

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Mussumat Bhagbutti Dae v. Chowdry
Bholanath Thakoor and others, from the
High Court of Judicature at Fort William
in Bengal; delivered June 5th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

IN order to make this case intelligible the following facts require to be stated. Odan Thakoor was one of three brothers. Shortly before his death, which occurred in February 1827, he had adopted a son of the name of Girdhari Thakoor, who was a son of his brother. At that time he had a wife, Mussumat Chunderbutti, and he had a daughter, Mussumat Suntbutti. He, shortly before his death, on the 21st January 1827, executed a document which will have to be referred to hereafter, upon which the question in this case arises, and a document of a similar character and very similar in terms was also executed by Girdhari. Under these documents the present Defendant, Mussumat Bhagbutti Dae, who is the grand-daughter of Odan Thakoor and of Mussumat Chunderbutti, claimed all the land in question, being 34 lots. The Plaintiffs, who are nephews or grand-nephews of Odan Thakoor, brought their suit to obtain possession of these lots, and they have succeeded with respect to the first 12 of them in both Courts. As far as the lots up to No. 12 are concerned there is now no dispute. Those lots were, in fact, lots

of real property which belonged to Odan Thakoor in his lifetime, and which, it is now agreed, upon the death of Mussumat Chunderbutti reverted to the Plaintiffs as the heirs of Odan Thakoor, or at all events of Girdhari, his adopted son; nor is there now any dispute as to lots Nos. 15, 16, and 17, which both Courts have given to Defendants.

With regard to the greater part of the other lots the Plaintiffs contend that the Mussumat held the property out of the proceeds of which these lots were purchased as a Hindoo widow, and that they were an increment to that property, and did not descend to her heir.

The question arises upon the construction of these documents. The first is that executed by Odan Thakoor himself on the 21st January 1827, and is in these terms: " I am Odan Thakoor, proprietor of one-third share of the whole 16 annas " of certain mouzahs " which I inherited from my forefathers," and so on. " Whereas no son is born to me except one daughter, by name Mussumat Suntbutti, whom I have reared up like my son, and have still got in my house, and not allowed to go to her husband's house, and as on account of my dotage I have given up all hopes of my existence, consequently, in order to evade all future disputes I have made a partition in this wise: that a one-third share out of the whole 16 annas of mouzah Munkowli usli with Dakhili, Rs. 1,100 in cash, and Bhichuck slave with his children, I have granted to Mussumat Suntbutti, my daughter, for her maintenance, in order that she may enjoy possession of the same with her children, as proprietress, and thus pass her days," giving to Suntbutti an estate of inheritance in this particular property,—" that the remaining 'milkiut' and 'minhai' estates, together with the amount of ready money,

“ articles, slaves, and all household furniture
 “ I have placed in the possession of Mussumat
 “ Chunderbutti Thakoorain, my wife, to be
 “ enjoyed during her lifetime, in order that
 “ she may hold possession of all the properties
 “ and milkiut possessed by me, the declarant,
 “ during her lifetime, and by the payment of
 “ the Government revenue, appropriate the profits
 “ derived therefrom, but that she should not by
 “ any means transfer the milkiut estates and the
 “ slaves; that after the death of my aforesaid
 “ wife the milkiut and household furniture shall
 “ devolve on Girdhari Thakoor, my *kurta*
 “ (adopted son), and that no objection thereto
 “ raised by anyone shall be ever held valid.”

On the same day a similar document, no doubt slightly differing in terms, but in their Lordships' judgment in no material particular, was executed by Girdhari, the adopted son. It does not appear to their Lordships necessary to enter into the question as to the effect of the particular form of adoption: it is enough to say that it gave him a right to the inheritance.

The subordinate judge has construed this document in what would certainly appear to be its plain ordinary meaning, namely, that it was in the nature of a family settlement, giving to Chunderbutti an estate for life, with a power to appropriate the profits; and to Girdhari what would be termed in the phraseology of English law a vested remainder on her death. According to this construction, she would have the power of making whatever use she chose of the proceeds of her estates; and if she bought land or personal property with them, that land and that property would be hers, and would devolve on the Defendant who represents her. Applying this principle he gave the Plaintiffs a decree for the first 12 lots of the 34 lots claimed,

affirming the title of the Defendant to the remainder. The view of the High Court was different; they indeed agreed with the finding of the subordinate judge with respect to the first 12 lots, in which he was manifestly right, for the documents referred to certainly gave to Chunderbutti no more than a life estate. They also affirmed, but on different and special grounds, his judgment as to lots 15, 16, 17. But they differed from him upon the construction of these instruments, expressing their opinion in these terms: "Shortly, the effect of the two ikrar-namas which have been read to us appears to be this, that by an understanding between Odan Thakoor and his adopted son, carried out in those instruments, it was agreed that notwithstanding the adoption, Chunderbutti should take and enjoy the estate of her husband, whose death was then apprehended, and which did shortly afterwards occur, in the same mode as she would have taken and enjoyed it if no adoption had taken place," that is, in her character as a Hindoo widow.

