Maharaja Sris Chandra Nandy Vs Rakhalananda Thakur

Court: Bombay High Court

Date of Decision: Nov. 11, 1940

Acts Referred: Evidence Act, 1872 â€" Section 32

Citation: (1941) 43 BOMLR 794

Hon'ble Judges: Thankerton, J; George Rankin, J; Atkin, J

Bench: Full Bench

Judgement

Atkin, J.
This is an appeal from the High Court of Judicature at Fort William in Bengal who affirmed a decree of the Additional District

Judge 24 Parganas in favour of the plaintiffs, the present respondents. The plaintiffs are a distinguished family of Brahmin priests, Thakurs of

Shrikhanda: and their claim is for a declaration that they are entitled to a charge on the Kasimbazar Raj Estate represented by the defendants for an

annual britti of 4,000 rupees payable by half-yearly instalments and for a money decree for arrears amounting to Rs. 13,260. The defences to the

suit are in substance that the plaintiffs never had a legal right to the britti, and that in any event it was not charged upon the estate. These issues

were raised in the proceedings and have been decided in favour of the plaintiffs in both Courts. The history of the claim begins with the founder of

the Raj fortunes one Krishna Kanta Nandy. He appears to have been a Hindu of comparatively humble origin who by his abilities attracted the

attention of Warren Hastings, became his Diwan, and died in the year 1778 proprietor of large possessions in about twelve different districts and in

Calcutta. After his death his son Loknath appears to have been given the title of Maharajah of Kasimbazar by Warren Hastings, and the property

to which he and his descendants have succeeded is known as the Kasimbazar Raj Estate. The case of the plaintiffs is that Krishna Kanta Nandy

established two deities, Radhagovinda and Lakshminarayan, at Shrikhanda, the plaintiffs'' home, and granted the plaintiffs a britti of Rs. 4,000 for

the worship of the two deities: and at the same time charged his Raj estate with the payment of the britti. The plaintiffs and their successors, it is

said, became the gurus of Krishna Kanta Nandy and his family and its successors: they have conducted the worship and service of the deities ever

since.

2. The learned Assistant District Judge found that the plaintiffs had established the whole of their case. A permanent grant of britti was made by

Krishna Kanta Nandy who had established at the home of the plaintiffs the two deities and provided the britti for securing their service and

worship. To secure the permanent payment he had charged it upon the estate. The learned High Court Judges were not able to find that Krishna

Kanta Nandy had established the deities, but they concurred in the finding that he had made a permanent grant, and had charged it upon the

Kasimbazar estate.

3. Their Lordships are of opinion that no evidence was given sufficient to support these findings. As they will point out later, both Courts erred in

admitting as valid evidence of tradition given by and on behalf of the plaintiffs: and when the admissible evidence is considered there is none to

justify the finding of a permanent grant or of a charge. The evidence establishes the following facts: that from the time of Krishna Kanta Nandy the

sum of Rs. 4,000 has been paid annually to the plaintiffs and their successors as britti: that they have continuously conducted the worship and

service of the two deities: and that until about the year 1897 such worship was conducted on behalf of the holder of the Raj and that the plaintiffs

were the gurus of his family. The succession of the Raj family is relevant. Krishna died in 1778 and was succeeded by his son Loknath who first

received the title of Maharajah. There is nothing to indicate that this is an impartible estate. Indeed what little evidence there is on the point

indicates the contrary, but in fact there only appears to have been one person at a time entitled in the line of descent. Loknath was succeeded by

Harinath who died in 1832, who was succeeded in turn by his son Krishnanath, who died in 1844 without issue. His widow Rani Swarnamayi

succeeded to the estate and possessed it for over fifty years until her death in 1897. On her death the estate reverted to Krishnanath"s mother Rani

Hari Sundari. She, who must have been a very old lady at the time, in the same year transferred her interest to the next successor Manindra

Chandra Nandy the sons of her daughter Gobinda. The estate thus passed out of the direct male succession. Manindra had for his gurus another

family the Thakura of Jogeswardi, and had family deities other than Radhagovinda and Lakshminarayan. In 1923 Manindra Chandra Nandy

executed a trust deed in favour of the firm of Ogilvy Gillanders & Co. and certain named trustees with the object that the firm should raise a loan

for the Maharajah of Ã¯Â¿Â½675,000 and pay off certain scheduled incumbrances and unsecured liabilities. The bulk of the Raj estate was assigned to

the trustees by way of mortgage or trust to keep down the necessary charges, and create certain reserve funds including a sum of three lacs which

the Maharajah estimated would be sufficient for his personal household expenses. The Maharajah covenanted inter alia that the property was free

from all incum-brances other than those mentioned in the 4th schedule to the deed which did not include the charge now alleged to exist. In

February, 1929, on the application of the Maharajah Manindra the estate was taken under the management of the Court of Wards, by whom it is

now managed subject to the provisions of the deed of trust of 1923. In 1929 the Maharajah Manindra died and was succeeded by the present

