
(1875) 03 CAL CK 0004

Calcutta High Court

Case No: Suit No. 517 of 1874

Radhanath Mukerjee

APPELLANT

Vs

Tarrucknath Mukerjee

RESPONDENT

Date of Decision: March 12, 1875

Judgement

Phear, J.

It appears to me that this so-called deed-of-trust puttro is in truth not practically a trust deed at all. Five gentlemen named in it, who are the makers of it, describe themselves as being coparceners under the Bengal Law and entitled for the interest of a joint-family to the property which is the subject of the deed. No one else has any proprietary right in it. They are living together and enjoying it as a joint-family, of which there are, of course, certain dependent members. They say "we are the rightful owners of the ancestral property, the real and personal, and being in the enjoyment thereof, the various members of the family are maintained and the _____ daily and casual ceremonies and festivals performed _____" and they proceed " we, these five coparceners, have intended that, as we now support the members of the family and perform the daily and casual ceremonies and festivals and the sheba of Sree Sree Issur Deb and feed the strangers out of the joint-estate, they should hereafter be maintained in the manner without _____ obstacle and dispute," and then they say we, " the five coparceners, determine that perpetually and continually the members of the families of us all should be supported, and the daily and casual ceremonies and festivals and the Debsheba performed and the strangers fed, and so forth, from the proceeds of the whole of our said joint real properties; we appoint Sree Tarruk Nath Mukerjee and Sree Chunder Kant Mukerjee, two of us, and Sree Nobin Chunder Bundopadhya, inhabitant of Jonye in Balia Pergunnah in Zillah Hooghly, and Sree Dwarkanath Bundopadhya, an inhabitant of Moolgram in Sag-had Pergunnah in the East Division of Zillah Burdwan, trustees to perform all those duties, and we make over the said Collectorate Kharajei Talook the Mehal Toolseeram Ghoso Joar Boora Mozoomdar and within it the above written rent, talook, & c., _____ for all those purposes, and particulars are written in the following clauses how the business is to be done." The second of these clauses directs: " The trustees, as

our representatives, will, on our account, keep under their management the property made over for the above purposes, collect all the proceeds, pay such revenue and income tax, etc., thereof, as are and will be fixed, and after deducting the expenses of the establishment for the collection and the suit expenses incurred for the same, they will, out of the profit money, pay suitably to the means for the maintenance of the members of the family, that is, the five coparceners' families, comprising our sons, our son's sons, sisters and daughters, and daughter's sons, daughter's daughters, and sister's sons, and sister's daughters, the wives of the male members of their families and obeera (a female who has no husband and son) daughters-in-law who live in the family, and for the performance of the daily and casual ceremonies and festivals, and the Debsheba, and for the feeding of the strangers, and so forth; but such members of the families as shall change from our caste or religion or drink wine, or form intimacy with the Jobonee or Chundalee females, and with such a female as is equal to them, or turn from our family creed will have no maintenance from the proceeds of the property which is made over." In short, this deed is merely an arrangement by which all the existing joint-owners of this family property, being themselves the natural managers of the property, for reasons of convenience, depute the management of that family property to trustees for the purposes of the family solely, giving the trustees certain specific directions with regard to the management of the property and the application of the funds. It is quite plain, I think, that an arrangement of this kind can only be operative, just so long as all the joint-owners consent to its being operative and no longer. No one of the makers' beneficial rights of property is alienated or altered, but simply an arrangement is made for the management of the joint-property. It is, no doubt, apparent on the words of the deed that the parties intended the arrangement to endure, I may say for ever, and in one clause they bound themselves not to ask for partition. I need hardly say, however, that it is not competent for the owners of property in this country by any arrangement made in their own discretion to alter the ordinary incidents of the property which they possess, for instance, in this particular case, to say that the joint-property shall remain the joint-property of the joint-family in perpetuity but shall not possess the incident which the law of the country attaches to property in such condition, namely, that every independent parcener is entitled at any time to have his share divided off from the rest. No doubt any one member of the family, and therefore all might, for sufficient consideration, bind themselves to forego their rights for a specified time and definite purpose by a contract which could be enforced against them personally. Here there is no consideration that I can see which would serve for the foundation of binding agreement such that the parties to this deed should be held to have bound themselves to forego their rights of property. In this view it follows that this deed does not in the slightest degree affect the right of insisting upon the partition which the Plaintiff seeks. In this view it will not be necessary to try any issue as to whether the original Plaintiff Jogendra Nath Mukerjee himself acquiesced in this deed, because if he had even professed to bind himself, it was in my opinion open to him at any time to withdraw from it, and to claim the enjoyment of his separate rights. I therefore refuse to raise that issue, as being unnecessary. I wish to add that I don't find any gift in the deed to an idol; there is a provision with regard to the sums of money to be laid out by

the managers for the family worship and on various occasions of religious festivities, but I find no gift in it of any property to an idol. The property, therefore, which is the subject of this deed, is, I think, liable at the instance of the Plaintiff to be divided free of any effect from this deed. Mr. Woodroffe has urged that even if this deed-of-trust puttro is not of itself binding upon the Plaintiff and operative to prevent him from having the right to claim a partition of the property which is the subject of it, yet the Will of Ram Narain, on which the Plaintiff bases his rights, does so. I have given my best consideration to this Will, and I think this is not the case. The Will merely states the fact of the existence of the trust puttro and abstains from dealing with the property which is the subject of it. So far as I can perceive, the Will does not, either expressly or by implication, dispose of the testator's share of the property, which is the subject of the trust puttro, or make it a condition of the Plaintiff's taking any benefit under the Will that he should accept and maintain the dispositions of the trust puttro.

2. It must therefore be declared that the Plaintiff is entitled to his share of the joint-family property unaffected by and free from the trust puttro.

3. The next question is, of what does that property consist?

4. The Plaintiff's and the Defendants respectively have each made their allegations, on this point with clear specifications of detail, and I think the most convenient course will be to take the items of property, with regard to which their allegations are in conflict seriatim, and to try with respect to each as a separate one, whether it is or is not joint-family property.

5. I do not think there is sufficient ground for directing that an account be taken from Chunder Kant Mukerjee, or any other of the Defendants of the monies, &c., of the joint-family come to his hands in the capacity of karta of the family or otherwise. In effect this account was asked for at the hands of Chunder Kant so far as regards all the joint-family property except the property under the trust puttro in the suit which Jogendra brought for the purpose of carrying into effect the trusts, &c., of Ram Narain's Will, for he could not have accounted for Jogendra's undivided share which he managed under the Will without accounting for the whole. But this suit was withdrawn with liberty being granted to Plaintiff to file a fresh suit. And no complaint is made in the present plaint as to the management of the property under the trust puttro. Thus all that now remains to be done before the final order for partition is made is to try and determine the above-mentioned issues as to the joint-family property.