

*Privy Council Appeal No. 114 of 1923.*

*Patna Appeal No. 3 of 1922.*

Ashrafi Singh . . . . . *Appellant*

*v.*

Bidya Prasad Narayan Singh and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 9TH MAY, 1924.

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*Present at the Hearing :*

LORD SHAW.

LORD BLANESBURGH.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

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Everything that could be said in favour of this appeal has been admirably said by the learned Counsel for the appellant. Their Lordships adopt the opinion of the Court below, which is appealed from, but desire only to say that they cannot see their way to acquiesce in the characterisation of the conveyance of the *malik* as occurring in a preamble in the deed. When the deed is looked at it is seen that the actual gift to the donee of the *malik* is that which, although characterised as in the preamble, is in truth in the substantive disposition.

With that correction, however, full assent must be given to the proposition that the deed as a whole must be looked to. In the primary clause, called erroneously a preamble, and now referred to as the actual portion constituting the gift, these words follow the gift—"and all rights appertaining thereto with the following conditions." It appears to their Lordships that that fundamentally affects the construction of the deed as a whole, because the whole balance of the document consists in the insertion of those very conditions under which the deed of gift is accomplished. So construed, the deed as a whole leaves no room for doubt that it did not confer the *maliki* rights without conditions, nor did it confer on the donee those rights of property and alienation which a bare disposition in favour of a person denominated as *malik* would have involved.

On the whole, without entering upon details, the decision arrived at appears to their Lordships to be sound in principle and in accord with authority, and their Lordships will humbly advise His Majesty that the appeal be disallowed with costs.

In the Privy Council.

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AŠHRAFI SINGH

v.

BIDYA PRASAD NARAYAN SINGH AND OTHERS.

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DELIVERED BY LORD SHAW.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1924.