

Privy Council Appeal No. 70 of 1929.
Bengal Appeal No. 33 of 1928.

Srijukta Saraju Bala Debi and others - - - - *Appellants*

v.

Srimati Jyotirmoyee Debi and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH APRIL, 1931.

Present at the Hearing :

LORD MACMILLAN.

SIR GEORGE LOWNDES.

SIR DINSHAH MULLA.

(Delivered by SIR DINSHAH MULLA.)

This is an appeal from a decree of the High Court of Calcutta affirming the decision of the Subordinate Judge of Dacca.

The question for their Lordships' consideration is whether on a true construction of three leases executed by Raja Kali Narayan Roy Chowdhury in favour of his daughter Kripamoyee Debi she took an absolute estate or an estate for life. Both the Courts in India agreed in holding that she took an absolute estate of inheritance which she could dispose of by deed or will.

All the three leases are described as *miras talukdari puttās* and *putni talukdari puttās*. The words "*miras talukdari putta*" imply a permanent and heritable estate. The words "*putni talukdari putta*" import a permanent heritable estate subject to a fixed rent. The leases comprised properties forming part of the Raja's *zamindari* estate.

The first lease was executed on March 22nd, 1865. It begins with a description of the properties and after reciting the annual income thereof proceeds as follows :—

" You being my daughter, I grant you *mirash taluk*, by fixing Rs. 2,926 as the *sadar* rent thereof, for your maintenance, without *selami*, out of my

affection for you. You and your sons born of your womb, and the sons born of their loins, in succession, and the daughters born of your womb, shall continue to enjoy (the same) on paying the said *sadar* rent into my *Zemindari Sherista* year by year, according to the instalments mentioned below, and living in village Joydebpur, with right of transfer by sale and gift and by cutting and filling up and by making homestead and orchard, according to the terms written below."

The sons, the male descendants of the sons, and the daughters of Kripamoyee are described in subsequent parts of the lease sometimes as "your said heirs," and sometimes as "your heirs."

The "terms" referred to above are as follows:—

"So that the descendants of your daughter and the adopted sons, or other sons of like character in your family, or your husband or co-wife and the children born of her womb, and the husband of your daughter, etc.—or the heir of any other kind should not have any right to this *taluk*; and the right which I grant, of transfer by sale or gift, you will not be able to exercise freely according to your wish: It is special in this way—that if you wish to make a gift of some land for the spiritual benefit of your father, mother, mother-in-law or father-in-law, or for any religious act, you will be able to make gift to your *Guru* or *Purohit* of lands not exceeding 5 *pakhis* in each act; you or your said heirs will not have the right of making any gift exceeding the above. God forbid if your heirs aforesaid be under the necessity of making a sale or giving in mortgage by way of conditional sale or of giving *Ijara* or *Kaimi Patta*, etc., or of making transfer in any way of the whole or any portion of this *taluk*, then you or they will have to sell the same to me or to my heirs at the value of ten *gandas* (times?) the amount of the realisable rent that may remain after deducting the *Sadar* rent, or grant *Kaimi Mirash Patta* thereof, or, if it be necessary, to give in mortgage by way of conditional sale or grant *Ijara Patta*, you will have to do it according to rule; but you will not be able to sell or transfer as aforesaid, in any way, or mortgage by way of conditional sale or grant *Ijara* or *Kaimi Mirash Patta* to any other person. If you or they do so, the same will be rejected. If I or my heir on being requested, fail to purchase, etc., as aforesaid, or do not take in mortgage by way of conditional sale on *Ijara* or *Kaimi Mirash* lease, then you or your heirs as aforesaid will be able to put in a petition in Court, by mentioning the terms of this *patta*, and on the expiry of three months from the date of that petition, to sell or give in mortgage by way of conditional sale or grant *Ijara* or *Kaimi Mirash Patta* or transfer in any other way; to that no objection on my part or on the part of my heirs will avail."

Then follows a defeasance clause in these terms:—

"Further, if you or your heirs as aforesaid willingly give up your residence in Joydebpur, and, God forbid, if the particular heirs of you, whose rights have been mentioned in respect of the lands of this *patta*, cease to exist, then the terms written in this *patta* will become inoperative and the *taluk* will revert to the right of me and my heirs."

As the net income of the properties comprised in the first lease was considered insufficient for the maintenance of Kripamoyee, the Raja executed on June 10th, 1867, another lease of other properties in her favour. The lease, after reciting the grant of March 22nd, 1865, and the Raja's desire to provide an adequate maintenance for her, runs as follows:—

"Apprehending that the income of the said *taluk* may not be sufficient for your proper maintenance, I grant you *mirash taluk* of the aforesaid

taluks, for your maintenance, fixing Rs. 344 as the annual *Jama*, without *Selami*. You shall enjoy the same on payment of the said rent, annually, according to the following instalments, as *malik* in possession, by right of the *Mirash Taluk*, of all rights and interests relating to the *taluk*, viz., *bhiti, nal, hasil, patit, bil, jhil, char, bank, river, nala*, reformed lands after diluvion, tank, ditch, *hat*, fields, *gola, ganjas, falkar, bankar, jalkar jamas*, distinguished places, with trees and the rights over *Mirashdars* and *Howladars*, while living in Joydebpur, with the sons born of your womb and their male descendants in succession, and the daughters born of your womb, and by cutting, filling up, making *bastu* and orchards, and being entitled to transfer by sale and gift, according to the terms stated below."

The terms referred to are the same as those contained in the first lease.

