

**IN THE HIGH COURT OF LAHORE**

Decided On: 23.07.1923

Appellants: **Mahomed Shafi and Ors.**

**Vs.**

Respondent: **Kalsum Bi and Ors.**

**Hon'ble**

*Raoo and Fforde, JJ.*

**Judges/Coram:**

**JUDGMENT**

**Abdul Raoo, J.**

1. This appeal has arisen out of a suit brought by Mt. Kalsum Bi and others for the cancellation of two sale-deeds executed by her and others in favour of the appellants Mohamad Shafi and Abdul Rashid. The parties to the suit belong to a class of Musalmans called Punjabi Mahomedans. They carry on trade and are well known for their keen business instinct. Besides carrying on trade some of them own lands and houses also. The pedigree table given in the judgment of the trial Court shows the relationship between the parties concerned in this appeal. Abdul Rashid, Mahomad Shafi and Riaz-ud-Din were three brothers being the sons of Aziz-ud-Din. Riaz-ud-Din had married two wives. By his first wife Mt. Mohd.-ul-Nisa, who pre-deceased him, he had two sons and two daughters, namely, Bashir-ud-Din, Shuja-ud-Din, Mt. Sughra Jan and Mt. Ashraf-ul-Nisa. By his second wife Mt. Kalsum Bi he had five children, namely, Iqbal Ahmad, son, and Mt. Mussarat Begum, Mt. Kudsia Begum, Mt. Amat-ul-Basit and Mt. Zubaida Begum, daughters. Riaz-ud-Din died on the 9th of March, 1914. In the year, 1913, in his lifetime he stood in need of money to pay off certain creditors. Under a deed, dated the 1st of July, 1913, he borrowed Rs. 6,000, from his wife Mt. Kalsum Bi. The document was written in the shape of a conditional sale-deed. Mt. Kalsum Bi had to go to Lahore to her brother Sheikh Muhammad Naki, an Honorary Magistrate, to get money from him in order to pay her husband Riaz-ud-Din. On her arrival at Lahore she did not find her brother there but succeeded in

raising Rs. 2,000 in his absence and returned to Delhi. Later on Sheikh Muhammad Naki went to Delhi and handed over to his sister on the 11th of July, 1913, six currency notes of Rs. 1,000 each out of which the balance of Rs. 4,000 was paid to Riaz-ud-Din. Sheikh Muhammad Naki obtained a written receipt from his sister, Mt. Kalsum Bi, who signed it with her own pen in Persian character. This is translated and printed at page 8 of the paper book in First Appeal No. 2784 of 1915. Shortly after this the joint property of the three brothers was partitioned and one-third was allotted to each of the brothers. On the death of Riaz-ud-Din the property conditionally sold to Mt. Kalsum Bi was mutated in her name, in spite of objections raised by her step-sons. Thereupon Bashir-ud-Din and Shuja-ud-Din, the step-sons, brought a suit against her for the recovery of their share (28-96) of inheritance in the property left by their father. That suit was resisted by Mt. Kalsum Bi on the ground that the property had been sold to her absolutely for Rs. 6,000 by a sale-deed, dated the 1st of July, 1913. Mr. Dundas, the District Judge, however, held that the property had been only conditionally sold as a security for the Rs. 6,000 lent by her to her husband Riaz-ud-Din. It was found by the learned District Judge that a sum of Rs. 7,400 was due to Mt. Kalsum Bi, namely, Rs. 6,000 paid by her under the conditional sale-deed and Rs. 1,400 which she had paid to Mt. Muhammadi Jan and Mt. Shamas-ul-Nisa to adjust the partition of the property in suit. A decree was passed in favour of the plaintiffs on the 29th June, 1915, for joint possession by redemption of 28/96 of the property in suit on payment of 28/96 of Rs. 7,400, i.e., Rs.

2,158-5-4, together with the defendant's costs in this suit. Against this decree Mt. Kalsum Bi filed an appeal in the Chief Court which was registered as First Appeal No. 2784 of 1915. Under the conditional sale-deed of the 1st of July, 1913, to which the litigation just referred to, related four properties were mortgaged, namely:

- (1) 1/3rd of a house called Jaman wala.
- (2) 1/3rd of a house called Nibwala.
- (3) 1/3rd of two plots of agricultural land in Chandrawal Chan, Danishmand Khan.
- (4) 1/3rd share in a garden called Dolawa in Ladhaura Kalan.

2. In addition to the first appeal pending in the Chief Court Mt. Kalsum Bi was carrying on litigation against her husband's brothers, both in the Civil and the Revenue Courts. She had brought two suits for accounts--one in the Revenue Court and the other in the Civil Court. On the 30th of August, 1918, Mt. Kalsum Bi on her own behalf and as the guardian of her minor children, Iqbal Ahmad, Mt. Mussarrat Begum and Mt. Kudsia Begum, executed two sale-deeds in favour of Abdul Rashid and Muhammad Shan in respect of their shares in the entire property left by Riaz-ud-Din. Mt. Amat-ul-Basit, Mt. Zubaida Begum, her adult daughters, Basbir-ud-Din, Shaja-ud-Din, and Mumtaz Ahmad also joined her in the execution of the deeds by which they transferred their shares in the estate. As Mumtaz Ahmad had purchased the shares of Mt. Sughra Jan and Mt. Ashraf-ul-Nisa, the stepdaughters of Mt. Kalsum Bi, be as their representative-in-interest joined in executing the sale-deeds in respect of their shares. Thus Abdul Rashid and Muhammad Shafi acquired the whole of the estate left by Riaz-ud-Din. The list of the property sold to Abdul Rashid is translated and printed at page 5 of the paper book in Civil Appeal No. 2 of 1922 as list 'A' and the list of the property sold to Muhammad Shafi is translated and printed at page 4 of the paper book as list 'B'. The consideration for the sale in favour of Abdul Rashid was Rs. 8,975 and that for the sale-deed in favour of Muhammad Shafi was Rs. 5,475 as stated in the two sale-deeds. Under one of

