
(1908) 06 CAL CK 0026
In the Calcutta High Court

Sankar Nath Mukerji and Others

APPELLANT

Vs

Bejoy Gopal Mukerji and Others

RESPONDENT

Date of Decision : 04-06-1908

Acts Referred:

Contract Act, 1872 — Section 196, 199

Citation : 4 Ind. Cas. 513

Hon'ble Judges : Coxe, J;Caspersz, J

Bench : Division Bench

Judgement

1. The suit giving rise to this and the connected appeals was brought by four out of the seven reversionary heirs of one Chandra Bhusan Mookerjee who died in the year 1832. The plaintiffs sought to recover khas possession of a 4/7th share of certain properties, and prayed for a declaration that an ijara, dated the 23rd Bhadra 1270 (7th September 1863), granted for a term of sixty years by Sayamani Debi--the widow of Chandra Bhusan Mukerji, and the dur-ijaras, and se-ijaras, derivatively created thereunder had become inoperative since the death of Sayamani Debi. The plaintiffs allege that all these transactions are not binding on them.

2. The ijara was granted by Sayamani Debi to Annada Pershad Mookerjee--the father of the plaintiffs, and to Sarada Pershad Mookerjee, the son of the brother (Gouri Pershad) of Annada Pershad. The genealogical tree (at page 10 of the paper-book in appeal No. 71 of 1896) is not disputed. The history of the litigation between the members of the family goes back to the year 1814 when Chandra Bhusan Mookerjee's paternal grandfather Mohadeb Mookerjee made a partition of the zemindari and gave a 4 anna share to the father of Chandra Bhusan Mookerjee. Bamandas Mookerjee (the father's brother's son of Chandra Bhusan) appropriated this share under cover of a deed of trust, dated the 7th Aswin 1239 (1832), bearing the signature of Chundra Bhusan Mookerjee. The deed of trust purported to show that Chandra Bhusan Mookerjee had adopted Mathura Nath Mookerjee, the third son of Bamandas Mookerjee.

3. In the year 1844, twelve years after the death of Chandra Bhusan Mookerjee, his widow Sayamani Debi instituted suit No. 39 of 1844 against Bamandas Mookerjee and obtained a decree for her share of the inheritance. The final decision in that litigation is reported in *Bamundoss Mookerjee v. Musammat Tarinee* 7 M.I.A. 169. It bears dates the 22nd and 23rd February 1858.

4. The defendants Nos. 9 to 13, the appellants in the present appeal, who are some of the representatives of Bamandas Mookerjee, support the ijara granted by Sayamani Debi against the plaintiffs. Their case is that Sayamani Debi harassed and exhausted by the protracted litigation, and unable to get complete and effective possession of the properties decreed to her, with the exception of three smaller properties, entered into an arrangement with the then reversioners (Annada and Sarada) and granted them an ijara of all the properties for a term of sixty years in order to secure a competence for the rest of her life, leaving the lessees to continue the contest with Bamandas Mookerjee--the remaining reversioner, and that, for this purpose *ekrarnamahs* were executed between the parties simultaneously with the ijara of the 7th September 1863. It is conceded that numerous *dur-ijaras* and *se-ijaras* were created after the original ijara during the interval up to the death of the widow which occurred thirty years later, in the year 1893.

5. The Subordinate Judge found that the suit was not barred by limitation and gave the plaintiffs a decree for all the properties with the exception of certain properties in the Mymensingh and Faridpur districts, the claim to which in the opinion of the Court below, could not prevail because the plaintiffs had ratified the ijara in respect of these properties after the death of Sayamani. On appeal to this Court (Sir Francis Maclean, C.J., and Geidt, J.) the decision of the Subordinate Judge was reversed on the question of limitation, and it was held that the suit was barred. The matter then went up to His Majesty in Council, and their Lordships of the Judicial Committee remanded the cases for a consideration of the merits. The judgment of the Privy Council is reported in *Bejoy Gopal Mukerji v. Srimati Krishna Mohishi Debi* 11 C.W.N. 424; 34 C. 329; 9 Bom. L.R. 602; 5 C.L.J. 334; 2 M.L.T. 133; 17 M.L.J. 154; 4 A.L.J. 329.

