*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Lal Mookerjee* v. *Secretary of State for India in Council and others, from the High Court of Judicature at Fort William in Bengal; delivered* 1*st March* 1881.

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Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.

THIS was an administration suit for the purpose of carrying into effect the trusts of the will of one Behari Lall Mookerjee, instituted by the Secretary of State for India, in which Komoleh Kamini Debi, widow of the testator, Mani Lal Bandopadya, father and guardian of a minor, Hori Dasi Debi, daughter's daughter of the testator, and Ram Lal Mookerjee, a brother of the testator, were made Defendants. Two other Defendants were afterwards added, described in the will as advisers of the widow. The plaint concludes in these terms:—

"But as the Defendant No. 3, Ram Lall Mookerjee, has impeached the will as a forgery, and as Defendant No. 1, the widow, who has the management of and is in the enjoyment of the profits of the estate under the provisions of the aforesaid will, has omitted to take any action to have the validity of the will determined, or to carry out the charitable bequests therein contained, though the period for carrying out such bequests has expired, and as the rights and interest of this Plaintiff, as well as of other persons interested in the above will, are thereby seriously endangered, it is, therefore, prayed that the authenticity and validity of the said will may be declared, and that the said Komoleh Kamini Debi, Defendant No. 1, be directed and enjoined to make over to the Collector, or such other trustee or trustees as the Court may appoint, the sum of

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Rs. (1,50,000), one lac and fifty thousand, in Government securities, for the establishment of the aforesaid school and hospital, and a further sum of Rs. 1,000 (*sic*) for the furnishing of the said school and dispensary; and, further, that the rights of the several parties under the will may be ascertained and determined, and that a scheme for the due administration of the trust under the will may be propounded, with such other relief as the Court may think fit to grant."

Behari Lall Mookerjee, a wealthy Hindoo, made the will in question on the 9th of August 1870. He had then a wife living. He had never had a son, but had had a daughter, who had died, leaving an infant daughter, Hori Dasi Debi. As he was then not passed middle age, he may have reasonably contemplated having further issue. He died on the 12th of August 1874, without sons or daughters, leaving his wife and grand-daughter him surviving, and a brother, Ram Lall Mookerjee, the Defendant, with whom he had not been on good terms. The material parts of the will for the purposes of the present appeal are as follows:—

"2. I have no son at present. If one or more sons should be born to me hereafter, and should have arrived at majority at the time of my death, then he or they shall be entitled to my properties according to the Shastras.

"3. If my son or sons, or any son (of mine), should be a minor at the time of my death, then the whole of my properties shall remain under the Court of Wards until my son, or, in the case of my having more sons than one, until the youngest son has attained majority.

"4. If grandsons or great grandsons of mine should be living at the time of my death, they shall be the owners of my property according to the Shastras.

"5. If no sons, grandsons, or great grandsons of mine should be living at the time of my death, then my wife, Srimoti Komoleh Kamini Debi, shall be proprietress of the whole of my properties, according to the Shastras, and shall enjoy the profits thereof during her lifetime.

"6. If one or more daughters should be born to me, then, on the death of my wife, she or they, and, on the death of her or of them, my grandsons (daughter's sons), shall be the owners of my property according to the Shastras.

"7. If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my grand-daughter (daughter's daughter), Srimoti Hori Dasi Debi, shall become

the proprietress of my property, and shall remain in undisputed possession thereof from generation to generation.

"8. If the death of my wife should take place before my grand-daughter (daughter's daughter) arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son.

"9. If my grand-daughter (daughter's daughter) should be barren, or a sonless widow, or if she should be otherwise disqualified, she shall not become entitled to my property, but shall receive an allowance of Rs. 300 per mensem for life."

Here follow bequests for the purposes of establishing a school and dispensary, with respect to which no question now arises. Clause 20 is in these terms :—

"If no son or daughter should be born to me, or if my grand-daughter (daughter's daughter) should die before she bears a son, or if she should be barren or become a sonless widow, or be otherwise disqualified, then the whole of my properties shall pass into the hands of the Government. The whole of the profits of my estate, which shall remain as surplus after the expenses connected with the various matters specified above have been defrayed, shall be employed by the Government, as it thinks proper, in the improvement of the school and dispensary, and in alleviating the sufferings of the blind, the lame, the poor, and the helpless of my native village, and of the neighbouring villages."

After some previous proceedings, which it is not now necessary to refer to, the present suit was instituted on the 19th May 1876. All the Defendants, except Ram Lall, supported the will, and the widow submitted that she had carried out its directions to the best of her ability.

Ram Lall disputed the factum of the will. He also maintained that no part of it was effectual except that which gave the estate to the widow for life.

