(1871) 06 CAL CK 0012

Calcutta High Court

Case No: None

Biswanath Chunder		APPELLANT
	Vs	
Khantamani Dasi and Another		RESPONDENT

Date of Decision: June 12, 1871

Judgement

Phear, J.

I think, on the whole, I must decide this preliminary issue in favour of the plaintiff. Biswanath sues, as expectant heir in reversion, to restrain Khantamani, a Hindu widow in possession, from committing waste. His ground of action is simply this, namely, that Khantamani in 1864, for a certain consideration, not having at that time obtained possession of the property, executed a deed by which she assigned one-half of it to Hiralal Seal. She has very lately got possession of the property. The plaintiff contends that the assignment is of such a nature as to be void against the reversionary heirs expectant on the death of Khantamani; and he says he is apprehensive that Khantamani now having got the property into her hands will carry out the terms of the assignment and transfer one-half of it to Hiralal Seal, and so commit what may not improperly be termed irreparable waste, inasmuch as the property is in the shape of money. Mr. Marindin for Hiralal Seal has pressed on me with some force that apprehension really amounts to nothing; that consequently the suit must be taken to be substantially one brought simply to set aside the original assignment, and that if it be so taken the suit is barred by limitation. I think the suit to set aside the deed of alienation simply would be so barred; but it appears to me that Mr. Cowell is right in arguing that this suit involves somewhat more than that. It is a material point in the case that Khantamani has only just got possession of the property, and that the opportunity for committing the anticipated waste has only just occurred. It seems to me that the plaintiff may, under these circumstances, well enough say that the fact of Khantamani having lately obtained the property is a fact which gives rise to his cause of action, inasmuch as it first gives the opportunity to commit the waste which he has reason to anticipate in consequence of her having bound herself by the deed of 1864. So that while I think the original alienation alone could not now be

called in question by the plaintiff, it appears to me that it is not too late for him to come into Court to restrain Khantamani from parting with the money under the terms of that alienation. I say nothing now as to the nature of the relief which he asks for in the prayer of his plaint; it will be time enough to consider that in detail at the hearing of the suit. But I may say that even if the Court refrains from calling back the money, as it probably will, at any rate to the full extent of the fund, it may still think it right to restrain Khantamani from paying the whole of the money to Hiralal Seal, and Hiralal Seal from receiving the whole, or if he has already received the whole, may compel him to refund any excess which he may have received beyond the money advanced by him with reasonable interest and costs. It appears to me that there is some likeness between a case of this kind and the case of an executor in England who is about to alien, or may have aliened, a portion of the assets of his testator for an improper purpose. Although an executor by English law has a full legal title to the assets and power to pass that title, a Court of Equity will, if the occasion call for it, restrain him from the full exercise of that power.