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(1892) 12 PRI CK 0005

In the Privy Council

Saodamini Dasi — APPELLANT

Vs

The Administrator-General of Bengal and others — RESPONDENT

Date of Decision : 16-12-1892

Acts Referred:

Citation : (1893) 20 ILRPC 433

Hon'ble Judges : Hobhouse, Macnaghten, Hannen, Shand, R. Couch, JJ.

Judgement

Shand, J. 1. On this appeal the only question raised for decision is whether Badamkumari Dasi, the widow of Nobokumar Mullick, a member of the Mullick family of Calcutta, had power to dispose as she did, by a deed executed by her on the 12th July 1886, about two months before she died, of certain Government of India promissory notes. These Government securities were purchased with a sum of Rs. 2,69,500, which she had received out of her husband''s estate, and a further sum of Rs. 10,500, being interest which had accrued during her life-time on that amount. Mr. Justice Trevelyan held that Badamkumari had absolute power to alienate and dispose of these securities, and his decision was confirmed by the Appellate Court. 2. The appellant''s contention has been that the sum of Rs. 2,69,500, and the Government securities for that amount, were possessed by Badamkumari not as her own property with a power of alienation but as part of he estate of her husband Nobokumar Mullick, in which she had the right or interest, only of a Hindu widow. 3. The circumstances in which she obtained possession of this fund, which are very peculiar, may be shortly stated. Her husband, who was a man of very large means, real and personal, by his will, dated the 15th March 1856, appointed his widow and his younger brother Shamcharan Mullick, his executors, to manage his estate; and he directed that his widow should receive for maintenance and for the expenses of religious acts and observances one lakh of rupees. Having no son, he, by the 9th clause of his will, made the following provision in regard to his general estate: "Should my executor Sreeman Shamcharan Mullick, my younger brother, have more than two sons within eight years from this date, in that case such son shall be made my adopted son. Should such adopted son die within the said appointed period of

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eight years, in that case should there be other sons of my brother within the specified time of eight years, power is reserved for adopting up to the extent of a third time. Should my brother have no more than two sons, or the adopted sons shall die one after the other, in that case the share belonging to me of Company''s papers and lands and houses and gardens and so forth, the whole real and personal estate will be received by my younger brother, Sreeman Shamcharan Mullick." This, which was the only clause in the will regulating'' the disposal of the general estate of the testator, made no special provision in regard to the income of the estate during the eight years, in the course of which the testator''s brother might have a son who could be validly adopted as the testator''s heir. 4. Shamcharan Mullick bad one son only, and consequently the power of adoption conferred by the testator on his widow could not be exercised. During the eight years which elapsed after the testator''s death, Shamcharan Mullick himself administered the estate, and received the income and retained it. On the expiry of that time Badamkumari not only required payment of the lakh of rupees to which she had right by the special direction in her husband''s will, but also of the eight years'' income which had not been specifically disposed of by the will, and which she maintained to be intestate succession falling to her as her husband''s widow and heiress. Shamcharan Mullick contested this claim, and seems for a time to have maintained that the income of these years became his property under the general destination to him of the real and personal estate of the testator. 5. This dispute and other questions which had arisen between the parties were settled by a deed of agreement, dated the 14th August 1866. That deed narrates the will, and states the question which had arisen regarding the accumulated income of eight years; and the nature of the widow''s claim and the arrangement in regard to it are thus stated: "And I the said Srimati Badamkumari Dasi, as the sole widow, heiress and legal personal representative of the said Nobokumar Mullick, deceased, claim to have the accumulations of the said estate from the time of his death down to the expiration of the said eight years next succeeding his death, the same as I contend and am advised being residuary estate undisposed of by the said will of the said Nobokumar Mullick. And whereas the said Shamcharan Mullick has consented and agreed to concede the point in question and to give up to me as such heiress of the said deceased the accumulations of the said estate from the death of the said deceased for the period of eight years, the time within which the contingency of a son being born to the said Shamcharan Mullick to be adopted by me was limited and fixed." The deed then goes on to state that, in order to avoid the delay and expense of taking an account of the accumulations, it bad been agreed by the parties that the amount should be taken at Rs. 2,89,000, and this amount having been paid to her, Badamkumari granted a full discharge of all her claims for these accumulations. Before leaving the deed it should be mentioned that, in respect of payment then made to her, Badamkumari also discharged Shamcharan Mullick of her legacy of Rs. 1,00,000 and Rs. 62,450 of interest which had accrued on it; and she also granted a discharge for payment of a sum of Rs. 24,000 which she accepted as compensation for relinquishing her right to live in her husband''s

