

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Indur Chunder Singh and others v. Radhakishore Ghose, from the High Court of Judicature at Fort William in Bengal; delivered 5th March 1892.*

---

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD HANNEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hannen.*]

In this suit, which was brought in the Court of the Subordinate Judge of Moorshedabad, the Plaintiffs claimed arrears of rent in respect of lands originally held for a term of years under the Plaintiffs or their predecessors in title by one Gopi Mohun Ghose.

Before the expiration of the lease Gopi Mohun Ghose died (February 1869), leaving no issue. By his will (28th January 1869) he gave his wife, Nrityashama Dasi, power to adopt a son, who was to be entitled to all his property, with an exception not material to this case. The will contained the following clause: "As long as the son begotten of my loins or my adopted son remains a minor and has not attained majority, all the property shall be in the possession of my adorable mother and my wife, as their guardians." In 1870 the widow adopted

Radhakishore Ghose, the Respondent in this appeal, who only attained his majority on the 9th June 1885.

On the death of Gopi Mohun Ghose his mother, Naraini Dasi, and his widow continued in possession of the lands claimed during the remainder of the term and after its expiration.

On the 7th September 1874 they took a fresh lease for five years from the Manager of the Court of Wards then in charge of the Plaintiffs' estates. The lessees therein described themselves respectively as "mother of the late Gopi Mohun Ghose" and "mother of the minor adopted son," and they bound themselves to pay the rents reserved, and to pay interest on any arrears.

After the expiration of this term Naraini Dasi and Nrityashama Dasi continued to hold possession, but on the 13th April 1885, two months before the Respondent came of age, Naraini Dasi having died, Nrityashama Dasi surrendered the lands, and the Appellants accepted the surrender and recovered possession of them. There were at that time three years' arrears of rent, which were sought to be recovered in this action against the Respondent personally, and also against his adoptive mother, Nrityashama Dasi.

The Subordinate Judge dismissed the suit as against Nrityashama Dasi, and against this decision no appeal has been brought, but he held that the present Respondent was liable for the arrears of rent with interest, and costs of suit.

The issues raised were as follows:—"Was the ijara by Naraini and Nrityashama Dasi contracted for the benefit of Defendant No. 1? Was it beneficial to him? Did Defendant No. 2 take the lease on the *bond fide* belief that it would be beneficial to him? Is he bound by their acts, and liable for the rent, cesses, and interest claimed?"

The Subordinate Judge decided all these issues

in the affirmative, that is, against the present Respondent.

Another question was discussed, though not raised on the pleadings, namely, whether the Respondent, after he attained his majority, ratified or adopted the acts of his adoptive mother and grandmother? The Subordinate Judge held that the Respondent had not adopted or ratified these acts. It was, in fact, proved that the Respondent, on coming of age, repudiated the act of his guardians, and refused to collect rents from the sub-tenants.

On appeal to the High Court the learned Counsel for the Plaintiffs did not contend that the guardian of the minor could bind the minor by contract, but argued that the learned Judge was wrong in not finding that the Respondent had, after he came of age, adopted the contract. On this point the High Court agreed with the Subordinate Judge, and this question of fact must be treated as finally determined.

The contention that the mother and widow of Gopi Mohun Ghose had power to bind the minor by contract was abandoned in the Court below, and their Lordships are of opinion that such a contention could not be sustained.

But it was suggested that, under the terms of the will of Gopi Mohun Ghose, his mother and widow had power to bind his estate, and had done so, and that the Respondent, having succeeded to that estate, is bound by the act of his adoptive mother and grandmother as his guardians, done in the *boná fide* belief that it was beneficial to the estate.

Their Lordships are of opinion that this is not the claim made by the Plaintiffs' plaint. It does not make any claim against the estate, but makes a personal claim against Nrityashama Dasi, and the Respondent whom it states she had adopted. While a liberal construction should be

given to pleadings, so as to give effect to their meaning to be collected from their whole tenour, they ought to be expressed with sufficient definiteness to enable the opposite party to understand the case he is called upon to meet, and their Lordships consider that neither in the plaint, nor in the issues which cover a wider ground than the plaint, is the claim made against the estate of the deceased Gopi Ghose. Indeed, if it was, and was sustained in that sense by the Subordinate Judge, it is difficult to see why the suit should have been dismissed against the widow and guardian. It is indeed now urged that the suit may be treated as a claim against the estate, and against the heir, to the extent of assets received by him. But there is quite enough in the evidence to show that a claim so put would raise entirely new issues, both as to the extent of assets received and as to the extent to which the Plaintiffs themselves were responsible for the renewal of the lease, that it would in fact be a new suit, and that it would be improper to allow such a change of case at this period of the litigation.

But, further, their Lordships are of opinion that upon the facts proved the suit, even if treated as one against the Respondent in regard to the estate, cannot be sustained.

The kabulyat executed by the mother and widow of Gopi Mohun Ghose, on which the Plaintiffs' claim is founded, does not purport to bind the estate of the deceased. By it the lessees undertake themselves to pay the rents, and interest on any arrears, and to observe the obligations of the lease. The learned Subordinate Judge, while admitting that there is nothing in the lease to show that it was taken for the benefit of the Respondent, says that that fact is immaterial when it is proved that the lease was really taken for the Respondent, and

that the lessees were in possession for his benefit; and he relies on the case of *Hanuman Pershad Panday v. Mussumat Babui Munraj Koer* (6 Moore Ind. Ap. p. 393) as an authority. In that case, however, the managers of an infant's estate were actually dealing by way of mortgage with a portion of that estate, and it was held that the manager might do so in a case of need or for the benefit of the estate, and that the fact that the mortgage contained the inaccurate statement that the mortgagor had a beneficial proprietary right, was immaterial. But in the present case the mother and widow of Gopi Mohun Ghose were not dealing with, and did not purport to deal with or affect, his estate, but were incurring new obligations which it is now sought to transfer from them to the estate. It may be that, as between them and the infant, they might be able, in some circumstances, to show that the estate ought to bear the burden they had taken upon themselves, but that is not the question raised in this case, in which the Plaintiffs seek to establish a direct relation between themselves and the estate of the infant, and a liability on the part of the infant now that he is of age, and of his estate, to fulfil the obligations entered into by the lessees in their own name.

Their Lordships are of opinion that this contention cannot be supported, and that the judgment appealed from, reversing that of the Subordinate Judge, should be affirmed with costs, and they will humbly advise Her Majesty accordingly.

---

