

**(1868) 07 CAL CK 0037**

**Calcutta High Court**

**Case No:** Special Appeal No. 168 of 1868

R.A. Pushong

APPELLANT

Vs

Munia Halwani

RESPONDENT

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**Date of Decision:** July 9, 1868

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### **Judgement**

Phear, J.

No more unconscionable case than this certainly has it been my lot to meet with since I have sat upon the Bench of this Court. There can be no doubt that the Lower Appellate Court is entirely right in its conclusions, but it might very well have founded its decision upon higher ground than that upon which it has felt it sufficient to place it. The defendant is resisting a claim to possession of a certain house which is made by a lady who was admittedly his client, in the matter of certain proceedings in the Lower Courts, wherein he had undertaken to do his best as a mookhtear, and as a person skilled in the practice of the Courts, to recover for her the property of which this forms a portion. It seems that the proceedings, which he took as her agent, were successful, and that he got possession on her behalf; but he now seeks to keep that possession adversely to her, and to retain the house for himself. He justifies this conduct, on his part, by saying that he is entitled to hold the property as his own under a contract which he entered into with the plaintiff, preliminary to his undertaking the conduct of her affairs. But as he has met with one insuperable difficulty in making out this case, namely, that if the contract gave him, as he says it did, the right to possession which he sets up, then, the document which he tenders as the written evidence of the contract is not admissible under the stamp which it bears. Consequently there is nothing before the Court which can be looked at as evidence of his alleged right, and this of itself is sufficient to defeat the claim which it puts forward.

2. Assuming, however, that the contract was proved, we learn from the defendant's own admission that it was entered into with the lady at a time when he undertook to be her legal adviser or manager. It lay at the very initiation of a fiduciary relationship between himself and her. Now it is always held in Courts of equity that a contract of

sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust, is liable to be called in question by the vendor, and to be set aside at his instance if it be found that the other party made an unfair use of his advantages. So also, when the seller labours under such disabilities, or is so situated as to be peculiarly liable to be imposed upon; and bargains with widowed or single purda women fall within this class, see *Rup Narayan Singh v. Gangadhar Prasad* (9 W.R., 297). But especially in a case, where any person, acting as an attorney or as a skilled legal adviser, enters into a contract of purchase with his client in respect of the subject of litigation or advice, is the contract liable to be questioned by the other side at any time, and when it is questioned, every presumption is made against its being just. Undue influence is presumed to have been exerted until the contrary is proved; and it is incumbent upon the purchaser, if he relies upon the contract, to show that all its terms and conditions are fair, adequate, and reasonable. Failing that, his claim under the contract and his rights under it must go.

3. Upon the facts of this case, although in strictness, perhaps, the defendant was not actually the attorney or adviser of the plaintiff at the very moment when he made the bargain with her, still it is clear that he was so situated relative to her as to possess all the influence and advantages which belong to that relationship, and which are the foundation of the plaintiff's equity. And even, if the transaction in question does not fall exactly under the last special head, which I have mentioned, it is clear that it is within the operation of the general rule. But, moreover, looking at the conditions of the contract which the defendant in this case thought it consistent with his duty as a Mookhtear of a Civil Court, and as legal adviser of the plaintiff, to enter into with her, I do not hesitate to say, that they are such as, upon the face of them, exhibit the operation of undue influence and pressure. Such terms would clearly never have been come to, if the contracting parties had stood upon equal ground. In truth, if the description given by the Judge of the nature of this contract be correct; the transaction goes as near an act of fraud as any thing can, without subjecting the perpetrator to the risk of being tried at the bar of a Criminal Court. It seems to me that the defendant's conduct falls but little short of an attempt at stealing the property of the plaintiff, and I feel it impossible to say that a contract of this kind can be for "a moment maintained when the party on the other side questions it.

4. We think, as I have already said, that the decision of the Lower Appellate Court is entirely right for the reason given by the Judge, and we have also felt ourselves bound to express our opinion that it might well have been placed upon other and higher grounds than those upon which the Judge has placed it, namely, on the grounds which I have just alluded to. We, therefore, dismiss this appeal with costs. And inasmuch as we learn from the judgment of the Judge, that the defendant in this case has been in the habit of practising as a mookhtear of a Court, over which we have jurisdiction, we think it is our duty to direct that Court to hold an enquiry

into the circumstances under which this contract was made and entered into, with the view to its forming a judgment as to the propriety of allowing this gentleman to practise as a mookhtear and a pleader before it for the future, as it sauna to us, if any confidence can be placed in the representations of the Judge of the Lower Appellate Court, the defendant is not a person to whose hands the interest of suitors ought to be entrusted.