

PRIVY COUNCIL

(Rao Bahadur) Man Singh

Vs.

Maharani Nawlakhbati

Privy Council Appeal No. 95 of 1924
(Lords Shaw Phillimore, Sir John Edge and Mr. Ameer Ali JJ.)

02.12.1925

JUDGMENT

SIR JOHN EDGE J.

1. This is an appeal from a decree, dated the 6th April 1923, of the High Court at Patna, which affirmed a decree, dated the 5th June 1922, of the Additional Subordinate Judge of Bhagalpur.

2. The parties to the suit in which this appeal has arisen are Hindus, by caste Rajput, of the district of Bhagalpur, who are governed by the law of the Mitakshara, and the following pedigree shows how they are related.

3. Sir Hariballab Narain Singh died intestate on the 1st April 1907, possessed of the Sonbarsa estate, which was situate principally in the district of Bhagalpur and produced an income of about two lacs of rupees a year. On his death his two widows, Maharani Tarabati and Maharani , Nowlakhbati, succeeded him in the possession of the estate. On the 30th April 1907, the two widows who were pardanashin ladies, jointly presented to the Collector of Bhagalpur a petition in which they alleged that the estate was heavily involved in debt, that there were large arrears of income to be collected, and that they were unable to manage the estate, and asked that they should be held under Section 6 of the Court of Wards Act, 1879, to be disqualified proprietors, and should be declared by the Court of Wards incompetent to manage their own property and that the estate should be taken over by the Court of Wards. That application was forwarded by the Collector to the Court of Wards, and thereupon the Court of Wards under Section 27 of the Act made on the 27th May 1907, an order declaring that the widows were incompetent to manage their own property and declaring that it was determined under Section 35 of the Act that the Court of Wards

should take charge of the property of the widows and directed that possession of such property should be taken on behalf of the Court of Wards. Thereupon the widows became wards of the Court of Wards. The Court of Wards allowed to each of the widows Rs. 625 a month for her maintenance. On the death of Maharani Tarabati in 1920 the monthly allowance made by the Court of Wards to Maharani Nowlakhbati for her maintenance was increased to Rs. 1,250. The widows and the survivor of them continued to live in the family house of the Sonbarsa estate.

BLOCK DIAGRAM

4. On the 18th December 1918, the widows, as parties of the first part, and Gobind Singh and Rudra Pratab Singh, a parties of the second part, made a deed, written in English, which, omitting the schedule, is so far as is material as follows :-

" (Sd.) Sri Maharani Teravati. By my own pen.

(Sd.) Sri Maharani Navalakhabati. By my own pen.

5. This Indenture made the eighteenth day of December of the Christian year One Thousand Nine Hundred and eighteen Between Maharani Tarabati and Maharani Nowlakhbati, the senior and the junior widow respectively of the late Maharaja Harballabh Narain Singh Bahadur, K. C. I.E., residing at Sonbarsa in Thana Sonbarsa, Pargana Nisankhpur Korha, District Bhagalpur, hereinafter called the First Party of the one part ; and Rao Bahadur Govind Singh and Rudra Pratab Singh, sons of the late Rao Bahadur Takat Singh, and daughter's son of the said Maharaja Harballabh Narain Singh Bahadur K.C.I.E., residing at Barwara, in the Jeypore State, in Rajputana, hereinafter called the Second Party of the other part, whereas the late Maharaja Harballab Narain Singh Bahadur, K.C.I.E., died in testate on the 1st day of April 1907, leaving considerable property, moveable and immovable, commonly called the Sonbarsa Estate, mostly situate in Pargana Nisankhpur Kurha in the Sub-division of Madhipura, District Bhagalpur, and leaving behind him no male issue but only two widows, namely, the First Party and an only daughter namely Maharaja Kumari Padmabati, mother of the Second Party, and two daughter's sons by the said daughter, namely the Second Party and whereas on the death of the said Maharaja Bahadur the First Party succeeded to and came into possession of all property, moveable and immovable, left by him, with the rights of Hindu widows under the Benares School of Hindu Law, which governs the family of the said Maharaja Bahadur and where as by reason of the First Party, being pardanashin ladies incapable of managing a big property like the Sonbarsa Estate, the Court of Wards has taken up the management of the said estate under the provisions of Act IX of 1879 (B. C.) on