On March 5th, 1877, the Raja executed a third lease, whereby he substituted certain properties for some of the properties granted by the first lease. The lease, after reciting the two previous grants, runs as follows :—

"Accordingly, in lieu of the said *Kaimi Mocarari Jama* . . . I give you *patni talukdari patta* in respect of my purchased *taluk*, named Ramballav . . . on account of my affection for you. You and your sons born of your womb, and the sons born of their loins, in succession, and the daughters born of your womb, shall continue to possess (the same), living in village Joydebpur, on paying into my *Zemindary Serista* the said *Sadar Jama*, annually, according to the instalments written below, by realising the *jama* of the *patni taluks* from the *talukdars* according to the terms written below, being *malik* in possession by right of *mirash talukdari*, in all the lands and *Jamas* relating to the whole *taluk* written in the *patta*, by cutting and filling up, by making homesteads and orchards, and by being entitled to the right of transfer by sale and gift."

The instrument then proceeds in much the same terms as the first lease.

Kripamoyee entered into possession of the properties demised to her under the three leases and enjoyed the rents and profits thereof during the remainder of her life. The Raja died in 1878. Kripamoyee died on April 22nd, 1920, without issue. She left a will of which the first respondent is the executrix. The latter entered into possession of the leasehold properties and divided them among the other respondents who are the legatees under the said will.

On April 15th, 1925, the plaintiffs, who are the appellants before this Board, alleging that they were the nearest reversionary heirs of the Raja, instituted the present suit in the Court of the Subordinate Judge of Dacca against the respondents for a declaration that Kripamoyee took only an interest for her life in the properties comprised in the three leases, and that she had no power to dispose of them by will, and they claimed possession of the properties. Written statements were filed and several issues were framed, of which only the eighth was tried. It is in these terms :—

"Has the force and effect of the *mirash pattas* in dispute ceased to have any effect after the death of late Kripamoyee Debi? What was the interest given to late Kripamoyee Debi by the said deeds? Have the

plaintiffs acquired any right in the disputed properties after the death of late Kripamoyee Debi ? ”

Both the Courts in India held that Kripamoyee took an absolute estate of inheritance under the leases and that she was entitled to dispose of the properties by her will. The plaintiffs have appealed to His Majesty in Council.

The contention on behalf of the appellants has been that none of the three leases contains any words which confer an absolute estate upon Kripamoyee, that the intention of the Raja was to create a series of life-estates with limited powers of alienation, and that even if Kripamoyee took an absolute estate the *taluks* passed under the defeasance clause to the appellants as the Raja's heirs on her death without leaving her surviving any of the persons designated as her heirs in the leases.

The three leases, it will be observed, are similar in terms except as to the words of gift contained in them. But though the words of gift are different, their legal effect, in their Lordships' opinion, is the same ; the words of gift in the first lease confer upon Kripamoyee an absolute estate as effectively as if she was constituted “ *malik* ” of the properties. The second and the third leases constitute her “ *malik* ” in express terms, and the word “ *malik* ” imports full proprietary rights, unless there is something in the context to indicate an intention to the contrary : see *Bhaidas Shivdas v. Bai Gulab* (1921), L.R. 49, I.A. 1 ; *Jagmohan Singh v. Sri Nath* (1930), L.R. 57, I.A. 291.

It was urged for the appellants that the context did indicate the intention on the part of the Raja not to give an absolute estate to his daughter and that this was to be found in the conditions subject to which the grant was made. Their Lordships do not think that those conditions, taken singly or collectively, cut down the absolute estate into one for life.

The first condition is that the *taluks* should not in any case pass to the heirs of the daughters of Kripamoyee. This can hardly be read as implying an estate to be determined on the death of the grantee. It is rather, in their Lordships' opinion, an attempt to alter the legal course of succession to an absolute estate, and is therefore void : *Juttendromohun Tagore and another v. Ganendromohun Tagore* (1872), L.R. I.A., Supp. 47.

The next condition is that neither Kripamoyee nor her said heirs should transfer the *taluks* or any part thereof by way of gift except a gift for a religious purpose which also should not exceed five *pakhis*. This, again, their Lordships think, is more consistent with an attempt to restrict the powers of an absolute owner than an intention to enlarge the powers of a life tenant. As such a restriction it is repugnant to the absolute estate and is void on that ground : *Lalit Mohun Singh Roy v. Chukkun Lal Roy and others* (1897), L.R. 24, I.A. 76.

The last condition gives a right of pre-emption to the Raja and his heirs in the events mentioned therein. This condition implies a power of sale rather than negating it, and is inconsistent with the notion of an estate for life.

The conditions referred to above are followed by a defeasance clause which provides that if the persons designated as the heirs of Kripamoyee, that is, her sons, their male descendants, and her daughters "cease to exist," the *taluks* should revert to the Raja and his heirs. A Hindu, no doubt, may give property by way of executory gift upon an event which is to happen, if at all, immediately on the close of a life in being and in favour of a person born at the date of the gift, and such a gift over might be a sufficient indication that only a life estate to the first taker was intended: *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick and others* (1862), 9 M.I.A. 123; *Tagore v. Tagore, supra* pp. 69-70. That, however, is not the case here. The event which is referred to in the leases is an indefinite failure of the male issue of Kripamoyee and the attempted gift over is therefore void.

No reliance has been placed by the appellants upon the condition as to continued residence in Joydebpur, which is clearly of no binding effect.

For the above reasons their Lordships are of opinion that the two Courts in India have rightly construed the leases as giving to Kripamoyee an absolute estate of inheritance which she could dispose of as she pleased, and they will humbly advise His Majesty that the appeal should be dismissed with costs.

SRIJUKTA SARAJU BALI DEBI AND OTHERS

v.

SRIMATI JYOTIRMAYEE DEBI AND OTHERS.

DELIVERED BY SIR DINSHAH MULLA,

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