the conditions entered in the two sale-deeds Mt. Kalsum Bi accepted the correctness of the decision of Mr. Dundas and undertook to present an application to the Chief Court for the withdrawal of the appeal.

3. The suit which has given rise to this appeal was instituted on the 19th of March 1919 by (1) Mt. Kalsum Bi, (2) Iqbal Ahmad, minor son, (3) Mt. Kudsia Begum, and (4) Mt. Mussarrat Begum, minor daughters of Riaz-ud-Din through Muhammad Sultan, (5) Mt. Amat-ul-Basit, and (6) Mt. Zubaida Begum principally against the two vendees Abdul Rashid and Muhammad Shafi, and Shuja-ud-Din, Bashir-ud-Din, Mumtaz Ahmed, Mt. Shamshad Jan and Mb. Putli Jan as pro forma defendants. The last named two defendants were impleaded because they were said to have obtained a contract for sale from Abdul Rashid and Muhammad Shafi in respect of a portion of the properties purchased by them. As already stated the suit was for the cancellation of the two sale-deeds on the grounds mentioned in the petition of plaint. Those grounds are set forth in paragraphs 4 and 5 of the plaint in the following words:

4. Defendants Nos. 1 to 5 deceived the plaintiffs saying that the property entered in paragraph No. 2 of the plaint, a plot of culturable land known as Lariwali, which is muafi, measuring bighas 5 --8 entered at khewat No. 2, khatauni No. 28 with a well situate at Mauza Sadhaura Kalan, are of a very small value and that therefore all the disputes should be settled. Accordingly the property entered in the list A was sold to Abdul Rashid for Rs. 8,975-13-0 and the property in the list B was sold to Muhammad Shafi for Rs. 5,475-13-0 under deeds, dated the 30th August, 1918.

5. The plaintiffs and the minors were deceived. Defendants Nos. 5 and 6, having taken advantage of the fact that the plaintiffs were inexperienced and pardanashin ladies, got the property which was of very high value sold to them for a very low price and also got such conditions as were never accepted by the plaintiffs entered in the sale-deed. A heavy sum was shown as due to Mumtaz Ahmad. All these proceedings were fictitious. The plaintiffs were never informed of them.

4. In paragraph 10 the plaintiffs prayed that it might be declared that the documents in question had been got executed through fraud and were unauthorised and detrimental to the interests of the minors so far as they concerned them and that they be cancelled as against all the plaintiffs. The suit was resisted by the defendants on various grounds. The jawab-i-dawa of the defendants Muhammad Shan and Abdul Rashid is printed at pages 66 and 67 of the paper book and contains the following plea on the most material questions arising for decision in the case:

The plaintiffs were not deceived in any way. According to law the plaintiffs should state distinctly in the plaint what fraud was exercised on them and how it was exercised. The petition of plaint is liable to be amended. The plaintiffs may be directed to state the fraud in detail and also state the conditions which were not accepted by them (plaintiffs) and which were got entered in the deed according to their statement. Plaintiff No. 1 is a literate and an intelligent woman. She has often chances of litigation. She understands matters fully. There was conversation with plaintiff No. 1 and other plaintiffs who after duly consulting the matter and fully enquiring about the price got the sale-deed registered in favour of defendants Nos. 4 and 5. The receipt for the earnest money was executed on the 13th August, 1918. The sale-deeds were registered on the 31st August, 1918. The receipt marked D. I is attached to this jawab-i-dawa, Moreover, plaintiff No. 1 sent a notice marked D. II to defendant No. 4 on the 11th December, 1918 and notice marked D. III to defendant No. 5 making a demand for the money and the hundis executed in lieu of the earnest-money and recovered the amount of the hundis from defendant No. 4. The sale-deeds bear the signatures of the plaintiff's advisers and relatives. The sons-in-law of plaintiff No. 1 and the husbands of plaintiffs Nos. 5 and 6 indentified them at the time of registration.

5. It was also pleaded that the sale was for the benefit of the minors and that the other adult co-sharers had executed this sale-deed after due consideration for their own benefit as well as for the benefit of the other plaintiffs-minors who are their

descendants and sisters and that they were bound thereby according to law. Defendants Nos. 6 and 7 disclaimed all connection with the property in suit and it is admitted before us that they dropped out of the suit and had no concern with it. The other defendants supported the pleas urged by Muhammad Shaft and Abdul Rashid. On the 8th of July, 1919 the Court made the following order which is translated and printer at page 72 of the paper book:

The plaintiff contends that she was deceived. But she has not stated what sort of fraud has been practised on her. It is therefore her duty to file correct and detailed plaint \* \* \* \*

6. In compliance with this order Mt. Kalsum Bi filed a further statement of her claim setting out the points regarding which the fraud was alleged to have been practised:

(1) It was stated with regard to the property that it was of a very small value, that the value, for which it was being sold was much more than the market price.

