

(1888) 04 PRI CK 0005

In the Privy Council

Chandi Churn Barua and Others

APPELLANT

Vs

Sidheswari Debi

RESPONDENT

Date of Decision : 26-04-1888

Acts Referred:

Citation : (1889) 16 ILRPC 71

Hon'ble Judges : Watson, Hobhouse, B. Peacock, R. Couch, JJ.

Judgement

Watson, J. 1. This suit was brought by the appellants in the year 1880, before the Court of the Subordinate Judge at Goalpara, for possession of the four mouzahs of Daborgaon, Salbari, Dingaon, and Bhotegaon, which are part of the Bijni Raj estate in Assam. The original defendant was the late Raja Kumud Narain; and since his death the estate has been represented by his widow, the Ranee Sidheswari Debi, who is respondent in this appeal. The foundation of the appellants' claim is a deed alleged to have been executed by the Raja Mukund Narain, the ancestor of the defendant, in 1185 Perganati (1778 A.D.) in favour of certain members of the Bafua family, to which the appellants belong. The document, according to the translation made by the Subordinate Judge, to which no exception has been taken by either of the parties, is in these terms:

Let peace and health rest upon your dwelling, O Kasi Nath Barua, dewan, O Ram Nath Barua, O Dharmasil Barua, O Komlakant Barua, O Earn Jibun Barua. Inasmuch as because of my having caused the daughter of Kasi Nath Barua, dewan, to lose caste by taking her away, you and all your connexions having become low in your minds, have conceived the design of abandoning my service and of withdrawing from my jurisdiction and going elsewhere, and forasmuch as from the days of the Maharajas, my deceased ancestors, you have all along been supported in various ways (such as) by service in my kingdom and by (grants of) villages and lands; and as I too am supporting you in the same manner, and as you have now become dispirited and (therefore it is proper) that I should show you even greater kindness, (I have determined that) a means of support, that is, a perpetual wage, should be given to you; and in case in my time or in the time

of my descendants, you or your descendants should not be supported in various ways (by me or by my descendants), then, as a means of maintenance, that is to say as wages, I do hereby assign to you seven villages, namely, Shamraipara, Mauria-gram, Daborgaon, Salbari, Kaitpara, Dingaon, and Bhotegaon in the nature of a fixed (perpetual) remuneration. However, as you are now being supported by (the profits derived from) three villages and by other means, for this reason four villages have not been made over to you. Those three villages that are now in your possession by virtue of farming leases, of leases for a fixed period, and of charitable grants (you will now hold) and you will pay rent for them, and other dues on account of them, as you have done from heretofore. If ever in the time of my descendants you are not provided with the means of maintenance (by them), then let those descendants of yours who may be living at that time produce this deed, and taking possession of the three above-mentioned villages, and also of the four villages (now held) khas (by me), enjoy possession of them rent free from generation to generation. But you will have to pay to the estate a yearly quit rent of Rs. 100. Beyond this amount I will not call upon you to pay any cesses or exactions of any kind whatsoever. These seven villages will in no way appertain to my kingdom. 2. It is not now disputed that Kasi Nath and Ram Jibun, two of the four grantees named in the deed, died without issue; and that the appellants are the living representatives of the other two, viz., Dharmasil and Komolkant Barua. They are still in possession of the three mouzahs of Shamraipara, Mauriagram, and Kaitpara, which their four ancestors held in 1778, by virtue of farming leases or other tenures, and which were presently assigned to them by the deed; and these mouzahs now yield an annual return of 4,000l. sterling. As might be expected in these circumstances, the appellants do not allege in their plaint, and they do not now contend, that they have not been already provided with ample means for their support. The case which they present is, that by the terms of the deed each successive Raja was under an obligation, either to maintain them, and that not merely by grants of land, but by employing them on his estate and paying them wages, or to give them the four villages in question; and accordingly, that the conditional grant to descendants became at once operative in their favour, when the late Raja dismissed Chandi Churn from his service in 1876, and declined to employ either him or any other of the appellants. 3. The real controversy between the parties turns upon the third issue adjusted in the District Court: "Is the document filed genuine, and are the plaintiffs entitled to any relief under it?" Besides disputing its genuineness, the respondent argues that the deed, in so far as concerns the disposition of the four villages claimed, is void in law; that at any rate the contingency upon which it depends is the failure of the Raja to provide maintenance, and that no claim can lie so long as the appellants have sufficient means of maintenance derived from her predecessors in the Raj. 4. The Subordinate Judge gave the appellants a decree in terms of their plaint. He found as matter of fact that the deed was genuine, and he held as matter of law that the conditional grant to descendants is valid and effectual, and that it became operative whenever the Raja failed to support _ them by giving employment as

