APPELLATE CIVIL.

Before Lort-Williams and M. C. Ghose JJ.

1933

Dec. 6, 13, 20.

MAHESHCHANDRA SHAHA

v.

ANANDACHANDRA SHAHA.*

Mortgage—Bond—Compound interest—Promise not to enforce—Inadmissibility of oral evidence—Misrepresentation—Indian Evidence Act (I of 1872), s. 92, prov. (1).

Where a mortgagee sued on mortgage bonds, which stipulated for payment of compound interest, and the mortgagor alleged that, when he came to sign the bonds, he objected to this stipulation, refusing to sign, but later on he was persuaded to sign, on the mortgagee promising not to enforce the stipulation,

held that such evidence was inadmissible under section 92 of the Evidence Act.

The law on this point in British India must be ascertained from the terms of the section and not otherwise.

Balkishen Das v. *Legge* (1) and *Maung Kyin* v. *Ma Shwe La* (2) referred to.

Nadia Chand Saha v. *Birendra Chandra Dutt* (3) distinguished.

Held, further, that evidence would be relevant to show that the mortgagee had always intended to enforce the stipulation about compound interest and had obtained the mortgagor's signature by means of a misrepresentation of fact, *viz.*, his real intention at the time of signature.

Where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a court of equity, considered as having been obtained fraudulently.

Pertap Chunder Ghose v. *Mohendranath Purkait* (4) referred to.

SECOND APPEALS by the defendants.

The facts of the cases and the arguments advanced at the hearing of the appeals appear sufficiently in the judgment.

*Appeals from Appellate Decrees, Nos. 2342 and 2343 of 1931, against the decrees of B. M. Mitra, District Judge of Noakhali, dated April 2, 1931, reversing the decrees of Atulchandra Das Gupta, Subordinate Judge of Noakhali, dated April 20, 1929.

(1) (1899) I. L. R. 22 All. 149 : L. R. 27 I. A. 58.
(2) (1917) I. L. R. 45 Calc. 320 : L. R. 44 I. A. 236.
(3) (1915) 20 C. W. N. 1067.
(4) (1889) I. L. R. 17 Calc. 291 : L. R. 16 I. A. 233.

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Amarendranath Basu and *Bhagirathchandra Das* for the appellants.

Atulchandra Gupta and *Nagendrachandra Chaudhuri* for the respondents.

Cur. adv. vult.

LORT-WILLIAMS J. The point raised on these two appeals is short and simple. Plaintiffs sued on mortgage bonds, which stipulated for payment of compound interest. The defendant's case was that, when he came to sign the bonds, he objected to this stipulation and refused to sign. Later, he was persuaded to sign, on plaintiffs promising not to enforce the stipulation. The District Judge held that such evidence was inadmissible and allowed the claim.

No principle of law is clearer than that, when the terms of a contract have been reduced to the form of a document, no extrinsic evidence is admitted to contradict, vary, add to, or subtract from its terms. This principle is embodied in section 92 of the Evidence Act.

It is true that evidence may always be given, which tends to show that the document is invalid, such as evidence of fraud, error, or incapacity. This is stated in the first proviso to the section. That is to say, a party may show by such evidence that his signature to a document was procured by means of fraud: Or, in other words, that there was fraud in its inception. Thus, evidence would be relevant to show that the plaintiffs always intended to enforce the stipulation, and obtained defendant's signature by means of a misrepresentation of fact, namely, their intention at the time of signature. But evidence that plaintiffs, at some later date, sought to enforce the stipulation is not evidence sufficient to prove that they had this intention when the document was signed.

The cases, which have been mentioned and which are relevant, do not support any different or more

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extended proposition of law. The law on this point in India must be ascertained from the terms of the section and not otherwise [*Balkishen Das* v. *Legge* (1), *Maung Kyin* v. *Ma Shwe La* (2).]

The decision in *Nadia Chand Saha* v. *Birendra Chandra Dutt* (3) can be supported on the ground that the Judges found misrepresentation at the time of signature, though it is difficult to discover any evidence in support of that fact. They refer to Sir Richard Couch's judgment in *Pertap Chunder Ghose* v. *Mohendranath Purkait* (4), which purports to be based upon the sound proposition that

> where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a court of equity, considered as having been obtained fraudulently.

It is true that both these decisions appear to go further and to suggest that, where the plaintiff told the defendant that a certain stipulation in a document would not be enforced, they cannot be held to have assented to it, as the document is not the real agreement between the parties, and the plaintiff cannot sue upon it. But this means, obviously, that a document may be invalid or a person entitled to a decree or order relating thereto, on the ground of mistake in fact or law, as stated in the first proviso, because the Judges in the former case say that the test is whether the defendant can maintain a suit for rescission, cancellation or variation of the contract.

Moreover, this case is clearly distinguishable, because it turned upon the question upon what terms the defendant had held over after the termination of the period of his lease, and in the other case it was found that the defendant's signature to the document had been procured by means of a fraudulent misrepresentation about the existing law.

(1) (1899) I. L. R. 22 All. 149 : L. R. 27 I. A. 58.
(2) (1917) I. L. R. 45 Calc. 320 : L. R. 44 I. A. 236.
(3) (1915) 20 C. W. N. 1067.
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For these reasons, I am of opinion that the decision of the District Judge was correct, and the appeals are dismissed with one set of costs.

