

(1914) 02 BOM CK 0006
In the Bombay High Court

Bijoy Gopal Mukerji

APPELLANT

Vs

Girindanath Mukerji

RESPONDENT

Date of Decision : 02-02-1914

Acts Referred:

Citation : (1914) 16 BOMLR 425

Hon'ble Judges : Shaw, J;Moulton, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Moulton, J.—The substantial question in this appeal is the validity of an Ijara executed on the 7th September 1863, for a term of sixty years, by a Hindoo widow named Sayamoni Debi, under circumstances which it will be necessary to refer to in some detail.

2. Sayamoni Debi was the widow of Chandra Bhusan Mukerji. Her husband died in 1832 without leaving any issue, making her his sole heiress. The property consisted chiefly of landed property of considerable value.

3. Sayamoni was a Purdanasheen lady and probably not very capable of managing a large estate. She appears to have been dispossessed of the property by one of her husband's relatives, Baman Das Mukerji, and was compelled, in 1844, to bring a suit against him and his two brothers, Gouri Pershad and Annoda Pershad, to recover it. This litigation lasted till 1858, when, on appeal to Her Majesty in Council, the rights of Sayamoni to the estate of her husband were finally established. But although this was the case, it is evident that she did not thereupon obtain possession of the property. Further difficulties were raised and much of the property was threatened with the growth of adverse rights in the actual possessors of the land, who refused to pay rent under the pretext that the title had not been settled, and seeing that, prior to 1858, adverse possession against a widow ranked as adverse possession against the reversioners, there can be no doubt that the whole estate was in very serious peril.

4. While this state of things was still continuing the Ijara now in question was executed by the widow. Although at this distance of time it is impossible to ascertain with accuracy all that then happened, it is evident that this Ijara was part of a general family settlement whereby the widow divided up the family property amongst the various reversioners, reserving to herself only a comparatively small annual income which may fairly be looked on as representing maintenance. The Ijara itself was granted to Annoda Pershad and Saroda Pershad, who was the son of Gouri Pershad who had died in the interval. The third brother, Baman Das Mukerji, did not directly take any interest under the Ijara, but in October 1863 a Dar-Ijara was granted to his son of a portion of the property, and we find also that a large sum due from him on account of mesne profits was remitted by Sayamoni, so that it is clear that all branches of the family shared in the settlement.

5. If the term of the Ijara had been for the life of Sayamoni, no question could have arisen such as is now before their Lordships. But doubtless from the necessities of the case, in order to facilitate the practical settlement of the property so as to obtain its full value, the term was made for a fixed period of sixty years. Inasmuch as the lady was forty-two years of age at the date when the Ijara was granted, it is evident that all the parties realised that the term would extend beyond her lifetime, and thus affect the rights of the reversioners whomsoever they might happen to be. So far as the persons are concerned who then represented the reversion, it is clear that all this was done with their consent. They all took large interests under the arrangement, and have continued to enjoy them so long as they lived.

6. One of the parties who principally benefited by the Ijara was Annoda Pershad, who was one of the actual lessees under the Ijara. He died in 1882, so that Sayamoni (who died in 1893) survived him eleven years. The appellants are four sons of Annoda Pershad, and on the death of Sayamoni they became entitled directly to share in any family property of which she was the life tenant, and they have brought this action to set aside the Ijara, on the ground that it was an unauthorised interference by the widow with the reversionary interest which did not belong to her. The Court below, in a careful and well reasoned judgment, have decided that, on the facts of the case, the arrangement of which the Ijara formed part was in truth dictated by the necessities of the case, and that the choice of the term of sixty years as the term of the Ijara was made for the benefit of the estate and did not injure anyone.

7. Their Lordships agree with this judgment. They are of opinion that the case depends entirely on the facts, and that it raises no new question of law as to the powers of a Hindoo widow to deal with family property in case of necessity with the consent of the then present reversioners, and they are, therefore, of opinion that the appeal fails.

8. Counsel for the appellants laboured to show that the so-called settlement by which peace for thirty years was brought into the family and, in their Lordships'

opinion, the family property was in fact saved, was an outrageous and flagrantly unjust arrangement forced upon a helpless Purdanasheen widow by her influential relations in whose hands she was, and that any person either at the time or since must have known from its terms that it had been extorted by duress or engineered by fraud. Their Lordships are of opinion that Counsel entirely overlooked the evidence against this contention which is derived from the conduct of his own clients. From the year 1882, when Annoda Pershad died, to the year 1893 when Sayamoni died, they themselves took the benefit of this arrangement which they now stigmatise as a gross fraud. It is suggested on their behalf that they thus made themselves participants in it solely because it was profitable so to do. Their Lordships decline to believe them to be as unscrupulous as they desire to be considered. As against them it is a fair inference from their conduct that they believed that the arrangement had been made in good faith, and under such circumstances of necessity as would give it validity according to Hindoo law, and as it has always been a feature of Hindoo law as administered by this Board to attach great weight to the sanction by expectant reversioners of an alienation of property by a Hindoo woman as affording evidence that the alienation was under circumstances which rendered it lawful and valid, their Lordships in this case consider that the conduct of the appellants themselves during those years affords evidence upon which the respondents are entitled to rely.

9. Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs.