

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Robert Watson and Company v. Sham Lal Mitter, from the High Court of Judicature at Fort William, in Bengal, delivered 9th July 1887.

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD BAGGALLAY.

SIR RICHARD COUCH.

The Plaintiff in this suit and Respondent in the appeal is a tenant of two mouzahs, named Kuilibadi and Gilabani, under the Defendants and Appellants, who are putnidars of pergunnah Bogri. The principal object of the suit was to obtain a declaration that the Plaintiff is not bound by two decrees for enhancement of the rent of those mouzahs obtained in January 1861 against Srimati Haimabati and Srimati Peari Dasi, and by kabuliyats given by Srimati Haimabati to the putnidars in January 1867. The Plaintiff also asked for a declaration that the mouzahs were not liable to have the rent enhanced, and that the Defendants might be required to refund to him the sum of Rs. 7,800. 1. 5 gundahs, the amount paid by him to prevent the sale of the mouzahs, in execution of decrees obtained by the Defendants against Srimati Haimabati. It has been found by both the lower Courts that the mouzahs

were liable to an enhanced rent, and so that question is no longer in dispute.

The mouzahs were originally held by Jaggut Mundal Saontal and Soonder Mundal Saontal, and by a succession of transfers they came into the possession of Kasi Nath Ghose. He on the 17th of September 1850 sold one moiety of them to the Plaintiff's father, Gopi Nath Mitter, and about the same time made a gift of the other moiety to his wife, Srimati Peari Dasi. Gopi Nath died in October 1858, leaving his widow Haimabati, who on the 10th of May 1859 gave birth to the Plaintiff. On the death of Gopi Nath Haimabati appears to have entered into possession of his estate, and to have been recognized by the Defendants as tenant. On the 16th of May 1859, immediately after the birth of the Plaintiff, the Defendants caused notices of enhancement to be served upon Haimabati Dasi and Peari Dasi, and on the 17th June 1859 they instituted two suits against them for enhancement of rent, one as to each mouzah. On the 18th of November 1860, whilst the suits were pending, Peari Dasi sold her moiety to Haimabati, who is described in the deed of sale as "mother and guardian of Sham Lal Mitter, "minor," and it is apparent from the deed that the purchase was made on his behalf. No change, however, was made in the suits.

On the 26th of January 1861 the Defendants obtained a decree in each suit against Haimabati Dasi and Peari Dasi declaring that they had the right of enhancement, but the rate of enhancement was to be determined after local investigation. This was made, and by an order dated the 25th of June 1861 the rent of Kuilibadi was fixed at Rs. 529. 14. 14 gundahs, and of Gilabani at Rs. 675. 2. 13. 2 cowries. Soon after this, on the 26th of September 1861, a compromise

was made between the Defendants and Haimabati for payment by instalments of what was due on account of Gilabani. In 1865 the Defendants appear to have caused a re-survey to be made of the mouzahs, and Haimabati on the 3rd of September 1865 executed two dowl settlements of land and jumma, one of each mouzah. In these the rents fixed by the decrees are stated, and also a rent for other lands which had apparently come under cultivation, or for which rent might be claimed. The additional rent was Rs. 270. 3. 0 for Gilabani and Rs. 114. 8. 0 for Kuilibadi. These documents are both signed "Haimabati "Dasi, mother of Sham Lal Mitter, minor." On the 28th of January 1867 Haimabati executed two kabuliyats, one for each mouzah, signed in the same way as the dowls in which the rent fixed by the decree for enhancement is stated, and also the additional rent named in the dowl, together with a small sum for other land, and she agrees to pay the rent by instalments, year by year. Probably there was some land which had become subject to pay rent since the dowls were executed.

