

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Kanai Lall Dutt and others v. Srimoti  
Sudhamoni Dassya, from the High Court  
of Judicature at Fort William, in Bengal;  
delivered 10th July 1875.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

THIS was a suit brought by the Appellants, who were the grandsons of one Madhub Chunder Dutt against Sudhamoni Dassya, a lady with whom Madhub Chunder Dutt had lived a great number of years though he had not married her, and by whom he had had many children, for the purpose of compelling the Defendant to account for Government securities to the amount of Rs. 22,200, which were alleged by the Plaintiff to have been given to her by Madhub Chunder impressed with a trust for certain idols, of removing her from the office of shevait to those idols, and appointing one of the Plaintiffs in her stead.

This suit, it is to be observed, was brought by the grandsons of Madhub Chunder in the year 1871; the time of the gift of the notes to Sudhamoni having been the years 1852 and 1853, and Madhub Chunder having died in 1855. It is further to be observed that Guru Das, the father of the Plaintiffs and the son of Madhub Chunder, made no such complaint of Sudhamoni as his sons now make—indeed he was made by the grandsons of Madhub

Chunder a co-defendant in this very suit with Sudhamoni. Both Courts in India have held that the Plaintiffs have not sufficiently made out that these Government notes, being four in number, and making up the sum which has been before mentioned, were given by Madhub Chunder to Sudhamoni impressed by the trust which is alleged in the plaint.

The evidence by which the Plaintiffs endeavoured to make out their case may be briefly stated. It consisted in the first place of entries in khata books, as they are called, kept by Madhub Chunder, one entry of the 14th April 1850, the other of the 9th January 1853. In the first of those entries two of these notes, in the second the other two notes are referred to as having been given or as being given to Sudhamoni for the service of the idols. These khata books it appears were kept in Calcutta, where Madhub Chunder had a family house, his ordinary residence, where Sudhamoni lived with him, being in Chinsurah. It is not shown that these khata books ever came to the knowledge of Sudhamoni; indeed, there is her evidence that she knew nothing whatever about them. It is further to be observed that these documents were in the possession of the Plaintiffs, at all events that they had access to them for a great number of years before they commenced their suit, and their delay in commencing it is not satisfactorily accounted for.

The subordinate Judge has considered these khata books not proved to be genuine; in fact he goes as far as to say that he thinks they have been prepared to suit the purpose of the case by the Plaintiffs. Their Lordships think it enough to say that they are not prepared to find that the subordinate Judge was wrong in treating them as not genuine, but assuming them to be genuine, they are of opinion that

they afford no evidence against the Defendant, unless they can be used, under the Indian Evidence Act, for the purpose of corroborating some other proof.

The next document relied upon by the Plaintiffs is a document of the date of July 1854. It is a document which they say was discovered in the premises at Chinsurah which were occupied by the Defendant. It is not shown that this document any more than the khatas was ever read by the Defendant—indeed it would appear that she is not able to read or write—or that it was ever brought in any way to her notice. It is not a testamentary disposition; it is not a conveyance; it is not a deed; but it appears to be a statement of properties more in the nature of an inventory than anything else. It is headed “Statement of Properties belonging to “Sudhamoni Dassya,” and it begins, “Statement of lands and houses, ghats and gardens, “buildings, &c., and Company’s paper, &c., “belonging to Sudhamoni.” Then there is this further statement, “When Sudhamoni Dassya “dies, Baboos Radharomun, Krishna Lal and “Nitai Lal Dutt will succeed to the properties “detailed below.” So far as this general heading goes, there is no indication of any trust whatever; on the contrary, there appears an indication that all the properties mentioned below were supposed by Madhub Chunder Dutt to belong to this lady and her children. There does follow subsequently a statement that the notes in question were on account of these idols, but it may after all be nothing more than a statement of the opinion of Madhub Chunder at the time that the proper service of the idols might be properly performed out of the proceeds of the notes.

But their Lordships are of opinion that this document, which bears date in July 1854, a

considerable time after the notes had been endorsed to Sudhamoni, (the notes having been all endorsed between the dates of October 1852 and April 1853,) would not of itself have the effect of controlling those endorsements or of affixing a trust upon the notes.

The next piece of evidence relied upon by the Plaintiffs is one of a somewhat extraordinary character, which did not come out in the subordinate Court, but was for the first time brought to light before the High Court on appeal. It consists of writing in pencil upon these notes—upon the face of three of them, and on the back of one of them—indicating that Sudhamoni took the notes in trust as shevait for the idols. It is remarkable that the subordinate Judge observes upon the absence of any evidence of this description. He says, “It appears that Madhub Dutt duly made over  
 “ the disputed Government securities to the  
 “ Defendant with proper endorsements. Here it  
 “ is to be observed that if in point of truth the  
 “ said securities had been dedicated to the  
 “ service of the deities, then the endorsements  
 “ in question, with the addition of these few  
 “ words, ‘these papers are made over to the  
 “ ‘Defendant for the performance of the service  
 “ ‘of these deities,’ would have been sufficient  
 “ for the purpose. In the absence of that, when  
 “ Madhub Dutt made over the said Government  
 “ securities to the Defendant with endorsements  
 “ in the ordinary form, the Defendant’s plea that  
 “ he had made over the papers to her absolutely  
 “ without any reservation seems sufficiently  
 “ proved and worthy to be believed.” It would therefore appear that the materiality of the discovery of a writing of this kind upon the notes was observed upon by the Judge in the Court below. These notes were handed to him; they were inspected by the attorneys or vakeels

for the Plaintiff; and no such writing was then discovered. But this very description of writing which was spoken of by the Judge below as so very material, and as absent, became present when the notes were examined in the Court above. This certainly does seem to their Lordships a very extraordinary circumstance; and it does occur to them as somewhat dangerous to affix a trust of this description, whereby property is permanently alienated from useful purposes to purposes of mortmain, upon such evidence. This further observation is to be made, that upon one of these notes the pencil writing creating the trust is to be found upon the back, just above or close to the signature in writing of Madhub Chunder; and it does appear very extraordinary that, even if pencil writings on the face of the notes were not discovered at the trial in the Court below, this writing upon the back of that note should not have been discovered when the signature undoubtedly was seen. Assuming, however, these pencil writings to be genuine, there is no proof in whose handwriting they are. The High Court observes upon this,— “ These pencil memoranda are not in Madhub Dutt’s handwriting; ” and goes on to say: “ Nor do we place much reliance on the evidence “ that the signature ‘ Madhub Dutt ’ in ink “ on one of them, or the initials ‘ M. D. ’ in “ pencil on another, are genuine.” The High Court, therefore, do not determine whether a portion of what is found upon these notes is or is not genuine.

Taking it at the highest, on the part of the Plaintiffs, that these pencil writings were upon the notes when they were first produced at the original trial, yet, inasmuch as it appears that they were not in the handwriting of Madhub Dutt, and no evidence was given that they were written by any person authorized either by

him or by the Defendant, or when they were written, their Lordships have come to the conclusion that it would not be right to reverse the decision of the High Court, which is to the effect that, assuming all the documents relied upon by the Plaintiffs to be genuine, nevertheless it has not been proved with the requisite certainty that these notes were endorsed by Madhub Chunder to Sudhamoni impressed with the trust described in the plaint.

Under these circumstances their Lordships will humbly advise Her Majesty that the decision of the High Court be affirmed, and this Appeal dismissed, with costs.