Privy Council Appeal No. 107 *of* 1936

Bengal Appeal No. 29 *of* 1935

Srimati Rajlakshmi Dassi - - - - - *Appellant*

v.

Bholanath Sen and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JULY, 1938

Present at the Hearing:

LORD THANKERTON.

LORD ROMER.

LORD SALVESEN.

SIR LANCELOT SANDERSON.

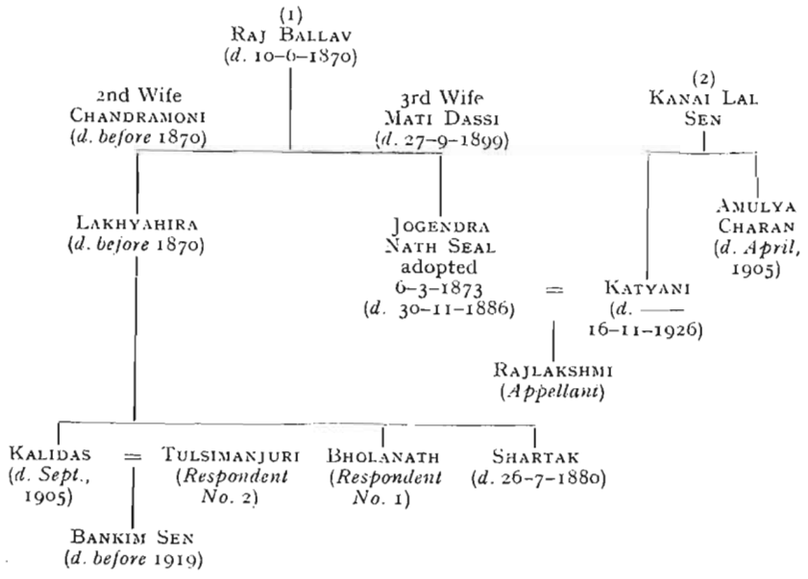
SIR GEORGE RANKIN.

[*Delivered by* LORD THANKERTON.]

This is an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal dated the 8th March, 1935, which affirmed the judgment and decree, dated the 15th May, 1930, of the Special Land Acquisition Judge of the 24 Parganas on a reference made to him under section 18 of the Land Acquisition Act (1 of 1894) by the Second Land Acquisition Collector, Calcutta.

The question in the appeal is whether the appellant is entitled to the compensation money awarded in respect of the acquisition of part of the premises 2, Deb Lane, in the Town of Calcutta, as successor to the estate of Raj Ballav Seal, of which the said premises formed part.

Raj Ballav died on the 10th June, 1870, leaving him surviving his widow Mati Dassi and three grandsons, who were sons of a predeceased daughter by another wife, of whom one died in 1880 unmarried. Respondent No. 1 is another grandson, and respondent No. 2 represents the third grandson, who died in 1905. The grandsons' line is hereinafter called " the Sens ". Respondents Nos. 3-11 represent the mortgagee of the Sens. The following pedigree shows the descendants of Raj Ballav:—



Raj Ballav left a will giving his widow Mati Dassi authority to adopt a son to him and giving benefits to the said widow, to the son to be adopted and to the Sens. On Raj Ballav's death in 1870 Mati Dassi entered into possession of the estate and adopted Jogendra Nath Seal in 1873, under the authority conferred on her. Jogendra married Katyani and the present appellant is their only child; Jogendra died in 1886, when the appellant was less than one year old.

Mati Dassi died in 1899, and the Sens appear to have then taken possession of the estate. Shortly after the death of Jogendra, Mati Dassi had purported to adopt Amulya Charan, the brother of Katyani, in further exercise of the authority conferred on her, and in 1901 Amulya brought a suit against the Sens and Katyani claiming the estate; the suit was dismissed in both Courts on the ground that Mati Dassi's power of adoption had been exhausted with her adoption of Jogendra, and the High Court further held, on construction of the will, that there was an intestacy as to the corpus of the estate, which vested in Jogendra as legal heir, and on his death passed by succession to his widow Katyani. In this suit a Receiver had been appointed to the estate pending the disposal of the suit. The decision of the High Court which was dated the 28th March, 1905, is reported in I.L.R. 32 Cal. 864.

