
(1933) 11 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 66 of 1932

Sat Bharai

APPELLANT

Vs

Barkhurdar Shah and another

RESPONDENT

Date of Decision : 13-11-1933

Acts Referred:

Citation : (1934) AIR(PC) 43

Hon'ble Judges : George Lowndes, John Wallis, Lord Macmillan, JJ.

Advocate : S.L. Polak, Sam Singh Nchra, Zafrullah Khan, K.V.L. Narasimham, L. DeGruyther, W. Wallach, A.M. Dunne, for the Appearing Parties.

Judgement

Sir George Lowndes, J.

The appeal arises out of a suit brought by the appellant to recover possession of certain immovable properties situated in the Jhang District of the Punjab which are said to be of considerable value, and for a declaration of her right of ownership in certain other properties which were in the possession of mortgagees. The properties in question had formed part of the estate of one Amir Shah, who died without issue in 1862. He was succeeded under the customary law applicable to his family by his widow, Fateh Bibi, by whom the mortgages in question appear to have been made. It is common ground that she took only a life estate, but in the year 1907 she executed a deed of gift of the properties in favour of two persons named Isa Shah and Ghulam Akbar Shah. She died on 3rd January 1911, and on 3rd May 1913 a suit was brought by two ladies of the family, Nur Bari and the present appellant, against the donees, claiming the properties jointly as the then heirs of Amir Shah, and charging that the gift was invalid. Nur Bari was the widow of one Hassan Shah, who it was said would have been the next heir if he had been alive, and the present appellant the daughter of Hassan Shah by another wife. They said in their plaint that there was no disagreement between them, and asked that the properties might be awarded to either of them or to both. The trial Court on 30th November 1917, passed a decree in favour of Nur Bari alone, on the ground that she was the preferential

heir. The decree was silent as to the quality of her estate, but it is not now disputed that, taking as the widow of Hassan Shah, she would only hold for her life, the appellant, if she survived, being the next reversioner.

Almost immediately after this decree was passed, namely, on 21st December 1917, Nur Bari, with the now undisputed concurrence of the appellant, executed a document described as a tamliknama (settlement) in favour of the present respondents. It was registered on 30th December 1917; mutation in their names was duly effected in the Government records, and they entered into and remained in undisturbed possession until the institution of the appellant's suit on 16th June 1924. Nur Bari died in July 1919, during the pendency of an appeal filed by the donees of Fateh Bibi, which was eventually dismissed. The Subordinate Judge by whom the suit was tried decided in favour of the appellant, and passed a decree in the terms of the prayer of her plaint. This was reversed by the High Court and the suit dismissed. She has now appealed to His Majesty in Council.

First among the questions involved in the argument before the Board is one of limitation. The High Court held that the suit was barred under Punjab Act 1 of 1920, which provides a special period of six years in suits to set aside alienations of ancestral properties in that province. The material provisions, contained in Arts. 1 and 2 of the Schedule to the Act, are as follows:

The learned Judges were of opinion that the tamliknama effected an alienation of the properties which were admittedly ancestral and that therefore the suit, not being brought within six years from the date of its registration, was out of time. In the Indian Courts it was contended that the registration of the document was invalid, and therefore ineffective for the purposes of limitation, but this was not seriously disputed before their Lordships, who have no doubt that it was in fact (as the High Court held) duly registered. The real contention of the appellant's counsel has been that the document did not effect an alienation of the properties, within the meaning of the articles cited, but only purported to pass to the respondents the limited interest of Nur Bari, with which she was perfectly competent to deal. "Alienation" is not defined in the Act, and it may not be easy to say exactly that it connotes, but their Lordships will assume for the purposes of the present case that a mere transfer by Nur Bari of the life estate would not be within the purview of this enactment. They think, however, that the true intent of the document was not merely to deal with Nur Bari's life interest, but to make over the properties themselves to the respondents. The language used is at least wide enough to bear this construction, and the concluding paragraph is, their Lordships think, capable of no other explanation. It is to the following effect:

"After my death Mt. Sat Bhari my (step)daughter and daughter of Mian Hassan Shah was to succeed me. She accepts and ratifies this Tamlik (settlement) of her own accord and free will. Her thumb-mark has also been secured in support of the above fact. She will accept and ratify this Tamlik also at the time of registration. "

There could in their Lordships' opinion be no reason to bring Sat Bhari (the appellant) in to accept and ratify the gift if it was only of Nur Bari's life interest.

The natural and, indeed, the only reasonable explanation of this is that the ladies thought that between them they held and could deal with the full estate. Respondent 1 to whom the one moiety was to go to was apparently the nearest male relative of Nur Bari in her own family, while respondent 2 who was to take the other moiety was the sister's son of the appellant, who was not married. A division of the estate between them would seem to be just the sort of the arrangement that two ladies in their position and on friendly terms would desire. It is also not without significance that the appellant in the trial Court set up the case that her signature to the document was obtained by fraud, which was not only (as has been held by both Courts in India) untrue, but is hardly consistent with the case now made that the transfer was merely of the life interest of Nur Bari. Reading the document as a whole, and taking into account the surrounding circumstances, their Lordships can see no reason to dissent from the conclusion come to by the High Court, namely, that there was an alienation by the *tamliknama* in favour of the respondents, and that consequently the appellant's suit was out of time. In these circumstances there is no necessity to consider the other and possibly more complicated questions which have been discussed in the argument before them. In their Lordships' opinion the present appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.