

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Asad Ali Beg and others v. Zaffer Ali Beg and others, from the Court of the Judicial Commissioner, Central Provinces; delivered March 20th, 1879.*

---

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an appeal from an order or decree of the Judicial Commissioner of the Central Provinces of India, dated the 18th July 1876, which reversed the decrees of two Lower Courts. The facts are few and simple. It appears that in the year 1844 one Shir Ali Beg was killed by a tiger. He was the Malguzar of a considerable number of villages, of which those in dispute may be taken to be the residue. Upon his death the question who was entitled to succeed him as Malguzar of those villages arose; and after proceedings, to which it will be necessary again to refer, it was held that Hassan Bibi, his widow, was the sole person entitled to do so. A kaboolyut was executed by her, she was put into possession and enjoyment of the malguzari right, whatever that at that period and in those provinces may have imported, and the decision of the Deputy Commissioner, to the above effect was affirmed by Colonel Sleeman, then the Chief Commissioner. At the time of Shir Ali's death, the state of his family was such that if his estate had been administered according to the strict terms of Mohammedan law, his widow, being childless, would have been entitled to one fourth, and the other three fourths would have been

equally divided between four half-brothers, Hyder Ali Beg, Zaffer Ali Beg, Ashruff Ali Beg, and Mahomed Ali Beg, all of whom, upon the evidence, may be taken to have survived him. The widow continued in the enjoyment of the rights given to her in the villages by the settlement of November 1844 up to the time of the regular settlement, which took place in 1863. On that occasion no other person made claim to the settlement of the property. The Settlement Officer, in his order of the 4th of September 1863, says, "Hassan Bibi has now held for 19  
" years, and none has brought any claim in the  
" interval against her, so that her present claim  
" to the village rests on her possession for so  
" long. She has no right as heir of Shir Ali  
" Beg, for under Mahomedan law the estate  
" ought to have gone to the cousins, &c., and  
" the widow without sons has no right at all.  
" But no relation has now put in a claim, and  
" although it is discreditable to her that she  
" should refuse to do anything for these adopted  
" sons, yet by law they had no claim on her."  
And the order concludes with the words, "I  
" bestow the proprietary rights on Hassan Bibi.  
" She holds 27 other villages in Perganah Seoni."  
His statement of the Mahomedan law of succession is incorrect; but he obviously made the settlement upon the ground of her possessory title of 19 years, treating her possession during that time as adverse to the heirs of Shir Ali, whoever they might be. Hassan Bibi on the 22nd of November 1869, made a deed of gift in favour of the Appellants on this Record of the ten villages claimed in this suit, having about the same time sold another village to certain parties who are not before the Court, and made a wuqf or religious endowment of another. She died on the 8th December 1870. On the 26th August 1874 the present suit was commenced, the

Plaintiffs being Zaffer Ali Beg, the surviving half-brother of Shir Ali Beg, the representatives of two of his deceased half-brothers, and a stranger who had purchased an interest in the suit. There seems however to be no representative on the Record of the fourth half-brother Mahomed Ali. The title of the Plaintiff is thus stated in the plaint: "Whereas the Plaintiff, as half-brother, and Shujait Beg and another, as nephews of Shir Ali Beg, are heirs entitled to the property left by the deceased" (meaning Shere Ali). They are, therefore, suing upon a title which, if a good one, accrued to them originally, or to those whom they represent, upon the death of Sher Ali Beg. It is unnecessary to go through the voluminous proceedings which have been had in the cause before the different Commissioners and the Deputy Commissioners in detail. The sole issue with which their Lordships deem it necessary to deal is, whether the suit was barred by the Statute of Limitations; and as incidental to that question, whether the long possession of Hassan Bibi, the widow, was or was not adverse to the present claimants. The two Lower Courts have both found that it was adverse, a finding sufficient to dispose of the suit; but they have also tried other issues with which their Lordships do not propose to deal, as to the validity under Mahomedan law of the title of the Defendants under the deed of gift. Their Lordships must express their regret that it was thought-right by the Commissioner to remand the case on one occasion for the trial of those issues, which, if he was right in his view of the nature of the possession by the widow, were immaterial.