On the cause coming on for hearing before Mr. Prinsep, the Judge of Hooghly, he was of opinion that the making of the will was fully proved; that under its provisions, and subject to the payment of an immediate legacy of Rs. 1,50,000 for charitable purposes, the widow took a life interest in the estate; that on her death, Hori Dasi, if not disqualified, would

succeed and take a life interest, but that after the death of both ladies, or on the death of the widow, if Hori Dasi should be then disqualified, the estate would pass to the next legal heir of Behari Lal Mookerjee, a supposed devise to the male descendants of Hori Dasi being, in the Judge's view, opposed to the rule laid down in the Tagore case, and ineffectual, and the devise to Government coming after it being thus defeated. He also directed, that the fund created by the legacy should be vested in the Collector as trustee, but declined to propound any scheme for the management, and he ordered that the costs of all the parties should come out of the estate.

Against this decision Hori Dasi appealed on the ground that her interest had been unduly curtailed.

Ram Lall, on the ground that Hori Dasi took nothing under the will, he no longer disputed its factum.

The Secretary of State, on the ground that the gift over to the Government, in certain events, ought to have been held good.

The High Court held that Behari Lall's intention was to confer on Hori Dasi, if she survived, and was, on the widow's death, not disqualified, an absolute estate, and that his intention was effectuated; also that the gift over to the Government, which they interpreted as taking effect in the event of Hori Dasi not surviving the widow, or being disqualified at the time of the widow's death, but not in the event of her becoming subsequently disqualified, was good.

The High Court, indeed, observed :—

"The only case not clearly provided for in the will seems to be this: If Hori Dasi had a son who survived her, but herself died before the widow, was it intended that the Government should take, or was the son to take? On the one hand, neither of the further events contemplated in the 20th clause would have arisen, *i.e.*, Hori Dasi would not have died without giving birth to a son, nor would she be disqualified at the death

of the widow, unless we say that death itself is included in disqualification; nor, on the other hand, could Hori Dasi's son easily succed, being a stranger, and not provided for in the will.

"But we need not occupy ourselves with a case not before us."

A decree was drawn up, which in some points which will be subsequently referred to is not in conformity with the judgment.

No argument has been addressed to their Lordships founded on the first six clauses of the will, which are no more than bequests in accordance with what the testator conceived to be the rules of the ordinary Hindoo law of succession. All of these, except the 5th, refer to possible events which did not happen. The 5th describes an ordinary Hindoo widow's estate, which would take effect on the death of the testator by operation of law. The argument in favour of the Appellant has been founded on the 7th, 8th, 9th, and 20th clauses.

It was not, and could not be disputed, that since the case of Srimoni Soorjemoni Dasi *v.* Denobundho Mullick (IX. Moore, 123) recognized and confirmed as that case has been in the case commonly called the Tagore case (Juttendro Mohun Tagore and another *v.* Ganendro Mohun Tagore, Cowell's Supp., I. A. 47), and in Bhoobun Mohini Debya *v.* Hurrish Chunder Chowdry (5 L. R. I., App. 138), a gift by will upon an event which is to happen, if at all, immediately on the close of a life in being, to a person in existence, and capable of taking under the will at the testator's death, was good and valid under Hindoo law, and consequently that it was competent to the testator, by the use of apt words, to confer an absolute estate on Hori Dasi on the death of his widow. But it was argued that the words "putra poutrádi kramé" (translated in the Record "from generation to generation"), expressed in

their etymological sense an intention on the part of the testator to limit the succession to the heirs male of Hori Dasi; that the gift, being "stridham," would descend by law, in the first instance, to her unmarried daughters equally with her sons, and that in its further descent females would have peculiar rights; that, therefore, the testator had endeavoured to create an estate of inheritance in her inconsistent with the general law of inheritance, which endeavour, under the authority of the Tagore case, would render his gift to Hori Dasi void, or, at the least, would prevent its operating further than to give her an estate for life. This latter view was adopted by the Judge of First Instance. Upon this question the High Court observe,—

"We dissent entirely from the learned Judge, when he holds that the words 'putra poutrádi kramé' denote an attempt to limit the succession to Hori Dasi's male descendants in any manner opposed to the decision in the Tagore will case (Tagore *v.* Tagore, 9, Bengal Law Reports, page 377). The devise and bequest to her are contained in the words 'adhikárini haibek,' and the words added are merely usual words, implying an absolute and heritable estate.

"If these words are to be interpreted in the sense applied to them by the Judge, very few grants in the Bengali language conld stand, because the formula is one constantly used to show that the estate is to go beyond the life."

The effect of these words is thus spoken of by Sir Barnes Peacock in delivering the judgment of the High Court in the Tagore case (4, Bengal Law Reports, 182):—

"A gift to a man and his sons and grandsons, or to a man and his sons' sons, would, in the absence of anything showing contrary intention, pass a general estate of inheritance according to Hindoo law. I believe the words usually used in Bengal are 'putra poutrádi krama,' and in the Upper Provinces 'naslan baad naslan," the literal meaning of the former being to sons, grandsons, &c., in due succession, and of the latter in regular descent or succession."

