

Privy Council Appeal No. 53 of 1937.

Bengal Appeal No. 28 of 1936.

Sreemati Radharani Dassya and others - - - *Appellants*

v.

Sreemati Brindarani and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH DECEMBER, 1938.

Present at the Hearing :

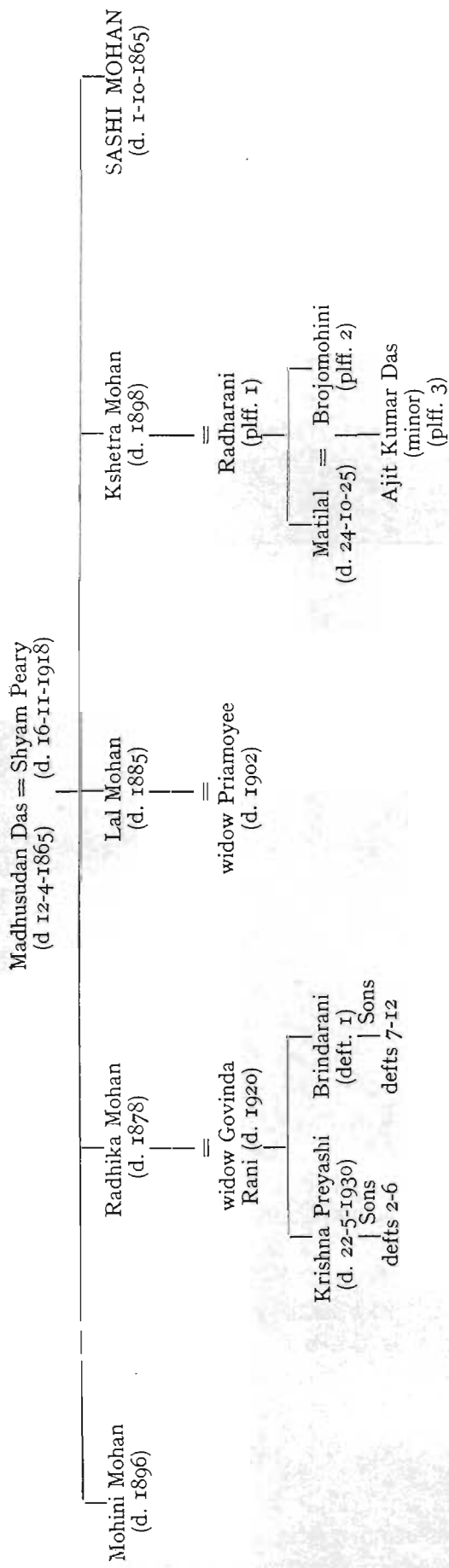
LORD THANKERTON.

LORD ROMER.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

The parties in this case are governed by the Dayabhaga. The appeal is brought by the plaintiffs whose suit, instituted on 20th September, 1930, in the Court of the Subordinate Judge at Dacca, has been dismissed by the Trial Court (20th April, 1932), and by the High Court (17th January, 1936). The plaintiffs are the mother, widow and son of Matilal Das who died on the 24th October, 1925, and between them they represent his estate. They claim that Matilal in 1918 succeeded to the whole estate of his uncle Sashi Mohan who had died unmarried on 1st October, 1865. The plaintiffs' case is simply that on the death of Sashi Mohan his mother Shyam Peary succeeded to his property for the estate of a Hindu mother, and that on her death (16th November, 1918), Matilal was the nearest reversioner to Sashi Mohan. They admit that in the events which have happened they have no need of relief as regard three quarters of the estate left by Sashi Mohan but they say that Brindarani Dasi the first defendant is in possession of and claims title to the remaining quarter. They seek a declaration of title and a decree for possession against her: the other defendants are joined *pro forma*. Brindarani is the only child of Radhika Mohan surviving at the date of the suit, and she represents his estate.



