
(1872) 02 CAL CK 0004

Calcutta High Court

Case No: None

Dhanno Sirang

APPELLANT

Vs

Upendra Mohan Tagore
and Others

RESPONDENT

Date of Decision: Feb. 2, 1872

Judgement

Phear, J.

There is but one question for me to determine in this suit, and that is whether or not the plaintiff on the facts of the case was a domestic servant of the testator within the meaning of the word "domestic," as that is used in this clause of the testator's will (reads.) I say that it must be within the meaning of the word "domestic" as used in this clause, because it is eminently the case in construing an English will made by a native of this country, that the words used should be looked at and considered in close reference to the whole of the context. In the event of the word "domestic" being used by an English testator in England to designate members of his own household establishment, it would be, I think, presumed, unless it appeared from the will that the testator intended the word to bear an unusual sense, that he employed it in the sense which it commonly bears in ordinary parlance, having regard to the nature and conditions of private establishments in England. The different cases to which Mr. Phillips referred me are cases in which the Courts were called upon to put a construction on clauses somewhat similar to this. From these it appears that it has been held in England that a distinction was to be drawn between in-door and out-door servants, among the whole body of the servants who are in a greater or less degree personal to the master, and minister to his ordinary wants in and about the house, and "domestic" has been held properly to designate those employed and dwelling in-doors, in contradistinction to those employed and dwelling out of doors. Thus in a very strong case on which Mr. Phillips relied, the coachman, though he often waited at table, was held not to be a domestic servant; and in two or three other cases cited yesterday, the head gardener and under-gardeners were held not to be properly designated as domestic servants or members of the domestic establishment; and reasons are given in *Ogle v. Morgan* 1 De Gex. Mac. & Gor., 359 : S.C., 16 Jur., 277 for

drawing the distinction in that way. The like reasons, however, certainly do not seem to me to arise out of the circumstances of servants in this country, whether forming the house hold establishment of native gentlemen or of English residents. I do not feel therefore able to say that the word "domestic" in the testator's will must be even *prima facie* taken to apply only to servants employed in in-door work in the house; and when I look at the terms of the whole clause, and consider them with reference to the facts disclosed by Akhai Chandra, it seems to me that this clause was intended by the testator, taking the whole in its different sub-divisions, to cover the entirety of his establishment in Calcutta. He first speaks of his *sudder naib* and his *sudder mooktear*. Akhai Chandra says, these are superior servants in Calcutta. Then he mentions each of his native assistants and writers in the English department of his business, and Akhai Chandra says that the English department was a recognized department of his business in Calcutta. He next goes on to his other native assistants and servants in the *zamindari* department, and Akhai Chandra states that the *zamindari* department was another recognized department in Calcutta. He next mentions his *munshi* and cash department, which is that in which the witness Akhai Chandra himself was. Finally, the clause ends "and to each of my domestic servants in Calcutta, &c.," If, I give the term "domestic" the strict meaning, which Mr. Phillips asked me to attach to it, I should then leave this part of the clause applicable to very nearly all the servants belonging to the testator's establishment in Calcutta; but I should cut off a small margin, which would consist of servants, who, as I understand the habits and circumstances of servants in this country, are in no way separable by any material conditions of life or service from those whom I should comprehend within the term "domestic". I should have to leave out the *syces*, *coachmen*, and *mallis*, and also the *palki-bearers*, if there were any, while I included *Mahomedan table servants*, &c.; and I think it would be an unnatural construction of the testator's words, which would have the effect of cutting his domestic establishment into two such arbitrary divisions as those. I cannot help thinking, on a consideration of the whole clause, that the testator intended to cover the whole of his establishment in Calcutta, and that he did not imagine any such line of distinction as I have stated, and as Mr. Phillips contended for. If then I pass beyond this line, why am I not to say it covers the plaintiff, as well as any of the servants who were in daily attendance at the *baitakhana* establishment in Calcutta. Whatever might have been the case, if the matter rested solely on the testimony of the *sirang* himself, whom one might perhaps not unjustly suspect of exaggerating the amount of his attendance at the *baitakhana*, there can be no doubt, from Akhai Chandra's evidence, that the plaintiff was, year after year, and day by day, in the habit of presenting himself as part of his duty at the *baitakhana*, and remaining there with the other servants in attendance on his master, though it may be uncertain what precisely were the services he rendered in the house. I think, then, I must come to the conclusion on the facts before me that the plaintiff does come within the meaning of the word "domestic" in this clause, and that he is entitled to the legacy for which he sues. There will, therefore, be a decree for that amount, with costs on scale No. 2. The executors were perfectly justified in defending this suit, and ought therefore to have their costs out of the estate.