

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lala Narain Das v. Lala Ramanuj Dayal from the High Court for the North-Western Provinces, Allahabad; delivered 15th December 1897.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Durga Parshad who died childless on the 1st of August 1882 leaving two widows Ram Dei and Hira Dei was the grandson of Bakhtawar Singh the son of Jawahir who had also three other sons Dilawar Singh, Kishan Sahai, and Har Sahai. Dilawar died leaving an adopted son Chanda Lal, Har Sahai died leaving four sons, Anand Sarup, Jugal Kishorie, Narain Das and Ram Saran Das. The suit was brought by Kishan Sahai, Chanda Lal and the four sons of Har Sahai against the Respondent and the widows and the mother of Durga Parshad. The plaint stated that in order to defeat the rights of the reversioners the widows had caused the name of the Respondent to be entered in respect of most of the properties left by Durga Parshad along with theirs and his name alone in respect of some on the false allegations that Durga Parshad left them and Ramanuj Dayal the minor son of his sister as his heirs; that he owing to his having no issue kept Ramanuj

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Dayal with him as his adopted son and heir promising that in case of his having no male issue he and his descendants should succeed as owners to the entire property left by him but that they should have no right to waste the property; and that in case of his having a son of his own Ramanuj Dayal should get an equal share with him; that he had brought him up, educated him and celebrated his marriage as if he was his own son; that the widows in their own right and as guardians of the minor were heirs in possession of his estate. And the Plaintiffs prayed that it might be declared that these allegations being false the transfers of the estate of Durga Parshad made on them in favour of Ramanuj Dayal were void as against the Plaintiffs or the persons who at the death of the widows would be reversioners and that the statement that Ramanuj Dayal or his descendants were entitled to the estate of Durga Parshad by virtue of any declaration falsely attributed to him was of no effect and false. The widows in their written statement said that as their husband was killed suddenly he could not execute any document in favour of Ramanuj Dayal and they therefore in accordance with his promise and order made over the entire property to him. The mother in her written statement said the same. Ramanuj Dayal in his written statement said that Durga Parshad had a great affection for him from his childhood and constantly kept him with him and eventually entered into a contract with him through his father, his guardian, to make him proprietor of and heir to all his property; from that time he lived with Durga Parshad as his son and the widows in pursuance of the stipulations and directions of their husband continued to maintain and bring him up during his minority and gave him possession of all the estate left by Durga

Parshad. Upon these pleadings the following issue was settled by the Subordinate Judge :—

“ Did Lala Durga Parshad covenant with Defendant’s father on his behalf to make the Defendant his heir and owner of the property and in the event of his having issue to give a portion of the property to the Defendant? Is such a covenant, if proved, good and binding upon the Plaintiff? ”

This was the substantial question in the suit. Durga Parshad having died childless the widows were entitled to his property during their lives and could dispose of their interest in favour of Ramanuj Dayal but they could not go beyond that. If the reversioners were to be bound it must be by the act of Durga Parshad. There was no issue whether the allegations of the widows were false. It was not necessary as if they were true they would not justify the action of the widows if there was no contract by Durga Parshad as was alleged by Ramanuj Dayal. The evidence of the widows as to what was said by Durga Parshad and Ganga Saran when the alleged covenant or agreement was made is only heresay and, to use the language of the Indian Evidence Act, is not relevant. It was admitted by the Subordinate Judge and is in the record but it ought now to be disregarded. The evidence of Jwala Parshad another witness is too vague and uncertain to have any weight. The principal witness is Gunga Saran, the father of the Respondent who is corroborated in some respects by Diwan Singh, but without that his evidence may be considered trustworthy. Their Lordships have considered the whole of his evidence which is material to the question of a contract but it is sufficient to state the part which is directly applicable to it. At page 255 of the Record he says that Durga Parshad said to him “ My property is for this boy, I have no dearer

