**PRIVY COUNCIL**

Sasiman Chowdhurain and others

Vs.

Shib Narain Chowdhury and others
P.C.A No. 144 of 1919

(Lords Buckmaster, CJ, Carson, J. Sir John Edge and Sir Lawrence Jenkins. JJ.)

2.12.1921

**JUDGMENT**

**Sir John Edge J.**

1.The suit in which this appeal has arisen was brought on the 12th August, 1912, in the Court of the Subordinate Judge of Darbhanga in Behar by the plaintiffs, who are the presumptive reversioner's of Bachcha Chowdhury; deceased, who in his lifetime was a land-holder in and a resident of Mouza Subhankapur in Tirhoot. Bachcha Chowdhury died in 1865. The principal defendant is Musammat Sasiman Chowdhurain, who is the surviving widow of Bachcha Chowdhury. His other widow was Musammat Subast Chowdhurain; she died before suit. Bachcha Chowdhury died possessed of considerable moveable and immoveable properties, which on his death, came into the possession of his widows. Part of Bachcha Chowdhury's immoveable property was ancestral, and the remainder of it had been purchased by him.

2. Musammat Subast, shortly before she died, executed, on the 12th February, 1887, an instrument by which she bequeathed her half share in the proparty to Musammat Sasiman.

3. The suit relates to the nature of the title of Musammat Sasiman to the immoveable properties of which her husband, Bachcha Chowdhury, had died possessed, and to the nature of her title to other immoveable properties, which she and Musammat Subast or one of them acquired by purchase, it being alleged by the reversioner's that those immoveable properties which were acquired by the Musammats were purchased by them with moneys saved from the usufruct of the immoveable properties of which Bachcha Chowdhury had died possessed. The object of the suit is to obtain a declaration that Musammat Sasiman neither had nor has any power to alienate any of

the immoveable properties. Her right, if any, to alienate, except for necessity, depends upon the nature of her title. Musammat Sasiman and some of the other defendants are appellants here. The plaintiffs and others of the defendants are the respondents.

4. The Hindu family to which Bachcha Chowdhury had belonged was governed by the law of the Mithila School of Hindu Law. Bachcha Chowdhury has separated from that family. The suit and this appeal depend upon the true construction of a testamentary document which, although described as an atainama (deed of gift), 1922 Privy Council 65 must be regarded as a Hindu will, which Bachcha Chowdhury made on the 5th of June, 1864. On behalf of the plaintiffs it is contended that the Musammats took no greater interest in the immoveable property which had belonged to Bachcha Chowdhury in his lifetime than that allowed by the law of the Mithila to the widow of a separated and childless husband. On behalf of Musammat Sasiman and those claiming under her it is contended that she and Musammat Subast took in that property under the will a full, absolute, and heritable interest as proprietors with full rights of alienation, and not merely the interest of Hindu widows under the law of the Mithila. If her contention as to the construction of the will is correct, this suit must fail and should be dismissed and it would not be necessary to consider whether the immoveable properties which were purchased by the Musammats or either of them, were purchased with moneys derived by them, after their husband's death from the usufruct of the immoveable properties which were left by him.

5. According to the official translation of the will of the 5th June, 1864 (15th Jeth, 1217 FS) Bachcha Chowdhury stated that:-

> "I am Bachcha Chaudhury, resident of Mouzah Subhankarpur, Pargana Hati, Zila Tirhoot."

6. He then mentioned lands, some of which were ancestral lands, and others of which he had purchased, and stated, as was the fact, that:-

> "the ancestral and purchased properties are held and possessed by me without participation or interference on the part of any person" and proceeded:- "I, the declarant, have no issue, I have, to obtain bliss in the next world, caused to be sunk several ponds, and have constructed a temple of Sri Murli Manohar Ji within the compound of my own house, at a considerable cost. I often remain ill, although at present I am well, still on account of having no child, and placing no certainty in life, I intend to go on pilgrimage to Kashi and other places. Therefore, I, the declarant, of my own accord and free will, in order to

