

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Robert Watson and Company and another v. Ram Chand Dutt and others, from the High Court of Judicature at Fort William in Bengal; delivered 25th April 1890.*

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Present :

LORD MACNAGHTEN.  
SIR BARNES PEACOCK.  
SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

Gungaram Dutt, Ram Chand Dutt, and Pudma Lochun Dutt were brothers, and constituted a Hindu family joint in estate. They also carried on business as money lenders.

In the year 1877 Pudma Lochun executed two deeds of endowment, or Nirdes Patras, one on the 24th of July and the other on the 12th of December. On the former of those dates the three brothers were entitled to a 12-annas share or twelve sixteenths of pergunnah Silda in zillah Midnapore, which they held under three putni bynama patras; the first for a four-annas share, dated the 29th Srabun 1268, and registered on the 20th of August 1861, the second dated the 3rd Cheyt 1276 Amli, corresponding with the 14th of March 1869, for a six-annas share, and the third dated 13th Kartick 1283, for a two-annas share.

The property was subject to the ordinary law of Bengal, according to which upon the death of any one of the brothers the share of the joint

property to which at the time of his death he might be entitled would descend to his heirs. Pudma Lochun had no son, but in 1877, at the time of the execution of the deed of the 24th July, he had a wife, a daughter Bama Soondari Dasi, one of the Appellants, and a grandson, the only son of that daughter. His wife died in his lifetime, between the dates of the two deeds. He himself died on the 26th of October 1879, and upon his death his daughter was his heiress. The Watsons, Appellants, claim through her. It is contended on behalf of the Respondents that Pudma Lochun divested himself of his one third of the 12-annas share held in Putni by the deeds of endowment executed by him.

It is not necessary to review the evidence in detail. It was carefully considered by the District Judge. It seems clear that from the time of the execution of the deed of the 24th of July 1877 until after the death of Pudma Lochun, a period of about three years and three months, no change took place in the accounts, or in the management of or dealing with the business or estates, or the proceeds thereof. Mortgages were executed, in which Pudma Lochun joined, and everything appears to have gone on in the same manner as if the deeds had never been executed, except that the family idol was removed from the house of Gungaram to that of Pudma Lochun. No act was done by Pudma Lochun or his brothers in which he was described as Shebait.

Their Lordships concur generally with the District Judge in his findings of fact, and they are of opinion that it was not the intention of Pudma Lochun or of his brothers that the deeds should be acted upon, or that Pudma Lochun should thereby divest himself of his share of the property. The deeds were merely fictitious, or benami.

In arriving at that conclusion their Lordships agree with the District Judge that the deed of the 24th of July did not profess to postpone any of its avowed objects until the death of Pudma Lochun, or to any period subsequent to the execution of the document, except in so far as it related to the allowance to Bama Soondari or her son Upendra Nath. They cannot concur with the High Court that the provisions relating to that allowance were the chief provisions of the deed, or that the deed purported on the face of it to postpone the gift so far as it related to religious objects to any future period.

It was strongly urged on behalf of the Plaintiffs on the argument of the appeal that the receipt by Bama Soondari, after her father's death, of three monthly payments of the allowance provided for her by the deed was inconsistent with the fact that the deeds were not intended to take effect; but their Lordships do not attach much importance to those receipts. Bama Soondari was a widow, maintained by and residing in one of the houses which formed part of the estate; she had apparently no means for embarking in litigation; she was then, so far as it appears, living on friendly terms with her uncles, and if she had not at that time received the allowance which on the face of the deeds was provided for her she probably would have received nothing.

After the execution of the deeds of endowment, and during the lifetime of Pudma Lochun, a mowrussi istimrari mokurruri pottah of another two-annas share of Silda was granted to Ram Chand in consideration of the sum of Rs. 25,000.

It having been considered that Pudma Lochun did not by the deeds of endowment divest himself of any part of the joint family property, the mokurruri pottah must be assumed to have been purchased with funds of the joint family,

and to have enured for the benefit of the three brothers.