their behalf, and is at present managing the property through Rai Sahib Nilmoney Dey Manager appointed under the provision of the said Act and whereas the First Party are now getting a monthly allowance of Rs. 625 (rupees six hundred and twenty-five) each from the Court of Wards for their respective maintenance. and whereas the said Maharaj Kumari Padmabati died on the twentieth day of May 1915, and whereas the First Party are now growing old and are desirous of remaining aloof from the concerns of the world and of spending their latter days in Divine worship and meditation in the Holy City of Benares, with an allowance for their maintenance befitting their rank and position ; and whereas for the reasons aforesaid the First Party wish to relinquish and surrender their Hindu Widows' estate in the said property left by the said Maharaja Bahadur, their deceased husband, to the next heirs, the Second Party who have undertaken to pay them or the survivor of them, out of the income and profits of the said estate left by the said Maharaja Bahadur the monthly sum of Rs. 2,000 (Rupees two thousand) for maintenance and also to defray the expenses of the daily and periodical worship of the family deities Lachhmi Narayan Jeo, Ram Chandra Jeo and Radha Krishan Jeo, at a cost of Rs. 100 (Rupees One hundred) per mensem. and whereas the Second Party have agreed to all the terms aforesaid.

6. Now this indenture witnesseth : 1. That the First Party Maharani Tarabati and Maharani Nowlakhbati do hereby relinquish and surrender all their rights in the property moveable and immovable, left by their husband, the late Maharaja Harballabh Narain Singh Bahadur, K.C.I.E., commonly called the Sonbarsa Estate, now in the charge and under the management of the Court of Wards to and in favour of the Second Party Rao Bahadur Gobind Singh and Rudra Pratab Singh, the next heirs of the said Maharaja Bahadur under the Hindu Law, and in pursuance thereof the First Party do hereby make over the entire property aforesaid to the Second Party in full extinction of their rights therein as Hindu widows.

2. That the Second Party will be entitled to the whole property aforesaid from this date and they will hold and enjoy the same in the rights of daughter's sons succeeding to the property of their maternal grandfather under the Benares School of Hindu Law, the share of each being a moiety of the said property.

3. That the Second Party will be entitled to have their names entered as proprietors in equal share in respect of the revenue-paying or revenue-free estates included in the said property by removing the names of the First Party now recorded in the registers maintained under Act VII of 1876 (B. C).

4. That the First Party will at once inform the Court of Wards of this surrender

and request the Court to make over the charge and management of the said property to the Second Party subject to the Court's retaining the management if it thinks fit, under section 13-A of the said Act IX of 1879 (B. C.).

5. That the first party, or the survivor of them, will be entitled to receive a maintenance allowance of Rs. 2,000 (Rupees two thousand) per mensem, from the Second Party out of the rents and profits of the said property so long as they or either of them live or lives.

6. That the Second Party undertake to keep up and maintain the daily and periodical worship of the family deities, Lachhmi Narayan Jeo, Ram Chandra Jeo, and Radha Krishna Jeo, installed at the Sonbarsa House left by the said Maharaja Bahadur, at a cost of Rs. 100 (rupees one hundred) per mensem, and should they omit or neglect to carry out this undertaking the First Party will be entitled to enforce the fulfilment thereof.

7. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above-written in the presence of :-

Witnesses. - (1) Bindhyeswari Prasad Singh, High Court Vakil, Monghyr.

(2) Ajodhya Prasad Choudhary, M. C., resident of Kassim Bazar, Monghyr.

