

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sookh-
moy Chunder Dass and Another v. Srimati
Monohurri Dasi from the High Court of
Judicature at Port William, in Bengal; de-
livered March 6th, 1885.*

Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE suit which is the subject of this Appeal was brought to recover a part of the estate of one Krishna Pershad Dass, who died on the 24th May 1853. Upon his death he left a third wife, the Defendant Srimati Pria Dasi, Sookhmoy Chunder Dass, his eldest son by a former wife the present Appellant, and three minor sons, Hurry Churn, Gour Hurri, and Anund Hurri. Another son was born shortly after his death, but as this son only lived for a few days it is not necessary to take any further notice of him. It is only material with regard to the shares into which the estate would be divided. Anund Hurri, one of the sons, married the present Plaintiff, and died in 1873 without leaving children, leaving the Plaintiff his heir-at-law. Thereupon the Plaintiff brought the suit, seeking to recover the share of the estate of Krishna Pershad Dass, her father-in-law, which she alleged had belonged to her husband Anund Hurri. The question as to whether she is entitled to recover or not depends upon whether Krishna Pershad Dass left a valid will of his property. If he did, she

would not be entitled to recover in the way she claimed. The property would be subject to the will, and she would take such rights, if any, as the will would give her.

The District Judge who tried the suit gave a Decree in favour of the Plaintiff; that she was entitled to recover the share claimed, and that she was also entitled to the account which she asked for in her plaint. The High Court have confirmed that Decree.

The first material paragraph in the will (taking the translation which was adopted by the High Court) is the sixth, in which the testator says:—"My estate shall remain intact, " and from the profits thereof there shall be " performed the worship, the periodical festivals " and ceremonies, of my ancestral deities, idols " and chakras according to my turn, as they " have hitherto been performed. As regards " the enjoyment of the profits, I do hereby " provide that my houses, zemindaris, talooks, " and other immovable properties, and my " business of various descriptions, and the capital " stock thereof, shall always remain intact as " at present, and my heirs, sons, sons' sons, and " great grandsons, and so on in succession, shall " be entitled to enjoy the profits thereof. No " one shall be competent to alienate by sale or " gift the immovable property, to close any " business, to misappropriate the capital stock " thereof, or to divide the same. If any one " succeeds in doing so, or will do so, it shall be " disallowed by the authorities."

The question is, What was the intention of the testator in this provision of his will? He says distinctly, "my estate shall remain intact," and then he proceeds to say, as regards the enjoyment of the property, the estate remaining intact, my heirs, sons, &c. "shall be entitled to enjoy the profits thereof." These words appear

to their Lordships to indicate that he was not going to give away the estate, but that all he intended was to give the enjoyment of the profits to the persons mentioned in the will. His object appears to have been to create a perpetuity as regards the estate, and to limit, for an indefinite period, the enjoyment of the profits of it, which would not be allowed by Hindoo law. It is true if the bequest had been of rents and profits, and it appeared that it was the intention of the testator to pass the estate, those words would be sufficient to do it; but what their Lordships have to do is to find the intention, looking at the whole of the provisions of the will? and they gather from those words that it was not his intention to pass the estate. The provision afterwards against alienation further confirms this. It is not a case where the testator has expressed an intention to pass the estate and has added a clause against alienation, in which case the clause against alienation would be void, but the provision here against alienation is confirmatory of the other part of the will.

When we come to the subsequent clauses, they further confirm this view of his intention. Having said that the profits are to be enjoyed, he, in the subsequent paragraphs, provides for what he considers and intends to be the mode of the enjoyment; and it is very material to notice that in the eighth paragraph he assigns a six-annas portion for the family worship of the idols, and also for the maintenance of the family whilst they continue joint, leaving a 10-annas share which, as long as the family remained joint, would not be, as he supposed, expended at all. What he does with that is to provide that it shall simply accumulate. He does not dispose of it in any way, but as long as the family remains joint it accumulates; again confirming the view that

his intention was that the estate itself should not be disposed of.

Then he goes on to provide for the way in which the profits shall be enjoyed in the event of disagreement among the members of the family and their separating; but the whole of these provisions appear to their Lordships to be consistent with and to support the view that the intention was that the estate itself should not be disposed of, and that there was no gift of the estate, but simply a gift with reference to the enjoyment of the profits.

The whole question really resolves itself into what was the intention of the testator to be gathered from the will. Their Lordships think that this was his intention, and that is the construction which must be put upon the will. This is the view which has been taken by both the Lower Courts. The Subordinate Judge, a Hindoo gentleman quite acquainted with the customs of Hindoo families, considered that that was the intention, and that being contrary to Hindoo law, the will was an invalid will, and that the Plaintiff was entitled to recover the share of the property which would belong to her husband, supposing the property not to be disposed of by the will.

There remains another question, and that is with regard to the account which has been ordered. The Subordinate Judge says, in reference to the 16th issue, which was the issue raised as to the accounts:—"I have to observe that it is not
 " denied that no portion of the profits of the
 " estate which have accrued to the estate since
 " the death of Krishna Hurri, and which have
 " remained in the hands of the manager, the
 " Defendant No. 1, was given to Anund Hurri,
 " and that no account was ever rendered to him.
 " Under such a circumstance I am clearly of
 " opinion that the Plaintiff, as the heiress of her

“ husband, is entitled to an adjustment of accounts
 “ of the profits and proceeds of the estate from
 “ the date of her father-in-law’s death to that of
 “ her husband’s death, and from the date of her
 “ husband’s death to the date of the suit, and to
 “ the amount of money which will be found due to
 “ her share under this adjustment of accounts.
 “ The account shall be taken in the execution
 “ case.”

This is the same account as was ordered to be taken in a similar case of *Surjamoni Dasi v. Denobundho Mullick*, (9 Moore’s Indian Appeals, p. 123.) It is not intended that the different payments by the manager, or moneys taken out by the members of the family, should be inquired into, but it is to ascertain what portion of the savings of the family, or the accumulations which have been made, the Plaintiff would be entitled to. It has been suggested that there may be settled accounts, and that there ought to be some provision to prevent the opening of settled accounts. The Subordinate Judge says very distinctly that no accounts have been rendered to Anund Hurri, and in the face of such a finding as that their Lordships think it would not be proper to insert in the Decree any such provision.

Their Lordships will therefore humbly advise Her Majesty to affirm the Decree of the High Court, and to dismiss this Appeal, the Appellants paying the costs thereof.