Meantime, after the decision of the Subordinate Judge in Amulya's suit, Katyani brought suit No. 11 of 1903 against the Sens, Amulya and the Receiver in Amulya's suit, claiming three-fourths of the estate and partition, which she later amended to a claim for the whole estate, after the decision of the High Court in Amulya's suit. The suit was defended by the Sens, and on the 21st December, 1905, the Subordinate Judge decreed the suit in Katyani's favour, ordering and declaring "that the plaintiff's title in the whole 16 annas' share of the immoveable properties in dispute as specified in Schedule B (2) of the plaint be declared and she do recover possession therein." The Sens appealed to the District Court and without authority, joined Kanai, the father of Katyani and Amulya, as respondent in the appeal; they also obtained leave to join a representative of the mortgagee.

A petition of compromise was filed in the District Court on the 9th January, 1907, under which the Sens, with their mortgagee, Kanai and Katyani agreed to divide the inheritance, Katyani taking 6 annas, the Sens 4 annas, subject to the mortgagee's rights, and Kanai 6 annas. On the 24th January, 1907, a consent-decree on the basis of the compromise was made by the District Court, and partition was directed; subsequently, on the 15th September, 1907, as directed by the Court, the Receiver made the partition and made over possession of the respective shares in terms of the compromise. The premises 2, Deb Lane, compensation for a part of which is the subject of the present appeal, was included in the 4 annas, of which the Sens got possession.

Less than three months after the consent-decree of the District Court in suit No. 11 of 1903, the present appellant, in order to protect the reversionary interest, instituted on the 18th April, 1907, suit No. 59 of 1907 against the parties to the compromise and the Receiver, for declaration that the compromise and the consent-decree of the District Court dated the 9th January, 1907, were void and inoperative and that the reversioners were not bound by the partition proceedings taken in execution of the decree. The Subordinate Judge dismissed the suit, but, on appeal, the High Court set aside this decision, by a judgment and decree dated the 8th August, 1910, and declared " that the consent decree made on the 9th January, 1907, is void and inoperative as against the plaintiff appellant and that she is in no way bound by the partition proceedings which have taken place in execution of that decree." This decision is reported in I.L.R. 38 Cal. 639. It is clear that the main ground of decision was that the District Court had no jurisdiction and that accordingly the consent-decree was void and inoperative. The Court did not decide any question as to the right of the Sens to retain possession of the 4 annas during the life of Katyani, who had a widow's right in the estate, because of the compromise agreement, to which she was a party, or on some similar ground.

It is important to get a clear view of the position of the estate after the decision of the High Court of the 8th August, 1910, the effect of which, *inter alia*, was to annul the consent-decree of the District Court in No. 11 of 1903, and to leave the decree of the Subordinate Judge dated the 21st December, 1905, which has been already quoted, as final and binding. This decree declaring Katyani's title to the whole estate, was clearly a decree in Katyani's favour as representing the whole interests in the estate, and it has rightly been so regarded by both the Courts below in the present case; and it formed *res judicata* in any question with the Sens. As regards possession of the estate, while the decree made an order for recovery of possession, the possession given under the partition of 1907 continued, the Sens being in possession of the four annas. It seems clear that possession under an agreement which was not binding on the reversionary heirs, could not avail the Sens in a question with a reversionary heir, whose right to possess could not arise until the succession opened to such heir.

In that position, it appears to their Lordships that unless something thereafter occurred during the life of Katyani which affected the title to the whole or part of the estate, which took such whole or part of the estate away from Katyani and vested it as matter of title in the Sens, mere possession of such whole or part of the estate by the Sens would afford them no answer to the appellant's claim as reversionary heir, on Katyani's death, founded on the decree of the Subordinate Judge in No. 11 of 1903, as set up by the decree of the High Court in 1910 in her own suit, No. 59 of 1907.

The respondents maintain that the appellant's claim in the present suit is excluded by reason of the subsequent decision in suit No. 115 of 1919, instituted by Katyani against the Sens and their mortgagees for recovery of the four annas; that suit was dismissed by the Subordinate Judge and, on appeal, by the High Court. The respondents maintain that Katyani, in that suit, was suing on behalf of the reversioners as well as herself, and that the decision is *res judicata* against the present appellant. Both Courts below have accepted this contention and have dismissed the appellant's suit and the appellant now challenges their ground of decision, which is largely founded on certain decisions of this Board, which they have held to be applicable, and to which reference will be made later.

In the first place, the title to the estate having been finally decided, in any question with the Sens, as above stated, their Lordships are of opinion that the widow, Katyani, had no right to submit it to fresh adjudication by the Courts as against the Sens, so far as the right of the reversionary heirs was concerned, or to affect their right by any such action. In the second place, their Lordships are satisfied, on a scrutiny of the proceedings in suit No. 115 of 1919, that Katyani was only suing in her own interest, and not as representing the reversionary heirs.