Witness. - Prabhu Charan Ambasta, Bhikhanpur, Bhagalpur.

Witness. - Bindyeswari Prasad Singh

Vakil, Monghyr.

Anirudh P. Singh, Pleader

and Zamindar, Panjwara,

Bhagalpur.

Ram Chandra Singh of Mohanpur,

Bhagalpur.

Ram Chandra Singh of Mauza Chakla Hanuman Nagar.

By my own pen.

" Babu Nirbhay Narayan Singh of Bindwara, Pargana Monghyr. By my own pen." The deed was registered on the 18th December 1918.

8. On the same day, 18th December 1918, Gobind Singh and Rudra Pratab Singh by their ekrarnama agreed in writing with the widows so far as is material as follows :-

" This agreement made on the 18th (eighteenth) day of December one thousand nine hundred and eighteen between Rao Bahadur Gobind Singh and Rudra Pratap Singh, alias Begai Singh, sons of the late Rao Bahadur Lakat Singh, and daughter's sons of the late Maharaja Harballab Narain Singh Bahadur, K.C.I.E.,

residing at Barwara in the Jaipur State, Rajaputana, hereinafter called the First Party of the one part and Maharani Tarabati and Maharani Nowlakhbati, the senior and the junior widows, respectively of the said Maharaja Hariballab Narain Singh Bahadur, K.C.I.E., residing at Sonbarsa, in Thana Sonbarsa, Pargana Nisankpur Karha, District Bhagalpur, hereafter called the Second Party of the other part, whereas the said Maharaja Harballab Narain Singh Bahadur. K.C.I.E., died intestate on the 1st April, 1907, leaving considerable property moveable and immovable, commonly called the Sonbarsa estate, mostly situate in Pargana Nisankpur Karha in the Sub-Division of Madhipura, in the District of Bhagalpur, but also situate in part in Pargana Farakya in the District of Monghyr and leaving behind him no male issue, but only two widows, namely the Second Party, and an only daughter, namely, Maharaj Kumari Padmavati, mother of the First Party, and two daughter's sons by the said daughter namely the First Party, and whereas on the death of the said Maharaja Bahadur, the second party succeeded to and came into possession of all property, moveable and immovable, left by him with the rights of Hindu widows under the Benares School of Hindu Law, which governs the family of the said Maharaja Bahadur, and where as by reason of the Second party being pardanashin ladies, incapable of managing a big property like the Sonbarsa estate the Court of Wards has taken up the management of the said estate, under the provision of Act IX of 1879 (B. C.,) on their behalf, and is all present managing the property through Rai Saheb Nilmoney Dey, Manager appointed under the provisions of the said Act ; and whereas the said Maharaj Kumari Padmabati died on 20th (twentieth) day of May, 1915, and whereas the Second Party, who are now growing old and are desirous of remaining aloof from the concerns of the world, and of spending their latter days in Divine worship and meditation in the holy city of Benares, have proposed to surrender their estate to the First Party who are now the next reversionary heirs of the said Maharaja Bahadur under the Hindu Law on getting a suitable maintenance for the remainder of their natural lives, and an assurance that the worship of the family deities at Sonbarsa should be kept up and maintained in the proper stage by the First Party. and whereas the first party have agreed in the event of the said surrender being made, to give the Second Party or the survivor of them, a maintenance allowance of Rs. 2,000 (rupees two thousand) per mensem, and also to keep up and maintain the worship of the said family deities in a suitable style at the cost of Rs. 100 (rupees one hundred) per mensem. and whereas the Second Party consider the said amount of

