

T. B. Ramachandra Rao and another - - - - *Appellants*

v.

A. N. S. Ramachandra Rao and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 31ST JANUARY, 1922.

Present at the Hearing :

LORD BUCKMASTER.

LORD ATKINSON.

LORD CARSON.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

On the 6th August, 1858, Ramajee Bavajee Pandit, who died on the 10th August, 1858, executed a deed of settlement of all his moveable and immoveable properties. It is prefaced by a statement that he had adopted Panchapikes, the second son of Mahasubd Rajaram, and after various gifts and dispositions which are not material, it continued in these terms :—

“ Out of the remaining property, after deducting the above, my adopted son, to whom I have given the name of Bavajee Pandit, shall be entitled to and enjoy half of the property. Out of the remaining half of the property these two persons, namely, (my) senior wife Sowbhagiavathy Kamatchi and junior wife Sowbhagiavathy Thulja shall take half and half.”

In 1894 one acre and 74 cent. of the land so given, and then in the possession of Thulja Boyee, was acquired by the Government. The usual proceedings for determining the amount of compensation appear to have taken place, and no dispute arose as to the award, but a question did arise as between Ramajee Bavajee Pandit, the adopted son, and the widow as to the character and extent of the estate that she took under the will. If she took

absolutely, the money could be divided forthwith ; but if she took a limited interest, her share would have to be invested. It was consequently necessary that this dispute should be determined in order that the compensation monies should be properly dealt with. Section 31, Sub-section 2. of the Land Acquisition Act, 1894, expressly contemplates this position, for after referring in Sub-section 1 to the payment of the compensation by the Collector to the persons interested, Sub-section 2 provides that " if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted." Section 18 does not define the Court ; this is done by Section 3, Sub-section D, which provides that a Court means a principal Civil Court of original jurisdiction, unless a special judicial officer within specified limits has been appointed to perform the functions of the Court under the Act. Section 32 further provides that when money has been deposited in Court under Sub-section 2 of Section 31, and it appears that the land whereof the same was awarded belonged to any person who had no power to alienate, the Court shall order the money to be invested as therein mentioned. Now the dispute between Bavajee and the widow was plain upon the face of the document. It depended upon whether the deed had conferred an absolute heritable and alienable estate upon the widow, or whether she took either a limited Hindu widow's estate or a heritable estate which she was incapable of alienating. What the actual proceedings were that ensued between them is not plain, but they must have come before the District Court of Tanjore, for the grounds of appeal from the order of that Court are before their Lordships, and from these it appears that the District Judge had held that the widow had an absolute estate. From this decision Bavajee brought the appeal to the High Court of Judicature at Madras. Judgment was delivered by the High Court on the 13th July, 1897, by Sir Arthur Collins, C.J., and Mr. Justice Shephard. Their judgment is short, and, as it throws considerable light upon the whole proceedings, it is desirable that it should be reproduced in full. It is as follows :—

" The first question is what estate the widow Thulja Boyee took under the gift of 1858. We cannot agree with the District Judge that the law is unsettled on the question of such gifts. There being no indication of intention to give a large estate, we must assume that the husband intended that a widow's estate only should pass. This being so it is quite clear that Sections 31 and 32 of the Act apply. The order must be set aside as the parties are not agreed as to the mode in which the money should be invested.

" We must direct the District Judge to pass order under the provisions of Section 32. Each party to bear his own costs of this appeal."

On the 10th June, 1911, and again on the 11th January, 1916, Thulja Boyee executed wills and bequeathed all her moveable and immoveable properties to the first respondent ; she died on the 2nd April, 1916. The adopted son, Bavajee Ramajee Pandit, also died at a date subsequent to the decision of the High Court,

but the exact time is not stated, nor is it material, and the present appellant and his brother Jeevanna Rao, now deceased, were his two sons. On the 12th July, 1916, they instituted the suit out of which these proceedings have arisen against the claimants under Thulja's will, alleging that she had only a limited estate under the deed of settlement, and that she had no power to dispose of the properties by will. The learned Subordinate Judge decided in their favour, but this decision was reversed by the High Court, from whose decree the present appeal has been brought. Both the judgments of the Subordinate Judge and the High Court depended upon the true effect of the deed of settlement, but for reasons which their Lordships will shortly explain, they do not think that this question was open to either of the Courts.