> avoid future disputes and to perpetuate my name gave all the mouzahs in entirety or in part, both ancestral and purchased, thika properties and all goods, and assets, articles of copper and silver, elephant, oxen, she-buffaloes, and all other properties, to both my first and second wives, Musammat Subast Chowdhrain and Musammat Sasiman Chowdhurain, who after my death will be heirs to all the moveable and immoveable properties. It is desired that the said Musammats by holding possession and occupation of all the moveable and immoveable properties should pay the Government revenue thereof, and they should collect rent of, and keep watch over, the mouzas either in entirety or in part and scattered lands, orchard, oxen, and elephant, etc., and they should give alms and charities. The said Musammats, after my death, shall have, in every way, full power and all proprietary rights over all the moveable and immoveable properties, and they should, under the deed executed by me, pay annually, Rs. 360 to Musammat Lechhmi Chowdhurain, widow of my brother, Dular Chowdhury, until her death for her maintenance, and by this deed the said Musammats should get their names recorded in the Government Sherista in the columns of proprietors. To this I, the declarant, neither have nor shall have any objection. I have, therefore, given into writing these few words by way of a deed of Atainama so that they may be of use when required."

7. Their Lordships have quoted from the translation which was made of the will by the official translator in India, but it is admitted on behalf of the parties to this appeal that the vernacular word which has been translated as "gave" should have been translated "give."

8. The important words in the will which in the official translation have been rendered as giving to the Musammats after the testator's death,

> "in every way, full power and all proprietary rights", are in the vernacular "Kul haq Malkiyat har hal akhtear Musammat Majkuram Ko hasil hai" and were understood by the Trial Judge as a declaration by the testator of the rights which the Musammats would have in the properties by inheritance after his death, and not as giving them any greater right in the properties, or implying that they should have any greater right, such as a right of alienation, except for necessity. The Trial Judge, by his decree of the 9th April, 1914, made a declaration in favor of the plaintiffs as reversion’s. From that decree Musammat Sasiman appealed to the High Court.

9. The appeal to the High Court was heard by Chapman and Roe, JJ., and was

dismissed by the decree of that Court of the 23rd February, 1917. The leading judgment in the High Court was delivered by Roe J., with which Chapman J., concurred. Mr. Justice Roe was of opinion that in one respect the official translation of the will of the 5th June, 1864, was not quite accurate. In his Judgment he said:-

> "A more accurate translation of clause beginning with 'The said Musammats after my death.....' would be - 'And in respect of all the moveables and immoveables after my death all and complete rights, the power of a landholder in every circumstance, accrues to the said Musammats.' The Urdu words which I have translated 'accrues' are hasil hai.' The Urdu word which I have translated 'of a landholder' is Malkiat. There is no such word in the language. Either the long 'a' is a mistake or the word is a manufactured word. The point has been pressed at some length in the argument. It is not to my mind material. Milkiat or 'Malikiat' would equally imply something appertaining to a Malik. The word 'Malik' means literally one who holds Mulk or land. The translation with the amendments which I suggest represents the terms of the Deed".

10. There does not appear to their Lordships to be any material difference in that respect between the official translation and that suggested by Mr. Justice Roe. In their Lordships' view they mean the same thing. But if they materially differ, their Lordships hold that they must accept the official translation as correct. If that translation was incorrect there was ample opportunity to have it judicially corrected in the High Court after evidence as to its correctness or incorrectness had been taken and recorded in the Court in which the correctness of the official translation was challenged. The Judicial Committee has no means of enquiring into the correctness of an official translation of a document in a vernacular language of India except by sending the case back to the Court with a direction to make such enquiry. It is not necessary to adopt that course in this case.

11. The following decisions, which it has been contended should guide their Lordships in construing this will, have been cited in argument at the Bar. Their Lordships may observe that it is always dangerous to construe the words of one will by the construction of more or less similar words in a different will, which was adopted by a Court in another case. Their Lordships will briefly refer to the decisions which have been cited in the order of their dates.

12. In 1874 in *Moulvi Mahomed Shumsool Hooda v. Shewukram*[1] which came on Appeal from the High Court of Calcutta, and related to the construction of a testamentary document executed by Roy Hurnarain, a Hindu of Behar, the Board held

that :-

> "In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the distribution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate".