“ relation in this world than this boy. I will
 “ give my property to this boy. He goes to
 “ members of the brotherhood on my behalf and
 “ does my household business. If you will take
 “ him with you how shall I manage these affairs.”
 At last Durga Parshad uttered these words: “ I
 “ would make him my heir and he would get
 “ sufficient education at Meerut for my business.”
 I said to him: “ Two years have elapsed since
 “ your marriage. It is hoped that you may get
 “ an issue and your own son may soon be com-
 “ petent to manage your affairs. Thereupon he
 “ said :—‘ Even if a son be born mind that I would
 “ ‘ give a share to Ramanuj Dayal. It is by no
 “ ‘ means my intention that I may in any way
 “ ‘ deprive him, but give up this hope that I
 “ ‘ would ever part with him and allow him to go
 “ ‘ with you.’ Lala Jwala Parshad made me
 “ understand that my object was the welfare of
 “ the boy, that he could not remain with me, for
 “ if I got him admitted into the college or sent
 “ him to England he could become separated
 “ from me, and that I should do what Durga
 “ Parshad liked. I thinking that he will be
 “ recompensed here for education in England
 “ and that it was impossible to take the boy
 “ without complete displeasure of Durga Parshad
 “ and that I did not like to displease him. I
 “ told Durga Parshad that the boy was his if he
 “ wished to keep him, and that I would not
 “ interfere in this affair. Up to that time there
 “ was no other son of mine, I finally left the boy
 “ saying that I waived all claim to the boy and
 “ the thought of taking him did not remain in
 “ my mind.” The reference to the college and
 England is explained by Gunga Saran having
 said in the previous part of his evidence that he
 told Durga Parshad that he wanted to take the
 boy to Agra (where there is a college) and there
 educate him and that he wished he should be
 educated in England “ either for service or for

the Bar." At this time the Respondent was nine years old; and being the son of a sister of Durga Parshad could not according to Hindu law be adopted by him. The only way by which the Respondent could be made his heir was by a deed of gift or by a will. Diwan Singh in his evidence said that Durga Parshad about two months before his death asked him to write out a deed of gift in favour of Ramanuj Dayal and upon his saying it was not proper to do so and asking him whether he should write out a will told him to do so, that the matter was put off from time to time and the will was not written.

Upon the evidence in the case their Lordships are of opinion that there was no contract or agreement, there was only an expectation on each side, on the part of Durga Parshad that if the Respondent continued to live with him and was brought up and educated under his care and control the Respondent would be induced by the prospect of becoming his heir to continue to live with him and on the part of Gunga Sarun that if he gave up the boy Durga Parshad would have him educated and make him his heir. Gunga Sarun could according to any view only bind the Respondent during his minority and it is very difficult to believe that it was their intention that Durga Parshad should be bound in all events to make the boy his heir when upon the Respondent attaining majority Durga Parshad would have no control over him and he might determine to leave him. Gratitude would be a very weak obligation upon the Respondent if he knew that the estate must become his. The Subordinate Judge found that Durga Parshad made a promise to Ganga Saran that he would make the Respondent his heir if he had no male issue or would give him a share in his property if he had such but that it did not amount to a contract and was not binding on the

reversioners. He made a decree declaring that the reversioners of Durga Parshad deceased should after the death of the widows and the mother of the deceased be entitled to get the estate of the deceased by right of inheritance and that the rest of the Plaintiffs' claim should be dismissed. Ramanuj Dayal appealed to the High Court at Allahabad and that Court ordered the decree of the Subordinate Judge to be set aside and the suit to be dismissed. Their Lordships are quite unable to agree in the reasons of the two learned Judges of the High Court for making this decree. They appear to their Lordships to have entirely disregarded the question in the suit (whether what passed between Durga Parshad and Gunga Saran amounted to a contract) and indeed in the former part of their reasons to have misconceived the real question in the case and in the latter part to have conceded that there was a contract, and only considered whether it was illegal or opposed to public policy. Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court and to order the appeal to it to be dismissed with costs and to affirm the decree of the Subordinate Judge. The Respondent will pay the costs of this appeal.
