

(1870) 03 CAL CK 0012

Calcutta High Court

Case No: Regular Appeals Nos. 215, 237, 239, 245, 247, 255, 257, 259, 260, 264 and 273 of
1869

Shewukram alias Rai
Durga Prasad and
Another

APPELLANT

Vs

Chattar Lal Sing and
Others

RESPONDENT

Date of Decision: March 19, 1870

Judgement

Sir C.P. Hobhouse, Bart, J.

We now come to the real merits of the case, and here, in order that we may clear the case for a right understanding upon its merits, it is necessary to state what are the admitted facts as to the relative position of the plaintiff and the defendants before us. Whatever may have been the contention on this point in the Court below, it is now admitted that Kalika Prasad, the father of Rani Dhan Kunwar, having died in the life-time of his father Harnarayan, the founder of the family, neither the plaintiff, nor his mother, nor his maternal grandmother, were the natural heirs to Harnarayan; that in fact, neither he nor they could have taken this property at all, unless it had been given to them by the petitions on which the plaintiff relies. It is further an admitted fact that although the plaintiff attained to his majority upon the 21st May 1865, still he did not sue until the 29th April 1868, so that when he did sue, he had but some few days to spare ere his suit would have been barred by the Statute of Limitation. Of course, the plaintiff might have shown that between the time of his coming of age and the time of his instituting this suit, he had made other private endeavors to attain to his rights, or that for some good reason or other, he had been unable to make any such endeavours until the time of the institution of the present suit; or that, in short, there was some good explanation for the plaintiffs remaining silent for more than two years and eleven months out of the three years, after the time when his rights accrued to him. The plaintiff makes no explanation whatever, and it is impossible, therefore, not to hold that in this particular he appears before us in the most disadvantageous light possible. On the other hand, the position of the defendants is

in comparison a far better one. He is admittedly a purchaser for a valuable consideration, and without notice, and he has been for fifteen years, previous to the institution of this suit, in undisturbed possession of the property, and of these fifteen years very nearly the whole of the three last years is made up of a period during which the defendants were in possession adverse to plaintiff, and during which it was at any time within the power of the plaintiff to endeavour to oust the defendants; whereas, on the other hand, the plaintiff has not ousted them, nor, for any proof that there is on the record, made any attempt to do so. In this state of facts, the plaintiff does, undoubtedly, in our judgment, come before us in such an unfavourable light as compared with the defendants, that we think we ought to put the plaintiff to the strictest proof of the right on which he avers that he has the title to oust the defendants. Now, the sole evidence of that right is the petition of the 16th August 1830, the contents of which are given in the printed record, and are, with a very few emendations, which I shall incorporate in the following translation of the said contents, correct. The petition says:--"The entire rent-free and rent-paying estates, and gardens appertaining to the Zillas of the Behar province, and buildings and ghat Tuazi, ryotkhanas, and household furniture, and other real and personal property which descended to my ancestors, one after the other, and at last to me, from Rani Myma Bibi, wife of my late brother Raja Basantaram, who, the said brother, was son-in-law of Maharaja Ramnarayan according to the Vyavasta of the pandits and decision of the Sudder Court, are now in my possession. But as in 1229 (1822), my son Kalika Prasad died, and in 1237 (1830), my younger brother Rai Ganga Prasad and his wife died, leaving no issue, and as my wife predeceased them, and only Rani Dhan Kunwar, the widow of my late son Kalika Prasad, is at present living, who has only two daughters, Mussamat Bibi Shitabo and Bibi Dilaru, and no other children or heir, I declare her (Rani Dhan Kunwar) my heir; and as with the exception of the said Rani Dhan Kunwar, I have no other heir or malik, nor can there be any, of which circumstances I have already preferred information in my petition of 16th April 1830, and life is uncertain; I consequently request that the name of Rani Dhan Kunwar, the widow of my late son, be registered in the Collectory mutation book as proprietor and malguzar in the place of my name, with regard to the property, both kheraji and lakhraji noted at the foot of the petition, situate in Zilla Patna. Further, as of Rani Dhan Kunwar there are two daughters, who, after marriage, by the blessings of Providence, may be blessed with children, they and their children, therefore, are and will be heirs and maliks. But as long as I live I shall keep the management of my household affairs in my own hands, and look after all the transactions of dihat, &c., myself as heretofore." This petition, it must be said, was filed in the Court of the Collector of Shahabad, and the ostensible object of it undoubtedly and admittedly was that Rani Dhan Kunwar's name should be substituted on the register of the Collector's mutation books as proprietor and malguzar of the revenue-paying estates of the petitioner Rani Harnarayan in the place of the names of the said petitioner. The effect of this would be that on the Collectorate books the said Rani Dhan Kunwar would stand in the place of the said Harnarayan as the person who was the proprietor of the revenue-paying estates of Harnarayan, and who was responsible for the amount of the Government revenue assessed on the said estates. This undoubtedly would be, generally