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family house on the estate. The several sums payable and paid under this deed amounted in the aggregate to Rs. 4,75,450, and the payment was made in currency notes of various amounts, the most of these being one thousand rupee notes, others being notes for Rs. 500 and Rs. 100. 6. Out of the sum of Rs. 2,89,000 of accumulated income, Badamkumari paid away about Rs. 20,500 for law and other costs, and with the balance, as well as with the other sums above mentioned received from her brother-in-law, she purchased Indian Government promissory notes yielding interest payable half-yearly. She survived till the 7th September 1886, and, as already mentioned, in July of that year she executed a deed of settlement and trust, by which she transferred to the Administrator-General of Bengal as trustee the securities in which she bad invested the sum received as the eight years of accumulated income from her husband''s estate, after deducting costs and charges, and also other Indian Government promissory notes for Rs. 10,600, being part of the interest which had accrued on the securities originally bought, which had not been spent by her in the meantime. The purposes of the trust were generally the payment to herself or for her use of the interest or dividends of the securities during her life, and after her death a provision that the securities should be held in trust for Grishchunder Roy, her grandson, whom she had resolved to bring up as her son, and his heirs and assigns, for his and their absolute use and benefit. 7. The appellant, alleging that she and her sister (called as a defendant) are the only heirs now alive of Nobokumar Mullick entitled to succeed as his heirs in intestacy, has brought her suit, claiming right to the Government securities, and in her plaint she alleges that these form part of the estate of Nobokumar Mullick, that Badamkumari was not entitled to endorse or convey them away, as she did by the deed of the 12th July 1886, and that this deed is invalid. 8. The ground on which this claim has been supported in argument is that, under the provisions of the ninth clause of the will of Nobokumar Mullick, there was an implied direction by the testator that the income of his estate should be accumulated and capitalized for the eight years during which Shamcharan Mullick might have a, son to be adopted, and that under the deed of arrangement and compromise and release of the 14th August 1866, between Badamkumari and Shamcharan Mullick, Badamkumari claimed and accepted the accumulated income as a capitalized sum which in her hands was part of the capital of the estate of her husband; that she therefore acquired only a Hindu widow''s interest in the fund, and was not entitled to alienate it or deal with it in any way which would deprive Nobokumar Mullick''s heirs of their right to receive it as part of his estate to which they had a right of succession. If this view of the purport and effect of these instruments were sound, there might be great force in the argument of the appellant. 9. Their Lordships are, however, clearly of opinion that the view presented by the appellant is not warranted by the terms of the will and the deed of arrangement. As regards the will of Nobokumar Mullick, all parties are agreed that it gives no specific direction as to what was to become of the income of the estate until the adoption of a son to be born to Shamcharan Mullick, or until the expiry of the eight years during which a son, to be adopted, might be born. There is no

