

*Privy Council Appeal No. 39 of 1931.*  
*Patna Appeal No. 15 of 1930.*

Maharaja Kumar Gopal Saran Narain Singh - - - *Appellant*

v.

Sita Devi - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 19TH NOVEMBER, 1931.

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*Present at the Hearing :*

LORD THANKERTON.

LORD SALVESEN.

SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

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The question raised by this appeal is as to the right of the respondent to enforce the terms of a deed dated the 18th July, 1917, by which the appellant purported to grant to her, "her heirs, executors, administrators and assigns," a perpetual annuity of Rs. 15,000 charged upon specified immoveable properties. The Subordinate Judge by whom the case was tried held that the deed was unenforceable on various grounds. The High Court came to the opposite conclusion.

The suit out of which the appeal arises was instituted by the respondent in the Court of the Subordinate Judge of Gaya. It was founded upon two deeds, both admittedly executed by the appellant. By the first, dated the 16th April, 1913, he purported to settle upon her a life annuity of Rs. 36,000. The second was in the terms set out above, and in effect reduced the life annuity just referred to by Rs. 15,000 per annum. The plaintiff claimed a declaration of her rights under the combined deeds and the payment of arrears. Both Courts in India have rejected her claim under the earlier deed. She has not appealed

against this decision, nor has she appeared upon the present appeal.

The material facts of the case are not in dispute. The plaintiff was an Australian by birth, and apparently an actress by profession. On the 11th June, 1903, she was married in Capetown to an American of the name of Stillwell. On the 26th June, 1906, they were divorced by a decree of the Supreme Court of New South Wales. Subsequently she came to India and was associated with the appellant. In 1909 she became a convert to Hinduism, adopting the name of Sita Devi, and on the 2nd May of that year she was married according to the rites of the Arya Samaj sect to the appellant, who was by birth a Bhumi-har Brahmin.

The parties admittedly lived together openly as husband and wife for a number of years, and seem to have been on the best of terms in 1917 when the deed in question in this appeal was executed. The annuities under the deeds were paid till 1921, when payment was stopped in consequence of her infidelity, which has been affirmed by the judgments of both Courts in India. The deed of 1913 has been held to be unenforceable on the ground that, being on the face of it a provision for her maintenance, a *dum casta* condition must be implied. As already stated, there is no appeal by the lady, and their Lordships are therefore not concerned with the correctness of this decision. The only question before them is as to the second deed, to which different considerations apply.

Various defences to the suit were raised by the appellant and many questions have been discussed in the Indian Courts upon which their Lordships do not find it necessary to come to any conclusion. It was, for instance, contended that the divorce of 1906 was obtained by fraud and was without jurisdiction, and that the marriage with the appellant in India was invalid under his personal law. Upon these questions there was a considerable divergence of opinion between the Subordinate Judge and the High Court, but they clearly could only be material if the deed of the 18th July, 1917, was conditioned upon the existence of a valid marriage. Reading the document as a whole in the light of the surrounding circumstances, their Lordships think that this is not the case. In their opinion, the reference to the respondent in the deed as the wife of the appellant is merely descriptive, and they have no doubt that the grant was not intended to be in any way dependent upon the validity of the marriage. It is also, their Lordships think, obvious that in this case there is no room for the implication of a *dum casta* condition.

But it is further contended for the appellant that the question of the marriage is raised at least indirectly by another aspect of the case. The deed, it is said, though in form unilateral, and purporting to be a grant by the appellant, is really in the nature of a contract between the parties, and founding upon Section 25 (1) of the Contract Act, it is contended that the grant being

expressed to be made out of "love and affection," it would only be binding if the parties were validly married.

If their Lordships could regard the document as merely contractual, they might have to consider whether the words used in the subsection above referred to, "between parties standing in a near relation to each other," would not be reasonably applicable to persons who had lived together as husband and wife for a number of years, even though their marriage might have been invalid for one or other of the reasons assigned in the present case. It would also be a matter for consideration whether the acceptance by the respondent of the reduction in her life annuity under the earlier deed would not of itself be sufficient to validate the later transaction. But, in their Lordships' opinion, the deed of the 18th July, 1917, was clearly not a contract at all. It was in form and substance a gift for which no consideration was necessary.

A last attempt to impugn the validity of the deed was made by reference to a passage cited from the *Nāvada Smṛiti* in Golapchandra Sarkar's well-known treatise on Hindu Law (3rd edition, p. 488). In this passage the compiler of the *smṛiti*, in dealing with the subject of gifts, lays down that "what is given to a person not a proper object of the gift but representing himself, and mistaken by the donor through ignorance, to be a proper object" may be resumed. It is sufficient to say in answer to this contention that there is no evidence of misrepresentation by the respondent, or of the mistake or ignorance of the appellant. He did not in fact go into the witness-box, and there is no indication that he was deceived.

There was a suggestion that the respondent had improperly retained certain "family jewels" of the appellant, and that her claim under the deed should only be affirmed upon the condition of their return. The High Court was of opinion that there was "no evidence worth the name" to substantiate this allegation, and their Lordships are in complete agreement with their finding on this head.

For the reasons given their Lordships think that the decree passed by the High Court was right and that this appeal fails, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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MAHARAJA KUMAR GOPAL SARAN NARAIN  
SINGH

v.

SITA DEVI.

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DELIVERED BY SIR GEORGE LOWNDES.

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