

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Basanta Kumari Debi v. Kamikshya Kumari Debi, and after her death Prasanna Moyi Debi and others, from the High Court of Judicature at Fort William in Bengal; delivered the 26th July 1905.*

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Present at the Hearing :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The principal question in this Appeal is whether the Courts below have put a right construction on a few words in a document called a *danpatra*, bearing a native date corresponding to the 14th July 1863, executed by one Chunder Nath Surma Bishi, in favour of his younger sister, Srimati Doorga Soondari Debi. By that document Chunder Nath Surma Bishi declared that he did of his own free will make a gift to Soondari Debi of an eight annas share of a mouzah called Briboaliah for her maintenance. The document contains the following words :—

“ You shall annually pay Rs. 36.11.4.2, the annual Government revenue of the said moiety, to the collectorate of Rajshahye, and get your name registered to the extent of the said amount of Government revenue, and enjoy possession during your lifetime. On your death, your husband, sons, grandsons, and other heirs in succession, will continue to enjoy and possess. The power to dispose of by gift or sale will successively vest in your husband, sons, grandsons, and others.”

At the date of the deed of gift Soondari Debi was married to one Doorga Das Khan. She

remained in possession of the property until her death, which took place on the 31st May 1879. She left her surviving her husband and one unmarried daughter, the original Respondent, Kamikshya Kumari Debi, who was then a minor. Upon the death of Soondari Debi, Doorga Das Khan took possession of the property, and applied to be registered as owner of the property. On the 27th May 1880 an order was made directing registration in the name of Doorga Das Khan in lieu of the name of Soondari Debi. In his petition for mutation of names Doorga Das Khan falsely stated that his wife had died childless.

The question is, whether the deed conferred an heritable estate on Soondari Debi, or only a life estate with remainder to her husband. The property having been given to Soondari Debi when married, became what is called her "ayautuka stridhan," and it is not disputed that there being no son of Soondari Debi, the original Respondent, as her only unmarried daughter, was entitled to succeed to the property as her sole heiress if she had an heritable estate. Her husband would only be entitled to succeed as heir in default of issue and certain other relatives.

Doorga Das Khan retained possession of the property until his death, which took place on the 23rd February 1893. The Appellant was his widow, and sole heiress and executrix of his will, and on his death she took possession of the property.

On the 22nd January 1897 the original Respondent commenced the present suit against the Appellant in the Court of the Subordinate Judge of Pubna and Bogra for recovery of the property in suit and mesne profits from the death of her mother. By her written statement the Appellant alleged that the original

Respondent had wrongly stated the date on which she attained her majority and that the suit was barred by limitation, and also raised the question of construction of the deed of gift.

The Subordinate Judge decided the issue as to the date of the original Respondent's birth in her favour, and consequently held that the suit was not barred by limitation. He also held that an heritable estate was conveyed to Soondari Debi by the deed of gift. By his decree dated the 30th June 1898 it was ordered that the original Respondent should get possession of eight annas of Mouzah Briboaliah on ejectment of the Appellant therefrom, with costs of suit, and that the Appellant should pay to the original Respondent mesue profits from the time of the death of Soondari Debi. The Appellant appealed to the High Court. The learned Judges in that Court affirmed the finding of the Subordinate Judge as to the date of the original Respondent's birth, and his decision on the construction of the deed of gift. And by the decree of the High Court dated the 1st August 1900 (from which this Appeal is brought) the Appeal was dismissed with costs.

There being, therefore, concurrent Judgments on the question of fact, it was not contended before their Lordships that the suit was barred by limitation. Their Lordships have no difficulty in affirming the decision of both Courts below on the question of construction also. They are of opinion that Soondari Debi took an heritable estate. The words "on your death your husband, sons, grandsons, and other heirs in succession will continue to enjoy and possess," are sufficient to show that the heirs were to succeed as such, notwithstanding that those who would take as heirs are named in wrong order, or (in other words) there is an inaccurate enumeration of

them. And the words that immediately follow confirm this construction.

With regard to the mesne profits the learned Counsel for the Appellant suggested that they should be confined to three years before suit. But, having regard to the fact that Doorga Das Khan was the original Respondent's natural guardian, and that he only obtained a possession which was apparently adverse to her by an untrue representation in his petition for mutation of names, their Lordships think the decree is quite right.

It should be mentioned that the original Respondent died during the pendency of the Appeal, and the present Respondents have been placed on the Record in her stead.

Their Lordships will therefore humbly advise His Majesty that this Appeal be dismissed. The Appellant will pay the costs of it.

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