13. The Board, having regard to those considerations, and to the document as a whole, all the expressions of which should be taken together, held that Hurnarain, in using the expression "except Musammat Ranee Dhun Kowar aforesaid, none other is or shall be my heir or malik", intended that Ranee Dhun Kowar should take in his property "a life interest immediately succeeding him, without that interest being shared by her daughters or by any other person", but that she should not take an absolute estate which she should have power to dispose of absolutely. The Board so decided, although it held that there were expressions in the document which, if they stood alone, showed that Hurnarain intended to make an absolute gift to Ranee Dhun Kowar. She was the widow of Hurnarain's deceased son, by whom she had two daughters, who were living at the date of the document, and were named in it.

14. In 1875, in *Kollany Koer v. Luchmee Pershad,* [2] which depended on the construction of a Hindu will, and came to the High Court at Calcutta an appeal from a decree of the Subordinate Judge of Saran in the Patna Division of Bengal and related to the title to immoveable property, Romesh Chundar Mitter J., in his judgment, from which the other Judge who heard the appeal, (Glover J.), did not dissent, held:-

> "Therefore the primary matter for our consideration is the language of the will, or the words in which it is expressed. As far as the words go, I think it is plain that the testator intended to make an absolute gift of his property in favor of his widow and his daughter. He says that after his death they shall be (maliks), and his entire estate shall devolve upon them."

15. Mr. Justice Mitter considered that there being nothing to show a contrary intention, the words which were used gave an absolute estate, and not merely the estate of a Hindu female, to the testator's widow and daughter.

16. In 1884, Sir Richard Garth C. J. and Cunningham J., in *Punchoo Money Dassee v. Troylucko Mohiney Dassee* [3] which was an appeal from a decree of Wilkinson J., in a

suit on the original jurisdiction side of the High Court at Calcutta, and related to a Hindu will, held that the description in the will of a devisee, a woman, as malik, did not necessarily import an intention of the testator that by his will an absolute or proprietary interest should pass to her.

17. In 1897, in *Lalit Mohun Singh Roy v. Chukkun Lal Roy* [4] which was an appeal from a decree of the High Court at Calcutta, which had reversed a decree of the District Court of Hoogly in a suit which related to a Hindu will, the Board held that the words of gift in the will to the effect that the donee shall

> "become owner (malik) of all my estate and properties", conferred an heritable and alienable estate in the absence of a context indicating a different meaning.

18. In 1907, in *Surajmani v. Rabi Nath Ojha* [5] in an appeal from a decree of the High Court at Allahabad which had affirmed a decree of the Subordinate Judge of Gorakhpur in a suit which related to a deed of gift or testamentary instrument, by which a Hindu gave to his first and second wives and daughter-in-law respectively certain immoveable property, reserving to himself a life interest, but directing that after his death they shall be

> "Malik amain khud ikhtiyar (owners with proprietary rights)", the Board said :- "This case of *Lalit Mohun Singh Roy v. Chukkun Lal Roy (Supra)* [6] seems to adopt and apply the same view of the word 'malik' as was taken in the Calcutta case in 24 W. R., above cited *(Collany Koer v. Luchmee Pershad) (Supra)*, [7] with the result that in order to cut down the full proprietary rights that the word imports, something must be found in the context to qualify it. Nothing had been found in the context here or the surrounding circumstances, or is relied upon by the respondents but the fact that the done (Surajmani) is a woman and a widow, which was expressly decided in the last mentioned case not to suffice. But while there is nothing in the context or surrounding facts to displace the presumption of absolute ownership implied in the word 'malik,' the context does seem to strengthen the presumption that the intention was that 'malik' should bear its proper technical meaning."