In the plaint, dated the 15th September, 1919, Katyani clearly founded on the decree of the Subordinate Judge in suit No. 11 of 1903, dated the 21st December, 1905, as set up by the High Court decree in suit No. 59 of 1907, dated the 8th August, 1910, as forming *res judicata* against the defendants, the Sens, on the question of title; she then proceeded to deal with her own personal difficulty, viz. the compromise, as to which she alleged that it had been obtained from her by the undue influence of her father Kanai, in fraudulent collusion with the Sens. The written statement of the Sens has not been made available. The Subordinate Judge in a judgment dated the 24th August, 1921, rejected the plaintiff's allegations of fraud and held the compromise to be binding on her so as to prevent recovery of possession by her. This clearly could only relate to Katyani's possession during her life, as the compromise had been finally held not to be binding on the reversionary heirs.

On appeal, the High Court, in a judgment dated the 21st and 24th July, 1925, did not refer to the question of

the compromise, but they state, in reference to suits No. 11 of 1903 and 59 of 1907, that, as a result of the compromise decree being held to have been without jurisdiction, the decree of the Trial Court in the suit of Katyani (No. 11 of 1903) must be treated as a good decree and that that decree declared her right, but the Court held that Katyani had been out of possession for more than 12 years and could not recover possession and affirmed the dismissal of the suit. Again their Lordships are unable to regard this judgment as affecting the right of the reversionary heir to possession.

An examination of the decisions of this Board, on which both the Courts below have relied, will show that the decree against a female holder of the estate which has been held to be binding on a succeeding heir, has in each case involved the decision of the question of title, and not the mere question of possession. In none of the cases had the prior female holder of the estate already obtained a decree of her title to the estate against the defendants. In *Katama Natchiar* v. *The Rajah of Shivagunga* (1863) 9 Moo. I. A. 539 the following passage occurs in the judgment of the Board, delivered by Turner L.J., at page 603,

> It seems, however, to be necessary, in order to determine the mode in which this appeal ought to be disposed of, to consider the question whether the decree of 1847, if it had become final in Anga Mootoo Natchiar's lifetime, would have bound those claiming the Zemindary in succession to her. And their Lordships are of opinion that, unless it could be shown that there had not been a fair trial of the right in that suit—or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit in the Zillah Court by any person claiming in succession to Anga Mootoo Natchiar. For assuming her to be entitled to the Zemindary at all, the whole estate would for the time be vested in her, absolutely for some purposes, though, in some respects, for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance, would seem to apply to the case of a Hindoo widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow.

Anga Mootoo Natchiar, the widow, had claimed in the previous litigation a Hindu widow's estate in the Zemindary as self-acquired by her late husband, and maintained that it was not part of the impartible estate. Quite clearly the question of title was in issue, and her failure carried the estate away from the reversionary heirs, and the observations of the Board were directed to a litigation as to the title of the estate.

In *Hurrinath Chatterji* v. *Mohunt Mothoor Mohun Goswami* (1893) 20 I. A. 183, the decree against a preceding female heir was founded on limitation, on the ground that she had never been in possession since the death of the widow in 1855, some 26 years before, when the succession had opened to her. It was held by this Board that the fact

that the decree was founded on limitation did not take the case out of the ruling laid down in the *Shivagunga* case, which is quoted above. Article 141 of the Limitation Act of 1877 had first appeared in a more limited form in article 142 of the Act of 1871, being then confined to the death of a widow. The judgment of the Board, delivered by Sir Richard Couch, after referring to these changes, states in reference to article 141 of the Act of 1877:

> " the words ' entitled to the possession of immoveable property ' refer to the then existing law. Under that law the plaintiff, being bound by the decree against Sampurna would not be entitled to bring a suit for possession. The intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. The purpose of the Second Schedule in each of the Acts is only to prescribe the period of limitation for the suit."

Here again it is clear that Sampurna had held no previous decree as to title, and that her title was in issue in the litigation which was instituted on behalf of herself and the reversionary heirs.

In *Chaudri Risal Singh* v. *Balwant Singh* (1918) 45 I. A. 168, a Hindu female, in whom an estate vested on the death of her husband and infant son, had purported to adopt Balwant Singh as son to her husband; subsequently she instituted a suit for a declaration that the adoption was invalid. It was held by this Board that she was estopped by her conduct from denying the validity of the adoption, which was the ground of decision in both the Courts below, and also, that upon the facts the adoption was valid. On the widow's death, the reversionary heir sued for recovery of the estate, alleging that the adoption was invalid. It was held that the reversionary heir was bound by the previous decision against the widow as *res judicata*. There could be no doubt that the widow in her suit had represented the reversionary heirs, and that the decision that the adoption was valid negatived any right of the reversionary heirs as well as the right of the widow.