Their Lordships do not, therefore, propose to embark upon the consideration of what the effect of the deed of gift in favour of Thulja Boyee might be correctly determined to be, but as some misapprehension appears to exist as to the effect of certain decisions of the Board, and notably one in 35 I.A., p. 17, their Lordships think it desirable to remove this doubt, lest error should creep into the administration of the law in India with regard to the rights of a Hindu widow. In the case referred to, *Mussammatt Surajmani and others v. Rabi Nath Ojha and another*, 35 I.A., p. 17, when originally heard before the High Court it had been stated that under the Hindu law in the case of a gift of immoveable property to a Hindu widow, she had no power to alienate unless such power was expressly conferred. The decision of this Board did no more than establish that that proposition was not accurate, and that it was possible by the use of words of sufficient amplitude to convey in the terms of the gift itself the fullest rights of ownership, including, of course, the power to alienate, which the High Court had thought required to be added by express declaration. In that case it is true that there is some comparison drawn between the gift to a widow and a gift to a person not under disability, but that was not the foundation of the decision, which depended entirely upon the wide meaning attributed to the words in which the gift to the widow was clothed. More recent decisions of this Board (in *Mussammatt Sasiman Chowdhurain and others v. Shib Narayan Chowdhury and others*, and *Bhaidas Shivdas v. Bai Gulab and another*, at present unreported) do nothing but repeat this same proposition in other words. The importance of preventing confusion due to the contrasting of different phrases used in distinct cases to express the same idea has led their Lordships to make this explanation, but the points argued as to the effect of the gift in the present case are not now open to consideration, for in their Lordship's opinion the decision given on the 13th July, 1897, by the High Court at Madras is a clear and complete determination as between the parties to that suit and those claiming under them, which the present litigants cannot dispute.

It is urged on behalf of the respondents that the judgment cannot be so regarded because it arose out of proceedings under the

Land Acquisition Act, 1894, and for the purpose of their arguments they rely upon the case of *Rangoon Botatoung Company Limited v. The Collector, Rangoon*, 39 I.A., p. 197. There appears to be some misapprehension in the Courts in India as to the effect of this authority which it is desirable should be removed. Under the Land Acquisition Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that necessary for fixing the amount of the compensation and this is described as being an award. By Section 54 an appeal from that award or of any part of the award is given to the High Court. The case in 39 I.A. decided that in those circumstances the appeal so given was the only one open to the parties, and that even if appealed against, the award still retained its characteristics and was incapable of further appeal. The argument which succeeded in that case emphasizes the distinction between an award and a decree, and the judgment mentions this in terms by stating that the appellants, although admitted to the High Court, could not have the right to carry an award made under an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in course of its original jurisdiction. The manifest inconvenience that would attend any such proceeding is also pointed out, but neither this judgment nor any other judgment of this Board affects the question of an appeal on the totally different proceedings that arise when there is a dispute as between the persons claiming compensation involving, as it does in this case, a difficult question of title. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. That is exactly what occurred in the present case. How the proceedings were commenced is a matter that is not material provided that they were instituted in the manner that gave the Court jurisdiction, for they ended in a decree made by the High Court and appealable to this Board. It is true that in the case of *Sreemati Trinayani Dassi v. Krishna Lal De and others*, 17 Calcutta Weekly Notes, p. 935, following an earlier case, *Balarām Bharamaratar Ray v. Sham Sunder Narendra*, I.A. 23 Cal., p. 526, it was decided that an order under Section 32 may appropriately be deemed as an integral part of the award made by the Court, but their Lordships regard this as a misapprehension as to the meaning of the award. The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under Section 31 (2) the functions of the award have ceased; and all that is left is a dispute between interested people

as to the extent of their interest. Such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away when the piece of land was represented by a sum of money paid into Court. There has in the present case been a clear decision upon the very point now in dispute which cannot be re-opened. The High Court appear only to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in *Badar Bee v. Habib Merican Noordin* 1909, A.C., p. 623, it is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision, no longer open to appeal, given by another Court having jurisdiction to try the second case. If the decision was wrong, it ought to have been appealed from in due time. Nor in such circumstances can the interested parties be heard to say that the value of the subject-matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal from it. If such a plea were admissible, there would be no finality in litigation. The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute. It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference, for it has been recently pointed out by this Board in *Hook v. Administrator General of Bengal* (48 I.A., p. 187), that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect. Their Lordships will therefore humbly advise His Majesty that the decree appealed from be reversed, and the decree of the Subordinate Judge restored with costs here and in the Courts below.

In the Privy Council.

T. B. RAMACHANDRA RAO AND ANOTHER

vs.

A. N. S. RAMACHANDRA RAO AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1922.