

(1899) 12 CAL CK 0003**Calcutta High Court****Case No:** Suit No. 794 of 1898

Sm. Denomoyee Dassee

APPELLANT

Vs

Sm. Chooney Money Dassee

RESPONDENT

Date of Decision: Dec. 8, 1899**Judgement**

Ameer Ali, J.

It is necessary to state shortly the facts connected with this case in order to understand the points urged before me. Denomoyee Dassee obtained upon partition a one-third share of certain premises.

2. Harendro Bhusan, an assignee, from one of the sons of Denomoyee obtained another one-third and Ram Kinkur Dutt, the second son, the remaining one-third.

3. On the 16th of September 1898 Denomoyee Dassee brought a suit against the Defendant Chooney Money Dassee, inter alia, for damages for certain acts of trespass alleged to have been committed by Chooney Money on the share allotted to Denomoyee on the partition to which I have referred.

4. The parties, however, came to terms before trial. The Plaintiff agreed to sell, and the Defendant agreed to take over, the share of Denomoyee on a valuation to be fixed by two arbitrators appointed by the parties. It was arranged that if the arbitrators differed the matter should be referred to Mr. Robert Belchambers as an umpire whose decision as to price should be final.

5. The reference to arbitration was made on the 2nd of June 1899. The arbitrators differed as to the price and the matter went before Mr. Robert Belchambers, and on the 4th of September 1899 he made an award which was received on the same date and filed on the 6th of September 1899.

6. Denomoyee Dassee died on the 13th of September 1899, and on the 18th her two sons Ram Kinkur and Hurry Dass applied before Mr. Justice Sale as her only sons, heirs and legal representatives to be placed on the record in her place and to have the suit revived in their names. The matter came before me yesterday for judgment

on the award of Mr. Belchambers. An application was also made on behalf of Chooney Money, the Defendant, to have the order of the 18th of September set aside and to have it declared that the suit had abated.

7. The ground on which this application was based is that on the death of Denomoyee Dassee her interest in the premises ceased and that no right to sue survived in the persons who have revived or attempted to revive the suit.

8. It is also urged that Chooney Money Dassee had obtained assignments of the entire interest of the persons in whom on the death of Denomoyee the property would absolutely vest and that inasmuch as the two Plaintiffs have nothing left in them to convey and have obtained no interest on the death of Denomoyee Dassee the suit must be regarded as having abated. The two contentions run on parallel lines and in support of the ground that the right to sue did not survive. Sec. 361 of the CPC was referred to and attention was directed to illustration (c).

9. It is quite clear that illustration (c) refers to a personal right of action. It is unnecessary to define what are regarded in law as purely personal causes of action which expire with the death of a person who has the right. It is enough to say that in the present case the right to sue was not a personal right. It was a right in connection with the personal estate of the deceased and my view is supported by a reference to the award of Mr. Belchambers who in fixing the value of the property says as follows :--

I therefore find that the price of the Plaintiff's share or interest in the disputed property is Rs. 2,850. It is admitted that the Plaintiff has no property out of which she can be maintained except this property. The price fixed by me therefore is the value of an absolute interest in this property.

10. Therefore, what was arranged to be conveyed to the Defendant and what the Defendant purported to take was an absolute interest in the property and the price was fixed on that basis. There was a contest relating to the personal estate of the deceased, and it is impossible to say that that ceased absolutely on her death.

11. A judgment on the award is necessary to enable it to be executed as a decree of the Court but even without a decree the person in whose favour an award is made can bring a suit based upon it. Without relying on the statement in the petition of the 18th of September that Denomoyee Dassee had called on the Defendant for payment of the price fixed by Mr. Belchambers, I am of opinion that what was settled by the award gave rise to a right of action which did not expire on the death of the deceased. It must be noted that Chooney Money Dassee in agreeing to purchase the Plaintiff's share must have known perfectly the nature of the interest Denomoyee possessed, for in all the intermediate conveyances culminating with that to Chooney Money every assignment is made subject to the interest of Denomoyee Dassee. Thus knowing the position of affairs Chooney Money Dassee entered into the contract to take over the share of Denomoyee Dassee leaving only

the price to be settled by an umpire who fixed the price valuing the share as an absolute interest. I do not think it can be contended that a contract relating to a property in which Denomoyee had an absolute interest expired with her or that her representatives cannot enforce it. The enforcement of the contract would not be for their benefit alone, but also for the creditors of Denomoyee Dassee.

12. My attention has been called to the fact that the sons have not obtained a certificate or letters of administration. This may throw difficulty in their way to obtain any money payable under the award but it does not interfere with the course it seems I must take now. I therefore refuse the application to set aside the order of the 18th of September and as a consequence thereof I give judgment in terms of the award under sec. 522. A decree will be drawn up in those terms.