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# A Case Analysis

## On

### Khwaja Muhammad Khan v. Husaini Begam

Authored By- Jumana Raja

<b>Citation</b>	<b>(1910) 12 BOMLR 638</b>
<b>Date of Judgement</b>	<b>07/06/1910</b>
<b>Name of the Court</b>	<b>Privy Council</b>
<b>Name of the Judges</b>	<b>Lord Macnaghtan, Lord Collins, Sir Arthur Wilson, Mr. Ameer Ali</b>

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## Abstract

This case is in relativity to the exception of doctrine of privity of contract. A Doctrine of privity of contract is when no one other than the parties of the contract are through law allowed to enforce or protects their rights. To the doctrine, this case is one of the exceptions in terms of beneficiary. It revolves around how fathers of minor plaintiff and her husband executed an agreement wherein the plaintiff after her reception shall receive Rs.500 every month as kharch-i-pandan for her. Due to some internal differences, a couple of years later the plaintiff left her husbands house, following this she stopped receiving the kharch-i-pandan. Upon denial from her father-in-law, the defendant, to be paid the pandan, she filed a suit against the defendant, initially to the subordinate judge of Agra.

### **Facts of case**

- Husaini Begam the plaintiff, daughter of Muhammad Fida Ali Khan, is a Mohammedan lady who was married to the son of, Khwaja Muhammed Khan the defendant, Rustam Ali Khan.
- On the 25<sup>th</sup> of October 1877, her father and father-in-law had executed an agreement that stated about kharch-i-pandan which is common in Mohammedan Law, to be given to the plaintiff, of Rs. 500 every month from the income of certain property in Agra District & a Jagir in Dhampur State which is kept liable as charged. It was decided that from the day of their reception into conjugal domicile, this agreement would come into place.
- They were to be wed on November 2<sup>nd</sup> 1877 according to the agreement. Both Husaini Begam and Rustam Ali Khan were minors at the time of their marriage, and hence their reception didn't take place until 1883 which was six years after their marriage. From that day this agreement had come into effect.
- She lived with her Husband until 1896 which was nearly 13 years, whereafter due to certain differences that arose, she left her husband's house and started staying in Moradabad from thereforth. The defendant had then discontinued her kharch-i-pandan payments since then.
- Her husband had raised no action before against his wife for restoration of those conjugal rights after she had left the house. But her father-in-law had since then discontinued paying her kharch-i-pandan of Rs. 500 per month. She then filed a suit against her father-in-law claiming for her kharch-i-pandan arrears upto the end of October 1903 to be granted as he had refused to grant her those.

- This case was first taken to the subordinate judge of Agra by the plaintiff Husaini Begam in 1901. It was brought to attention that she was a third party to the contract and had left her marital home. Using the precedent of *Tweddle v. Atkinson (1861)*<sup>1</sup>, it was argued that a third party to a contract cannot be involved in bringing a suit. The Judge passed a judgement on August 16, 1904.
- An appeal was further filed in Allahabad High Court, where it was argued that the agreement was illegal and was also opposed to public policy. The court witnessed arguments from the both sides each justifying their own stance. The plaintiff had argued that there were no conditions or any provision stated that talks about the discontinuance of that kharch-i-pandan.
- The defendant pleaded that the plaintiff was no party to this agreement and when it was executed she was a minor at that time and hence cannot take advantage of such and sue upon it. The court also discovered that the reason the plaintiff left her husbands house was because her husband had a habit of entertaining prostitute in their house or misconducting himself and these were the factors that led her to move out of her marital home. And on November 27, 1906 the high court bench announced their judgement.
- Unsatisfied with the judgement passed, this case was further taken up to the privy council.

### **Issues Of The Case**

1. *Is the plaintiff legally entitled to bring in this legal action against the defendant being a third party to the agreement based off on the doctrine of privity of contract*
2. *Is she still entitled to receive kharch-i-pandan as she left her marital home and refused to reside with her husband*

### **Synopsis Of The Judgement**

When the case was first brought to the subordinate judge, it was argued by the defendant that they were not liable to pay her on two grounds being:

1. The plaintiff was not a party to the agreement as the agreement took place between only the defendant and the plaintiffs father, and

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<sup>1</sup> 1 B&S 393

2. As the plaintiff had refused to live with her husband and conveyed her misconduct, she had also refused her right to receive the allowance as well.

To the court, evidence was presented to prove the plaintiffs misconduct but was considered as not legally proved. But the judge conclusively decided that the plaintiffs refusal to live with her husband was satisfactorily proved, and to this she will not be entitled to the allowance. With furtherance to this, the judge dismissed the suit.

The plaintiff then appealed to the high court, where the arguments presented revolved solely around proving the question of whether the plaintiff has the right to maintain this action or not. The judges noticed none of the sides had mentioned about any evidence on the record. They also followed that in the agreement, there had been no mention or any provision that was provided that stated about the plaintiffs chastity or unchastity to receive the said payment of annuity. The judgement issued by the high court judges was that the plaintiff had a transparent right to sue under the agreement that was previously enforced. This judgement overruled the previous judgement of the subordinate judge.

To this judgement, the defendant then had filed a further appeal to the privy council. Now the appellant had firstly focused on proving using a precedent of *tweddle v. atkinson (1861)*<sup>2</sup> that as the respondent was a third party to the agreement, she should not be allowed to take any advantageous benefits of the provisions of the agreement. And secondly, as the respondent had left her husbands house they argued that as the kharchi-pandan is defined, she is ought to receive the money only as long as she lives with her husband. The lordships passed the judgement that firstly, the precedent used will be considered as an action of assumpsit which shall not be applicable to this case given the facts and circumstances that were presented on the basis of common law. And secondly, the Kharch-i-pandan in some analogy to the pin-money of English system is still apart from each other as it does not impose any restriction on the wife to be living with her husband to receive such money. So, the judges believe that the judgment of the high court passed, is right in its entirety and proceeded to uphold it further. Hence, making the appellant liable to bear the costs, and dismissed the appeal.

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<sup>2</sup> 1 B. & S. 393

## **Critical Analysis**

There is a doctrine of privity of contract which states that “contracts should not give rights or obligation to entities other than those who are parties to the contract”. This case is proved to be an exception to this doctrine on the basis of trust. The lordships believed that given the culture among Indian communities as well as the mohammedans, where marriage is contracted for mostly minors by their legal guardians or parents, it would prove as injustice if it would be considered in the same manner any other case would, therefore they believed this doctrine should not be upheld in this case. This case establishes that not every case is to be considered in the same manner as another. The ruling of the subordinate judge was extremely biased and unsatisfactory to the judges as well, where wrong expressions were conveyed by the judge showing a certain prejudice that contested the nature of law. The final ruling by the privy council, seemed to consider that even if one is to leave the house of the husband, the kharch-i-pandan is not subject to forfeiture unless or until there have been provisions made in an agreement regarding the same. The doctrine of privity is not necessarily applied everywhere, there are few cases that prove as exceptions to this doctrine based on the circumstances in which the facts are produce on.

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