maintenance allowance and of the expenses of worship fair and reasonable, and therefore they are executing the deed of surrender contemplated by them. The First Party, therefore, in consideration of the pre mises, do hereby agree of their own free will and accord that from the day they become the proprietors of the said Son barsa estate, by reason of the surrender aforesaid they and their heirs, successors, executors, administrators and assignees shall pay to the Second Party or the survivor of them, so long as they or either of them live or lives, the monthly sum of Rs. 2,000 (rupees two thousand) for their maintenance in a style suitable to the rank and position held by their deceased husband, and if they fail to pay the allowance due for any months (which is to be taken as an English month) on the first day of the following month, the Second Party will be at liberty to enforce the payment thereof, with simple interest at the rate of twelve percent, per mensem by process of Court, and the said arrears of allowance, with interest and the costs of the suit if any to enforce the payment thereof shall be the first charge on the property mentioned in the schedule hereto annexed which form a part of the estate surrendered by the Second Party as mentioned above. and the first party further agree, that from the day aforesaid they shall keep up and maintain the daily and periodical worship of the family deities Lachmi Narain Jee, Ram Chunder Jee, and Radha Krishen Jee, installed at the Sonbarsa house left by the said Maharaja Bahadur, at a cost of Rs. 100 (rupees one hundred) per mensem (the month being taken as an English month), and should they omit or neglect to carry this agreement the Second Party will be entitled to enforce the fulfilment thereof. In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written in the presence of witnesses : (1) Bindheyswari Prasad Singh, High Court Vakil, Monghyr ; (2) Ajodhya Prasad Chaudhury, M. C., resident of Kasim Bazar, Monghyr."

9. That agreement was registered on the 18th December, 1918.

10. On the 23rd December, 1918, the two widows sent the following letter to the Collector of Bhagalpur :-

" To The Collector of Bhagalpore.

Dated Bhagalpore, the

23rd December, 1918.

SIR,

We have the honour to state the following for your information :-

That we are disqualified proprietresses of the estate known as the Sonbarsa Estate and we are Wards of the Court.

That we have two grandsons named Rao Bahadur Gobind Singh and Rudrapratap Singh.

That for some time past we had been contemplating surrendering our rights to the estate in favour of our grandsons who are the reversioner's to the estate and we had informed Mr. B. C. Sen, I. C. S., the then 'Collector and the Hon'ble Mr. H. J. McIntosh, I. C. S., the then Commissioner, informally about our intentions.

That we have kept Mr. Sen informed informally about all the steps that we have been taking in connexion with our intention to surrender the estate.

That we had taken the best legal advice (e.g.) of the Government Advocate, Bihar and Orissa and Government Pleader, Bhagalpore, and we were given to understand that under the law we had every right to surrender the estate in favour of our two grandsons.

That in pursuance of our intentions to keep the authorities informed about all our actions in connexion with the surrender, we so far back as March, 1918, sent a copy of the proposed deed of surrender to the Collector of Bhagalpore with our forwarding letter, dated the 4th March, 1918.

That we have executed and registered the deed of surrender on the 18th instant and as provided in para. 4 of the said deed we beg to inform you about the same and request you to take steps to make over the charge and management of the said properties to Rao Bahadur Gobind Singh and Rudrapratap Singh, our two grandsons aforesaid, if the Court of Wards do not think fit to retain management under Section 13(a) of Act IX of 1879 (B. C.).

That we have been given to understand that our two grandsons aforesaid are applying for the mutation of their names in the registers maintained under Act VII of 1876 (B. C.) and that we have no objection to their so doing.

We have the honour to be,

Sir,

Your most obedient servants,

(Sd.) Sri Maharani Tarabati.

(Sd.) Sri Maharani Nowlakhbati,

Maharanis of Sonbarsa."

11. The gentleman whom the widows mentioned as the Government Advocate and Government Pleader in giving any advice to the widows acted as their legal adviser

and not in any respect as representing the Court of Wards.

12. On the 15th April 1919, the Court of Wards, through their Deputy Collector, sent the following reply to the widows to their petition of the 23rd December, 1918 :-

To,

Maharani Tarabati Kumari and Nowlakhabati Kumari, Sonbarsa.

Their petition No. nil, dated the 23rd December, 1918.