speaking, the sole effect of a petition of this nature, but it may further be added that it is very common in this country, when persons are desirous of conveying their properties to other persons, that they do so by way of a petition to some one or other of the judicial or ministerial officers of the district in which their property lies, and, usually speaking, to the Collector of the district. As a consequence of this practice, there are many decisions of the Courts of this country in which petitions of this nature have been held to be of the nature of testamentary bequests from the petitioners. In fact, in the very case which is now before us, both the parties contend that the petition in question is of the nature of a testamentary bequest from Rani Harnarayan, the petitioner; and the sole contention is on the one part that the bequest was restricted, and on the other, that it was absolute. We have considerable doubts as to whether, as a general rule, it is strictly right in law to consider petitions of this nature as anything more than expressions of the desires and intentions of the petitioner, but the doubt is, in this particular instance, materially allayed by the consideration that the intentions of the petitioner were not only declared, but that that declaration was followed up by a prayer, the definite object of which was practically a first step to carrying out the petitioner's intention by having the name of Rani Dhan Kunwar substituted for his own name as the recorded proprietor of his estates on the Government rent-roll. Such a step too was a very strong one, and, if the petitioner did not afterwards recede from it, was a very conclusive step to take towards transferring the property from himself to some one else, viz., to Rani Dhan Kunwar, and so we cannot but conclude this petition is a document of a gift of some kind or other to the said Rani. Then what is the nature of the gift? The petitioner first recites the whole of his estates, real and personal, of whatever nature they were, and wherever they might be situated. It then recites that these estates are at the moment in the possession of the petitioner. It further recites that Kalika Prasad, the son of the petitioner, is dead; that certain others, who would have been heirs of the petitioner, are dead, leaving no issue; and that only Rani Dhan Kunwar, the widow of his late son, and her two childless daughters, are living. Having thus recited these particulars, the petitioner goes on to say:--"So I declare her (Rani Dhan Kunwar) my heir; and as with the exception of Rani Dhan Kunwar I have no other heir or malik, nor can there be any, and as life is uncertain," so the petitioner requests that the name of Rani Dhan Kunwar, widow of his late son, be registered in the Collectorate mutation book as proprietor and malguzar of his estates in the place of his name. If the petition had stopped there, we do not think that there could have been any doubt as to what was the meaning of the petitioner; but it is contended that the next passage in the petition not only creates a doubt as to the meaning of the first passage, but actually restricts the gift which was made in the first passage to Rani Dhan Kunwar. The words relied upon by the learned counsel, Mr. Paul, for the respondent, are these:--"Further, as of Rani Dhan Kunwar, there are two daughters, who, after marriage, by the blessings of Providence, may be blessed with children; they and their children, therefore, are and will be heirs and maliks. But as long as I live, I shall keep the management of my house-hold affairs in my own hands, and look after all the transactions of dihat, &c., myself as heretofore." Upon the strength of this passage, Mr. Paul contends that the gift was to Rani Dhan Kunwar for her life only; and that on her

death, it was to descend to her two daughters; and after their death, to their heir, viz., the present plaintiff.