There is little room for dispute as to the facts. Madhusudan Das was possessed of considerable property and a money-lending business. He died on 12th April, 1865, leaving him surviving five sons of whom Sashi Mohan was the youngest. By his will dated 24th November, 1855, he left his property to his sons in equal shares, and he directed that on his death his properties and business should continue to be managed and enjoyed jointly (in *ejmali*); the charge of the entire estate being made over to the sons as they came of age. As regards his mother and widow he directed that the amounts that might from time to time become necessary for going to holy places and for other due and needful expenses should be supplied from his estate by all the sons in equal shares. There was a provision entitling each of these ladies in case of disagreement among members of the family to a separate place for her residence, and certain guardians, nominated by the will, were to fix the amount of maintenance. He declared that his widow should be absolutely entitled to her own ornaments and any cash in her possession.

In October, 1865, a few months after the death of Madhusudan, Sashi Mohan died an infant and unmarried; whereupon his mother Shyam Peary succeeded to his one-fifth interest (3 annas 4 gandas) in his father's estate. The eldest of the sons Mohini Mohan managed the various properties left by Madhusudan, but some questions having arisen between him and his three brothers, an agreement in writing dated 7th December, 1875, was entered into by all four. This document ignored the mother's right to one-fifth of the property as representing Sashi Mohan, and proceeded on the footing that the four surviving brothers were the owners in equal shares. It provided that Mohini Mohan was to continue in management as *karta* consulting with his brothers upon certain matters; that the property should continue to be undivided, each brother drawing Rs.300 per month from the estate; and that certain complaints which had been submitted to arbitration should be withdrawn.

On 29th September, 1877, there took place the transaction which gives rise to the dispute which has now been brought before their Lordships. This transaction is evidenced by or contained in two registered instruments each bearing date 29th September, 1877, one being a *nadabinama* (release) executed by Shyam Peary and the other an *ekrarnama* (agreement) executed by Mohini Mohan and signed by his brother Lal Mohan as consenting thereto. The former is addressed to Mohini Mohan and the latter to Shyam Peary. The arguments which have been put forward upon the true construction of these documents make it necessary to set them out herein. The question which arises upon them and upon the actings of the parties thereon is whether the Hindu mother's estate of Shyam Peary in the one-fifth share of Sashi Mohan (in his father's property) became extinguished so as to vest Sashi Mohan's one-fifth share in his surviving brothers subject to the monthly allowance of Rs.150 which Shyam Peary had stipulated for. If

the mother's interest was extinguished and the estate vested in the brothers, then the appellants' suit must fail as the Courts in India have held.

To

Sri Mohini Mohan Das, son of late Babu Madhu Sudan Das, inhabitant of Sabjimahal, Police Station Sadar, District Dacca, by occupation moneylender, trader and Zemindar, and by caste Barendra Saha.

I, Sreemati Shyampeary Dasya, widow of the said late Babu Madhu Sudan Das, residence, caste and occupation as above, do hereby execute this Nadabinama Patra (Deed of Release) to the effect following:—

My husband Babu Madhu Sudan Das having died, leaving him surviving five sons, namely, yourself, Radhika Mohan Das, Lal Mohan Das, Kshetra Mohan Das and Sasi Mohan Das, two daughters, namely, Sreemati Gangamani and Sreemati Jamuna and myself as his widow and providing by a Will dated the 8th Agrahayan 1262 B. S. that the immovable and movable properties left by him should be possessed, enjoyed and managed by the eldest son in succession, you, being his eldest son and capable obtained a certificate from the District Judge of Dacca under Act 27 of 1860 according to the terms of the said Will and have been possessing, enjoying, managing and acting as Karta of all the movable and immovable properties left by him. In the meantime, owing to bad luck, your youngest brother, born of my womb, namely, Sasi Mohan Das died unmarried on the 16th Aswin 1272 B. S., and although you and my other sons are the next reversioners of the said deceased, yet according to the Sastras I am entitled to a right of enjoyment of the share left by the said deceased son, for my life-time; I having accordingly applied for obtaining a certificate under Act 27 of 1860, in respect of that share, my application was rejected up to the High Court, and the properties have remained in your possession and enjoyment and under your management. Although, being a Pardanashin woman of a respectable family, I was unable to carry on management, yet being led by the evil advice of mischievous persons, I at times expressed a desire for instituting a title suit in Court for the share of the said deceased son and thus caused pain to the good heart of you, my son, born of my own womb and as you are dissatisfied on account of that, I am in great uneasiness of mind. Whereas my sons, yourself and others, are the real heirs and owners of the share left by the said deceased son, and whereas I am never myself capable of managing the same without (the help of) those appointed to act as Karta of the estate left by my husband, namely yourself and others,—I proposed to give up the right of enjoyment which I have and had in respect of the share left by the said deceased son, in the properties etc. mentioned in the schedule below and in the properties that may in future be acquired with the profit thereof as well as in the money-lending and trading concern, Government promissory notes, Bank-shares etc., relating to the said estate, on condition of getting a Mashahara (monthly allowance), on and from the present months till the end of my life, at the rate of Rs.150 one hundred and fifty rupees at a lump per month out of the said estate *i.e.*, the share left by the said deceased son. And having agreed thereto, you have executed in my favour an Ekrarnama (agreement) stipulating to pay a sum of Rs.150 in lump per month on condition that I shall have no power to sell or give away the right of getting the said money. Therefore being in full possession of my senses and out of my own accord, I give up, by this Nadabi (Release), whatever rights of enjoyment I have or had under the Sastras, in the share left by the deceased sons, on the aforesaid terms. Save and except getting this fixed monthly allowance in respect of the share of the said deceased son, I shall