(2) No mention about the payment of any item to Mumtaz Ahmad was made to plaintiff No. 1.

(3) Plaintiff No. 1 never agreed that she would withdraw from her appeal case pending in the Chief Court of the Punjab.

(4) Every undue advantage was taken of the fact that plaintiff No. 1 was a pardanashin lady, She trusted the defendants, and put her signature on the document, She did not understand all the conditions.

7. The defendants Muhammad Shafi and Abdul Rashid filed an additional jawab-i-dawa to meet the case set up by the plaintiff Mt. Kalsum Bi in which they stated that the plaintiff, having herself fully ascertained from her sons-in-law, other relatives -and advisers the value of the property, had sold it for the highest market value; that she knew all about Mumtaz Ahmad; that she had agreed to withdraw her appeal pending in the Chief Court; and that although the plaintiff was apparently a

pardanashin lady she was literate, she had been fighting cases; she had in every way obtained full information from her advisers and relatives and that she fully understood all the terms of the sale deeds. Before issues were framed in the case the appeal of Mt. Kalsum Bi (Civil Appeal No. 2784 of 1915) came up for decision before the High Court on the 9th of February, 1920, and it was urged on behalf of the respondents that in consequence of a compromise the terms of which were incorporated in the deeds of sale Mt. Kalsum Bi had agreed to withdraw the appeal and that, therefore, it could not be heard. Mt. Kalsum Bi's Counsel replied that the sale-deeds were being contested; Thereupon the learned Judges before whom the appeal had come up for decision directed the Court to take evidence, are decide whether a valid agreement had been arrived at between the parties under which Mt. Kalsum Bi had agreed to withdraw the appeal. By consent of parties evidence was recorded in the inquiry held according to the orders of the High Court and the evidence taken in the inquiry by consent of parties was to be read as part of evidence in this case. On the 13th of January the statement of Abdul Rashid, defendant No. 4 was recorded under Order 10, Rules 2 and 3, Civil Procedure Code, and he made the following statement which is to be found printed at page 86 of the paper book:

The price of the property at the time of the sale was the same for which it was purchased. I did not purchase property of a higher price in 1918. The price of the property has not risen as yet and is the same as before. The conditions given in the sale-deed were settled with Mo. Kalsum Bi. The same conditions as were settled were got witten in the deed. The sale-deed was read over and her sons-in-law were present. Local Commissioner was appointed by Kazi Fazl-ul-Rahman, Revenue Assistant. They got a settlement made. Muhammad Mian was also one of the persons who got the settlement made. An agreement was made to sell a plot of 5,000 yards to Mussammat Chhamma Jan for Rs. 15,000, a receipt was executed, but she made a refusal. The plaintiffs had a share according to the Muhammadan Law before the sale. Raiz-ud-Din had 1/3rd share.

8. Counsel for the plaintiff Mt. Kalsum Bi on the same date made the following statement which is to be found on the same page:

The defendants took advantage of the fact of Mt. Kalsum Bi and the other females, vendors, being pardanashin ladies and said that in spite of the property being of a small value they were giving the price asked for from them. The females agreed, being thus deceived. But such conditions as were not settled were got entered in the sale deed. The sale is quite adverse to the rights of the minors. Hence it is prayed that it might be declared null and void. Mt. Kalsum Bi is prepared to give back the money received by her.

9. The following issues were framed by the Court after recording the statements of the parties, namely:

(1) Was the sale made for the benefit of the minors?

(2) Was the sale got made after the plaintiff has been fully informed of its objects?

(3) Was the property of a higher value? Subsequently when the case was taken up by Mr. Som Nath, Senior Subordinate Judge, Mr. Abdul Aziz, the plaintiff's counsel, on being questioned as to the nature of the fraud which was alleged to have been committed by the defendants-vendees stated that the fraud was that the defendants gave Mt. Kalsum Bi to understand that the property in suit was of a very little value and it would be better to sell it to them and it would be beneficial to the plaintiffs. It was further represented, that Mt. Kalsum Bi's sons-in-law were uselessly deceiving her. In consequence of this statement the issues originally framed by Mr. Abdus Samad, Subordinate Judge, 2nd Class, were recast as follows:

(1) Was the sale in suit for the benefit of the minors?

(2) Was it duly executed by Mt. Kalsum Bi after properly understanding its terms?

(3) Is it tainted with fraud and undue influence?

