

Privy Council Appeal No. 124 of 1928.

Oudh Appeal No. 13 of 1928.

Jagmohan Singh and another - - - - - *Appellants*

v.

Pandit Sri Nath and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 22ND JULY 1930.

Present at the Hearing :

VISCOUNT DUNEDIN.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES].

In this appeal the Board have again to consider a question which has been discussed under different guises in a number of cases within the last few years, viz., whether, under Hindu law, a woman taking immovable property by gift from her husband has power to alienate it.

The most recent decision on the subject is in *Pandit Shalig Ram v. Bawa Charanjit Lal** which cited and followed the judgment of Lord Buckmaster in *Bhaidas Shivdas v. Bai Gulab*, 49, I.A.11. Reference was also made to *Rama chandra Rao v. Rama chandra Rao*, 49 I.A. 129, in which Lord Buckmaster made certain remarks explanatory of the decision in *Surajmani v. Rabi Nath Ojha*, 35 I.A. 17, another case in which a widow's power of alienation had been called in question, but their Lordships have no doubt that these remarks were not intended to qualify in any way the pronouncement in *Bhaidas Shivdas v. Bai Gulab*. There is also an exhaustive judgment of Sir John Edge in *Sasiman Chowdhurain v. Shib Navayan Chowdhury*, 49 I.A. 25, to which

* Not yet reported.

Lord Buckmaster was a party and which was heard a few days only after *Bhaidas Shivdas'* case.

Under these circumstances their Lordships feel that the doctrine upon which the decision of the present appeal depends is so well established that no further discussion of the authorities is required.

If, as in the present case, the donor does not confer upon the lady express power of alienation, such power may nevertheless be deduced from the terms of the gift if the words used are sufficient to confer upon her absolute ownership, unless the circumstances or the context show that such absolute ownership was not intended. There is, their Lordships think, no magic in the use of any particular word or form of words; the document must be construed as a whole, and its fair import deduced in the ordinary way, and if the conclusion come to is that it confers the estate out and out with no reservation, the right of alienation will be included just as much as any of the other incidents of ownership, and just as much where the gift is to a female as where it is to a male.

In the present case, one Gaind Singh executed a deed of gift dated the 7th May 1877 in favour of his wife Musammat Agind Kuar. The subject matter of the gift was part of an estate in Oudh known as Bhati Risalpur, of which Gaind Singh was the proprietor. He had no son and had already made over other considerable portions of his estate to his two daughters. After her husband's death, Musammat Agind Kuar by a sale deed of the 8th September 1881 transferred a portion of the property to one Chedi Ram Misr, whose interest is now represented by the respondents. The sole question raised for determination by their Lordships is whether she had power so to do. The appellants claim as the ultimate reversioners to whom the property would pass if the alienation was invalid.

The deed of gift is in the following terms :—

I am Gaind Singh, son of Nokhe Singh, caste Chhatttri Bais, resident of Mauza Mareman, pargana Pachhamrath, and Seerdar and Taluqdar of Bhatti, pargana Tanda, district Fyzabad.

Whereas the entire village Fatehpur and half of village Nau Sanda constitute my Zamindari Haqiat without any co-parcenership which are in my exclusive possession, having been granted by the Government as reward for my loyalty, and I am in proprietary possession and enjoyment thereof up to the time of the execution of this deed; whereas I am now old and no reliance can be placed on this borrowed life; whereas I am afraid that this estate might be destroyed after me as I have no male issue and whereas Musammat Agind Kuar is my lawfully wedded wife besides whom I have no other co-sharer and co-parcener, so, with a view to safeguard the aforesaid property, I, while in the enjoyment of sound health and unimpaired intellect, without reluctance and coercion, have specifically gifted the Zamindari in the aforesaid villages with all the original and accreted rights, cultivated and uncultivated lands, Seer, Saer, *jalkar*, *bankar* and all the rights held by me, to my wife Musammat Agind Kuar, and I do hereby covenant and reduce to writing that the said lady shall, generation after generation, remain in possession and enjoyment of Zamindari Haqiat in the said villages on payment of the Government revenue. Now, after the execu-

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tion hereof, if I or any one of my heirs and co-sharers lays any sort of claim to the aforesaid property against the donee, the same shall be deemed false and untenable by the powers that be. With the exception of the lady-donee, no one else shall have any power of interference and meddling with regard to the gifted property.

Wherefore these few presents have been reduced to writing by way of a specific deed of gift, so that it may serve as an authority and be of use when required.

Their Lordships have no doubt that reading this deed as a whole it must be construed as conferring upon Musammat Agind Kuar an absolute estate in the property. Both the Courts in India by whom the case was heard came to the same conclusion, and their Lordships think it unnecessary therefore to discuss the document in detail. They would, however, remark that not only does the donor transfer to her all his rights in the property, but he says that she is to remain in possession and enjoyment of it "from generation to generation," words which have come to have almost a technical meaning in many parts of India as conveying a heritable and alienable estate : *Ram Lal Mookerjee v. Secretary of State for India*, 8 I.A. 46, at p. 61 ; *Lalit Mohun Singh Roy v. Chukkan Lal Roy*, 24 I.A. 76, at. p. 88.

In their Lordships' opinion the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

JAGMOHAN SINGH AND ANOTHER

v.

PANDIT SRI NATH AND OTHERS.

DELIVERED BY SIR GEORGE LOWNDES.

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