The case was finally taken by way of special appeal to the Judicial Commissioner who by the order under appeal reversed the decisions of the Lower Courts, and made a decree in favour of the Plaintiff. The grounds upon which he proceeded

are stated in his judgment at pages 81 and 82 of the Record, and are to the following effect. After stating that immediately after the death of Sher Ali there was a discussion as to the succession, he goes on to lay down the following propositions: "That the half-brothers, " cousins, and nephews having been dependent on " Sher Ali Beg's bounty, the drift of their " opinion was towards the propriety of waiving " their rights of inheritance in favour of Shere " Ali's widow. That while general agreement on " this head obtained only after some dissent " were overcome, such general agreement went no " further than a temporary waiver in favour of " the widow personally. That Shere Ali Beg's " widow, Hassan Beebee, understood this, and had " no further pretensions either at the time or " during the next 15 years, *i. e.* until 1869; that " even as a temporary waiver in favour of the " widow personally it was scarcely absolute, " being in a degree conditional on the widow " supporting the heirs. That there was no such " renunciation of right of heirship as gave the " widow Hassan Beebee the right to treat the " property, while those of Shere Ali's heirs, by " whose consent she held, lived, as absolutely as " her own. That therefore Hassan Beebee's " possession of the villages claimed, so far as they " were the heritage of heirs of Shere Ali Beg " other than herself, cannot be regarded otherwise " than as permissive under those other heirs; " and that a finding of adverse possession on the " part of Hassan Bebee as against the Plaintiff " is specially unjustifiable, seeing that Zaffer Ali " Beg, Plaintiff No. 1, was a minor in 1844; " that Hyder Ali Beg, father of Plaintiff No. 3, " was in 1844 clear for the inheritance following " the usual course, and gave in his adhesion to " the arrangement ultimately agreed to only " after pressure; and that Ashrof Ali Beg, the

“ father of Plaintiff No. 2, distinctly reserved his  
“ right of heirship as enforceable after Hassan  
“ Beebee’s death.”

It is not very easy to put into definite terms what the Judicial Commissioner considered the legal effect of the supposed arrangement of 1844 upon which he proceeds. He may mean that the arrangement was either that the heirs according to Mahommedan law then waived their rights only to the extent of giving the widow a life estate, reserving their power to assert those rights immediately after her death, or that they agreed to substitute her as malguzar upon certain trusts for the whole family, and with an obligation to maintain either the residuary heirs only, or them and others.

Two distinct points are raised by this Appeal as to the propriety of the course of proceeding and of the decree passed by the Judicial Commissioner. It is said that he had no jurisdiction to make, on special appeal, a decree which involves, more or less, the finding of matters of fact; and it is also said that the decree, if he had power to make it, was erroneous. Their Lordships certainly feel that it would be difficult to affirm that what he did came strictly within his powers upon a special appeal, because his judgment proceeds upon inferences drawn from the evidence which are contrary to the inferences that had been drawn by the two Courts below, and so far involves a review of their decision upon matters of fact. They do not however propose to rest their decision upon this point of form, because they have come to the conclusion that the judgment is erroneous, and proceeds upon grounds that are not supported by the evidence in the cause.

The widow could not be fixed with a trust except upon satisfactory evidence that she consented to the acceptance of that trust, and to take the estate upon it. But what is the real

effect of the proceedings upon which the Judicial Commissioner relies? It appears that upon the death of Sher Ali there were not only the half-brothers who would be co-heirs with the widow according to the strict Mahomedan law, but that he and his wife had during his lifetime adopted two sons, so far as a Mahomedan is capable of adopting a son; that they took a relative of each, whom they brought up in their house, and called their adopted sons. It also appears that besides his half-brothers, Sher Ali had sundry cousins, one of whom, Shah Ali, had been allowed to take a considerable part in the management of the villages. When, upon Sher Ali's death, the question arose who was to be the new malguzar, there seems to have been a general examination before the Deputy Commissioner of the people constituting what may be called this clan. The adopted son, who was of age, was examined; the brothers were all examined; two of the cousins, Shah Ali and his brother, were examined, and the widow herself was examined. She seems to have distinctly claimed the right to engage for the villages on her own account, and in her own name. She makes no suggestion of a trust. The brothers seem all to have finally given up their claims, and agreed that the new engagement should be made with her, but some of them express a desire that she should allow them maintenance. They treat themselves, not as co-heirs having a distinct right as such, but as more or less dependents of Sher Ali who would have a claim to be maintained by her. No doubt Hyder Ali, one of the brothers (and upon him the Judicial Commissioner mainly relies), on his first examination proposed that there should be a division of the villages; but he did not even then put forward the right of the co-heirs, according to the Mahomedan law, to have their shares in villages allotted to

