

Privy Council Appeal No. 15 of 1922.

Bengal Appeal No. 22 of 1920.

Sudhamani Das and another - - - - - *Appellants*

v.

Surat Lal Das and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH MARCH, 1923.

Present at the Hearing :

LORD ATKINSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD ATKINSON.]

The only question arising in this case is the proper construction of the Will dated the 11th May, 1896, of the testator Banka Behari Saha Das. He left a widow and a brother, who has since died, and is represented by his son, who if the testator's widow was only entitled to a life estate would be entitled to the property.

It has been well established that in the absence of anything to the contrary, the words of a Will—in India—are to be taken as having their ordinary meaning. It appears to their Lordships that nothing could be clearer than the following provisions of this Will. At the end of paragraph 1 the testator says:—

“ I give my wife permission to adopt five sons in succession. My wife aforesaid is authorised to adopt one to five sons according to her will.”
[Paragraph 2 commences]: “ If my wife aforesaid should adopt a son in accordance with the authority given by me, the aforesaid adopted son and my wife aforesaid shall succeed to the ownership of the entire properties in equal shares, vested with the power of sale and gift, and no violation of such provision shall be permitted.”

Therefore, if there was an adopted son, no stronger words could be used to confer upon the widow the absolute right and interest in one-half, and on the adopted son the absolute right and interest in the other half of the property.

This is followed by a provision about their living together in the ancestral home :—

“and in the event of disagreement between my adopted son and my wife, my estate shall be divided equally among my adopted son and my wife aforesaid, and after my death, my wife aforesaid shall take out probate of this Will, and when the adopted son attains to the age of twenty-one, my wife aforesaid shall make over his estate to him.”

Then paragraph No. 4 provides as follows :—

“If the aforesaid adopted son, or my wife aforesaid should find it necessary to sell any of the properties left by me, they shall be entitled to sell it to a stranger if my heirs and co-sharers refuse to purchase it for an adequate consideration.”

And the last paragraph runs :—

“If no son is taken in adoption by my wife [which is the event which has occurred], she shall succeed to all the properties left by me after my death, with powers of sale and gift, and my wife aforesaid shall be *malik*, and be in possession, and she shall have power of sale and gift in accordance with the provisions in paragraph 4.”

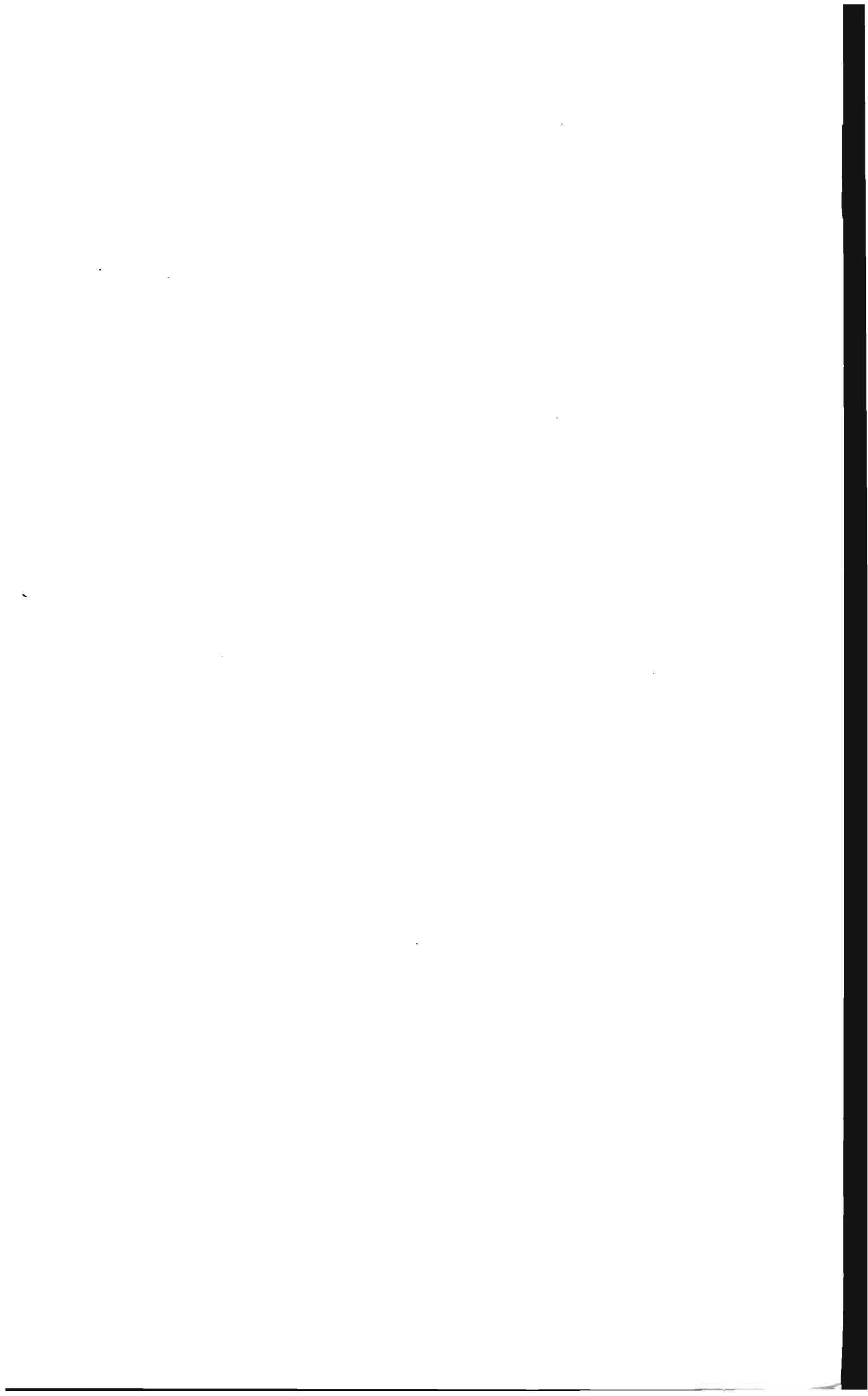
In every one of these provisions it is therefore clear that the testator's intention was to give the absolute property to the wife—either in the whole of the property, or if there was an adopted son, in one-half of the property. As was pointed out in the Court below, the word “*malik*” in itself has considerable force as indicating that the person in reference to whom it is used should take absolute interest in the properties conferred.

The appellants' argument which is based on the provisions of paragraph 4 is fallacious. What paragraph 4 says is this :—

“If the aforesaid adopted son, or my wife aforesaid should find it necessary to sell any of the properties left by me, they shall be entitled to sell it to a stranger if my heirs and co-sharers refuse to purchase it for an adequate consideration.”

This only means that before selling a portion to a stranger, which the widow has perfect right to do, she shall offer it—or give the opportunity of purchasing it at an adequate consideration—to the co-heirs. That by no means limits her power of sale in any degree, and it appears to their Lordships that the decision appealed from was right.

This appeal must therefore be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

SUDHAMANI DAS AND ANOTHER

vs.

SURAT LAL DAS AND OTHERS.

DELIVERED BY LORD ATKINSON.

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