2. On the other hand, Baboo Anukul Chandra Mookerjee, for the appellants, contends that the last part of the document was nothing more than an expression at the best of the wishes and intentions of the testator--wishes and intentions which it was in the power of Rani Dhan Kunwar, by the first part of the testamentary disposition, to defeat; and further, Baboo Anukul Chandra contends that, in truth, the passage is nothing more, upon a grammatical construction of it, and upon a comparison of it with its context, than an indication of who were the heirs, not of the testator, but of Rani Dhan Kunwar. If the testator had used words expressly declaring that Rani Dhan Kunwar's two daughters and children were and should be "his" heirs and maliks, some part of the difficulty of the sentence would have been explained; but the words literally translated are these "are and will be heirs and maliks," so that the testator does not in so many terms declare whether he was referring to those daughters and their possible issues as "his" heirs and maliks, or as Rani Dhan Kunwar's heirs. Neither, on the other hand, does he in so many terms speak of these persons as Rani Dhan Kunwar's heirs and maliks, so that the passage, taken by itself, cannot be interpreted in favor of or against either the one contending party or the other. But Baboo Anukul Chandra contends that, when the testator had, in so many terms, in the first part of the testament, said that Rani Dhan Kunwar was his heir, and that with the exception of the said Rani he had no other heir or malik, nor could he have any, then it is impossible to say, when he spoke immediately afterwards of the daughters of Rani Dhan Kunwar and any possible offspring of theirs, that he could have been supposed to be speaking of them as his heirs and maliks. It seems almost impossible to get over the difficulty thus presented. We had thought, when we first looked at the second sentence, that is the one on which Mr. Paul relies, that, as there must have been some intention in it, and as no other intention but the one for which Mr. Paul contended seemed to be obvious on the face of it, so the absolute gift of the first sentence must be held to be governed by what would then be the restriction in the second sentence; but, on further consideration, we think there exists in fact a good reason why the words should be there, and why yet they should not convey only that meaning for which Mr. Paul contends. We remark that, whether the gift was an absolute gift to Rani Dhan Kunwar, or a restricted gift, first to her, and then to her daughters, and their heirs after them, in either case, there was a restriction in the gift--a restriction to the effect that, as long as the donor lived, he should retain his properties, and transact the business connected with them as heretofore. It is quite possible, therefore, that he may have been providing for a contingency, viz., the contingency of the Rani Dhan Kunwar's deceasing before himself. In that case he might, and very reasonably would, have wished that the daughters of Rani Dhan Kunwar, and any children of theirs, should be heirs and maliks. Rani Dhan Kunwar was not to have the enjoyment of his estates so long as he lived; and if she predeceased him, what was more natural than that he should have wished that in such a case the daughters of the Rani, viz., Dhan Kunwar, and any offspring of theirs should be heirs and maliks. This is, we think, a reasonable explanation of the second paragraph; and when

we consider the terms of the first paragraph as compared with the terms of the second, it is certainly a more reasonable explanation than the one on which Mr. Paul relies. If, as we think is the case, the second paragraph has no direct connection with the first, except to the extent above indicated, then it seems to us that there is, in the first paragraph, an absolute gift to the Rani Dhan Kunwar such as would entitle her to alienate the property; for, in so many terms, the testator declares her to be his sole heir and malik. (that is, proprietor) and not only declares this, but prays that, in furtherance of this declaration, a step may be taken by which she may be made known to the world as such heir and proprietor; and if, as we believe to be the case, the second part of the sentence places no restriction upon the gift made in the first part, then Rani Dhan Kunwar having, as has been admitted by the plaintiff, come into possession of the entire estate, real and personal, and not being in so many terms restricted from alienating the estate, is not, by the terms of any law or usage which bind a Hindu family, prevented from alienating such estates. There have been, it may be mentioned, several cases quoted to us on the one side, and on the other decisions given by their Lordships in the Privy Council. We have carefully considered the terms of those decisions, and we cannot say that any of them are, to our minds, either directly or indirectly in point, and help us therefore to any right determination of the question before us. In our view of the case, we hold that, by the document relied upon, an absolute gift was, in so many terms, made to Rani Dhan Kunwar of the properties in question; that she enjoyed those properties under the gift; that it was whilst she was in enjoyment of such properties that she alienated a part of them; and that as the gift itself was not, in so many terms, or even indirectly, fettered by any restrictions, so it was a gift which entitled her to alienate the estates to the defendants, appellants before us. In this view of the case, we reverse the decision of the Court below, and dismiss the plaintiff's suit with costs in both the Courts. Appeals, Nos. 237, 239, 245, 247, 255, 257, 259, 260, 264, and 273 are admittedly governed by the decision in this case; therefore, in those cases also we reverse the judgment of the Court below, and dismiss the plaintiffs' suits with costs of both the Courts.