

(1920) 07 CAL CK 0026
In the Calcutta High Court

Rajendra Mohun Moulik and Others

APPELLANT

Vs

Upendra Nath Guha Thakurta

RESPONDENT

Date of Decision : 20-07-1920

Acts Referred:

Citation : 64 Ind. Cas. 518

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

Bench : Division Bench

Judgement

Teunon, J.—This appeal arises out of a suit brought by the plaintiff to recover arrears of an annuity on the basis of a certain "briti danpatra," i.e., a gift or grant of an allowance for maintenance.

2. Plaintiff was the husband of one Sarat Sundari, the granddaughter by a deceased son of one Gopi Mohun Moulik. Sarat Sundari died in 1316 (1909) leaving an infant son who died in the same year, Gopi Mohun died in Sraban 1323 (July 1916) and the present suit was instituted on the 9th November of that year.

3. The material portions of the danpatra or grant are in these terms: "You are the daughter of my eldest son. I have married you to a Kulin. Hence it is essentially necessary that I should make provision for the support and maintenance of yourself and of the children born of your womb (gorbhajat santan digen). According to my Will you are entitled to Rs. 300 a year from my estate if you live with your husband in my house, but the Will does not make provision in case you live in your husband's house or elsewhere. So by this deed I agree (or provide) that if you do not live in my house but live in your husband's house or elsewhere, you will get from my estate only Rs. 200 per year and that after your death your son born of your womb, and his sons and grandsons in due succession (or from generation to generation) will get the same,"

4. The question discussed in this appeal then is whether the plaintiff, as the heir

of his son, is entitled to claim the annuity or whether it ceased with the death of the son.

5. In support of the case of the appellant, who is the heir of Gopi Mohun, it is contended that the intention was to benefit Sarat Sundari and her heirs in tail male, that no charge on the estate or any part of it was created, and that the grant offends against the rule against perpetuity. It has been found by both the Courts below that the intention of the grantor was to benefit Sarat Sundari and her lineal descendants. The appellant would further contend that "santan" though used as meaning children, is here restricted to its primary meaning "son," but that is negated by the use immediately thereafter of the words *putra poutradi krame*." Even if the intention was to benefit only Sarat Sundari and her descendants, that does not take away from the meaning now assigned to the words "*putra poutradi krame*." It merely shows that the grantor failed to foresee the possibility that the son might die without issue before his father. A series of life-estates in tail male is repugnant to Hindu Law. We are, therefore, of opinion that the Courts below are right in giving to the words "*putra poutradi krame*" their usual technical meaning and that the annuity in question was intended to be perpetual, and that on the death of Sarat Sundari an absolute estate vested in the son. In a perpetual annuity there is nothing repugnant to either Hindu or Indian Laws.

6. We are further of opinion that the provision that the annuity is payable "out of the estate" is sufficient to create a charge, and in this connection we may refer to the case reported as *Rajarajeswara Dorai v. Sundarapandiyaswami Thevar* 27 Ind. Cas. 283 : 27 M.L.J. 694. In the result there will be a decree against the appellant for the sum allowed by the Court below, the decretal amount with costs in all Courts and interest being payable out of the estate left by Gopi Mohun and taken by appellant.

Newbould, J.

7. I agree.