
(1873) 08 CAL CK 0002

Calcutta High Court

Case No: None

Khetterpaul Bysack

APPELLANT

Vs

Bolye Chund Dutt

RESPONDENT

Date of Decision: Aug. 20, 1873

Judgement

Sir Richard Couch, Kt., C.J.

The plaintiff in this case is one of the sons of Mohanund Bysack, who died on the 24th of October 1860, leaving three sons, namely, the plaintiff, Goureeloll, and Debendronath, and a widow Rammoney Dossee, whose executor and trustee is the defendant Bolye Chund Dutt. Mohanund Bysack was one of the sons of Ramsoonder Bysack, and he and his brothers who survived Ramsoonder Bysack and the son of a deceased brother formed a joint Hindu family. Goureeloll Bysack died on the 20th October 1860, intestate and unmarried, and Rammoney Dossee succeeded to his share of the property. Debendronath Bysack died on the 20th of May 1870, leaving his widow the sole heiress and legal representative to his estate. The plaintiff would, on the death of Rammoney Dossee, have become entitled to the estate of Goureeloll Bysack unless by reason of the award which I am about to notice, Rammoney Dossee became entitled to that estate absolutely, and not merely for the estate which a Hindu female heir would take. On the 12th of December 1866, Debendronath Bysack in his own right, and Rammoney Dossee as mother and heiress of Goureeloll Bysack, instituted a suit in this Court for a partition of the estate and effects of Ramsoonder Bysack, the present plaintiff with other members of the family being the defendants; and on the 15th of July 1867, a decree was made, with the consent of the parties to the suit, for a partition, and it was referred to Muddun Mohun Chatterjee on behalf of Khetterpaul Bysack, and Ramchunder Bonnerjee on behalf of the other defendants, and Bycauntnath Bysack on behalf of the plaintiffs, as arbitrators to make a partition of and division of the joint moveable and immoveable estate which was to be divided. The arbitrators so appointed made an award, which is dated the 15th of July 1868. It recites the decree and then says:--(Reads portion of award set out, ante, pp. 460, 461). The question is, what was the effect of this award upon the share of the property which was awarded to Rammoney Dossee? It is said that they with the like

consent (that is, with the consent of all parties, the plaintiffs and defendants) awarded the shares to be held by them (that is, by Debendronath Bysack and Rammoney Dossee) in severalty absolutely. These words would ordinarily mean, I think, that the share of each was to be taken by the two parties absolutely. Certainly that is the meaning of them as regards the share allotted to Debendronath, and the same expression is used with reference to the share of Rammoney Dossee. If it was intended that her share was to be held by her in a different manner, the proper way would have been to have stated it. But I think it does not depend merely on the construction which we should put upon the language of the award. It being stated by the arbitrators that what they did was with the consent of the parties, we are at liberty to see what the parties really consented to. The arbitrators do not profess to set out in their award the terms of the consent. They only profess to give effect to it. The effect they give is an allotment to these persons in severalty absolutely. To see what was intended, and what the arbitrators were authorized to do, we must look at such evidence as there is of what had been consented to. It is clear upon the face of this award that the intention of the parties was, and that they had agreed, that something should be done by the arbitrators beyond what they would have been authorized to do by a mere order in the partition-suit,--what they could not have done in a partition in the ordinary way. As to what was consented to, we have the evidence of one of the arbitrators. It is true he is the arbitrator who was named by the then plaintiffs in the suit of Debendronath and Rammoney; but I do not see that any imputation was made against him of not giving a true account of the matter, nor was any attempt made to show that the consent of the parties was different from what he states. He said that they did not make enquiry as to the state of the accounts, but that the accounts were examined; "that there was no writing; only that which was ultimately settled was reduced to writing; that all the parties were present there, the plaintiff as well as the defendants, and the defendants begged and prayed of us to see that a settlement was made" (one of the defendants being the present plaintiff Khetterpaul Bysack). "It was ultimately settled for Rs. 125 on the agreement of the parties. We wrote out our award on the agreement of the parties. The settlement was that Rammoney and Debendro were to receive Rs. 125, and whatever portions of land they were to receive as their share, they were to have the right of sale and gift over. We three arbitrators settled that." Then he proceeded to state how it was that the share of Khetterpaul was directed to be purchased by Debendronath and Rammoney. He said:--"Khetterpaul refused to take it: he said he would take the dwelling-house at Nimtollah. Then the mooktear of Rammoney and Debendro said the house belonged to their father; that they wished their father's name to remain connected with the house, so they would remain there. Debendro's mooktear said that Debendro and Rammoney should remain in that house: they said it belonged to their father, and the house should be known as belonging to their father. Khetterpaul is son of Mohanund by another wife. Rammoney and Debendro both said they wanted the house; so did Khetter. Ultimately Khetter said let money be paid me, so it was arranged money should be paid to him." Accordingly the award was so made. It appears to me then that these parties having obtained a decree for partition, and the estate being about to be divided, and the arbitrators having been appointed, did what is not unfrequently done;

