

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Raikishori
Dasi and another v. Debendra Nath Sircar
and others from the High Court of Judicature
at Fort William in Bengal ; delivered 22nd
December 1887.*

Present :

LORD FITZGERALD.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

THE Respondents in this appeal were the Plaintiffs in the action. They were four of the sons of Biswanath Sircar. The first Defendant, Raikishori Dasi, was the widow of the late Gobind Nath Sircar, who was an adopted son of Biswanath. The Plaintiffs claimed to be entitled under the will of their father to succeed, upon the death of Gobind Nath without male issue, to the share of the father's property to which he had succeeded on his father's death. The widow contended that the will of the father was illegal and void, and, consequently, that upon the death of her husband, Gobind Nath, she as his widow succeeded to his share of the property, and acting upon that view she, by deed dated the 9th of Falgoun 1285, transferred a portion of the property to the Defendant No. 2 (Syed Abdul Sobhan Chowdhry). The Plaintiffs by their plaint prayed that after putting a true construction on the will of the late Biswanath Sircar, the court would be pleased to pass a decree declaring that Defendant No. 1, that is to say the widow of Gobind Nath, had no right to the property stated in the schedule

marked (*ka*), and to declare the Plaintiffs' right to the said property in accordance with the said will. They also prayed that after declaration of the Plaintiffs' right, the court would be pleased to pass a decree declaring that Defendant No. 1 had no right to take possession of, or to transfer any property stated in the said will, and that the registered *kobala* executed by Defendant No. 1, dated 9th Falgoun 1285, was void.

The will was contained in three documents, which together formed the last will of the father Biswanath. The first of these documents was dated January 1856; the second, May 1862; and the third, August 1870. The Subordinate Judge held that the will was void, and, consequently, that the widow succeeded to her husband's share. The High Court upon appeal reversed that decision, and held that the Plaintiffs were entitled to it.

The will contained many provisions which could not legally be carried into effect, and which appeared to create a perpetuity, and consequently to render the will invalid.

At the close of the arguments their Lordships reserved judgement, in order that they might carefully consider all the provisions of the three documents read together. They have now done so, and although they cannot, after full consideration, say that the case is free from doubt, they are not prepared to hold that the High Court came to an erroneous conclusion, or to advise Her Majesty to reverse the judgement.

Their Lordships observe that the High Court has declared the deed of conveyance to be void, and that it be cancelled and retained in court. It is not because a man conveys property to which he is not entitled that the conveyance is absolutely void or ought to be cancelled or retained by the court. It was unnecessary to do more after declaring the Plaintiffs' right than

to declare that Defendant No. 1 had no right to take possession of, or to transfer any part of the property mentioned in the will, and that the deed passed no right in any part of such property to the Defendant No. 2.

Their Lordships will humbly advise Her Majesty to affirm the decree, so far as it declares that the Defendant No. 1, Raikishori Dasi, had no right or interest in the property mentioned in the schedule "*ka*" attached to the plaint, and that the Plaintiffs are entitled to the same, but that instead of declaring that the conveyance executed by Raikishori Dasi in favour of Defendant No. 2, Syed Abdul Sobhan is void, and that the said conveyance be cancelled and retained in Court, it be declared that the said conveyance transferred no interest in the property to the Defendant No. 2, and that in all other respects the decree of the High Court be affirmed. This modification of the decree of the High Court does not affect the merits of the case as regards the parties to this appeal, and accordingly the Appellants must pay the costs of the appeal.