6. In these circumstances, this and the connected appeals have been re-argued before the present Bench, and the points arising for determination are--first, whether Sayamani Debi executed the ijara, dated the 7th September 1863, for legal necessity, and whether, for any other reason, the ijara, does or does not bind the present reversioners; secondly, whether the doctrine of ratification bars the suit; and, thirdly, whether the suit is defective because the plaintiffs seek to recover not the whole property but only a 4/7th share of the same.

7. The third contention may be dismissed in a few words. The plaintiffs did not sue to set aside the ijara but to recover possession of that share of the immovable properties in dispute, and, in accordance with the view adopted by the Judicial Committee on the question of limitation, the suit cannot be defeated because the plaintiffs did not sue to recover the entire property of Chandra

Bhusan Mookerjee.

8. The facts do not appear to be seriously disputed, and the learned Counsel and the learned Vakils representing the different parties in this and the other appeals have argued on the inferences to be drawn from the facts and on pure questions of law. Sayamani Debi brought her suit in 1844 not only against Bamandas Mookerjee, but also against Annada Pershad Mookerjee, the father of the plaintiffs, and Gouri Pershad Mookerjee--the father of Sarada Pershad Mookerjee, and she was assisted by her cousin Umesh Chunder Roy, otherwise known as Moti Babu, to whom she, on the 25th November 1851, gave an ekrar which is printed at p. 227 of the paper-book in Appeal No. 71 of 1899. It was recited in that ekrar that the lady had become indebted to the extent of Rs. 38,000, for which she had executed a mortgage bond in favour of Umesh Chunder Roy's brother Bhagaban Chunder Roy. She undertook to pay Rs. 50,000, including the previous Rs. 38,000, with interest at the rate of 12 per cent. per annum, when she had realised the costs and mesne profits due to her under the decree of the Sudder Court and she gave security for that amount. This ekrar was entered into shortly after the decree of the Sudder Dewany Adawlut, in favour of Sayamani Debi, passed on the 30th September 1850. The litigation continued until the decree of the Privy Council (in 1858) to which we have already referred.

9. There can be no doubt as to the bona fides of the claim advanced by Sayamani Debi and the fact cannot be controverted that she had been involved in protracted litigation for the attainment of her just rights and the rights of her husband's reversioners.

10. After obtaining her decree from the Privy Council Sayamani Debi recovered possession of the three properties mentioned in the ijara of the 7th September 1863 where it was recited that she was in possession of those properties by collection rents. Reading the ijara we find that Sayamani Debi leased for a term of 60 years the whole of the taluks, indigo factories, gardens, tanks, &c, described in the schedule, possession of which had not been taken, together with the three properties possession of which had been recovered. The lessees undertook to pay Sayamani a balance of Rs. 5,300 annually after paying the Government revenue amounting to Rs. 7,030, odd. They, also, undertook to assist Sayamani in duly executing the decree of the Privy Council and she covenanted that she would do so. The arrangements were embodied in the ijara lease and the ekrarnamahs Exs. A and H2 all of the same date. At that time the lessees, Annada Pershad Mookerjee and Sarada Pershad Mookerjee, were disputing with Bamandas Mookerjee. But they adjusted their differences in the year 1866, when Bamandas Mookerjee took a dur-ijara of the 1/3 interest in the ijara of the 7th September 1863. This dur-ijara was in the name of Bamandas Mookerjee's son, but there can be no question that Bamandas was the person beneficially interested. The defendants Nos. 9 to 13, the appellants in the present appeal, derive their title, as we have already stated, from Bamandas Mookerjee.

11. The plaintiffs did not bring the suit in their capacity of sons of Annada Pershad--one of the original ijaradars--but as the reversionary heirs of the husband of Sayamani Debi who granted the ijara. But, in considering the circumstances in which that ijara was granted, we cannot shut our eyes to the fact that the plaintiffs are standing upon a technical legal right and not upon any equities affecting the welfare of the descendants of Mohadeb Mookerjee who effected the partition in the year 1814.

12. We have already observed that the Subordinate Judge decreed the suit for all the properties with the exception of certain properties lying within the districts of Mymensingh and Faridpur, the claim to which in his opinion, could not prevail, because the plaintiffs had ratified the ijara in respect of those properties after Sayamani's death in 1893. On the question of legal necessity the Subordinate Judge held that the ijara was at most a beneficial arrangement not amounting to legal necessity in the sense in which that expression is used in Hindu Law. It will be convenient to consider this question first.