well as land. On appeal the High Court reversed his decree, and dismissed the suit with costs. The learned Judges (Garth, C.J., and Beverley, J.) held that the onus being upon them, the appellants had not satisfactorily established the authenticity of the deed. Without deciding the point, they expressed grave doubts whether, if genuine, it was enforceable in law; but, on the assumption that it was both genuine and enforceable, they held that the descendants of the four Baruas named in it have, according to the just construction of the instrument, no right to the four mouzahs so long as they are sufficiently maintained from any source whatever provided by the grantor or his successors.

5. Their Lordships have not found it necessary to consider the evidence bearing upon the question whether the deed of 1778 is or is not a genuine document. On the assumption that it is, they agree with the construction which the learned Judges of the High Court have put upon the words: "If ever in the time of my descendants you are not provided with the means of maintenance." It attributes to these words their primary and natural meaning; and there is nothing in the context which suggests that the condition which they express must be qualified by the previous narrative of the means by which the four Baruas had actually been supported. There is an antecedent promise that these Baruas and their descendants shall in future be "supported in various ways." It may be plausibly argued that the condition was intended to compel the fulfilment of that promise; but support "in various ways" simply signifies support "in some way or other"; and if the words were imported into the condition, they would not alter its meaning.

6. These considerations are sufficient to dispose of this appeal; but their Lordships desire to rest their judgment upon broader grounds. They are of opinion that the conditional grant of the four mouzahs to persons yet unborn, who may happen to be the living descendants of the grantees named, at some future and indefinite period, upon the occurrence of an event, which may possibly never occur, is altogether void and ineffectual.

7. The manifest purpose of the deed was to fasten upon the grantor, and his successors in the Raj, a perpetual duty of giving, in some way or other, the means of maintenance to all the descendants of four persons who were in life at its date. It does not directly impose an obligation of that singular and unprecedented description; but on the failure of the then Raja, at any future time, to maintain these descendants, however numerous, the latter are to have immediate right to four of his villages, which thenceforth are not to "appertain to his kingdom."

8. Apart from the condition upon which it is made dependent, the grant of these four villages is expressed in language which, according to Hindu law, imports a present assignment to the grantees. It appears to their Lordships that two alternative views may be taken of its real character. It may be regarded as a present assignment to persons not yet in existence, subject to a suspensive condition which may prevent its taking effect at all or (as in the present case) for generations to come, or it may be regarded as a contract, not a mere personal contract but a covenant running with the Raj estate, and binding its possessor to give the villages to those persons in the event specified. It was hardly contended that a present grant to persons unborn, and who may never come into existence,

is effectual; and a covenant of that" nature in favour of non-existing covenantees is open to the same objections. It is immaterial in what way an interest such as the appellants' claim is created. If it prevents the owner from alienating his estate, discharged of such future interest, before the emergence of the condition, and that event may possibly never occur, it imposes a restraint upon alienation which is contrary to the principles of Hindu law. 9. Their Lordships are accordingly of opinion that the judgment of the High Court must be affirmed and the appeal dismissed; and they will humbly advise Her Majesty to that effect. 10. The appellants must pay the costs of this appeal.