never be entitled to file any suit in Court, demanding any accounts etc., for the past and making any sort of claims etc. for the future. If I do the same shall be disallowed by the Court. To this effect I execute this Nadabinama (Deed of Release). Finis, dated the 14th Aswin, 1284 B. S.

To

The worthy of remembrance Sreejukta (worm-eaten—Shyam Peary Dasya, widow of late Madhu Sudan Das inhabitant of (?) Sabjimahal, Police station Sadar, District Dacca, by caste Barendra Saha, by occupation, money-lender, trader and Zemindar etc.

I, Mohini Mohan Das, son of the said late Madhusudan Das, inhabitant of the same place, by caste and by occupation as above, do hereby execute his Ekrarnama-patra (agreement) to the effect following:—

That my father, the late Madhu Sudan Das having died on the 1st Baisakh 1272 B.S. leaving him surviving five sons, namely, myself, Radhikamohan, Lalmohan, Kshetramohan and Sasimohan Das and two daughters, namely Gangamoni and Jamuna Dasya and a widow, *viz.*, yourself and providing, by a Will dated the 8th Agraphayana 1262 B.S. that the immovable and movable properties left by him should be possessed, enjoyed and managed by the eldest son in succession, I being his eldest son, made an application before the District Judge of Dacca under Act 27 of 1860, according to the terms of the said Will, and obtained a certificate, and have been possessing, enjoying, managing and acting as Karta in respect of all the immovable and movable properties left by him. In the meantime, owing to bad luck, my youngest brother, born of your womb, namely, Sasi Mohan Das died before his marriage on the 16th Aswin 1272 B.S. I and my other brothers are the absolute owners of the (properties of) the said deceased (brother) but as under the Sastras, you are entitled to a right of enjoyment of the share left by our said deceased brother, for your life, you made an application to the District Judge of Dacca for obtaining a certificate under Act 27 of 1860 in respect of the said share, and your prayer in that behalf having been rejected up to the Hon'ble High Court, under the provisions of the said Will, all the properties have remained in my possession and enjoyment as well as under my management. Without remaining satisfied with that order, under the evil advice of mischievous persons, you are expressing a desire for instituting a regular (title) suit in Court for (worm-eaten) of the son; in that case the properties will be ruined on account of heavy expenditure and both will suffer mental pain and nobody can say what would be the ultimate result. Whereas, in father's Will, there is permission for maintaining you and the sisters, so long as we are capable, and whereas you have by a Nadabi (deed of release) renounced all claims and demands regarding the enjoyment of the share left by the deceased brother Sasimohan, for your life, and have desired to receive a sum of Rs.150 (one hundred and fifty rupees) in lump per month, from the present month up till the end of your life, out of the share of the said deceased brother—I, under the terms of the Will of my deceased father, and on the strength of my position as Karta of the estate left by him, of my own accord and in full possession of my senses execute this Ekrarnama and provide that so long as you live, you shall get a sum of Rs.150 (one hundred and fifty rupees) in lump per month, out of the said share; you shall not be entitled to give away or sell the same to any one. Myself or the persons acting as Karta after we shall pay up the said money to you every month; if we fail to pay up the same then you shall be entitled to realise the same from the share left by the said deceased brother, by suing for the same in Court; any objection to this either by myself or by my representatives shall not be entertained. To this effect, I execute this Ekrarnama. Finis. Dated the 14th Aswin, 1284 B.S.