they came to an arrangement for a division of the property which would be most convenient to themselves, and most suitable for all parties. It was in the nature of a family arrangement, a very fair and proper one, and apparently what they all agreed to. According to this gentleman's evidence, the agreement was that the property should go to Rammoney, not for the limited estate which she would take as the mother and heiress of Goureeeloll, but she was to have an absolute power over it: and considering the state of the family at that time, it does not seem at all unreasonable that such an arrangement should have been made. It was under the circumstances a proper arrangement. I look upon this as a family arrangement, and upon the award as having been made to carry it out. The intention of this award, as well as the ordinary meaning of the language used, is to give to Rammoney her share of the estate, not for the interest which she would take as a female succeeding to property, but an absolute interest which she would have a power of disposing of by a will. That being my opinion with reference to the share allotted to her, it follows that the case of the plaintiff must also fail as to the property which was purchased by her and Debendronath in accordance with the direction in the award; because the case of the plaintiff is that the property was purchased with the proceeds of the estate in which Rammoney had only a limited interest, and that the property purchased must be considered as substituted for the other. That fails, and it is not necessary for us to consider how far, supposing the plaintiff was right as to the share which was allotted to Rammoney Dossee, he has made out a case which would have entitled him to claim the whole of her share of the purchased property. I do not think he has made out such a case. He has not shown that the property was purchased with money which belonged to the family, and probably the utmost that he could have claimed, not in this suit, but in some other, would have been to have a charge on the purchased property for so much of the money expended in purchasing it as really belonged to the family estate. It is not necessary to determine that, because the plaintiff's case as to this part of the property claimed by him must follow the decision as to the other part. I think the decree of the learned Judge must be reversed, and the suit of the plaintiff dismissed with costs.

2. I may add that the case of 6 M.I.A. 1 (Privy Council) is distinguishable from this in this respect, that there all the persons whose consent would be necessary to alter the nature of the estate which the widow took were not parties to the instrument as they were here, and it would seem it was on that ground that the Judicial Committee, if not entirely, at least very considerably, came to the conclusion they did as to what interest the widow took in that case.

Phear, J.

I entirely agree with the Chief Justice, and would only add that, in the course of my experience on the original side, I have met with many instances of consent-decrees" being passed in partition cases wherein the interest of a female member of the family has been part of the matter determined, and as far as my memory serves me, the parties in those cases knew very well how to distinguish between the interest which was limited to a

female taker, and the interest which was given absolutely to a male member of the family. By a rather curious coincidence I have before me at the present moment for consideration on a collateral matter a consent-decree ⁽¹⁾, which was signed by me on the Original Side rather more than two years ago; and in that decree I find the words used, by consent of parties, are that one moiety or half part or share of the premises in suit should be allotted "to the plaintiff, to be held and enjoyed by her as a Hindu widow in the manner prescribed by Hindu law, and the other moiety or half part or share thereof to the defendant, to be held and enjoyed by him in severalty absolutely." I have certainly no hesitation whatever in agreeing with the Chief Justice that there is nothing in this case which ought to induce us to cut down words which, so far as we can judge, were used by the parties advisedly.

(1). In a case of Kistokaminee Dossee v. Mirtoonjoy Dutt.