10. After considering the evidence produced on behalf of Mt. Kalsum Bi, the Lower Court held that the fraud and the deception pleaded by her were not established, but that being a pardanashin lady she was entitled to the protection afforded to pardanashin ladies under several Privy Council rulings. On the basis of this view the learned Judge of the Court below proceeded to examine the evidence given on behalf of the defendants and came to the conclusion that the requirements of the rules laid down by their Lordships of the Privy Council were not satisfied. In the case of the minor plaintiffs the learned Subordinate Judge rightly held that the sale was ab initio void as a mother under the Muhammadan Law has no power to dispose of the Immovable property belonging to minor children. This has been authoritatively settled by the latest Privy Council ruling in the case of Imam-bandi v. Mutsaddi (I). As regards the, two major daughters of Mt. Kalsum Bi the, learned Subordinate Judge held that they had exercised no independent judgment in selling their shares and that they had acted as told by their mother. There being no evidence on the record to show that the terms of the sale-deed were ever explained to them or that they had received any sums the learned Judge held that the sale could not be held to be binding upon them. In the opinion of the learned Subordinate Judge the decision of the whole case turned upon the point whether the sale deed should be upheld as against Mt. Kalsum Bi. Then having come to the conclusion that they were not binding even upon her the Court granted a decree in favour of the plaintiffs and against the defendants cancelling the sale-deeds as far as they related to the plaintiffs' share on payment of Rs. 7,432-13-0 to Abdul Rashid and Rs. 232-13-0 to Mahomad Shafi.

11. Against this decision the present appeal has been preferred by the defendants Maho-mad Shafi and Abdul Rashid and Dr. Sir Muhammad Iqbal has argued their case before us. He has Very frankly admitted the correctness of the decision of the Court below as regards the minor plaintiffs. He has addressed a feeble argument as regards the adult daughters of Mb. Kalsum Bi, but as he is unable to point out any evidence on the record to

prove that the terms of the sale-deeds were settled with them or that any one besides Mt. Kalsum Bi had looked after their interest, his argument cannot be accepted. The terms of the sale-deeds are not shown to have been explained to them nor is there any evidence to show that they were in any way benefited by the transaction. We must, therefore, hold that the sale-deeds so far as they affect the shares of Mt. Kalsum Bi's children have been rightly cancelled. The real question to be decided in this appeal is whether the sale-deeds should be cancelled as against Mt. Kalsum Bi also or whether they should be allowed to stand. A careful examination of the plaint makes it quite clear that Mt. Kalsum Bi attacked the sale-deeds on the grounds of fraud, deception and undue influence. Before the framing of the issues counsel for the plaintiffs made it quite clear that the plaintiffs wanted to have the sale-deeds cancelled on the ground of fraud. In the supplementary statement of their claim printed at page 72 of the paper book the particulars of the fraud were set out. Prima facie therefore, the claim of Mt. Kalsum Bi should stand or fall on her success or failure to establish the allegations made in the plaint and in the pleadings.

12. The only question that requires consideration is whether a pardanashin lady who comes into Court with specific allegations of fraud can be relieved of the necessity of establishing those allegations on the mere ground that she is entitled to special consideration and protection if a document executed by her is sought to be enforced against her. There can be no doubt that if a transferee from a pardanashin lady comes into Court to enforce a deed executed by a lady it lies upon him to prove that it was obtained from her fairly, that the terms of the deed were explained to her, that she had independent advice before executing the deed and that she had benefited by it. We are on the other hand clearly of opinion that when a pardanashin lady comes into Court as a plaintiff with specific allegations of fraud and deception it lies upon her to make out prima facie case before the transferee can be called upon to show that the deed had been properly obtained from her. This view is fully supported by the decision of the Allahabad High Court in the case of Naushani Begum v. Intizar Begum

(1899) A.W.N. 25. That was a case in which the plaintiff a pardanashin lady sought to set aside a power of attorney executed by her on the 17th of November, 1892, in favour of one Inayat Husen Khan and a sale-deed, dated the 21st of November, 1892, which purported to have been executed on behalf of the plaintiff in favour of the vendee. The plaintiff alleged in her plaint that her attorney had led her to believe that a certain person was willing to purchase her share in Mauza Samaria Anup for a consideration in excess of the real value of the property; that the plaintiff believing this statement of the attorney to be true had agreed to sell the property; that after she had agreed to effect the sale it was represented to her that a power of attorney was necessary for the purpose of registration and mutation proceedings, and that thereupon she had executed the power of attorney, dated the 17th of November, 1892. She averred that she neither understood the purport of the deed nor was it explained to her. She added that the attorney had executed a sale-deed of the property in favour of the vendee for a consideration of Rs. 5,000 without the knowledge or consent of the plaintiff. She failed to prove the allegations made by her in the plaint, but the trial Court holding that the plaintiff being a pardanashin lady the burden of proof lay upon the vendee to prove that the sale-deed was fairly obtained from the plaintiff and that she had understood the nature and effect of it, decreed the claims and set aside the document. On appeal Banerji and Aikman, JJ., reversed the decision of the trial Court and made the following pertinent observations in their judgment:

His (the appellant's Vakil) main contention before us is that the burden of proof was improperly cast upon the defendant-appellant, and that it was the duty of the plaintiff to prove by some prima facie evidence the allegations made by her in her plaint. In our opinion this contention is well founded. No doubt, their Lordships of the Privy Council and the Courts in this country have been jealously watchful of the interest of pardanashin ladies, and it has been held that where a transaction by a pardanashin lady is relied upon it is the duty of the person who relies upon such transaction not only to prove that it was entered into by the pardanashin lady, but

also that she understood the nature and effect of it. Where a plaintiff comes into Court and seeks to enforce a contract made by a pardanashin lady that principle would apply in all its force, but, as observed by their Lordships of the Privy Council in *Kali Prashad Tewari v. Raja Sahib Perhlad Sen* (1869) 12 M.I.A. 282 a party who comes into Court to set aside a contract under which there has been possession and enjoyment is in a very different position from a person who comes into Court to enforce a deed. In the former case the burden of establishing at least a good prima facie title to the relief sought by the plaintiff has on the plaintiff. In the case of a pardanashin lady the quantum of evidence which would be required from the plaintiff would, in our opinion, not be the same as that required from any other plaintiff seeking to avoid his deliberate act, but that some prima facie evidence is necessary, even in the case of a pardanashin lady, is a proposition which cannot be disputed.