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direction in the deed either to capitalize or to accumulate that income, and nothing, in their Lordships'' opinion, from which such a direction can be held to have been implied. The income as it fell due each year after the testator''s death became either the property of Shamcharan Mullick under the general destination to him of the testator''s whole real and personal estate (and were the question still open, it seems difficult to suggest a reason for holding that it was not covered and conveyed by that destination), or it was entirely intestate succession which, as it fell due, became the absolute property of Badamkumari as the widow and heiress of her husband. And accordingly it was this right which Badamkumari maintained in the dispute on the subject which arose between her and Shamcharan Mullick, and which be yielded to her by the deed of agreement and release. The language of the deed being: "And whereas the said Shamcharan Mullick has consented and agreed to concede the point in question and to give up to me as such heiress of the said deceased "--that is, as appears from the sentence preceding, as the heiress and legal personal representative of the said Nobokumar Mullick, ---" the accumulations of the said estate from the death of the said deceased for the period of eight years." The claim of Badamkumari to this part of the income of her husband''s estate was made by her as heiress of her husband entitled to income not disposed of. She claimed this income as her absolute property, and their Lordships can see nothing in the language of the deed of agreement, or in the transaction with Shamcharan Mullick, which can support the appellant''s contention that she agreed to receive this income as capital in which she should acquire only the estate of a Hindu widow, or that the nature of the fund should differ in any way after she received it from what it had been before. 10. There is nothing to support the appellant''s argument in the circumstance that the income was received in one sum and only after the lapse of eight years after her husband''s death. The right she claimed was to receive payment as the income came in. That was a question between her and Shamcharan Mullick. If he had immediately on the testator''s death taken the same view as he took when the agreement was made, all the income would have reached the widow''s hands as it accrued, and there could have been no question as to the character in which she took it. It cannot make any difference that the title was not admitted for eight years, and that pending the uncertainty the income was accumulated. The administration of the estate was left entirely in the hands of Shamcharan Mullick, and it was only after the lapse of eight years that Badamkuraari received from him even the lakh of rupees left to her for her maintenance, and that a general settlement of her claims was made. 11. In this state of the facts there seems to be no ground for the appellant''s claim. Although at the earlier stage of the argument it was suggested that, even if the fund was to be regarded as income and not capitalized estate, it nevertheless became the husband''s estate, because of the subsequent actings of Badamkumari, this view was hardly maintained in the reply by the appellant''s counsel. 12. The appellant''s counsel contended that the savings of a Hindu widow must be presumed to have been made for the benefit of her husband''s estate. Without examining the precise result of the decisions, it is sufficient to

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say that in this case there is no room for any such presumption, for the corpus of the estate never came to the widow, but was taken by Shamcharan Mullick under the will, and the income to which the widow succeeded was separated from it, and became and was dealt with as an entirely separate fund. To use the words of Mr. Justice Trevelyan in reference to Badamkumari''s position I.L.R. 14 Cal. at p. 886: "There was no estate of her husband''s in her hands for her to augment." She did nothing to indicate an intention to make the fund received, or the interest on it, part of her husband''s estate which was in other hands, or to justify the inference that she wished it to revert to her husband''s heirs. It was said she had placed it in investments of a permanent nature. Had she done so, it does not appear to their Lordships that this circumstance alone would have added the fund to the estate devolving on her husband''s heirs. But the fact is that, having received the money in currency notes which yielded no return, and the keeping of which was attended with much risk, she at once placed it, as any prudent person would do, in securities, investing it in Government promissory notes yielding regular interest, but which were negotiable instruments transmissible by mere indorsation. It is important also to observe that the other funds which she received from Shamcharan Mullick were invested precisely in the same way and at the same time, and that for purposes of investment therefore the fund in dispute was not kept separate, but was mingled with her general personal means; and she seems to have used the interest and income of the whole indiscriminately for her maintenance, and spent the greater part of it, It may be further mentioned that, while her trust settlement by which she conveyed the income in question was executed in 1886, this deed superseded an earlier testamentary deed of 1882, which she cancelled in 1886, in which she distinctly records her view that she had received the fund as her absolute property, and bad placed it in Government securities "for my own absolute benefit, and without any intention or desire to make the same or any part thereof accumulations to the estate of the said Baboo Nobokumar Mullick, but on the contrary with the full intention of having, retaining and exercising full and uncontrolled dominion by will, deed or otherwise over the same and every part thereof." 13. Their Lordships, being thus of opinion that the fund in question wag not in any sense received by Badamkumari as capital or capitalized income of her husband''s estate, but was received as income which, under the arrangement with Shamcharan Mullick, was her own absolute property, and further that she never indicated any intention to make the same part of her husband''s estate for the benefit of his heirs, will humbly advise Her Majesty to dismiss the appeal, and the appellant must pay the costs of the appeal, which, however, will be one set of costs only, to the respondent Grishchunder Roy.

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