13. The doctrine of legal necessity has been elaborated in a series of judicial decisions. Each case must be judged upon its own facts. There can be no doubt that when Sayamani entered into the arrangement with Annada Pershad Mookerjee and Sarada Pershad Mookerjee her fortunes were at a very low ebb. She was in debt and her cousin Moti Babu and her gomasta had been convicted by a Criminal Court in connection with some case arising out of an attempt to execute decrees for rent in the property of which she had obtained nominal possession. The ijara arrangement turned out to be eminently successful because her principal opponent Bamandas Mookerjee took a dur-ijara in the year 1866, and the numerous parties who have been impleaded in the present litigation, or, rather, such of them as were then alive, regarded the ijara as a sound and honest disposition of her property by Sayamani Debi. It can be said that, as the term of 60 years was evidently beyond the then expectation of life of Annada Pershad and Sarada Pershad, it may be reasonably inferred that they considered it a beneficial arrangement not only for themselves but for their descendants. A sense of peace and security was induced. For 30 years, until the death of the widow in 1893, derivative titles were created and acted upon. The plaintiffs must establish a very strong case indeed to induce a Court of justice, equity and good conscience to set aside a beneficial arrangement of this kind and one that has had such far-reaching consequences.

14. For the plaintiffs it has been argued that Sayamani Debi was coerced by cruel necessity into granting the ijara and that she might very well, if she had been desirous of parting with her life estate, have granted it for the term of her natural life and not for 60 years. We, however, think that the very fact that the term actually adopted was 60 years, and not the uncertain space of human life, is a very strong indication that all the parties interested sought to make a definite arrangement possessing the best elements of finality and, if we find that the arrangement was for the benefit of the estate, and did actually benefit the

estate, we should apply and even broaden the principle adopted in the case of *Doyamoni Debi v. Srinibash Kundu* 33 C. 842. There it was said that a Hindu widow, as regards her management of the estate, has not less power than the manager of an infant's estate and that the reversioners were not entitled to set aside permanent leases granted by her which were found to be beneficial to the estate and by which they were found to have been benefited. The principle is based upon decisions of their Lordships of the Judicial Committee and it was applied in *Venkaji Shridhar v. Vishnu Babaji Beri* 18 B. 534 where Sir C. Sargent, C.J. said: "A widow like a manager of the family must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs." A fortiori if Sayamani Debi made a good bargain for herself, and if that bargain did not, prejudice the position of the then reversioners, it should be given effect to and the present reversioners ought not to be allowed to obliterate the history of nearly half a century. No doubt the authorities to which we have been referred as showing that costs of litigation may amount to legal necessity are not precisely in point. It does not appear that the *ijara* was entered into merely to meet the costs incurred by Sayamani Debi in the litigation. But the concurrent *ekrarnamahs* provided for the liquidation of all her debts and if the widow chose to become an annuitant and to make over her estate to the next takers some of whom accepted the arrangement then and there, and some of whom subsequently accepted it, there is no reason on principle or authority why such an arrangement should be set aside. We are disposed to give a broad meaning to the word "arrangement." It does not necessarily imply an agreement, see *Manning v. Eastern Counties Railway Company* (1843) 12 M. & W. 237 at p. 253 but here it proceeded on representations of facts, not of mere intentions. *Narain Das v. Ramanuj Dayal* 20 A. 209 (P. C) 25 I.A. 46 with on the of we assent Singh subject connection subsequent rely *Bajrangi Manokarnika Bakhsh* 12 C.W.N. 74; 6 C.L.J. 766; 9 Bom. L.R.. 1348; 3 M.L.T. 1; 5 A.L.J. 1 where their Lordships of the Judicial Committee observed that the consent of the reversioners was sufficient and that it was immaterial that it was given after the execution of the deed, then in question, and they applied the maxim "*omnis ratihabitio retrotrahitur et mandato priori acqui paratur*." Transactions of this kind may become valid by the consent of all those who are likely to be interested in disputing them; *Raj Lukhee Dabea v. Gokool Chunder Chowdhry* 13 M.I.A. 209; 12 W.R. 47 (P C); 3 B.L.R. 57 (P. C). The circumstances of the present case warrant an application of the further principle that if parties arrange to avoid the necessity for legal proceedings their arrangement is supported by sufficient consideration. Apart from legal necessity a widow can validly alienate property that has devolved on her from her husband with the consent of the reversioners. The widow can make such an alienation by the entire surrender of her own interest and thereby accelerate the interest of the reversioners or she can, as in the present case, part with her direct interest in the estate and convert it into an annuity. Subject to the payment of the annuity the transferee would acquire an absolute interest *Hem Chunder Sanyal v. Sarnamoyi Debi* 22 C. 354 at p. 361.