Maharajah Sris Chandra Nandy. On April 10, 1929, the plaintiffs presented a petition to the General Manager of the Kasimbazar Raj Ward''s

Estate alleging that they had been receiving for generations from the estate an annual annuity allowance of Rs. 4,000, that they had been spending

the said allowance as well as their own income towards the worship of several deities and other acts of piety: and asking for the payment of one

year''s arrears. It may be noticed that in this, letter there is no suggestion of the establishment by Krishna Kanta Nandy of the two specified deities,

or of a permanent grant by him, or of the creation of any charge. This request was refused by the Manager of the Court of Wards, and on June 28,

1929, the Maharajah Manindra wrote to him having been told by the plaintiffs of the refusal.

Kasimbazar Rajbari,

June 28, 1929.

My dear Mr. Burrows,

I have read your letter No. 575ES/16-108 dated the 4th May, 1929 (a copy of which was forwarded to me) as also another letter No. 1565ES

dated the 15th June, 1929 (shown to me) sent in reply to the letters of Srijut Rakhalananda Thakur of Shrikhanda.

The annual Britti payable to our spiritual guides, the Thakurs of Shrikhanda amounting to Rs. 4,000 (Four thousand) has been paid by the Raj

family of Kasimbazar from generation to generation, and I have been paying it all along during my management.

During Mr. Lyall''s administration as he did not like to meddle with Religious and Spiritual matters, he left the matter with me of course leaving

sufficient fund in my hands.

It is not of the nature of personal charity but has always been regarded as a charge upon the Estate. I have nothing to say regarding your decision.

You may hold it or alter it if there be good reason for doing so, but this Britti, in my opinion, is legally enforceable against the Kasimbazar Raj

Estate.

In this connection I would like to refer you to my letter No. 1/XII-4/3-G dated the 19th April, 1929, in which I mentioned the recurring permanent

grants which in addition to other commitments I ami bound to make viz. 1. To spiritual guides of Shrikhanda and Jageswardihi, 2. Debkarjya and

Debsheba &c. and to my letter to the Secretary Board of Revenue dated the 2nd February, 1929, with statements therewith attached, a careful

perusal of which will clearly convince you that the above demand is a charge really upon Kasimbazar Raj Estate and incidentally upon me as

proprietor of the Estate and not in my personal capacity.

The following is an extract of the relevant portion of my letter to Mr. Fawcus, Secretary Board of Revenue dated the 2nd February, 1929, for

your easy reference.

I should like to state however in this connection that whereas 1 have these additional sources of income which are not covered by the Trust Deed I

have at the same time additional demands on me for Debkarjya, Brittis to spiritual guides and Brahmin Pundits and the maintenance of educational

institutions which have been recognised by the family from generations past.

I shall be glad if you will consider all the facts relating to this matter and recommend to the Court far acceptance of the charge of paying Rs. 4,000

annually to the Thakurs of Shrikhanda which is in reality a charge on the Kasimbazar Raj Estate.

Yours sincerely,

Manindra Chandra Nandy.

L.B. Burrows, Esqr., B.A.,

Manager, Kasimbazar Raj Wards" Estate,

2/1, Russel Street,

Calcutta.

4. So far from regarding this letter as proof of a legal charge their Lordships are of opinion that it tends to negative such a claim. The Maharajah is

obviously seeking to limit his personal liabilities: and is treating the continual payment of this britti as an instance of the ""additional demands on me

for debkarjya and britti for spiritual guides and Brahmin Pundits and the maintenance of educational institutions which have been recognised by the

family from generations past."" It seems obvious that the continuous recognition is to him another way of saying it has always been regarded as a

charge upon the estate. It would not be suggested that the other"" additional demands"" in which this claim is included involved legal charges upon

the property. It seems obvious the letter of the Maharajah, written in the circumstances set out in the letter, could not possibly outweigh the express

covenant in the deed of 1923 that there were no incumbrances other than those scheduled.

5. In the result, therefore, there is no evidence at all of the establishment of the deities by Krishna, of any permanent grant by him of the britti, or of

the creation of any charge upon any property. It is very significant that though the plaintiffs appear to have very complete records of their

transactions from early times, no document is produced making or evidencing the grant or charge: and this alone is sufficient to cast doubt upon the

claim. Moreover while it would not be unusual to assign particular lands as the source from which britti was to be paid and in this sense create a

charge, it would seem to their Lordships very improbable that a vast estate should be charged as a whole with the payment of Rs. 4,000 a year.

