

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Braja Kisora Devu Garu v. Sri Kundana Devi Patta Mahadevi Garu, from the High Court of Judicature at Madras; delivered 4th March 1899.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This question relates to the distribution of a sum of money paid into Court as the price of land taken under the Land Acquisition Act 1870. The land taken is situate in a village called Maulabhonaja which formed part of the zemindary of Chinna Kimedi. The disputant parties are: the Zemindar who appeals, and his adoptive mother the widow of a former Zemindar who is Respondent. The sum is small but the title to it is the same as the title to the whole village, and on that ground the High Court has granted leave to appeal.

It is not disputed that the widow has been enjoying the revenues of the village for many years. She alleges that it was granted to her by her husband as an absolute jagheer. The Zemindar alleges that it was assigned only by way of maintenance to her. That was the first issue which the District Judge stated for trial.

On the trial no document containing any grant was produce by the widow. She produced two letters from the Collector written on

an occasion when the Zemindar then in authority denied that she had any title at all. The first (Exhibit I.) is dated 13th May 1871, and is addressed to the Zemindar. It contains this passage :—

“ Sri Kundana Devi Patta Mahadevi Garu has sent me an Arzi stating, among other matters, that her husband, the late Sri Audiconda Devu Zemindar Garu placed her in possession of the three villages of Pattuguda, Maulabhonaja and Bholadi attached to Pratapagiri Taluq, as Jagheer, that after her husband's death the late Collector Mr. Carmichael put her in enjoyment of the said villages, that upon your accession to the Zemindari you also wrote and gave her a document for her enjoying those three villages as Jagheer for her life.”

The other letter dated 15th June 1872 is addressed to a magistrate. It commences thus :—

“ It appears from the decrees hitherto passed by this Court that the right to the two villages of Maulabhonaja and Pattuguda in Pratapagiri Taluq belongs to Mahadevi Garu, and that they were given by the Zemindar as Mokhasa for her enjoyment for life. There is nothing to show that that grant was cancelled as alleged by the present Zemindar.”

The term Mokhasa is explained to be the equivalent of the more generally known term Jagheer. Each shows that the land is to be held for the benefit of the holder. Neither defines the duration of the holding. These terms therefore are consistent with either theory; and the Court must judge between them by such indications as it can get. The District Judge gave his opinion thus :—

“ The presumption in such cases where an Uriya Zemindar in this District gives a village to his wife after or in marriage is that it was a life interest only that was given. In this case all the evidence produced by claimants to rebut this presumption only confirms it.

“ The contention for Claimant 1 under isuse I. is baseless and rejected.”

He proceeded to award to each claimant one-half of the fund.

The widow appealed to the High Court. The learned Judges said that *prima facie* a gift by a husband to his wife is by way of Stridhan

and that such a gift passes to her heirs. They add that the District Judge had referred to a local custom of which there was no evidence; and they remanded the case for him to find "Whether there is a local custom for zemindars to give villages to their wives for life only, and if such custom is valid."

In point of fact the District Judge had not referred to any custom at all, in its legal sense of a rule exceptional to the general law. He had only stated what in his opinion was the presumption relating to gifts by Uriya Zemindars to their wives; and very likely his opinion was guided by what he had himself known to be done. It is not suggested that there is any rule of Hindoo law forbidding zemindars to make gifts to their wives by way of maintenance if they are so minded. A custom such as contemplated by the issue directed on remand, is some established practice at variance with the general law. How can there be a custom to do that which the general law permits any one to do or abstain from at his own will? There might be a rigid local or tribal rule forbidding grants to wives except for maintenance. But that is not the scope of the issue; nor could it be, seeing that the power of this zemindar to make a complete alienation is not questioned. The inquiry seems to be unmeaning and therefore misleading. However the District Judge addressed himself to the duty thrown upon him, and examined three witnesses who said it is the custom in Chinna Kimedi and in other specified zemindaries to give villages to zemindarnis for life, to be resumed at their deaths. Upon these statements he found in favour of the custom.

On appeal the High Court held that this evidence was inadequate to prove a custom, and in this their Lordships agree. The learned Judges then refer to their previously expressed

opinion as to presumption, and saying that the general law must prevail decide in favour of the widow. This however is a case in which the terms of the grant to the widow, if there ever was any expressed in any terms, are unknown. She has enjoyed the revenue for many years, and that is all we know. There is no general law to determine under such circumstances the amount of benefit which a husband, having absolute discretion in the matter, has conferred on his wife. The two documents produced by the widow herself bear against her view; though it must be confessed that their weight is slight. The evidence of the witnesses is very slight, but such as it is, it goes to show that the idea of giving land for life only to a wife by way of maintenance is not unfamiliar among the class to which this zemindar belongs, as indeed it is highly improbable that it should be.

Their Lordships think that the High Court has been misled by the idea that the nature of the gift is governed by some rule of law which can only be contravened by the establishment of a custom. They agree with the District Judge that there is no sufficient ground for holding that the village has been alienated from the zemindary in perpetuity. And they think that his division of the fund into halves is a very reasonable way of dealing with it. They will humbly advise Her Majesty to reverse the decree appealed from and to restore the Award of the District Judge. The Respondent must pay the costs of the proceedings in the High Court and of this Appeal.

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