15. Our attention has been called to the judgment of Sir John Stanley, C.J. and Burkitt, J., in *Gobind Krishna Narain v. Khunni Lal* 29 A. 487 at p. 494; 4 A.L.J. 365 where, quoting Mr. J.C. Ghose's book on Hindu Law, it was said "a decree against a widow to bind the reversioners must have been passed after full contest and a compromise decree or a decree on an arbitration, can have no higher footing than an alienation by the widow." On the facts of that case the doctrine of family settlement of doubtful claims was not applied. The case of *Imrit Konwur v. Roop Narain Singh* 7 C.L.R. 76 was a case of compromise by a widow as against her minor daughters. But the ijara of the 7th September, 1863, was not a compromise. There was no settlement then effected of doubtful claims. Nevertheless, the principle of family settlements, in our opinion, is applicable to an arrangement by which the persons interested in the property mutually consent that the property shall be managed in a particular and convenient manner, and, if the arrangement does not seriously prejudice the parties to it or those who come after them, a Court of Equity will be slow to set it aside.

16. How, then, have the plaintiffs been prejudiced by the ijara of the 7th September 1863? We have been unable to find a satisfactory answer to this question. The test is how long has the arrangement been acted upon. In *Ramanathan Chetti v. Murugappa Chetti* 10 C.W.N. 825 33 I.A. 139; 4 C.L.J. 189; 8 Bom. L.R. 498; 16 M.L.J. 265; 29 M. 283; 3 A.L.J. 707; Lord Macnaghten observed "The unbroken usage for a period of 19 years is, as against the appellant, conclusive evidence of a family arrangement to which the Court is bound to give effect.... It was one which the Court would, no doubt, have sanctioned, if its authority had been invoked." In *Helan Dasi v. Durga Das Mundal* 4 C.L.J. 323 the test of long usage was not necessary because other considerations were found to be sufficient; see *Williams v. Williams* (1867) L.R. 2 Ch. App. 294 and *Stapilton v. Stapilton* (1739) 1 W.T.L.C. 223. Sayamani lived for 30 years after 1863; the suit of the plaintiffs was instituted on the 30th April 1897. This long period of rest was attributable to the measures taken by Sayamani. She had executed her decree and obtained possession of three properties; she had entered into negotiation for an adjustment of her claims and had actually remitted Rs. 1,72,000 on account of mesne profits to Bamandas Mookerjee; she had received a sum of Rs. 42,000 up to the 8th February 1861. Apart from legitimate and natural influences, no coercion had been exercised upon Sayamani. She was in a position of superiority to Bamandas Mookerjee owing to the decree of the Privy Council. He actually begged her to show him some consideration. In a deposition given by Sayamani, on the 6th June 1889 (pages 1 to 9 of the paper-book in appeal No. 94 of 1899) the lady shortly before her death, said--"In the execution case Bamandas Babu alone was the judgment-debtor, Annada Pershad and Gouri Pershad were not judgment-debtors. Consequently what I remitted was remitted to Bamandas Babu alone. I made an ijara settlement with Annada Pershad and Sarada Pershad at the time of the family dispute amongst my husband's elder brothers. Being in difficulties on account of my debts, and as both the parties were particularly eager about it, I

granted the said ijara settlement for a term of sixty years." Such was the impression left on the mind of this aged lady 26 years after the transaction, and we think that her impression should not be disregarded. A prudent management of the property of Chandra Bhusan Mookerjee was called for. It was situated in numerous districts; it had been out of possession for 26 years at least (1832-1858) and adverse rights must have grown up. The usual method of management in such cases is by granting sub-leases of convenient parcels of the estate. Then, the disputes arising in the course of execution proceedings had resulted in loss of collections. Any one conversant with the management of landed property in the mofussil must be well aware that disputes between co-sharers lead to a total cessation of rent collections. In our opinion, therefore, the end justified the means adopted by Sayamani who, in securing that end, which was a prudent and effective management of the properties decreed to her after a protracted litigation, acted within her powers, and the fact that her principal opponent took a dur-ijara and accepted the situation in the year 1866 conclusively shows that the ijara arrangement was made for the benefit of the estate and did not prejudice any one.