Their Lordships are not prepared to say that a valid charge could not be created upon what could be defined to be the whole of a man''s property

at the date of the charge. In the present case it should be noticed that not only is the charge claimed and decreed a charge upon the estate as it at

present exists; but it has been decreed without any condition that the families of the grantor or the plaintiffs should continue to exist, or that the

plaintiffs should continue to perform the service and worship, sheva and puja, of the two named deities. This defect in the decree was admitted by

counsel for the respondents who submitted an amended form of decree which would remedy the mistake. But for present purposes the point is the

difficulty the plaintiffs are in in establishing any grant or charge with any sufficient certainty. Naturally if the continuous payments could not be

explained without asserting some legal origin which would create the rights claimed, any Court would feel inclined to presume the necessary legal

origin. But in the present case there are no facts which require a presumption of any lost grant either for the permanent gift of the britti or still less

for it being constituted a charge. It appears to their Lordships the natural inference from the known facts that the original founder of the estate

granted the britti in his lifetime: and that his successors from pious motives continued the grant to the plaintiffs'' successors who continued to be the

family spiritual guides, and served and worshipped; the family gods. ""Without assuming any legal obligation it would in the circumstances have been

strange if the britti had not been continued. The learned trial Judge working backwards, as it would seem from the fact that the payment was

continued for several generations, has imputed to the founder the intention that it should continue for all those generations: and has so drawn the

inference that he did in fact grant a permanent britti; and took steps to secure its permanence by creating a charge, the uncertainty of the terms of

which their Lordships have already discussed. The trial Judge it is true found that Krishna Kanta Nandy established the deities. The High Court

have found that it would not be safe on the evidence to hold that the plaintiffs had established the case that the two deities were so established.

Nevertheless they go on to say that they cannot express the definite opinion that the Trial Judge was not right in his inference that the deities were

so established. This conclusion appears to involve some confusion of thought. If it was not safe from the evidence for the appellate Court to draw a

particular inference, it was not safe for the trial Judge to draw the inference. Not safe must mean that there is not evidence from which the inference

can reasonably be drawn. There are cases in which evidence is so well balanced that an inference either way ran reasonably be drawn. In such

cases the appellate tribunal may select the inference they choose: but they can have no equal choice between an inference that is safe, and one that

is unsafe.

6. But the conclusions of the two Indian Courts are not based solely on the evidence of which the substance has been stated above and which their

Lordships have held to be insufficient. Both Courts relied on the evidence of some of the plaintiffs'' witnesses speaking of a tradition in their family

that Krishna Kanta Nandy had established the two deities, had granted the britti in perpetuity and had made it a charge upon the estate. Obviously

this is hearsay evidence, and it is equally clear that it is not one of the claims of hearsay evidence admissible under the provisions of Section 32 of

the Indian Evidence Act. The members of the High Court recognised this, but they made a statement as to the law of evidence which their

Lordships feel bound to state is entirely erroneous. They say, ""It is to be noticed in this connection that Section 2(1) of the Indian Evidence Act

repeals the whole of the English common law on evidence so far as it was in force in British India before the passing of the Indian Evidence Act,

and that provision of the law in effect prohibits the employment of any kind of evidence not specifically authorised by the Act itself."" This is of

course correct. But they continue, ""It must be recognised, however, that the principle of exclusion adopted by the Indian Evidence Act should not

be applied so as to exclude matters which may be essential for the ascertainment of truth."" It seems to their Lordships essential in the interests of

the administration of justice in India that this mode of regarding the law of evidence should emphatically be stated to be unsound. What matters

should be given in evidence as essential for the ascertainment of truth it is the purpose of the law of evidence whether at common law or by statute

to define. Once a statute is passed which purports to contain the whole law it is imperative. It is not open to any Judge to exercise a dispensing

power, and admit evidence not admissible by the statute because to him it appears that the irregular evidence would throw light upon the issue. The

rules of evidence, whether contained in a statute or not, are the result of long experience choosing no doubt to confine evidence to particular forms,

and therefore eliminating others which it is conceivable might assist in arriving at truth. But that which has been eliminated has been considered to

be of such doubtful value as on the whole to be more likely to disguise truth than discover it. It is, therefore, discarded for all purposes and in all

circumstances. To allow a Judge to introduce it at his own discretion would be to destroy the whole object of the general rule. There is therefore

no such principle as is suggested in the passage now under discussion. At the same time their Lordships wish to make it clear that apart from any

rule of law the evidence in question so far from leading to the ascertainment of truth in fact for the reasons already given leads away from it. It is not

remarkable that the learned Judges who gave leave to appeal in this case did not conceal some uncertainty; as to the correctness of this part of the

judgment. Their Lordships do not think it necessary to discuss at any length inferences drawn by both Courts from the absence of evidence by the

defendants of the contents of their own books. They do not think that in the circumstances the comments are well founded. In the result therefore

their Lordships are of opinion that this suit fails, and that the appeal should be allowed and the suit dismissed. Their Lordships will humbly advise

His Majesty accordingly. They notice however that the late Maharajah Manindra clearly regarded the payment of the britti as being a personal

obligation of his, and it would seem to follow in their opinion that the Court of Wards Would be justified in making payment of the arrears up to the

time of his death to the plaintiffs. This is not however a matter for decree in this suit. The respondents must pay the costs in the Indian Courts and

of this appeal.