

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Aziz-un-Nissa v. Tasadduq Husain Khan,  
from the Court of the Judicial Commissioner  
of Oudh; delivered 9th March 1901.*

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD LINDLEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this Appeal is the construction of an award made on the 11th December 1863 in the proceedings which followed the institution of a suit in the Court of the Deputy Commissioner of Rae Bareilly by Chedu Khan against Abdul Hakim Khan. The facts which led to it are these: Taluqa Anawan was formerly the property of Allahdad Khan. He had two daughters who married Abdul Hakim Khan and Saadat Khan and after the re-annexation of Oudh this estate was settled with the husbands of these ladies and a sanad was granted to them. Chedu Khan and Abdul Hakim were brothers and on the 13th December 1859 Chedu instituted a suit in a Revenue Court against Abdul Hakim for a quarter share of the taluqa as in accordance with an agreement with Abdul Hakim and Saadat said to be embodied in the proceedings dated 4th June 1858 of the Court of Captain Orr late Deputy Commissioner of the District of Rae Bareilly. These proceedings are not in the record of this Appeal but there is in it an agreement dated 31st January 1858 by

which Abdul Hakim after stating that his brother Chedu Khan by instituting the proceedings got his brother Saadat and himself released from prison said "I hereby declare and commit it to writing that I shall never and on no account be on bad terms with the said brother and shall have no objection to the giving of my brother's half share in the estate when I get possession of the estate, rather at the time of the execution of the lease." The suit was dismissed on the 13th October 1860 on the ground that the claim was not cognizable by a Revenue Court, Chedu being told that he was at liberty to have recourse to the Civil Court for damages incurred from time to time on account of Abdul Hakim's breach of promise.

Thereupon Chedu Khan brought a suit in the Court of the Deputy Commissioner of Rae Bareli against Abdul Hakim claiming Rs. 70 a month from the 15th September 1860 "compensation for breach of contract" in not giving him a share of the taluqa as promised in the agreement and the Deputy Commissioner made a decree for him for "Rs. 70 per mensem from the date that Defendant entered into possession of his share of the taluqa Arawan chargeable against Defendant's share." Abdul Hakim appealed to Colonel Barrow the Commissioner at Lucknow who appears to have doubted if Chedu could recover any damages. In his judgment (Rec. p. 33) he says "The document A (the agreement) is no specific contract, for no amount is mentioned in it, but it is a clear expression of Appellant's determination to do something for his brother (Respondent) but the allusions here are also to land and not to cash." The Commissioner followed this by saying that the case was susceptible of adjustment out of Court. After

the judgment was delivered the parties being present agreed to refer to three native gentlemen who were named the decision as to the amount that should be paid by Abdul Hakim to Chedu Khan. The award was made on the same day (11th December 1863) and is as follows "That from 1271 Fasli (1864) Abdul Hakim shall always pay to Chedu Khan " Rs. 70 per mensem and that the latter should " give up his claim in respect of previous " years and should realise from Abdul Hakim " Khan Rs. 70 every month. Parties being " present our decision stated above was read over " to them Chedu accepted it but Abdul Hakim " Khan did not. This arbitration award together " with deed of agreement is submitted to you " (the Commissioner) for orders. Moreover (we " hold) that Chedu Khan should always remain " obedient to Abdul Hakim Khan." Thereupon the Commissioner upheld the decision of the Deputy Commissioner awarding Rs. 70 a month to Chedu Khan to be paid by Abdul Hakim but reversed so much of the decree as awarded arrears of instalments.

Chedu Khan has died and the question in this Appeal is whether the Respondent who is his son is entitled to the Rs. 70 per month a suit having been brought by the Appellant the granddaughter of Abdul Hakim for a decree declaring that the right to receive it ceased at the death of Chedu Khan the payment of it having continued to be made to the Respondent by the lambardar of the estate. The Subordinate Judge who first heard the suit held that the agreement was purely and simply a grant to Chedu personally and not to his heirs and made the decree prayed for. On an Appeal to the District Judge of Rae Bareilly he held the same and referred to the sentence in the award that Chedu was to continue to obey his brother as being a personal obligation. He dismissed the Appeal and there was then a

further appeal to the Judicial Commissioner who reversed the decree and dismissed the suit. The reasons which he has given in his judgment for this decision are unsatisfactory. He begins by saying that the District Judge had based his judgment almost entirely on the interpretation of the word *hamesha* (always or for ever) and that there are several circumstances which the Court does not appear to have considered and it has held that Chedu Khan had a valid agreement in his favour which would have entitled him to claim half the estate. The District Judge did not hold this, on the contrary he says in his judgment that an agreement was said to have been executed admitting Chedu Khan to share in a moiety of the taluqa, that the Rent Courts rejected the agreement as not genuine, the Civil Court of First Instance accepted it but the Appellate Court doubted its genuineness and held it to be invalid. The Judicial Commissioner then says, that, construing the award together with the circumstances he refers to it appears to him that the word *hamesha* used therein was intended to grant an estate of inheritance and sets aside the decree of the District Judge and dismisses the suit. Now it has been held by this Board that the words "always and for ever" in a will do not *per se* extend the interest given beyond the life of the person who is named (*Moulvi Muhammad Abdul Majid v. Mussumat Fatima Bibi* L. R. 12 I. A. 163). They are not inconsistent with limiting the interest given but the circumstances under which the instrument is made or the subsequent conduct of the parties may show the intention with sufficient certainty to enable the Courts to presume that the grant was perpetual (*Toolshi Pershad Singh v. Rajah Ram Narain Singh* L. R. 12 I. A. 214). This ruling applies equally to the award and the Commissioner's order upon it. Their Lordships do not see in the circumstances under which the

award was made any which would enable them to pronounce that the Rs. 70 a month were to be paid after the death of Chedu Khan. The last line of the award seems to indicate that it was for him personally. If Chedu had any title to a share in the taluqa before the Government took possession of it in 1858 he had none after the sanad which was granted by the Government as his name was not in it. This is noticed by the Commissioner in the judgment he gave before the reference to the arbitrators. Chedu's right was only under the agreement and the Commissioner concluded his judgment by saying that the issue was reduced to "what consideration is Chedu Khan entitled to in consequence of Abdul Hakim's promises and agreements with him?" The arbitrators say in the award that they had inquired into the case and they may have considered that justice would be done by giving to Chedu the Rs. 70 per month for his life that being a sufficient reward for his services in obtaining the release of Abdul Hakim and Saadat from prison.

Their Lordships will humbly advise His Majesty to reverse the decree of the Judicial Commissioner and order the Appeal to him to be dismissed with costs.

The Respondent will pay the costs of this Appeal.

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