From the facts above stated it appears that at the time of his death Pudma Lochun was entitled to a one third undivided share of a 14-annas or fourteen-sixteenths share of Silda, of which twelve sixteenths were held by the three brothers in putni, and two sixteenths under the mokurruri pottah; that the other two brothers were entitled to the other two thirds thereof; and that the interest of Pudma Lochun descended upon his death to his daughter Bama Soondari. Out of her interest in the putnis Bama Soondari, on the 6th Assin 1292, after the commencement of the suit, granted a Dur putni to Bhola Nath Dhur, who on the 5th of November 1884 granted a Se putni to the Watson Defendants.

Their Lordships are of opinion that at the date of suit the interest of the Plaintiffs in the lands in suit was only two undivided third parts of an undivided share of 14 annas or of fourteen sixteenths of Silda; that Bama Soondari was at that time entitled to the other undivided third part thereof.

At the time of the death of Pudma the Watsons held the 14-annas share which belonged to the three brothers Dutt under leases, in respect whereof they paid rent to the Dutt brothers, and which leases expired on 31st Bhadro 1290, Amlī, corresponding with the 14th of September 1883. After the expiration of the leases the Watsons, who were entitled to the remaining two-annas undivided share of Silda under an ijara pottah from Rani Doorga Kumari Debi, of the 6th Bysack 1290 Amlī, corresponding with the 17th of April 1883, continued in possession of that portion of Silda which comes under the head of khas, and to cultivate and sow it with indigo as they had done during the continuance of the leases. Their Lordships cannot, upon the

evidence, say that that was such an improper course of cultivation or use of the land as to render an injunction the proper remedy.

The Plaintiffs endeavoured to sow oil-seeds, and to prevent the Watson Defendants from continuing the cultivation in which they were engaged; the Watson Defendants persisted in the cultivation which they had commenced; quarrels and even riots ensued, and the Plaintiffs commenced the suit in which the appeals have been preferred. They prayed to be put into ijmalī possession of their 14-annas share, to have damages awarded to them at the rate of 8 annas per bigha on 6,894 bighas, and similar damages until they should be put into possession, also for a permanent injunction prohibiting the Defendants from sowing indigo, and from allowing anybody else to do so without the consent of the Plaintiffs, and from throwing any obstacles in the way of the Plaintiffs' holding ijmalī possession.

The 6th issue laid down for trial was, "What is the extent of the Plaintiffs' interest in the land in suit?" Upon this the District Judge held that the Plaintiffs were entitled to two thirds of the 14-annas share of the khas lands of Silda specified in the decree, and to get joint possession of the same with the Watson Defendants. The High Court on the contrary having arrived at the conclusion that the deeds of endowment were intended to take effect, that Pudma thereby divested himself of his interest in the property, and that no part of it descended to his daughter Bama Soondari, held that the Plaintiffs were entitled to the whole of the 14-annas share.

The decree of the District Judge, after reciting the claim, and specifying the lands included in the 6,894 b., proceeded amongst other things as follows :—

"That a decree be passed in the following

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manner :—That, by reducing the quantity of land claimed, viz., 6,894 bighas to 4,128 bighas, the Plaintiffs' right is established to a two-thirds share of the 14 annas, and the Plaintiffs are entitled to get joint possession of the same with Defendants No. 1 (that is the Watsons); and that on payment of excess Court fees proportioned to the excess of amount found due over the valuation of the plaint, calculated at the rate of 8 annas per bigha of the decreed lands from the beginning of 1291 Amli until the date of possession, the Plaintiffs shall get two thirds of 14-annas share in accordance with the decision of the 6th issue. The Court further directs that an order of injunction be issued to the Defendants No. 1, prohibiting them from either themselves or through others sowing indigo on those khas lands of Silda, on which indigo is being now grown."

