

(1919) 03 CAL CK 0037

Calcutta High Court

Case No: None

Radha Lakshmi Debya and
Another

APPELLANT

Vs

Jogesh Chandra Roy

RESPONDENT

Date of Decision: March 5, 1919

Citation: AIR 1919 Cal 128 : 50 Ind. Cas. 479

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit to recover money under three mortgage bonds. The first two mortgages were executed by defendant No. 1 as executrix to the estate of her father-in-law Raj Kishore Chuokerbutty and the third mortgage was executed both by the defendant No. 1 and her son Rajendra, the defendant No. 2.

2. It appears that Rajkishore before his death executed a Will on the 10th December 1886 appointing his daughter-in-law Radha Lakshmi, the defendant No. 1 in the present suit, as executrix. At the date of his Will, his son Rasik, husband of Radha Lakshmi, had died. She was, however, five months pregnant at the time, and the testator had two married daughters who were maintained in his house. By the Will, the testator provided that in the event of a grandson (a son of Radha Lakshmi) being born in his lifetime, or failing that, a grandson being adopted by Radha Lakshmi, she would act as executrix until the grandson born or adopted attained majority. It was further provided that "if there was no grandson born or adopted during his lifetime, then, and if such an event happened after his death", she would act as executrix and continue to act as such. These provisions are contained "in the first paragraph. In the 7th paragraph, it was expressly provided that if the daughter-in-law adopted a son then even after the attainment of majority by that son, she would continue as the malik of the estate for her life.

3. The question involved in the case is whether or not Radha Lakshmi had ceased to be executrix when the first two bonds were executed by her.

4. The Court of first instance was of opinion that her power as executrix ceased on the defendant No. 2's attaining majority and as the bonds in question were executed after he had attained majority, they were not binding on the defendant No. 2, but as the latter joined his mother in executing the third bond, a decree was passed in favour of the plaintiff so far as that bond was concerned.

5. On appeal, the learned Subordinate Judge differed in the construction of the Will. He was of opinion that the defendant No. 1 did not cease to be executrix on her son attaining majority and in that view of the matter, as also having regard to the fact that the money raised on the mortgages was applied to the benefit of the defendant No. 2, the claim on the first two bonds was also allowed by him.

6. The defendants appeal to this Court.

7. As pointed out by the learned Munsif, it is rather difficult to say why a distinction should have been made as to the powers of Radha Lakshmi as executrix in case a grandson were born or adopted during the testator's lifetime, and her power where such grandson was born or adopted after the death of the testator. But whatever might be the reason which induced the testator to make such provision, the distinction is there. So far as the terms of the Will go, it is difficult to hold that the executrixship was to cease on the grandson attaining majority if the grandson were born after the death of the testator. In any case the very fact that the two Courts below differed in their construction of the Will shows that the question is a doubtful one.

8. It appears that all the parties concerned treated the defendant No. 1 as executrix and as a matter of fact it is found that the defendant No. 1 was acting as executrix in her dealings with others. The daughters of the testator sued her as executrix and when the third mortgage-bond was executed by her jointly with defendant No. 2, she described herself as executrix.

9. Though the Court of first instance came to a different conclusion, the learned Subordinate Judge has found "that the three mortgages were executed for the benefit of the estate admits of no question. The defendant No. 2 was benefited by those loans." As already stated, the third bond was executed by both the mother and the son and the execution of the two earlier bonds by (he defendant No. 1 as executrix was recited in the third bond without any objection on the part of the defendant No. 2 and apparently with his approval. It is also found that the plaintiff acted in good faith in advancing the money on the mortgage believing the defendant No. 1 to be executrix.

10. In all these circumstances, we think that the defendant No. 2 cannot be allowed to defeat the claim of the mortgagee. The appeal, therefore, must fail and is dismissed with costs.