13. We entirely agree in every word of the passage quoted. In the present case, as found by the Court below, Mb. Kalsum Bi entirely failed to establish the allegations made in her plaint on the strength of which she had asked the Court to set aside the sale-deeds, It was not denied that the sale-deeds were executed by her with a view to settle all the disputes which had taken place between the parties. After referring to this matter in paragraph 4 of her plaint the plaintiff went on to state that--

Accordingly the properly entered in the list A was sold to Abdul Rashid for Rs. 8,975-13-0 and the property entered in the list B was sold to Muhammad Shafi for Rs. 5,475-13-0 under deeds -dated the 30th August, 1918.

14. It is admitted that the contract was carried out and the vendees, who were already in possession of the property sold, became the owners of those properties. Thus the object of the suit was to get rid of the sale-deeds which the plaintiff had deliberately executed and for which she had at any rate received the full price from Abdul Rashid. The grounds upon which she had sought the relief being deception, and fraud, she was bound to produce some

prima facie evidence to support them. Upon this ground alone her suit ought to have been dismissed and the Court below ought not to have called upon the defendants to prove that the sale-deeds had been fairly obtained from her and that she had entered into the bargain after obtaining independent advice, etc., etc. The learned Judge of the Court below has cited in his judgment the case of Shambati Koeri v. Jogo Bibi (1902) 29 Cal. 749 to justify the course adopted by him. That was a case brought against a pardanashin lady on a mortgage bond which purported to be signed in her name "by the pen of Soondar Lal, son-in-law, and ammukhtar" which was not produced and secondary evidence to account for its non-production was held to be inadmissible or at any rate insufficient to show that Soondar Lal had authority to execute the bond. Under those circumstances the lady was held not to be bound by the deed as it was not shown that it was explained to her or that she understood its conditions and effect. That was an entirely different case. The suit had not been brought by the lady to set aside the deed, and it was not proved in that case that the deed had been executed with her consent. That case, therefore, can have no bearing upon the facts of the present case. Moreover, as We shall presently show, the plaintiff in this case is not an ordinary pardanashin lady and she thoroughly understood what she was about. She gave evidence in both the suits, namely, (1) brought by her step-sons against her, and (2) her own suit against the vendees appellants. Her evidence shows remarkable intelligence and business capacity. She is admittedly literate and can read and write. According to her own evidence she can carry on correspondence with others. The receipt Ex. D-1, printed at pages 6, 7 and 8 of the paper book in Civil Appeal No. 2 of 1922 is admittedly signed by Mt. Kalsum Bi in her own hand in Persian character. This is another receipt Ex. D.W. 2 printed at page 8 of the paper book in Civil Appeal No. 2784 of 1915, which is also signed by her in her own hand in Persian character. There is a letter Ex. D-3 printed at page 9 of the paper book in Civil Appeal No. 2 of 1922 addressed by Mt. Kalsum Bi to Sheikh Muhammad Shafi which is also signed in her own hand in Persian character. There are two Hundis Ex. D-5 and D-6 printed at pages 14 and 15 of this

paper book in which there is an endorsement in her own hand-writing to the effect "that the amount of this Hundi is received. (Sd.) Mb. Kalsum Bi in her own hand in Persian characters and with her thumb mark." Besides these there are other documents which have admittedly been signed by her to which it is unnecessary to refer in detail. We have looked at her hand-writing which is in good nastalik (set hand) and appears to have been written by a practised hand. There is evidence to show that lady has been carrying on litigation and has been entering into money transactions and is far from being inexperienced in such matters. Mumtaz-ud-Din, plaintiffs' witness No. 4, at pages 110 and 111 of the paper book in Civil Appeal No. 2 of 1922 has stated that he knew Mt. Kalsum Bi. He visited her house three or four years back and he had a mutation of the suit property attested in his presence, Mt. Kalsum Bi attended herself. Hafiz Abdul Aziz, her counsel, was not present. Mt. Kalsum Bi had herself mutation attested. At page 49 of the paper book is to be found the mutation entry relating to one of the properties conditionally sold to her by her husband, and the order of the Naib-Tahsildar effecting the mutation contains the following statement:

This case came on before me in a public meeting. Riaz-ud-Din, vendor, has died. Mt. Kalsum Bi, his widow, is the vendee. She having made an appearance verifies the sale. Babu Abdul Aziz, pleader for her is also present. \* \* \* \* Mumtaz-ud-Din, Lambardar, testifies to the fact that the revenue and the water rate are paid by Mussammatt Kalsum Bi, vendee, and that she is also in possession.

