

(1924) 02 CAL CK 0058
In the Calcutta High Court

Jnanendra Nath Roy Chaudhury and Others

APPELLANT

Vs

Ram Ranjan Banerji and Others

RESPONDENT

Date of Decision : 27-02-1924

Acts Referred:

Citation : 79 Ind. Cas. 588

Hon'ble Judges : Newbould, J; Ghosh, J

Bench : Division Bench

Judgement

1. This appeal is by the plaintiffs for the recovery of possession of certain Immovable properties after declaration of title. These properties originally belonged to one Gagan Chandra Roy Chowdhury who died in 1857 leaving a widow Kritarthamoyee Debi and a daughter by a predeceased wife Rangini. Rangini was married to one Chandra Sekhar Banerjee who resided in the house of his father-in-law. Kritarthamoyee made a gift of all the properties left by her husband Gagan in favour of Chandra Sekhar by a deed, dated the 4th January 1866. At that time the next reversioners of her husband's estate were Rangini who, if she survived the widow, would get a woman's estate, and Bishnu Chandra Banerjee who was the daughter's son of Gagan's great-grand-father. Rangini died sometime after the execution of the deed of gift and Chandra Sekhar apparently remained in possession of the property. On the 16th December 1891 Bishnu Chandra along with another person named Surendra Lal Roy Chowdhury executed a deed of release called a Nadabi Ekrar in favour of Chandra Sekhar with regard to those properties relinquishing their interest, and on the same day two documents were executed by Chandra Sekhar, one in favour of Bishnu Chandra and the other in favour of Surendra Lal giving some properties to those persons. Surendra was an agnatic relative, of Gagan Chandra Roy Chowdhury. Kritarthamoyee died on the 14th February 1919. Bishnu Chandra had predeceased her. The present plaintiffs have brought the suit out of which this appeal arises for recovery of the properties left by Gagan on the allegation that they are the next reversionary heirs after the death of Kritarthamoyee. These plaintiffs are the sons of Surendra Lal Roy Chowdhury who died in October

1918. The defendants are the sons of Chandra Sekhar Banerjee by another wife whom he had married after the death of Rangini and grandsons. The defendant No. 6 is the heir of Bishnu Chandra Banerjee and defendant No. 7 is the transferee from defendant No. 6.

2. The suit has been dismissed by the Subordinate Judge and the plaintiffs have preferred this appeal. It is not questioned that the present plaintiffs are the reversionary heirs of Gagan after the death of his widow Kritarthamoyee. The only question that has been argued and which requires consideration in this case is, what is the effect of the transactions we have already referred to with regard to the interest of the plaintiffs.

3. It is contended on behalf of the plaintiffs that Kritarthamoyee's deed of gift in favour of Chandra Sekhar Banerjee could not give a complete title to the donee so as to affect the interest of the plaintiffs. It is urged that at that time Rangini, the daughter, was alive and she was no party to this transaction. The subsequent affirmation of the transaction by Bishnu and Surendra in 1891 cannot confer a good title on the alienee, and in any case a transfer by a widow with the concurrence of the then expectant reversionary heirs only raises a presumption that the transfer by the widow was for legal necessity, and as in the present case the transfer was only by way of gift the defendants cannot rely on any such presumption in this case, and the plaintiffs are therefore, entitled to succeed. The appellants rely mainly on the principle laid down in the case of Rangasami Goundan v. Nachiappa Goundan 50 Ind. Cas. 458 : 46 I.A. 72 : 42 M. 523 : 36 M.L.J. 493 : 17 A.L.J. 536 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 26 M.L.T. 5 : 10 L.W. 105(P.C.), decided by the Privy Council.

4. It is contended on behalf of the respondents that Chandra Sekhar acquired a good title by the transaction, and it is objected on their behalf that the question of Rangini having been alive at the time of the gift by Kritarthamoyee should not be allowed to be raised here as it was not raised in the Court Below and, therefore, the defendants did not adduce any evidence that the deed of gift by Kritarthamoyee was in concurrence with that lady, and it is pointed out that Rangini was an attesting witness to the deed of gift. It is further urged that Bishnu Chandra Banerjee who was the next male reversionary heir of Gagan in 1866 had consented to the deed of gift being executed in favour of Chandra Sekhar at that time, as it appears from the recitals contained in the deed of release executed by Bishnu and Surendra. On these facts it is contended that the gift in favour of Chandra Sekhar was made by the widow with the consent and concurrence of all the next reversioners and, therefore, it conferred a valid title to Chandra Sekhar and the plaintiffs cannot, therefore, claim any interest to the property. Reliance has been placed on a certain passage in the case of Rangasami Goundan v. Nachiappa Goundan 50 Ind. Cas. 458 : 46 I.A. 72 : 42 M. 523 : 36 M.L.J. 493 : 17 A.L.J. 536 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 26 M.L.T. 5 : 10 L.W. 105(P.C.), on behalf of

the respondents. The passage on -which they rely, which is at page 80 of the report in the Indian Appeals, runs thus: "The surrender once exercised in favour of the nearest reversioner or reversioners the estate became his or theirs and it was an obvious, extension of the doctrine to hold that inasmuch as he or they were in title to convey to a third party, it came to the same thing if the conveyance was made by the widow with his or their consent." It is contended that the act of the widow should be considered as a surrender in favour of the next reversioner, and the consent of the next reversioner to the deed of gift should be taken as a conveyance by the next reversioners in favour of the donee. That can hardly be a proper view of the transactions. The widow did not surrender her estate to the next reversioner. She made a gift in favour of a stranger. The surrender by a widow of her widow's estate can only be made in favour of, the next reversioners, and even if it be assumed that the reversioners had consented to the gift being made by Kritarthamoyee, we have to consider the effect of such consent. The principle laid down in Rangasami Goundan's case 50 Ind. Cas. 458 : 46 I.A. 72 : 42 M. 523 : 36 M.L.J. 493 : 17 A.L.J. 536 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 26 M.L.T. 5 : 10 L.W. 105(P.C.), and the other cases decided by the Privy Council is that alienation by a widow with the consent, of reversioners can only be looked on as affording evidence that the alienation was under circumstances which rendered it lawful and valid ; or, in other words, the consent of the reversioners affords presumptive evidence that the alienation by the widow was for legal necessity. This presumption, however, cannot arise in the present case. Their Lordships observed in Rangasami Goundan's case 50 Ind. Cas. 458 : 46 I.A. 72 : 42 M. 523 : 36 M.L.J. 493 : 17 A.L.J. 536 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 26 M.L.T. 5 : 10 L.W. 105(P.C.), at page 85 of XLVI Indian Appeals: "Being a deed of gift it cannot possibly be held to be evidence of alienation for value for purposes of necessity." The case is the same here. The consent of the reversioners then to the alienation made by the widow in this case cannot be held to have conferred any title on Chandra Sekhar beyond the life interest of the widow Kritarthamoyee. After the death of Kritarthamoyee the plaintiffs would be entitled to the property left by Gagan. It is hardly necessary to point out that the plaintiffs are not affected by the acts of their father Surendra as they do not claim under him. They claim in their own right as heirs of Gagan. There is nothing, therefore, in this case which can prevent them from obtaining a decree.

5. The appeal is allowed and the suit is decreed. The title of the plaintiffs to all the properties left by Gagan is declared. The plaintiffs would be entitled to mesne profits from the date of the death of Kritarthamoyee up to the date of delivery of possession.

6. The plaintiffs will get their costs as against the defendants in this Court and in the Court below.