them. On the contrary, the division which he suggested as proper to be made was that the village of Somalwara should be settled with Asad Beg, one of the adopted sons; that another village should be settled with the other adopted son; that other villages should be apportioned among various parties, including himself and his co-heirs, but also including a nephew, Zadar Saheb, who did not possess the character of an heir; and that Shah Ali Beg, the cousin, should be malik, "as the most prudent man of us all." He added, "Shah Ali Beg as well as we all should be guided by or be dependent on the late Sher Ali Beg's widow." And he ended that examination by saying, "His widow is the malik; she can act as she likes." He afterwards retired from that contention, and consented that the settlement should be made with the widow. The person who really contested the right of the widow to take the settlement in her own name, and with the full powers of malguzar, was Shah Ali Beg, who had no right of inheritance, in the strict sense of the term, in the estate. The result of the whole proceeding was that two rubocarries were passed by the then Settlement Officer, Captain Spence. In the first of them, after stating all the different contentions and suggestions that had been put forward by the different members of the clan, he says: "Separate proceedings have been instituted in regard to these claims, and final orders have issued thereon, after a full inquiry and attestation of the disputed property; and as nobody, save Hassan Bibi, the widow and principal heiress of Sher Ali Beg, deceased, would appear to possess the least title to inherit the property left by him, I am of opinion that the settlement should in fairness be made with her. It is hereby ordered, therefore, that the name of Sher Ali

“ Beg be struck off the patta (lease) and that  
“ of Hassan Bibi be substituted for the same ;  
“ that the usual akranama or agreement be  
“ taken, and the dakhil, kharij parwana, or  
“ order, issue to the tahsildar of Seone.” She  
then executed a kubulyut and she was put in  
possession. In the other rubocarry to which he  
refers, and which seems to have been made on  
the petition of Shah Ali Beg, he expressly said :  
“ Under the circumstances it is ordered that  
“ the claims put forward by all the claimants  
“ be thrown out, and that the settlement of  
“ the villages held in malguzari by the late  
“ Sher Ali Beg be made with his widow Hassan  
“ Bibi.” These two rubocarries were sent to  
the Chief Commissioner and were sanctioned and  
approved of by him on the 24th of January 1845.  
It seems to their Lordships impossible to hold,  
whether the decision of the Commissioner was  
or was not just or right or according to law,  
that the effect of these proceedings was not to  
put the widow, rejecting all the other claims, into  
possession of all the rights in the villages which  
had been possessed by her deceased husband.  
All that subsequently takes place supports that  
view of the case. There is not the slightest evi-  
dence that she ever did maintain her husband’s  
relations, or that they ever claimed as of right  
to be maintained by her. If she had subjected  
herself to the supposed obligation, she would have  
been bound to maintain, among others, the  
adopted sons. But there is direct evidence that  
on one occasion, notwithstanding the strong  
remonstrance of the Government officer, she  
took upon herself to turn them out of the  
house, and that she then claimed (and appa-  
rently successfully claimed) the right to deal with  
the property as she chose. Then came the  
regular settlement of 1863, in which, as has  
been already shown, the Settlement Officer held



her entitled to a declaration of her proprietary rights upon the simple ground that for 19 years she had had possession of the estate. Their Lordships so far agree with the Judicial Commissioner that if it had been clearly made out by the previous proceedings that she held under a trust either for the present Plaintiffs or for others, an enlargement, whatever it may have been, of her proprietary interest in the villages upon that regular settlement would not have made her less a trustee, and that she would have taken whatever additional interest she thus acquired subject to the original trust. But they find nothing like an admitted or implied trust, and if anything like a trust could have been inferred from these proceedings it would have been one for a class including the adopted sons as well as for those persons who are now suing upon their original right as heirs under the Mahommedan law. Of an agreement whereby she was to take only a life interest in the villages, their Lordships can find no evidence.

It seems therefore to their Lordships that they must humbly advise Her Majesty to allow this Appeal, to reverse the decision of the Judicial Commissioner, and in lieu thereof to order that the decisions of the Lower Courts be affirmed, and the special appeal to the Judicial Commissioner against them be dismissed with costs. The Appellants here must also have their costs of this Appeal.