15. There is a little discrepancy between the statement of Mumtaz-ud-Din and the mutation entry as regards the presence of Babu Abdul Aziz, Mt. Kalsum Bi's pleader, at the mutation proceedings; but it is possible that the lady went there herself and Babu Abdul Aziz, pleader, joined her afterwards. One thing, however, is dear that, according to the mutation entry, the proceedings were carried on in a public meeting and the lady herself went there. This is not usual with pardanashin ladies. It is, however, explained that the mutation took place at the house of the Naib-

Thasildar and that therefore there was nothing strange if the lady went there accompanied by her relations and friends. But Revenue Officers at times do hold their Courts at their private residences. The meeting, though held at the Naib-Tahsildar's house, may yet be a public meeting as described in the order.

16. The principle to be deduced from the rulings of their Lordships of the Privy Council relating to documents executed by pardanashin ladies is thus stated at page 270 by Mr. Justice Mahmood in the case of Behari Lal v. Habiba Bibi (1886) 8 All. 267.

It is an estimate which I, from my acquaintance with the facts of Muhammadan life to which it refers, accept as in keeping with the rulings of the Privy Council in such matters, which have done for the pardanashin women what their life requires, which is, that they should be placed, by analogy, on a footing somewhat similar to that of persons non compotes mentis. The doctrines of equity which relate to such persons have been stated in Section 228 of Story's work on Equity Jurisprudence, where it is laid down that Courts of equity deal with the subject upon the most enlightened principles, and watch with the most jealous care every attempt to deal with persons non compotes mentis. Wherever from the nature of the transaction, there is not evidence of entire good faith [uberrima fides), or the contract or other act is not seen to be just in itself, or for the benefit of these persons, Courts of equity will set it aside, or make it subservient to their just rights and interests.

17. The learned Judge quoted a passage from the judgment of their Lordships of the Privy Council in the case of Buzloo Ruhreem v. Shumsoonnissa Begam (1867) 11 M.I.A. 551 in which the following observation is to be found:

In India the Musalman woman of rank, like the Hindu, is shut up in the zenana, and has no communication, except from behind the pardah, or screen, with any male persons save a few privileged relations or dependants.

18. Now, can Mt. Kalsum Bi be said to come under this description? Can she be placed on the same footing as persons non compotes mentis, and can it be said in her case that she was shut up in the zenana, had no communication, except from behind the pardah or screen, with any male persons, save a few privileged relations or dependants? In view of the circumstances disclosed in the evidence we are emphatically of opinion that Mt. Kalsum Bi does not come under the description given above. Even if she be taken to be a pardanashin woman of the kind contemplated by their Lordships of the Privy Council we are of opinion that there is sufficient evidence on the record, which goes to show that she had full knowledge of the nature and character of the transaction in which she had entered, that she had independent advice in the matter, and that she had executed the documents for very good reasons, fully understanding what she was doing. The vendees', Muhammad Shafi, and Abdul Rashid, had 2/3rds share in the property. The lady had difficulty in getting her share of profits from them. She had filed suits for accounts and she had to prosecute an appeal in the High Court against her two step-sons. At this juncture Sayad Mohamed Mian, plaintiff's witness No. 5, intervened and brought about a settlement of the disputes between the parties. The account given by him is as follows:

Riaz-ud-Din, Mahomad Shafi, Abdul Rashid and Mumtaz Din were four brothers, Kalsum, wife of Riaz-ud-Din had dispute with the brothers of her husband. I was appointed sole arbitrator. Riaz-ud-Din was then living. I gave my award there. Later on, after the death of Riaz-ud-Din there were other cases between, the parties. I suggested to them that they should come to a settlement. The parties met and the share in the property of Riaz-ud-Din was valued at about Rs. 15,000. Abdul Rashid agreed to purchase that share at Rs. 15,000. Kalsum Bi agreed to withdraw her cases pending in Courts.

19. In his cross-examination he stated that--

At first Mt. Kalsum Bi demanded Rs. 20,000 for her husband's share of the property. But she agreed to accept Rs.

15,000, after much consultation with her relations and friends.

20. Haji Fazl Rahman (P.W. 4) also had taken part in bringing about the settlement. This is what he stated:

I know Kalsum Bi by voice. Her husband Riaz-ud-Din was my collateral. The Revenue Assistant sent me to examine Kalsum Bi in a case by her against respondents for account of land produce. I took down the statement. Later on I intervened and a settlement was effected. One of the terms of the settlement was that all cases of Mt. Kalsum Bi and her children would be withdrawn, one of those cases was then pending in the Chief Court, and perhaps two in Delhi. The terms were settled in my presence, but the settlement was not reduced to writing in my presence because I left for Mahrauli. The property left by the husband of Kalsum Bi, excluding the Ranipur factory was valued at Rs. 15,000, and respondents agreed to purchase it all at this price.