Their Lordships, on considering this instrument, together with the surrounding circumstances which no doubt are proper to be regarded, have come to the conclusion that there is no sufficient reason for departing from what appears to be the plain and obvious construction of its language. There is no evidence whatever, extraneous to it, of any such understanding as that supposed by the Court to have been come to between Odan Thakoor and his adopted son. If there had been it would have been easy to express it; but as no such understanding is expressed, or is in their Lordships' judgment to be inferred by necessary or even reasonable implication from the language of the instrument, they do not feel justified, upon mere conjecture of what might probably have been intended, in

so interpreting it as materially to change the nature of the estate taken by Chunderbutti. If she took the estate only of a Hindoo widow, one consequence, no doubt, would be that she would be unable to alienate the profits, or that at all events, whatever she purchased out of them would be an increment to her husband's estate, and the Plaintiffs would be entitled to recover possession of all such property, real and personal. But, on the other hand, she would have certain rights as a Hindoo widow; for example, she would have the right under certain circumstances, if the estate were insufficient to defray the funeral expenses or her maintenance, to alienate it altogether. She certainly would have the power of selling her own estate; and it would further follow that Girdhari would not be possessed in any sense of a vested remainder, but merely of a contingent one. It would also follow that she would completely represent the estate, and under certain circumstances the Statute of Limitations might run against the heirs to the estate, whoever they might be.

Their Lordships see no sufficient reason for importing into this document words which would carry with them all these consequences, and they agree with the Subordinate Judge in construing it according to its plain meaning.

A case has indeed been called to the attention of their Lordships in which a somewhat limited construction was put by this Board upon words in a deed whereby a Hindoo widow was given an estate for her sole and absolute use and benefit (*Sreemutty Rabutty Dossee v. Sibchunder Mullick*. 6 Moore's Ind., App. p. 1). The circumstances of that case were these, as far as they are material to the present purpose. A deed of arrangement and release had been entered into between members of a Hindoo family in respect of a joint estate which was claimed by a childless

Hindoo widow, in the character of heiress and legal personal representative of her deceased husband, and that being so, and her claim in that character being recited in the deed, their Lordships thought that the terms "her sole absolute use and benefit" must be construed with respect to the character in which she claimed, in which she sued, and in which she was described in the deed. That case does not appear to their Lordships to have any material bearing on the present. This is not a case in which the widow claimed any right as a widow—in fact she had none; nor is she any party to the deeds, nor are they drawn under circumstances at all similar to those in that case.

Under these circumstances, their Lordships have come to the conclusion that whatever property, real or personal, was bought by Chunderbutti out of the proceeds of her husband's estate, belongs to her, and consequently to the Defendant.

This view of the case disposes of all the items in the cause, except No. 20, and from No. 30 to 34; all the items subsequent to No. 12 except these comprise either real or personal property which has been found by the Subordinate Judge to have been bought by Chunderbutti with the proceeds of her husband's estate, and which finding their Lordships uphold. No. 20 comprises the house in which Odan Thackoor lived, and must in their Lordships' opinion be recovered by the Plaintiffs on the same principle on which they established their claim to lots 1 to 12. As to the last four items, the Subordinate Judge finds that the Plaintiffs gave no evidence of their right to them. The Defendant must therefore retain them.

Their Lordships will, therefore, humbly advise Her Majesty that the decrees of both the lower Courts be discharged, and in lieu thereof that

it be ordered that the Plaintiffs recover the mouzals numbered in the plaint from 1 to 12, both numbers inclusive, and the property numbered 20, and that as to the residue of the properties mentioned in the plaint the suit ought to be dismissed. Their Lordships will further direct that the costs of the Plaintiffs in the Court of the Subordinate Judge, in proportion to the amount decreed by Her Majesty in Council, be paid by all the Defendants, and that the costs of each of the Defendants in the said Court of the Subordinate Judge, in proportion to the claim disallowed by Her Majesty in Council, be paid by the Plaintiffs, and that the costs in the High Court be borne by the Plaintiffs and the Defendant, Mussumat Bhagbutti Dae, respectively, in proportion to the value of the property decreed and disallowed by Her Majesty in Council. The costs awarded as above mentioned are to carry interest at the rate of 6 per cent. per annum from the date of the decrees of the Lower Courts, respectively, to the dates of realization. There will be no costs of this Appeal.

