

**(1909) 08 CAL CK 0049****Calcutta High Court****Case No:** None

Surja Prasad Sukul and Others

APPELLANT

Vs

Shyama Sundari Debi and Others

RESPONDENT

**Date of Decision:** Aug. 5, 1909**Judgement**

Lawrence Jenkins, C.J.

This appeal arises out of a suit brought by two ladies, widows of the late Din Dayal Agasti, and by it they seek to recover payment of a sum of money which they alleged was due to them by virtue of an agreement. The prayers of their plaint are that a decree may be passed against the defendants for the total sum of Rs. 759-1 as shown in the account below of which Rs. 720 is principal and Rs. 39-1 its interest at Re. 1 per cent. per mensem, for the costs of suit with interest and for such other remedies as the Court may deem proper ; and, secondly, that a decree may be passed directing the above amount to be realized from the estate left by the plaintiffs' husband.

2. The defendants are three in number and happen to be the persons who were appointed executors of a document which they put forward as the last Will and testament of Din Dayal Agasti--one of them being the son-in-law of the alleged testator and the other two his grand-sons. When this alleged Will was being propounded by the executors a caveat was entered on behalf of the two widows : but before the matter came into Court an agreement for compromise was arranged through the intervention of friends, and that agreement for compromise after reciting the circumstances which had led to the contest and certain difficulties that arose on the phraseology of the Will went on to provide in these terms : So out of fear that a misunderstanding may likely arise in future between the executors and ourselves regarding a grant adequate to our circumstances of the costs of our religious acts, and in order to avoid a future quarrel we, the objectors, (i.e. the ladies) accept from the petitioners a monthly sum of Rs. 3.) each and desist from further action. We will, so long as we live, each receive the said sum of Rs. 30 a month to meet the costs of our daily acts of charity and devotion and the

observance of days and vows and religious ceremonies etc. and we; the petitioners, (i.e. the three defendants) will be bound to pay the same. We the objectors (i.e., the ladies) will receive nothing in addition to the said money so far as daily religious acts etc. are concerned, but we will separately receive from the state the costs of pilgrimage and residence in holy places as provided by the Will ; and we the petitioners will be bound to pay the same. And our maintenance shall go on as it has gone on since the time of our husband without there being any change, and we the petitioners will be bound to maintain them as formerly." It was hoped, no doubt, that this document would settle all contest, but the hope was misplaced. The three defendants for reasons that are not apparent have declined to pay what is expressed to be payable by them and not merely have they so declined but they have defended this suit instituted by the two ladies, viz., for the purpose of enforcing payment, setting up that the agreement is bad in several respects ; that it lacks registration, that it is in excess of the authority and that it is even illegal because it facilitated the granting of probate. A defence of that kind in these circumstances cannot be expected to be listened to with anything approaching favour in a Court that is supposed to be influenced by considerations of justice, equity and good conscience. This agreement on which the suit is based is susceptible of the meaning that these three defendants undertook a personal liability. That is the view which has found favour with Mr. Justice Lal Mohan Dass, and, in my opinion, he was justified in coming to that conclusion. He has restored the decree of the Munsif with a necessary variation limiting its operation to a personal liability on the part of the three defendants, and it seems to me that his judgment is correct.

3. The result is that this appeal must be dismissed with costs.