19. In *Surajmani v. Robi Nath Ojha (Supra)* [8] the Subordinate Judge of Gorakhpur, who tried the suit, had held that Surajmani took a Hindu widow's estate and was incompetent to alienate it, and the High Court on appeal held :-

> "That under the Hindu law, as interpreted up to the present in the case of immoveable property given or devised by a husband to his wife, the wife has no

power to alienate, unless the power of alienation is conferred upon her in express terms. The learned vakil for the appellants Surajmani (5) contended that the words of the document we have to consider, and that we have cited above, did expressly convey such power, or at any rate that from them the intention of the executant to confer a power of alienation was evident. We cannot so hold".

20. In 1909, in *Amarendra Nath Bose v. Shuradhani* [9] Mookerjee J., held that the expression "malik like myself" in a Hindu will, as describing the position which the donee would occupy, was an indication that the testator intended the donee to take an absolute interest in the property devised, but that the word "malik" by itself would not indicate that more a limited interest was intended to be conferred.

21. In 1916, in *Fateh Chand v. Rupchand* [10] in an appeal from a decree of the High Court at Allahabad which had varied a decree of the Subordinate Judge of Saharanpur in a suit which related to the title to immoveable property, the Board held that the words in a Hindu will "I have bequeathed Mouza Khudda to Musammat Gomi - after my death she shall be owner in possession (malik-o-abkiz) of the entire property in Mauza Khudda aforesaid", conferred full ownership upon the devisee, there being in the will, in the opinion of the Board, nothing from which a contrary intention of the testator should be inferred.

22. It appears from some of the decisions to which their Lordships have referred and from the judgment of the Board in *Bhaidas Shivdas v. Bai Gulab* [11]that the term "malik", when used in a will or other document as descriptive of the position which a devisee or done is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full propriety rights were not intended to be conferred, but the meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning, and their Lordships can find nothing in the quoted decision contrary to this view,

23. Mr. Justice Chapman, in his concurring judgment in this suit, said,

> "As regards the word 'malik,' I trust that a word in such common everyday use in this part of the country (Behar) will not be converted by the decision into a technical term of convincing."

24. At least outside the Presidency towns of Calcutta, Madras, and Bombay, the art of

convincing is but little understood in India, and the drafting of documents, including wills, is generally of a very simple and inartificial character. See the observations of the Board in *Gokuldass Gopaldass v. Puranmal* and in *Syed Mohomed Ibrahim Hossain Khan v. Ambika Persad Singh and others,* [12]

25. In the present case the term "malik" does not occur in the will but the word "malikiyat" which has been rendered in the official translation as,

> "All proprietary rights", does, and Mr. Justice Roe, who did not accept the official translation as literally quite accurate, considered that a mistake in the spelling of the word had been made or that the word was a manufactured word. His opinion was that whether the intended word was "milkiyat" or "malkiyat" it meant the same thing - that is, the power of a landlord, and he stated that "malik" means literally one who holds land. Their Lordships cannot construe the words of the will giving to the Musammats, as the testator's heirs all his moveable and immovable properties, as interpreted by the declaration that after his death they,
>
> "shall have, in every way, full power and all proprietary rights over all moveable and immoveable properties", as meaning anything less than that they should hold in his properties full and complete rights as proprietors, including full rights of alienation, and that was, their Lordships infer, what the testator intended.

26. Their Lordships will accordingly humbly advise His Majesty that this appeal should be allowed with costs, and the suit should be dismissed with costs.

Appeal allowed.

Cases Referred.

1. (1874) 22 WR 409 : 2 IA 7 : 14 BLR 226 : 3 Sar 405 (PC)

2. (1875) 24 WR 395

3. (1884) 10 Cal 342.

4. (1897) 24 Cal 834 : 24 IA 76 : 1 CWN 387 : 7 Sar 155 (PC).

5. (1907) 30 All 84 : 35 IA 17 : 5 ALJ 67 (PC)

6. (1909) 14 CWN 458 : 5 IC 73

7. 1910 PC 20: 38 All, 446 : 43 IA 183 (PC)

8. 1922 PC 193: 46 Bom, 153 : 49 IA 11 (PC)

9. (1884) 1 OC 1035 : 11 IA 126 : 4 Sar 543 (PC)

10. (1912) 39 Cal, 527 : 14 IC, 496 : 39 IA 68 (PC)