The cross-objections are not pressed and are dismissed.

M. C. GHOSE J. These are two appeals by the defendants in a mortgage suit.

The only question in the two appeals is whether compound interest could be claimed on the deed by the plaintiff mortgagee. The deed shows that interest was to run at Re. 1-6 *per cent. per* month with yearly rests. Defendant pleaded that the deed was written before the defendant appeared and, when the defendant came to know about the compound interest, he protested and refused to take the loan, unless the plaintiff agreed not to take compound interest. That, thereupon, the plaintiff agreed not to take any compound interest and, upon that assurance, the defendant executed the deed. The trial judge found on the evidence that the defendant's plea was true. The court of appeal held that, having regard to section 92 of the Indian Evidence Act, oral evidence was inadmissible to prove the alleged plea of the defendant.

It has been urged by the defendant that the plaintiff's action in demanding compound interest in the suit, after having told the defendant that he would not charge compound interest, amounted to fraud and, following the decision in the case of *Lincoln* v. *Wright* (1) decided by the Court of Chancery, it is urged that the real agreement between the plaintiff and the defendant was that no compound interest should be charged. Therefore, it is fraud on the part of the plaintiff to insist on compound interest. I may note that in the case of *Lincoln* v. *Wright* (1) the question was whether the deed, which purported to be an absolute conveyance, was really a deed of mortgage.

(1) (1859) 4 De. G. & J. 16; 45 E. R. 6.

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On the part of the debtor, evidence was given to show part performance of the bond on the basis of the mortgage and the court held in the circumstances that it was a deed of mortgage.

I may note that in the case of *Balkishen Das* v. *Legge* (1) their Lordships stated—

> The cases in the English Court of Chancery which were referred to by the learned Judges in the High Court have not, in the opinion of their Lordships, any application to the law of India as laid down in the Acts of the Indian legislature.

In the case of *Pertap Chunder Ghose* v. *Mohendranath Purkait* (2), it was held that the landlord had obtained the *kabuliyat* by means of misrepresentation and, therefore, it was held that the *kabuliyat* was not binding on the tenants.

Much reliance was placed on the case of *Nadia Chand Saha* v. *Birendra Chandra Dutt* (3), decided by Mookerjee and Richardson JJ. In that case, the tenant executed a *kabuliyat* for one year, agreeing that, on default of punctual payment of rent, the arrears would carry interest at 75 *per cent. per annum.* After the one year, the tenant held over and, on a subsequent suit for rent, the landlord claimed interest on arrears at 75 *per cent.* The tenant pleaded that the landlord assured him that interest at 75 *per cent.* would not be enforced. The trial court found the allegation to be true. The High Court, in the circumstances, held that the interest at 75 *per cent.* was not the real agreement between the parties. It is to be observed that there it was a question, not so much on the terms of the *kabuliyat*, which was only for one year, but upon what terms the tenants held over at the end of that year.

Reference was also made to the case of *Maung Kyin* v. *Ma Shwe La* (4). In that case their Lordships

(1) (1899) I. L. R. 22 All. 149 (159): L. R. 27 I. A. 58 (65).
(2) (1889) I. L. R. 17 Calc. 291: L. R. 16 I. A. 233.
(3) (1915) 20 C. W. N. 1067.
(4) (1917) I. L. R. 45 Calc. 320; L. R. 44 I. A. 236.

followed the decision in the case of *Balkishen Das* v. *Legge* (1) and held that oral evidence was not admissible for the purpose of ascertaining the intention of the parties to written documents. In that case, the real point was whether there had been fraud in reference to matters antecedent to the deed in question and, on that basis, oral evidence was admitted to show the circumstances.

The latest decision in point of time is that in the case of *Abdul Aziz Mia* v. *Amanmal Bathra* (2). The facts of that case were exactly similar to those of the present case. That was a mortgage suit and the deed stipulated compound interest. The defendant pleaded that the mortgagee orally agreed not to take compound interest. The High Court held that oral agreement, varying the deed, was not admissible, having regard to the provisions of section 92 of the Indian Evidence Act. That section provides that, when the terms of a contract have been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to the contract or their representatives-in-interest for the purpose of contradicting, varying, adding to or subtracting from its terms. In this case, the defendant clearly wants to subtract from one of the terms of the written contract, namely the term as to the compound interest. The first proviso of section 92 provides that any fact may be proved, which would invalidate a document such as fraud, intimidation, illegality, *etc.* In this case, it is stated that there was fraud on the part of the plaintiff, inasmuch as he agreed not to take compound interest, but, afterwards in the suit, claimed compound interest. If this allegation be considered to amount to a fraud, then any thing may be alleged that there was a verbal agreement varying, adding to or subtracting from the terms of the written document and section 92 would be rendered futile.

(1) (1899) I. L. R. 22 All. 149 : L. R. 27 I. A. 58.

(2) (1924) 78 Ind. Cas. 742.

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In our opinion, the court of appeal below rightly rejected the oral evidence, by which the defendant attempted to subtract from the terms of the mortgage bond.

The appeals are dismissed with costs, hearing-fee one set. The cross-objections are not pressed and are dismissed.

Appeals dismissed.

G. S.