On 26th June, 1878, Radhika Mohan died, leaving a widow Govinda Rani and two daughters: so the widow succeeded as his heiress. Thereafter, the three surviving brothers and Govinda Rani, without dividing the properties, were possessed each of one-quarter share of the whole estate left by Madhusudan, until in 1881 Kshetra Mohan transferred his quarter share to his eldest brother, Mohini Mohan. In 1881, Govinda Rani sued her late husband's three brothers (suit No. 73 of 1883 in the Court of the Subordinate Judge of Dacca) alleging that Kshetra Mohan's share had been purchased by Mohini Mohan on behalf of and with monies belonging to himself, Lal Mohan and Radhika's estate. On 9th July, 1885, her suit was compromised: it was decreed that Govinda Rani's share of Madhusudan's estate should be one-quarter, that is, that the release by Shyam Peary of her right to inherit from Sashi Mohan had vested one-quarter of Sashi Mohan's fifth in Radhika Mohan, and that Govinda Rani was liable to pay one-quarter of the monthly allowance of Rs.150 payable to Shyam Peary; but Govinda Rani's claim to participate in the purchase of Kshetra Mohan's share was not sustained by the decree.

At the same time another suit was being prosecuted in the same Court [suit No. 85 of 1883] having been brought on 28th September, 1883, by Shyam Peary against her three sons and Govinda Rani to recover arrears of her monthly allowance of Rs.150 out of the estate of Sashi Mohan on the basis of the *ekrarnama* of 29th September, 1877, executed by Mohini Mohan. The suit succeeded as against all the defendants both in the trial court (25th April, 1885) and on appeal (2nd June, 1886), Shyam Peary obtaining a decree to recover Rs.5,837 and certain costs out of the properties mentioned in the schedule to her plaint, that is a decree to enforce her charge upon the estate of Sashi Mohan.

From the subsequent history of the family as shown in the pedigree table, it sufficiently appears that Shyam Peary succeeded as heiress to Mohini Mohan on his death in 1896 and to Lal Mohan on his widow's death in 1902; and that on the death of Shyam Peary in 1918, Matilal became entitled as the nearest reversioner of these two uncles. In this way he came into possession without difficulty of three-quarters of Madhusudan's whole estate which means that he obtained inter alia three-quarters of Sashi Mohan's undivided one-fifth share. In the present suit his representatives now claim against Radhika Mohan's daughter and representative Brindarani that quarter of Sashi Mohan's fifth (viz., one-twentieth or 16 gandas' share of the whole) of which Radhika Mohan's branch has long been in possession.

The appellants contend that the transaction of 29th September, 1877, is not shown to have been understood by Shyam Peary who was *pardanashin*; that it transferred merely the management of Sashi Mohan's share to Mohini Mohan; that if it transferred anything by way of title it transferred not her whole interest and estate as a Hindu woman but a mere life estate in the English sense; that it did not operate to accelerate the opening of the succession to Sashi

husband. It is true that the documents were drawn up on the footing, not of a surrender of an acknowledged right, but of an admission that the right did not exist; but in substance, and disregarding the form, there was a complete self-effacement by the widow which precluded her from asserting any further claim to the estate.

Again, in *Vytla Sitanna v. Marivada Viranna* (1934) L.R. 61 I.A. 200 at 207-8, where the question was whether a widow could relinquish in favour of a daughter, it is pointedly observed in the judgment delivered by Sir John Wallis:

“ But though the doctrine of surrender by a widow has undergone considerable development in recent years, it must be remembered that the basis of it is the effacement of the widow's interest, and not the *ex facie* transfer by which such effacement is brought about. The result is merely that the next heir of the husband steps into the succession in the widow's place.”