In the case of *Vaithialinga Mudaliar* v. *Srirangath Anni*, (1925) 52 I.A. 322, the widow, Chokkamal, had made an adoption in 1862 to her husband, Arunchala, who had died in 1849. The widow died in 1902, and in 1905, the suit under appeal was instituted by the plaintiffs as reversionary heirs of Arunchala against the defendants, who were successors of the adopted son and were in possession of the estate, and who relied mainly upon the defences that the suit was barred by *res judicata* and limitation. The former defence was founded on a decree in 1892 in a suit by the mother of the adopted son, against Chokkammal and others, for possession of the estates, which she alleged had been forcibly taken from her by Chokkammal in 1884—three years before the suit—prior to which date the adopted son, his widow and the plaintiff had held possession since the adoption in 1862. It was held by the High Court, by the decree of 1892, that the adoption was invalid, but that the plaintiff's claim of adverse possession for 12 years was established and they

affirmed the decree for possession which the Subordinate Judge had given. The defence of *res judicata* founded on this decree was sustained by the Board, on the ground that Chokkammal, as defendant, had represented the estate, and the decree of adverse possession bound the reversionary heirs. Again it is clear that the decree excluded the title of both the widow and the reversionary heirs. The Board also based their decision on article 129 of the Limitation Act 1871, but that part of the decision is not material for present purposes. In the course of the judgment, which was delivered by Sir John Edge, the judgment of Macpherson J. in the Full Bench decision in *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty*, (1867) 9 Suth. W.R. 505, at p. 510, was quoted with approval and was as follows: —

> I also concur in the proposed answer. But a very great difference exists between the case immediately before us and the case in which a mother or other Hindu female having an estate similar to that of a childless widow has herself alienated property belonging to the estate which she has taken as heiress, without sufficient reason for making such alienation. In the latter case, the alienation is good as against her, and so far as her own life interest is concerned. Therefore, in fact, no cause of action necessarily arises at all with respect to her alienation so long as she lives. The cause of action does not arise until her death, when the reversioner's cause of action for the first time accrues. In the case before us, the property having never reached the hands of the mother (the Hindu widow) at all, having been throughout held adversely to her, the cause of action (of the reversioner) accrued in the mother's lifetime, and therefore a suit to recover possession, by whomsoever it may be brought, is barred unless instituted within twelve years from the commencement of the adverse possession.

Lastly, in *Jaggo Bai* v. *Utsava Lal*, (1929) 56 I.A. 267, it is sufficient to quote a passage from the judgment of the Board, delivered by Lord Tomlin, which, after a reference to the case of *Hurrinath Chatterji, supra cit.*, states:

> " It is therefore established by this decision that where a decree founded upon the law of limitation is obtained against the widow in her lifetime the reversionary heir is barred and does not get the benefit of article 141. The question raised by the present case is whether the same result follows where there has been no decree, though at the death of the widow a stranger has been in adverse possession for 12 years or more. In their Lordships' judgment where there has been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled, after the widow's death, to rely upon article 141 for the purpose of the determination of the question whether the title is barred by lapse of time. To hold otherwise would, in their Lordships' opinion, in effect, compel the Court in determining a question within the scope of the article to ignore the express words of the article ".

Accordingly, the question in the present appeal is whether the decree in the suit No. 115 of 1919 deprived the appellant of the right to possession. As already stated, their Lordships are of opinion that the appellant's right to possess was established as *res judicata* against the Sens by the decree of the Subordinate Judge in suit No. 11 of 1903, as set up by the judgment of the High Court in the appellant's suit No. 59 of 1907, and Katyani's suit for possession No. 115 of

1919 could not, and did not, affect the appellant's right to possession.

In their Lordships' judgment, therefore, the appeal succeeds, and the judgment and decrees of both Courts below should be set aside, and the appellant should have a decree for the amount of the compensation money in suit, and their Lordships will humbly advise His Majesty accordingly. The appellant will have the costs of the appeal and of the proceedings in both Courts below.

(11311—3A) Wt. 8168—30 190 8/38 P. St. G. 338

In the Privy Council

SRIMATI RAJLAKSHMI DASSI

v.

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DELIVERED BY LORD THANKERTON

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