

*Privy Council Appeal No. 101 of 1945*

Goswami Shri Maganlalji Gordhanlalji Maharaj - *Appellant*

*v.*

Goswami Shri Purshottamlalji Wagheshlalji Maharaj  
and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 12TH MARCH, 1947

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*Present at the Hearing :*

LORD UTHWATT

LORD DU PARCQ

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from a judgment and decree of the High Court of Bombay dated 3rd November, 1943, made in its appellate jurisdiction reversing a judgment and decree of that Court dated 9th April, 1943, made in its original jurisdiction decreeing the appellant's suit with costs.

The subject matter of this appeal is thirteen shares in the Tapti Valley Railway Company Limited (which are hereinafter referred to as "the railway shares") which stood in the name of one, Narsinglalji Maharaj (who is hereinafter referred to as "Narsing") in the share ledger of the said company for the years 1902-1904.

The only facts which it is necessary to state in order to explain the advice which their Lordships propose to tender to His Majesty are these:—

Narsing died on the 22nd March, 1903, leaving a widow, Shri Rukshmani Vahuji (hereinafter referred to as "Rukshmani") and a son by a former wife, Shri Goverdhanlalji Maharaj (hereinafter referred to as "Goverdhan"). On the 2nd September, 1903, Rukshmani and Goverdhan entered into an Agreement, which is Exhibit "A", assigning certain property of Narsing for the maintenance of Rukshmani. Goverdhan died on 2nd July, 1918 and on the 7th February, 1922, his widow adopted the appellant. In 1924 Rukshmani, having wrongfully represented herself as the only heir and next of kin of Narsing, in whose name the railway shares still stood in the register of the said Company, received Rs. 4,400 as dividend on such shares being arrears of dividend for the years 1913 to 1924. The Company also at Rukshmani's request entered her name in the Company's register as owner of the shares. On 10th April, 1928, Rukshmani sold the railway shares for Rs.9,100. On the 26th March, 1936, Rukshmani died, and this suit was filed on the 26th November, 1936, against the respondents who claim under the will of Rukshmani.

The suit was heard by Mr. Justice Coyne on the Original Side of the High Court of Bombay. The learned Judge held that the plaintiff was entitled to the proceeds of the sale of the railway shares and to the arrears of dividend thereon received by Rukshmani with interest. He considered that Rukshmani held the shares as part of the property of the joint family existing between herself and the plaintiff, and that no question of limitation arose.

In appeal the learned Chief Justice and Mr. Justice Kanai held that the plaintiff's case was based on wrongful conversion of the railway shares and that such a case had not been pleaded. Accordingly, without going into the merits of the dispute, or considering any question of limitation, the learned Judges allowed the appeal and dismissed the suit.

Their Lordships are not in agreement with the view taken by the Court of Appeal. The plaintiff's case was not based on wrongful conversion. His case as pleaded in paragraph 24 of the plaint was that the property which Rukshmani had purported to dispose of by her will consisted of *inter alia* properties acquired from the property of the joint family of which she came into possession on, or after, the death of Narsing. Particulars of such property so far as the plaintiff was aware were given in the Annexure to the plaint, marked " D ". In his prayer the plaintiff claimed a declaration that the plaintiff was entitled to the properties of which Rukshmani had died possessed, of the character mentioned in paragraph 24 of the plaint, and asked that the defendants might be ordered to make a full discovery of all the property of which Rukshmani died possessed which had come into their possession. The railway shares were not mentioned in the plaint, but in particulars furnished to the defendants by the plaintiff's solicitors on the 2nd May, 1942, in answer to an application for particulars the defendants were told that the properties which Rukshmani had purported to dispose of by her will consisted of properties acquired by her from the properties which Narsing received as a reversionary heir of one G. S. Gopalkeshji, and the properties of Narsing which were in her possession in Shri Lalji's Temple including amongst other things, shares of the Tapti Valley Railway Company or from the conversion thereof for which she was bound to account. The case as fought in the trial Court was that the railway shares belonged to the plaintiff and that as they had been sold by Rukshmani he was entitled to the sale proceeds. The plaintiff accepted the sale, and did not claim damages for wrongful conversion. Their Lordships think that this case was sufficiently pleaded in the plaint.

Before this Board the appellant claimed that Rukshmani held the railway shares and the proceeds of sale thereof as a member of the joint family, and that her possession was not adverse to the plaintiff who was the other member of the family; alternatively, he claimed that Rukshmani was a constructive trustee of the shares for him. Sir Thomas Strangman for the respondents did not support the reasoning of the Court of Appeal; nor did he suggest that the railway shares were included in the maintenance agreement, Exhibit " A ", as the learned Chief Justice seems to have thought they might be, but he contended that the plaintiff's suit was one for money had and received by Rukshmani for the use of the plaintiff, and that it was barred by Article 62 of the Limitation Act. The position of a Hindu widow entitled only to maintenance who obtains possession of property which belongs to the joint family under a wrongful claim of title in her relation to the other members of the family, particularly in regard to limitation, is not free from doubt, and is of some general importance in Hindu law. The position has to be considered in the light of the facts proved in this case. Their Lordships think that it is not desirable that they should decide this matter until it has been properly investigated by the Courts in India, and they are in possession of the views of the Court of Appeal as well as of those of the trial Judge. Their Lordships will reserve the question of the costs of this appeal until after the decision of the High Court is known and there will thereafter be liberty to apply as to those costs.

Their Lordships will therefore humbly advise His Majesty that the Judgment of the Court of Appeal dated 3rd November, 1943, be set aside and that the Appeal from the Order of 9th April, 1943 be remitted to the High Court of Bombay with directions that the case of the plaintiff as made at the trial is sufficiently raised on the pleadings, and that the appeal be disposed of according to law. The costs of the proceedings in India will be dealt with by the High Court.

In the Privy Council

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GOSWAMI SHRI MAGANTALJI  
GORDHANTALJI MAHARAJ

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GOSWAMI SHRI PURSHOTTAMLALJI  
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DELIVERED BY SIR JOHN BEAUMONT