17. We have referred to the growth of adverse rights during 1832-1858. It appears that, under the law prevailing before the present Limitation Act came into operation, adverse possession against a widow was held to be adverse possession against the reversioners. The estate of Sayamani was, therefore, in danger of being lost unless the parties opposing her came to terms and took the management into their own hands.

18. For these reasons, we think the plaintiffs should not be allowed to take possession of the properties in suit until the expiry of the ijara term of sixty years.

19. The next contention raises the question of ratification of the ijara by the plaintiffs after the death of Sayamani in 1893.

20. Section 196 of the Contract Act provides that "where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority." Section 199 embodies the general rule that where a ratification is established as to a part, it operates as a confirmation of the entire transaction. In *Raja Rai Bhagawat Dayal Singh v. Debi Dayal Sahu* 12 C.W.N. 393; 7 C.L.J. 335; 35 C. 420 the Privy Council pointed out that ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier. Their Lordships observed--"It would be a serious extension of law, as hitherto applied, to hold that a woman with a limited interest could, by acts ex post facto, charge upon the estate which she represents, obligations not originally binding upon it." It cannot be said that Sayamani gave the ijara in 1863 on behalf of the reversioners who would become entitled to the estate of her husband at her death in 1893. The acts performed by the reversioners after 1893 cannot,

therefore, amount to a ratification of the ijara, in the strict sense of the term. Sayamani was never the agent of the plaintiffs.

21. But the defendants really rely on the doctrine of election and the case of *Modhu Sudan Singh v. E.G. Rooke* 25 C. 1; 24 I.A. 164; 1 C.W.N. 433. There the reversioners had elected to treat as valid a putni lease granted by the widow; he had accepted rent in respect of the tenure after the death of the widow.

22. The question, then, resolves itself into this: Did the plaintiffs elect to affirm the validity of the voidable ijara lease of the 7th September 1863? The question does not arise if Sayamani granted the ijara lease for legal necessity or for any other sufficient reason as we have found she did.

23. In our opinion, the evidence does not amount to proof of an election by the plaintiffs. As regards the payment of Government revenue and cesses by the ijaradars, the use of the word borat (on behalf of) cannot in itself saddle the plaintiffs with the responsibility of acquiescence in the ijara. The ijaradars were bound to pay the revenue and cesses without reference to their lessors. That they continued to do so is cogent evidence that the arrangement made in 1863 was adhered to or, at any rate, that it was not repudiated by the plaintiffs until they failed to get advantageous terms from the ijaradars and the persons holding by sub-infeudation; secondly, as regards the receipt of ijara rents, we do not find that the plaintiffs ever received such rents. The plaintiffs' brother Upendra Lal Mookerjee (defendant), did not collect rent dues on account of Sayamani's share and the Shaha defendants had no ijara or dur-ijara under the plaintiffs (see the evidence at pp. 142-3 of the paper book in Appeal No. 71 of 1899.) The post card Ex. A26 relied on by the Subordinate Judge proves nothing and the Acharjya defendants who made some payment or other have entered into a compromise with the plaintiffs. The other piece of evidence commented on in the judgment of the Court below refers to a dur-ijara granted to one Moijuddin by plaintiffs' brother the defendant Upendra Lal Mookerjee and we accept the explanation of plaintiff Bejoy Gopal on this point. There is no proof of any clear and unequivocal election by the plaintiffs, and Moijuddin's lease came to an end in 1894 after which he obtained a fresh settlement from the plaintiffs.

24. For all those reasons we disallow the second contention on behalf of the defendants-appellants and we find that plaintiffs did not ratify or elect to affirm the ijara of 1863 after the death of Sayamani Debi.

25. The appeal succeeds on the first contention only and plaintiffs' suit must be dismissed with costs payable to the defendants Nos. 9-13.