21. Abdul Rashid (P.W. 7.), one of the vendees, has also spoken as to the settlement. He has stated that Fazal Rahman (P.W. 4) was appointed Commissioner by the Revenue Extra Assistant Commissioner to take down the statement of Mt. Kalsum Bi, and that (the Commissioner) had called him, Mahomad Shafi, Shuja-ud-Din, the two plaintiffs, Mt. Kalsum Bi, her two daughters, Mt. Amat-ul-Basit and Mt. Zabida Begam, Mumtaz Ahmad, son of Muzaffar Hussain, and Abdul Wahab. He has described the different stages of the consultation and the final settlement. He says that ten days after the first consultation the persons mentioned above, except Abdul Wahab, collected at Mt. Kalsum Bi's, Mahomad Sultan, another of her sons-in-law, was present. It was then that the final terms of the sale-deed were settled, and "Mt. Kalsum Bi agreed to withdraw from the appeal, and the other suits pending locally in the Courts of the Munsif and the Revenue Extra Assistant Commissioner." As already mentioned Mb. Kalsum Bi had filed two suits in Delhi Courts for accounts. The final proceedings in one of them are translated and printed at page 6 of the paper book. The case was taken up on the 9th of August, 1918 in the presence of

Hafiz Abdul Aziz, pleader for the plaintiff, and of Mahomed Shafi and Abdul Rashid, defendants. The parties stated that a compromise was going to be made between them and asked for time. The Court made the following order:

The case should, therefore, come off on the 15th August 1918, If no settlement is arrived at by the 15th August 1918, the account should be filed in the Court according to the previous order.

22. The receipt, Exhibit D-1, dated the 13th of August, 1918 translated and printed at pages 6 and 7 of the paper book shows that the settlement was made, and Rs. 99 were paid as earnest money. The principal terms of the sale were embodied in the receipt which is signed by Mb. Kalsum Bi for herself, and as the guardian of her minor children and by the other vendors. This receipt is witnessed by Mahomad Shafi and Mahomed Sultan, the sons-in-law of Mt. Kalsum Bi. When the case came up before the Court on the date fixed (15th August 1918) the Court made the following order:

The case came off today in the presence of Hafiz Abdul Aziz, Pleader for the plaintiff. None of the defendants is present. The pleader for the plaintiff states that a mutual settlement has perhaps been made, but that he will make a statement to-morrow after making an enquiry into the matter. He asks for time till to-morrow. The case should, therefore, come off to-morrow.

23. On the 16th of August, 1918, when the case was again taken up none of the parties appeared. The Court, therefore, ordered the case to be consigned to the record room in default. After reading this evidence no doubt is left on the point that the sale-deeds in question were the result of mutual settlement between the parties, and the statements of the witnesses, to which we have already referred, are strongly corroborated by this documentary evidence.

24. The following facts show that the sale-deeds were not obtained in a hurry and that Mb. Kalsum Bi had sufficient opportunity and time to consult her friends

and relations, and after doing so had deliberately entered into the contract and had completed the sale-deeds. It has been pointed out that the receipt for the earnest money was executed on the 13th of August 1918. The sale-deeds were executed on the 30th of August, 1918. They were presented on 5th September, 1918, for registration by Mt. Kalsum Bi at her residential house for herself and as guardian of her minor son Iqbal Ahmad and Mts, Musarrat Begam and Kudsia Begam, her minor daughters. The registration endorsements at pages 21 and 28 of the paper book show that the contents of the two sale-deeds were read out and explained to Mb. Kalsum Bi, who after hearing them, admitted them to be correct. She was identified by Mahomad Sultan and Mahomad Shafi, her sons-in-law, the husbands of her two adults daughters. Under each of the documents a hundi for Rs. 3,500, part of the consideration, was secured by Mt. Kalsum Bi. As some delay took place in getting the hundi money she served the vendees with notices, dated the 11th of December, 1918, and pressed them for payment. These notices are translated and printed at pages 8 and 9 of the paper book. Payments were subsequently made as is shown by the endorsement made on the hundis by Mt. Kalsum Bi. Those are translated and printed at pages 14 and 15 of the paper book. The sale-deeds are written in an ordinary simple language. They do not contain any involved provisions or technical language such as would not be ordinarily understood by a parandashin lady, especially by a lady of the intelligence and education of Mt. Kalsum Bi. From the endorsements on the deeds it is made clear that they were explained to her in her own language; that she fully understood them, and that she admitted the execution thereof. The endorsements further recited that Mt. Kalsum Bi was identified by her two sons-in-law, who were, themselves, interested in the transaction as their wives were among the executants. Under Section 60 of the Registration Act, III of 1877, a certificate of the registering officer like the one to which we have referred is admissible to prove the facts mentioned in it. There is thus prima facie evidence that the sale-deeds were explained and understood by Mt. Kalsum Bi, and that she admitted the execution thereof. This prima

facie evidence has not been rebutted by her by any evidence whatsoever. Thus the execution of the sale-deeds by Mb. Kalsum. Bi, after consultation with relatives and friends, and after understanding their terms, has been satisfactorily established, beyond all reasonable doubt.

25. Now, let us see if the transaction was a fair transaction and adequate price had been paid for the property sold. In the sale-deed in favour of Abdul Rashid the detail of the consideration Rs. 8,975 (sale money) is given. The items therein given may be divided under two heads, namely:

(a) Items which were to be paid to Mt. Kalsum Bi in her own right and on behalf of her children; and

(b) Items which were to be paid to creditors and Mumtaz Ahmad, the executant No. 9.

