Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jogeswar Narain Deo v. *Ram Chund Dutt and others, from the High Court of Judicature at Fort William in Bengal; delivered 22nd February* 1896.

Present:

LORD WATSON.
LORD SHAND.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

This Appeal depends upon the construction of certain provisions made by the will of the late Raja Mokund Narain Deo, in favour of the Rani Doorga Kumari, his youngest wife, and of their son Jogeswar Narain Deo, the Appellant. At the time of his death in November 1870, the Raja was possessed of an impartible paternal raj called Phoolkoosma, and also of a six annas share of the zemindari of Silda, which he had inherited from his maternal grandfather.

The will, which was executed by the deceased upon the 15th March 1869, appears to have been dictated by the apprehension that his youngest wife and her son would be unable to live peaceably with his elder son, Jubraj Soonder Narain Deo, and the other members of the family after his death, and by his desire to prevent disputes arising between them after that event. The testator thereby directed that his elder son, now Raja

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Soonder Narain Deo, should remain in possession of the whole 16 annas of his paternal estate of Phoolkoosma, subject to these conditions, that Rani Doorga Kumari and the Appellant should get for their maintenance villages yielding an income of Rs. 300, and should also retain possession of certain buildings which had already been assigned to them for their separate residence. Two of the six annas share of zemindari Silda were bequeathed by him to his successor in the raj. No question as to those provisions of the will is raised in this suit.

The remaining four annas share of zemindari Silda was disposed of by the testator in the following terms :—

"The remaining four annas share I give to
" you Srimati Rani Doorga Kumari and
" the son born of your womb, Jogeswar
" Narain Deo, for your maintenance."

His intentions with regard to the respective interests which were to pass, under that gift, to the mother and son, were declared as follows :—

"Upon my death you and your sons and grand-
" sons &c., in due order of succession,
" shall hold possession of the zemindari
" &c. according to the above distribution
" of shares. And I give to you the power
" of making alienation by sale or gift."

It was not disputed by either party that the expression "according to the above distribution " of shares" refers to the distribution of the six annas share between Raja Soonder Narain Deo on the one hand, and the Appellant and his mother on the other. It was also admitted that the words "you" and "yours" occurring in those passages of the will already quoted, are plural.

At the death of the testator, the Appellant was a minor, and his mother, who was appointed manager of his property until he attained majority, entered into possession of the 4-annas

share of zemindari Silda which had been bequeathed to them. On the 20th January 1879, the Rani, in consideration of a sum of Rs. 25,000, paid to her by Ram Chund Dutt, and the other Respondents in this appeal, executed in their favour a mowrussi mokurruri pottah in perpetuity of what is therein described as her own 2-annas share of the 4 annas share of zemindari Silda bequeathed to herself and the Appellant. Upon his attaining majority, the Appellant brought the present suit, for the purpose of having it judicially declared that the pottah thus granted by his mother was null and void in so far as it extended beyond her own lifetime. The only ground of action disclosed in his plaint was, that according to the true construction of the will, the Rani took a right to maintenance out of the 4-annas share in question, for the period of her life, whilst the Appellant took an estate of inheritance in the whole 4-annas share, subject only to the burden of his mother's right.

The 6th 7th and 8th of the issues framed for the trial of the action are the only ones having any relation to its merits. They are in these terms :—

6. What right Doorga Kumari has acquired under the will of her late husband Raja Mokund Narain Deo, and whether in terms of the will the mokurruri pottah granted by her is wholly invalid ?
7. Whether the Rani has acquired absolute right to 2-annas share of Silda ?
8. If the Defendants be entitled to a share only proportionate to the amount of the Rani's maintenance, then what amount can properly be fixed for the maintenance of the Rani ?

The Subordinate Judge of Midnapore found that the Rani took no interest beyond a right of maintenance; and he accordingly decreed

that the pottah granted by her to the present Respondents should stand good for her lifetime to the extent of three gundahs and 2 krants share, and that as regards the remaining portion of the said 2-annas share the pottah be set aside. On appeal to the High Court, that decision was reversed by O'Kinealy and Amir Ali, J.J., who held that the Appellant and his mother took the same interest under the will, each to the extent of a 2-annas share, and on that ground dismissed the suit with costs.

Their Lordships have had no difficulty in coming to the conclusion that the judgment of the High Court ought to be affirmed. It is no doubt true that the gift of the 4 annas share of Silda bears to be made to the Rani and the Appellant, "for your maintenance"; but these words are quite capable of signifying that the gift was made for the purpose of enabling them to live in comfort, and do not necessarily mean that it was to be limited to a bare right of maintenance. That no such limitation was intended by the testator appears from the language of the gift, which clearly shows that the interest given is an estate of inheritance, with express power to the donees of making alienation by sale or gift. Then, the gift to both is made, not in similar language merely, but under the very same words. If there had been a gift to the Rani alone, in these terms, there could hardly have been a doubt that it would have conferred upon her an estate of inheritance, with power of alienation; and their Lordships cannot understand why the same terms, when equally applied to her and the Appellant, should be held to confer upon her any lesser interest.

In his argument for the Appellant, Mr. Branson raised a new point, which is not indicated in the plaint, and was not submitted to either of the Courts below. He maintained, upon the

authority of *Vydinada* v. *Nagammal* (XI. I.L.R. Madras, 258), that, by the terms of the will, the Rani and the Appellant became, in the sense of English law, joint-tenants of the 4-annas share of Silda, and not tenants in common; and that her alienation of her share before it was severed, and without the consent of the other joint-tenant, was ineffectual. The circumstances of that case appear to be on all-fours with the circumstances which occur here; and, if well-decided, it would be a precedent exactly in point. There are two substantial reasons why it ought not to be followed as an authority. In the first place, it appears to their Lordships that the learned Judges of the High Court of Madras were not justified in importing into the construction of a Hindu will an extremely technical rule of English conveyancing. The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided family. In the second place, the learned Judges misapprehended the law of England, because it is clear, according to that law, that a conveyance, or an agreement to convey his or her personal interest by one of the joint tenants, operates as a severance.

Their Lordships will humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss the appeal. The Appellant must pay the costs of the Respondents who have appeared to oppose this appeal.