The High Court modified that decree, and ordered that, instead of a two-thirds share of fourteen annas of the khas lands of Silda, the Plaintiffs were entitled to get joint possession with the Defendants the Watsons of the entire fourteen annas of the said lands; they increased the amount of compensation accordingly, and varied the injunction granted by the District Judge.

Their Lordships are of opinion that the judgment and decree of the High Court are erroneous and ought to be reversed, with costs, and that the decree of the District Judge ought to be modified and partly reversed. It was contended on the part of the Plaintiffs Respondents that the acts of the Watsons amounted to what in England is called an actual ouster, and that the Plaintiffs were entitled to a decree ordering them to be put into ijmali possession with the Defendants, but it appears to their Lordships that the Plaintiffs have not established a

right to have such a decree; and for the same reason they think that so much of the decree of the District Court as declares that they are entitled to get joint possession ought to be reversed. It seems to their Lordships that if there be two or more tenants in common, and one (A) be in actual occupation of part of the estate, and is engaged in cultivating that part in a proper course of cultivation as if it were his separate property, and another tenant in common (B) attempts to come upon the said part for the purpose of carrying on operations there inconsistent with the course of cultivation in which A is engaged and the profitable use by him of the said part, and A resists and prevents such entry, not in denial of B's title, but simply with the object of protecting himself in the profitable enjoyment of the land, such conduct on the part of A would not entitle B to a decree for joint possession. Their Lordships are further of opinion that the decree of the District Judge, so far as it orders an injunction to be issued, ought to be reversed. It appears to their Lordships that, in a case like the present, an injunction is not the proper remedy. In India a large proportion of the lands, including many very large estates, is held in undivided shares, and if one shareholder can restrain another from cultivating a portion of the estate in a proper and husband-like manner, the whole estate may, by means of cross injunctions, have to remain altogether without cultivation until all the shareholders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected, a work which, in ordinary course, in large estates would probably occupy a period including many seasons. In such a case, in a climate like that of India, land which had been brought into cultivation would probably become waste or jungle, and greatly

deteriorated in value. In Bengal the courts of justice, in cases where no specific rule exists, are to act according to justice, equity, and good conscience, and if, in a case of shareholders holding lands in common, it should be found that one shareholder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent with the rule above indicated to restrain him from proceeding with his work, or to allow any other shareholder to appropriate to himself the fruits of the other's labour or capital.

Upon the whole, their Lordships will humbly advise Her Majesty to reverse the decree of the High Court, and to order the Plaintiffs, Respondents, to pay the costs incurred by the Defendants in that Court. And further to declare that the Plaintiffs, Respondents, are entitled to only two thirds of 14 annas, or of fourteen sixteenths of the khas land, or, in other words, to two thirds of seven eighths of the 4,128 bighas, the quantity of the khas lands as determined by the decree of the District Judge; also to reverse the decree of the District Judge so far as it declares that the Plaintiffs are entitled to get joint possession with Defendants No. 1; and also so far as it directs that an order of injunction be issued; also to reverse that portion of the decree which orders "that, on payment of excess Court fees proportioned to the excess of the amount found due over the valuation of the plaint, calculated at the rate of eight annas per bigha of the decreed lands from the beginning of 1291 Amlī until the date of possession, the Plaintiffs shall get two thirds of 14-annas share, in accordance with the decision of the 6th issue," and in lieu thereof to order and declare that the Plaintiffs do recover from the Defendants No. 1



a sum of money calculated at the rate of two thirds of seven annas per bigha a year for 4,128 bighas, as compensation in respect of the exclusive use and benefit by the Defendants No. 1 of 4,128 bighas, from the beginning of the year 1291 Amli to the 4th of January 1886, the date of the said decree; also to affirm the decree of the District Judge so far as it relates to costs.

It may be right to mention, with reference to that portion of the decree above recommended which relates to compensation, that the rate of eight annas per bigha was not disputed by the Watsons, Appellants, and that the High Court were not prepared to dissent from the finding of the District Judge in fixing the area of the khas lands at 4,128 bighas.

The Respondents must pay the costs of this appeal.

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