The correctness of these observations was not questioned in the judgment on appeal. It was not denied at the bar that these words, though undoubtedly importing the male sex in their primary signification, would, in the case of a gift to a male, be read as words of general inheritance, and would include female as well as male heirs where, by the law, his estate would descend to females; their Lordships feel no greater difficulty in applying them to the female heirs of a female where by law the estate would descend to such heirs, and see no sufficient reason for narrowing the construction of words which have been often recognized in India and by this Board as apt for conferring an estate of inheritance. They are of opinion that Clause 7, if it stood alone, would confer an absolute estate on Hori Dasi upon the death of the widow.

Clause 8 has been relied upon for enforcing the argument that the testator's object was to benefit the sons of his grand-daughter, an object which their Lordships think he might reasonably suppose best effectuated by giving complete power over the estate to his grand-daughter. The provision for management by the Court of Wards obviously does not affect Hori Dasi's estate.

But it has been further contended that the condition sunder which by Clause 9 Hori Dasi is to take, or, more properly speaking, under which she is not to take, are so uncertain as to render the gift to her void. It has been argued that no time is fixed at which the disqualifications are to operate, that she may become a sonless widow at any period of her life, and that, therefore, it must always remain uncertain whether or not she is capable of taking the gift. In their Lordships' opinion, all difficulty as to the question of time is got rid of, by reading the clause in conjunction with that which pre-

cedes it, and treating the death of the widow as the time when it is, if at all, to take effect. This natural interpretation of the clause gives effect to it, and their Lordships are by no means disposed to give it a forced construction which would defeat its operation. The death of the widow is, in their opinion, the point of time when it is to be ascertained once for all whether Hori Dasi takes, or is disqualified from taking.

More difficulty arises in the construction of Clause 20.

It has been argued that the words "if my "grand-daughter should die before she bears a "son" are not limited to any point of time, that if this be so, the other disqualifications mentioned in that clause (which are repetitions of those in Clause 9) are not limited either, and may take effect at any period of Hori Dasi's life, that they are in effect conditions subsequent upon the happening of any of which the estate, if it had ever vested in her, would be divested. It has been further argued that the gift over of an estate on events which may happen, not upon the close of a life in being but at some uncertain time during its continuance, is void, as contrary to Hindoo law.

If, as the High Court have found, their Lordships think rightly, that one main object of the testator was to prevent his brother taking his property in any event, it is obvious that Clause 9, creating the incapacity, under certain circumstances, of the grand-daughter to take upon the widow's death, required to be supplemented by another directing on whom the estate, if such incapacity happened, should devolve. This is the purpose of Clause 20, which should be read as supplementary to Clause 9, and as if it had immediately followed it. This purpose points to the construcion that the gift over was to take effect, if at all, at the widow's death. When providing

for the devolution of the estate on Hori Dosi's being disqualified to take it, it was natural that the testator should also provide (which he had not done before) for its devolution in the event of her dying before her grandmother. This pro-ision is, by implication, contained in Sect. 20, and full effect may be given to every part of the clause, without supposing (what their Lordships agree with the High Court is somewhat improbable) that the testator intended the estate, if once vested in his grand-daughter, should be liable to be afterwards divested.

Viewed in this light, the section would read,—

"If no son or daughter be born to me, or if, on my widow's death, my grand-daughter should have died before bearing a son, or should be barren, or become a sonless widow, or otherwise disqualified, then the whole of my properties shall pass into the hands of the Government."

This construction, which their Lordships adopt, makes it unnecessary to discuss whether the disqualifications, if they had been conditions subsequent, would or would not be in violation of Hindoo law. It has not been disputed that, if they are to be ascertained on the widow's death, the gift over to the Government is good.

One possible event undoubtedly is unprovided for, viz., the grand-daughter predeceasing the widow, having borne a son.

Their Lordships do not deem it necessary to decide what would happen on the occurrence of this event—indeed, no judgment which they could give would affect the rights, if he should have any, of a son yet unborn, in the case supposed. In declining to declare the rights of the parties in this contingent event they are acting in conformity with the rule laid down in the case of Lady Langdale *v.* Briggs (8 D. G., Mn. & Gn. 391), explained as it was in the Tagore case.

It follows that the decree of the High Court

must be amended by substituting in line 16 (p. 91 of the Record) for the words "not surviving" "having died during the lifetime of "such widow without bearing a son."

It is further necessary that in line 13, for the words "or without a living son," there should be substituted the words "or a sonless widow." The decree as it stands is neither in accordance with the will nor the judgment.

Subject to these variations, their Lordships will humbly advise Her Majesty that the decree be affirmed. The costs of all the parties to the appeal should be paid out of the testator's estate.

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