26. The total of the items to be received by her comes to Rs. 6,932-13-0, and the total of the items to be paid to creditors, including Rs. 250 half of Rs, 500 kept in trust with Sheikh Abdul Wahab, sister's son, on account of pilgrimage expenses (haj-i-badl) for Riaz ud-Din comes to Rs. 2,042.30. Deducting this from the total amount of the consideration (Rs. 8,975) we get a balance of Rs. 6,932 13-0 which was the amount to be received by Mt. Kalsum Bi. Instead of this she received Rs. 7,432-13-0 as admitted in paragraph 8 of the plaint. Thus she received (Rs. 7,432-13-0--Rs. 6,932-13 0) = Rs. 500 extra. The defendants alleged that Rs. 600 were paid on account of the expenses incurred in filing suits for accounts in Delhi Courts, and Appeal No. 2784 of 1915 in the Chief Court which she had undertaken to withdraw according to the settlement. To prove this extra payment of Rs. 600 the defendants filed a receipt, dated the 15th of August, 1918, executed by Mb. Kalsum Bi, but objection was taken to its admission in evidence as it was produced at a late stage. We have compared her signature on the receipt with her signatures on documents which were admittedly executed by her and we have no doubt that the receipt was executed by her. Even if the receipt be ruled out as inadmissible there is some other evidence to show that it was very likely that this

amount was paid. Fazal Rahman (P.W. 4), whose evidence is translated and printed at page 105 of the paper book, has stated that the property left by the husband of Mt. Kalsum Bi, excluding the Rampur factory was valued at Rs. 15,050 and the respondents had agreed to purchase it all at this price. Now, the total of the price agreed upon under the two sale-deeds is Rs. 14,450. If we add Rs. 600, the total comes Rs. 15,050. This, in a remarkable manner, corroborates the case set up by the defendants. Another corroboration is to be found in the circumstance that though Mt. Kalsum Bi was entitled to Rs. 6,932 13 0 only she, as admitted in the plaint, actually received Rs. 7,432 13 0, i.e., Rs. 500 extra. This is not exactly Rs. 600 but the payment of this Rs. 500 extra can be explained only on the hypothesis that she had received something extra on account of the expenses of the appeal. It has been shown above that one of the account suits pending in Delhi was abandoned on the 15th of August, 1918, and the receipt relied upon is also dated the 15th of August, 1918. This also in a way goes to show that there is truth in the defendant's allegation as to the payment of the costs of the suit.

27. It has been contended that the items of Rs. 1,192-3 0 payable to Mumtaz Ahmad, Rs. 500 payable to Jamil Ullah, Rs. 250 kept in trust for haj-i-badl, and Rs. 100 paid to Mt. Muhammadi Jan are fictitious and have not been proved. Now, as regards the Rs. 1,192 3 0, the plaintiff stated in her plaint that a heavy sum was shown as due to Mumtaz Ahmad. In her statement later on she stated that nothing was due to Mumtaz Ahmad, and when she filed additional pleas, which are printed at page 72 of the paper book, she stated in paragraph 2 that no mention about the payment of any items to Mumtaz Ahmad was made to her. She did not take any objection as to the payment or existence of the other debts. If those items were fictitious she would have taken objection to those in her plaint, or in her further pleas, or in her statement in Court. In a way she admitted those items, and it is too late now to object to them. Objection, no doubt, was taken in respect of the item of Rs. 1,192 paid to Mumtaz Ahmad. This gentleman appeared as a defendant and stated on oath that his jawab-i-dawa and

pleas were the same as those of Mahomad Shafi and Abdul Rashid (page 90 of the paper book) in which there was a clear statement that the whole consideration, including the amount due to Mumtaz Ahmad was real. Again at page 13 of the paper book there is to be found an endorsement by Mumtaz Ahmad, dated the 30th of August, 1918, admitting the payment of the debt due to him under the mortgage, dated the 12th January, 1915 executed by Bashir-ud-Din and Shuja-ud-Din. The amount paid included the amount of Rs. 1,192. This was paid on the same date on which the sale-deeds were executed, i.e., the 30th of August, 1915.

28. A question as to the market value of the property was raised and a Commissioner was appointed to report as to the market price of the property. He estimated the price to be at Rs. 19,350. It is not easy always to estimate the exact price of a property with reference to the market value of other properties, but taking the estimate even to be tolerably correct the difference between the price paid for the two sale-deeds and the price estimated by the local Commissioner does not come to much. The total of the price paid under the two sale-deeds is Rs. 14,450. Rs. 500 extra were paid to Mt. Kalsum Bi as admitted in her plaint, namely, these two items amount to Rs. 14,950. Deducting this from Rs. 19,350 we get a balance of Rs. 4,400. This balance may be fairly set off against the following circumstances:

(1) Mt. Kalsum Bi and her children were not in possession of the properties and they had difficulty in realizing their share of profits;

(2) Litigation for profits was going on in the Delhi Courts;

(3) An appeal by Mt. Kalsum Bi was pending in the Chief Court. The sum decreed in her favour in the decree passed by Mr. Dundas, namely, Rs. 7,400 was to be realized by her from her stepchildren. By executing the sale-deeds she was purchasing peace and getting all this money by one stroke.

29. As already stated the sale-deeds were the result of a family settlement and must be looked upon as such. The difference of Rs. 4,400 was, therefore, not very great.

30. After carefully considering all the circumstances mentioned in our judgment we have unhesitatingly come to the conclusion that so far as Mt. Kalsum Bi is concerned the sale-deeds must stand. We, therefore, accept the appeal in part and dismiss the suit of Mt. Kalsum Bi with costs in all Courts. The decree in favour of the other plaintiffs will stand. The appeal against them is dismissed with costs.

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