
(1872) 05 CAL CK 0001

Calcutta High Court

Case No: None

Biswanath Chunder

APPELLANT

Vs

S.M. Khantamani Dasi
and Another

RESPONDENT

Date of Decision: May 6, 1872

Judgement

Macpherson, J.

The deeds of December 24th, 1864, and September 20th, 1865, executed by Khantamani Dasi are in their nature and effect similar to the deeds executed by Bamasundari Dasi which were the subject of discussion in the suit of Amirtamayi Dasi v. Grose ¹ and the facts now before me are so similar in every respect to those in that case, that I have no doubt that it is my duty now to make a decree following in principle the decree in Amirtamayi Dasi's Case ¹ as closely as possible. Like Bamasundari, Khantamani has assigned away absolutely the whole of her husband's estate to Hiralal seal, to be held by him as to one-half for his own use and benefit, and as to the other half to secure the repayment to him of all advances made by him to Khantamani, and to make over the balance (left after repaying these advances) to Khantamani Dasi. It was decided in Amirtamayi's Case ¹ that such an assignment is not binding on the reversionary heirs of the husband, except as regards the charge on a moiety of the estate for moneys advanced, and that the having made such an assignment, placing the whole of her husband's estate absolutely in the hands of another, whom she constituted her irrevocable attorney and to whom she gave one-half absolutely, is an act of waste entitling the reversioner to demand the interference and protection of the Court. There are two points in which the plaintiffs position differs from that which Amirtamayi Dasi occupied. The one is that the plaintiff, who now seeks relief as reversioner, is the person who, by his conduct, rendered necessary the litigation which led to the assignment to Hiralal Seal; the other is that the money of which the estate of Khantamani's deceased husband consists has been already paid out of Court to her.

2. As to the first point I am of opinion that in this suit I can only deal with the plaintiff in his character of reversioner, and that his position as such is not altered by the fact that he

resisted the plaintiff's attempt to recover that, which the Courts have now found her to be entitled to. It is to be borne in mind that, suing as he does as the next reversionary heir of Khantamani's deceased husband, he sues less for his own personal benefit than for the protection of the estate; for, in the not-improbable event of the plaintiff dying before Kantamani, he will derive no benefit himself from the present suit, which will in truth benefit those only who, on the death of Khantamani, happen to be the nearest heirs alive of her deceased husband. I think I am bound to treat the plaintiff merely as the nearest reversioner, and as if he had not been the chief defendant in Khantamani's suit.

3. As regards the money having already been paid out of Court, it seems to me that, as to one moiety of it, the defendants Khantamani Dasi and Hiralal Seal should be ordered to pay it back into Court. I have no doubt of the reversioner's right to secure the moiety assigned by the widow to Hiralal Seal absolutely, the assignment being an act of distinct waste as against the reversioner which the widow still upholds. As regards the other moiety I have more doubt as to the course which, under the circumstances, ought to be adopted. On the whole I think I ought not to order it to be brought into Court, especially as it has been actually paid out since this suit was instituted, and notwithstanding that the plaintiff applied for an injunction to restrain its being taken out. As to this moiety Khantamani committed no act of waste in charging it as she did with the advances made to her; and this being so, I do not think I should be justified in Ordering the money to be brought into Court again.

4. On the general question as to the pressing necessity under which Khantamani lay to enter into the arrangement which she made with Hiralal Seal, Mr. Marindin proposed to call witnesses to prove that the terms agreed upon are not unusual, and that they were, in the opinion of the witnesses, fair and reasonable; but I refused to receive such evidence. I do not doubt that such agreements are constantly made; but the fact that suit brokers, and those who traffic in litigation, think such agreements fair and reasonable really does not touch the matter which I have to decide. There is one element in which the agreement entered into by Khantamani differs from that entered into by Bamasundari, namely, that, before Khantamani Dasi made her agreement with Hiralal Seal, Bamasundari's suit had progressed with such success, that there was no doubt about the rights of Khantamani, as the widow of one of the sons of Ramtanu Chunder, being very valuable. The release which she had executed was the only obstacle between her and the establishment of those rights, and the release was not practically ranch of a difficulty. When she left the family dwelling-house at Behala, she went to live with Bamasundari; and, doubtless, she made the assignment to Hiralal Seal pretty much as a matter of course, and partly because Bamasundari had already dealt in like manner with her (Bamasundari's) interest.

5. The decree will declare that the deeds of December 24th, 1864, and September 20th, 1865, so far as they relate to the eight-anna share of the property therein mentioned, which purports to have been assigned to Hiralal Seal and his assigns, upon the terms that he or they should and might retain the same for his or their own absolute use and benefit;

is not binding upon the plaintiff, or upon the person or persons who, upon the death of she said Khantamani Dasi or other determination of her estate, may be entitled to inherit the property of the late Gakul Chandra Chunder deceased as his heir; that no force or effect ought to be given to that deed as against the plaintiff, or other such heirs as aforesaid, so far as relates to the said eight-anna share; and that Rs. 50,651 (being an eight-anna share of the sum of Rs. 1,01,302 paid out of Court to Khantamani Dasi, or to Hiralal Seal as her attorney, under the order of this Court, dated the 9th of March 1871, and representing the share of the said estate purporting to have been assigned absolutely to Hiralal Seal and his assigns) be forthwith brought into Court by Khantamani Dasi (or by Hiralal Seal, so far as the said sum or any portion thereof shall have come to his hands) and be retained there as a security for the rights and interest of the person and persons who, upon the death of Khantamani Dasi or other determination of her estate, may be entitled to inherit the property of the late Gakul Chandra Chunder as his heirs, and subject to the farther order of the Court. The decree will further declare that the deeds of assignment are of no force or effect as against the plaintiff, or other such heirs as aforesaid, so far as the said deeds relate to the other eight-anna share of the said sum of Rs. 1,01,302, save as creating a charge on the said last mentioned share for the advances (whether by way of maintenance or otherwise) and expenses charged thereon by the said deeds, with interest thereon at 12 per cent. per annum.

6. The plaintiff is not entitled to his costs of this suit. He has not succeeded in establishing his right to the whole of the relief which he sought; but, even if he had succeeded more entirely, I should not have allowed him his costs, in consequence of the charges of misconduct, profligacy, and debauchery, which, in the 13th and 15th paragraphs of his plaint, he has chosen to make against Khantamani Dasi, who is the widow of his brother. There is no evidence whatever to support those charges (which at the hearing were abandoned and withdrawn); but as they appear in the plaint, and as no attempt was made to support them in cross-examining Khantamani when she was examined under commission, I shall allow the plaintiff no costs. The plaint seeks no relief except as regards the sum of Rs. 1,01,302 which has been paid out of Court. I have therefore considered the plaintiff's case with reference to that sum-only.

¹ Reported on Appeal under the name of Grose v. Amirtamayi Dasi 4 B.L.R., O.J., 1