

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Pudmanund Singh and Others v. Hayes and Others, Executors of Dharam Chand Lal (deceased), from the High Court of Judicature at Fort William in Bengal; delivered 13th July 1901.

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this appeal is as to the construction of a pottah (lease) made by Raja Lilanund Singh the father of the Appellant Pudmanund Singh and by the latter on the 27th June 1874. After reciting two deeds of gift by which Lilanund Singh gave to his daughter Srimati Jogmaya Dai two mouzabs therein described for her maintenance and that of her descendant with power to alienate the properties, that the properties were ancestral and at the time of the gift his son the first Appellant was a minor, that a suit for setting aside the deeds had been brought on the part of Pudmanund Singh on the ground of their being illegal and was pending decision, that with a view to compromise the suit Jogmaya consented to relinquish the right which she had acquired under the deeds and a compromise had been effected through the intervention of the Commissioner of Bhagulpore to

the effect that Jogmaya " shall get an allowance
 " of Rs. 6,000 per annum during her lifetime,
 " and her descendants who may under the Hindu
 " law become her heirs shall get one half thereof
 " in perpetuity and in lieu of the same whatever
 " profits the mouzahs which are held by the
 " said Mussamat Jogmaya Dai under the deeds
 " sought to be set aside may yield annually over
 " and above Rs. 6,000 being fixed at the jumma
 " of those mouzahs, the said mouzahs shall be
 " left in the possession of the said Jogmaya Dai
 " and on the death of the said Dai one half of the
 " said mouzahs shall permanently remain in the
 " possession of her descendants who may be alive
 " at that time and be [her] heirs according to the
 " Shastras on a jumma equal to one-half of the
 " said jumma. The person holding possession
 " of the property shall never have any right to
 " alienate *i.e.* to effect any sale, gift or mortgage
 " or permanent mokurruri of the whole or a
 " portion of the said properties" the Raja
 and his son in effecting the compromise
 granted the pottah of the two mouzahs to
 Jogmaya Dai on the conditions specified by
 cancelling the former deeds. The conditions
 specified are that Jogmaya Dai should remain in
 possession of the properties during her lifetime
 and pay to the lessors Rs. 1234 the annual
 jumma and on her death her descendants who
 might according to the Shastras become her heirs
 should permanently remain in possession of one-
 half of the properties and pay the annual jumma
 of Rs. 617, that the lessee or her descendants
 should not have any power to transfer the
 property and if there should be no descendants
 of the lessee *i.e.* children born of her womb or
 their children the lessors and their representa-
 tives should have power to resume and to take
 possession of the remaining one-half and the

properties mentioned in the pottah should revert to the Raj.

On the same 27th June Jogmaya Dai executed a kabuliyat (counterpart) in which the terms of the compromise are stated to be substantially, though not in the same words, the same as in the pottah.

The facts upon which the question in this appeal arises are these : On the 3rd June 1883 Raja Lilanund Singh died. In June 1885 Jogmaya Dai mortgaged one of the mouzahs in the pottah called Duleri Alakhhari to Dharam Chand Lal since deceased now represented by the Respondents his executors and two other persons whose interests were afterwards acquired by him. She also gave a lease for ten years of the mouzah to Dharam Chand Lal in the names of two of his servants. Jogmaya died on the 9th April 1889 and on the 22nd March 1892 notice was given to the mortgagees and the lessees for 10 years to quit possession of the mouzahs. On the 7th April 1893 a suit was brought by Pudmanund Singh and two other sons of Lilanund Singh minors by their guardian against Dharam Chand Lal and the other mortgagees and lessees and also against Bholanund Jha otherwise Bholanath the grandson of Jogmaya Dai, a minor, in which the plaint asked that it might be held that the Plaintiffs were not bound by the mortgage and lease and that they might be put in possession of a moiety of the property without prejudice to their right to resume the other moiety in the event of there being no lineal descendants of Jogmaya Dai. On the 4th August 1893 before the Defendants had filed any written statement of their defence the Plaintiffs having learnt that Bholanath Jha was born after the death of Jogmaya Dai and being advised that as

he was not in existence at the time of granting the pottah the disposition of the property so far as it would apply to him was void according to Hindu law applied to have the plaint amended so as to claim the whole of the mouzah which was allowed. No appearance was put in on behalf of Bholanath Jha.

Upon these facts the District Judge of Purneah made a decree in the Plaintiff's favour for possession of the whole of the mouzah in dispute with mesne profits for three years. Dharam Chand Lal appealed from it to the High Court which modified it by decreeing that the Defendants should deliver to the Plaintiffs possession of one half only of the mouzah. The present appeal is from this decree and the question is whether the whole of the mouzah has under the terms of the pottah reverted to the Raj. Mr. Cowell who appeared for the Respondents did not dispute that Bholanath was by Hindu law incapable of taking under the pottah not being then born but he contended that the pottah might be construed as giving one half of the mouzahs to Jogmaya Dai for life and the other half to her for an inheritable estate referring in support of his contention to *Bhoobun Mohini Debia and Another v. Hurrish Chunder Chowdry*, L.R. 5 I.A. 138. That case is distinguishable from the present as no previous life estate was given to the person who was held to take an absolute estate and there were no words against alienation. If Jogmaya Dai took an estate of inheritance in that half the restriction in the pottah of the power to alienate would be repugnant or an attempt to take away the power which the law attaches to that estate. Jogmaya Dai could in that case at any time have disposed of that half by deed or by will. It was plainly not intended that she should have that power.

According to the ordinary meaning of the words the gift of the half is a specific one to her descendants to take effect on her death.

In the appeal to the High Court Dharam Chand Lal was the only Appellant and the question between him and the present Appellants (then Respondents) was whether the death of Jogmaya Dai had put an end to the mortgage and accompanying lease and the Appellants had thereby become entitled to the whole of the mouzahs. With regard to the meaning of the pottah the Judges of the High Court only say it was agreed that Jogmaya Dai should remain on the property during her life on the annual jumma of Rs. 1234, and that on her death her descendants would remain in possession of one-half of the property permanently on an annual jumma of Rs. 617 and the other half should revert to the Raj. They then refer to the mortgage and subsequent proceedings setting out at full length an order of 10 Bysack 1297 (1890) issued by the Appellants to the patwari the purport of which is that one half of the mouzah had on Jogmaya's death become fit to be resumed and her direct heirs *i.e.*, the children of her womb ought according to the pottah hold possession of the other half and they say that the Plaintiffs had only revoked that portion of the lease to the lady which dealt with one half of the property and they treated the then descendant of the lady as the owner of the other half whom they had as far as they could put in possession. The Judges further say that "the Respondents" (present Appellants) did not nor could they we think deny that Bholanath had not in terms of the agreement an equity against the Plaintiffs "to carry out the agreement" and they were of opinion that he had a right to specific performance of the agreement and to compel the Plaintiff to give him a legal title. Their

Lordships have some difficulty in following or understanding the observation of the learned Judges. They can only say that they do not agree with it and indeed they think the idea that Bholanath had any such equity is altogether erroneous. There was no ground for modifying the decree of the District Judge and their Lordships will humbly advise His Majesty to affirm it and to reverse the decree of the High Court ordering instead of it that the appeal to it be dismissed with costs. The Respondents will pay the costs of this appeal.