Applying these principles to the present case their Lordships are not of opinion that the transaction of 1877 fails to operate as a relinquishment for want of proof of acceptance and consent by all the reversioners, but they find it necessary to construe the instruments of 29th September, 1877, to see whether the “ release ” was intended to benefit one only, or some only, of the persons who were at that time the nearest reversioners. They do not so interpret the transaction: they agree with the High Court that the release was intended as operative in favour of all, and that this is the true construction of the *nadabinama*. It is also the construction acted upon by all the parties concerned. The mere circumstance that of these two documents the one executed by Shyam Peary was addressed to Mohini Mohan and vice versa is explained by the fact that he was a member of the family.

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to Mohini Mohan and
and if in law it has to be regarded as
of the brothers so as to depend for its effectiveness
their acceptance and consent the respondents might be in
some difficulty upon the evidence. In the High Court
Mitter J. referred to the judgment delivered by Viscount
Cave on behalf of the Board in the case of *Bhagwat Koer v.
Dhanukdhari Prashad Singh* (1919) L.R. 46 I.A. 259 at
270-1, wherein the law was expounded and applied as
follows:

The power of a Hindu widow to surrender or relinquish her interest in her husband's estate in favour of the nearest reversioner at the time has often been considered and was fully dealt with by the Board in the recent case of *Rangasami Gounden v. Nachiappa Gounden* (L.R. 46 I.A. 72). As pointed out in that case, it is settled by long practice and confirmed by a series of decisions that a Hindu widow can renounce the estate in favour of the nearest reversioner, and by a voluntary act efface herself from the succession as effectively as if she had then died. This voluntary self-effacement is sometimes referred to as a surrender, sometimes as a relinquishment or abandonment of her rights; and it may be effected by any process having that effect, provided that there is a bona fide and total renunciation of the widow's right to hold the property. In the present case there was indeed no formal surrender by the widow of her estate; but there was an express agreement, binding upon her, that for considerations which appeared to her sufficient she would abandon the claim which at the time she had a good right to make and would have no right, claim or demand in respect of the estate of her late

was *Rartu* of. the

Only remaining objection to the transaction being treated as a relinquishment is based on the monthly allowance (*mashahara*) of Rs.150. It is said that this word does not mean "maintenance" and that it was not given to Shyam Peary for maintenance. Stress is laid on the fact that Madhusudan had in his will provided for her residence and maintenance, and it is said that in the circumstances the allowance was either not required for maintenance or exceeded what was required for that purpose. It will be noted than in the *ekrarnama* executed by Mohini Mohan the covenant for payment of the monthly sum was introduced by a recital which refers to the provision for maintenance in Madhusudan's will. It may well be that Shyam Peary did not out of the sum of Rs.150 have to provide herself with a place of residence or her daily food. On that point and on the question whether she had before September, 1877, been in receipt of any money as maintenance from her husband's estate, evidence is lacking. But the learned judges of the High Court have held that in all the circumstances the allowance was no more than was proper, and they have taken fully into their consideration the position in life of her husband and the size of the estate left by her son Sashi Mohan. Their Lordships would in any case be slow to

interfere with their decision upon such a question [*Smt. Nittokissoree Dossee v. Jogendro Nauth Mullick* (1878) L.R. 5 I.A. 55, 56. *Ekrudeshwari Bahuasim v. Homeshwar Singh* (1929) 56 I.A. 182, 186], and they find no reason for doubting its correctness. The provisions of her husband's will would not have enabled her to get an excessive amount of maintenance. The fact that the allowance was described as *mashahara* does not in their Lordships' view cast any doubt upon its having been granted for the purpose of maintenance and they consider that the surrender made by her was a bona fide surrender of the whole estate and not a mere arrangement for dividing it with the reversioners.

They will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of the first respondent, who alone appeared.

In the Privy Council.

SREEMATI RADHARANI DASSYA AND
OTHERS

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SREEMATI BRINDARANI AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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