The Plaintiff attained his majority on the 10th of May 1877. On the 16th of July 1877 he deposited in Court Rs. 35. 1. 15 gundahs for rent of Gilabani, the Defendants having refused to take it, and on the 19th of January 1878 the Defendants presented a petition, in which they stated that the name of Sham Lal Mitter was not registered in their serishta, and he was not a tenant of Gilabani mouzah; that Haimabati Dasi held under them 3,579 bighas 17 cottahs 8 chittacks of land in Gilabani mouzah, on an annual rental of Rs. 946. 13. 13. 2 cowries, and the name of Haimabati was registered in their serishta, and therefore they were not bound to take the money in deposit. About this time they appear to have brought suits against

Haimabati for arrears of rent. They are numbered 2 and 3 of 1878, but the date of the filing of the plaints does not appear in the record of proceedings. The judgement in each was given on the 2nd of December 1878, and it states that the defence of Haimabati was that she executed the kabuliyat upon which the suit was based, not in her personal capacity, but as guardian of her, the then minor, son, Sham Lal Mitter, and, as he had become a major, the suit ought to be instituted against him, and not against her. An issue was settled on this allegation, and the Subordinate Judge, adopting the translation of her signature which has been given, held that the words used in the kabuliyats did not themselves convey the meaning contended for by the Defendant, viz., that Haimabati executed the instrument as guardian of her minor son, and made a decree in both suits for the amount claimed.

The Defendants proceeded to execute the decrees, and, the mouzahs having been attached, the Plaintiff made a claim under Section 63 of Act VIII. of 1869, which was rejected by the Subordinate Judge on the ground that the claimant's name was not registered in the serishta of the Defendants, the Judge saying that he "ought to bring a suit in the usual way to find out whether he was bound to pay the former rent, and whether the payment of the enhanced rent of the jote was binding on him." The 10th of January 1881 was fixed for the sale, and on that day the Plaintiff paid into Court the whole amount due under the decrees, whereupon it was ordered that the sale be stayed. The present suit was instituted on the 11th of February 1881, the sums so paid being what is sought to be refunded. The substantial question in the suit is whether the Plaintiff is bound by the decrees for enhancement obtained against Haimabati and Peari, or by the kabuliyats. It

was admitted by the learned Counsel for the Appellants that he is not bound by the decree as against Haimabati, but they contended that he is bound by it as against Peari, having purchased her moiety during the suit, and that it made him liable to pay the whole of the enhanced rent. Upon this question the lower Courts have differed. The learned Counsel relied upon the kabuliyats as being executed by the Plaintiff's mother, who was his natural guardian, and upon the absence of any suggestion that the enhancement of rent was otherwise than proper. At the close of the argument for the Appellants their Lordships intimated to Mr. Mayne, who appeared for the Respondent, their wish that they should first hear his argument upon the effect of the kabuliyats. Having done that they have come to a conclusion which makes it unnecessary to hear any further argument.

The addition to Haimabati's name of the words "mother of Sham Lal Mitter, minor," must, in their Lordships' opinion, be considered as meaning that she was contracting as the mother and guardian of her infant son. Undoubtedly, the statement of the Appellants in their petition of the 19th of January 1878, and their suing Haimabati after the Plaintiff's coming of age for rent due partly before and partly after that time, are weighty evidence against their present contention, but the evidence amounts only to admissions by them that Haimabati was the tenant, and no fact is proved which would make the admissions conclusive against them. The evidence of the dowls and kabuliyats has to be considered, and their Lordships think that outweighs the admissions. It is to be observed that this evidence is treated rather lightly by both the lower Courts. The Subordinate Judge does not notice the addition to the signature, and says, "these kabuliyats were executed by the Plaintiff's mother

“ not as his guardian but for herself. They
“ cannot therefore bind the Plaintiff. It has been
“ held in previous rent suits based upon these
“ kabuliyats, that the Plaintiff’s mother granted
“ them in her personal capacity, and was liable for
“ rent.” The judgment of the High Court in the
statement of facts merely says, “ Subsequently, in
“ 1865 and 1867, Haimabati, not professedly as
“ guardian of the Plaintiff but in her own name,
“ gave kabuliyats to the putnidars.”

It cannot be presumed that Haimabati claimed the estate adversely to her son and the substance of the case is that the estate being under her management as his natural guardian, and the Appellants being able to sue for an enhancement of the rent, she came to what appeared to be and she was advised was a proper arrangement with them. If there were any doubt as to the capacity in which she acted it should be presumed that she did so in her lawful capacity. As the other questions in the appeal have not been argued on behalf of the Respondents, their Lordships give no opinion on them. They will humbly advise Her Majesty that the decrees of both the lower Courts should be reversed, and a decree be made dismissing the suit, with costs in both those Courts. The Respondent will pay the costs of this Appeal.