The Maharanis of Sonbarsa are informed that the Board of Revenue, Bihar and Orissa considers that the deed of relinquishment executed by them in favour of their grandsons is invalid.

(Sd.) H. Bhattacharyja,

Wards Deputy Collector."

13. The Court of Wards had never given any sanction to the widows or to either of them to create any charge upon or interest in the property of the wards or any part thereof. In February, 1919, Gobind Singh applied to the Court of the Deputy Collector of Bhagalpur for mutation of names in his favour in respect of an eighth share in the estate on the ground that he had a right to the moiety of the estate, his contention being that the deed of the 18th December, 1918, operated as a surrender of the interests of the widows of their interests in the estate. Rudra Pratab Singh did not oppose the application. The application was opposed by the Manager of the Court of Wards on various grounds, one of which it is only necessary in the view their Lordships take of the law applicable to the case to consider, and that is that the Court of Wards had not sanctioned the so-called surrender and that it was consequently invalid under Section 60 of the Court of Wards Act, 1879. That section is as follows :

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof. "

14. The Court in that section mentioned was the Court of Wards. Gobind Singh's application for mutation of names was rejected. Gobind Singh died in October, 1919. Maharani Tarabati died in August, 1920. Man Singh, who was the son of Gobind Singh, brought this suit on the 17th January, 1921. In his plaint Man Singh referred to the deed of the 18th December, 1918, and relied upon it as a surrender by the widows of their interest as proprietors of the Sonbarsa estate and as having vested that estate in his father, Gobind Singh, and in Rudra Pratab Singh. The eleventh, twelfth and thirteenth paragraphs of the plaint state the title upon which the suit was brought thus :

11. That by the said deed of surrender the said Maharanees having put an end to

their life estate as Hindu widows in favour of the entire body of the then reversioner's the aforesaid Rao Bahadur Gobind Singh and Rudra Pratap Singh the defendant, second party in the aforesaid Sonbarsa estate, all the properties both moveable and immovable appertaining to the said Sonbarsa Estate vested solely and absolutely in the said reversioner's, who became entitled to hold, possess and enjoy the aforesaid estate as the absolute owners of and successors to the properties let by their maternal grandfather by right of inheritance under the Benares School of Hindu Law.

12. That as the aforesaid heritage being one which is known as obstructed heritage, the plaintiff's father Rao Bahadur Gobind Singh and Rao Bahadur Rudra Pratap Singh, the defendant, 2nd party acquired equal rights in the same and the share of each being a moiety of the said properties.

13. That the plaintiff's father, Rao Bahadur Gobind Singh, died in October, 1919 leaving the plaintiff his only son and the sole heir to his estate and he is lawfully entitled to all the rights and interest acquired by his late father in the aforesaid Sonbarsa estate by virtue of one aforesaid deed of surrender."

15. Man Singh, the plaintiff, prayed for the following amongst other reliefs :-

"(a) That the Court be pleased to declare that by the deed of surrender and the ekranama, dated the 18th of December 1918, the plaintiff's father and the defendant 2nd party became entitled as the next immediate reversionary heirs of the late Maharaja Sir Harbally Narain Singh Bahadur K.C.I.E., to all the properties left by him and the defendant, 1st party has no right to withhold possession of the Sonbarsa Estate from the plaintiff and the defendant 2nd party. That the Court be pleased to pass a decree for recovery of possession of all the properties moveable and immovable mentioned in Schedules A and B annexed to the plaint as well as any other properties that may be found on discovery to appertain to the Sonbarsa Estate in favour of the plaintiff and the defendant 2nd party by dispossessing the defendant 1st party. "

In Schedule B of the plaint, which contains a list of the moveable properties which were claimed : carriages, palkis, cattle, elephants, bullocks, cows, buffaloes, horses, and other things are mentioned as having been retained in the possession of Maharani Nowlakhbati.

16. The defendants, Maharani Nowlakhbati and Rudra Pratab Singh filed separate written statements. The Maharani Nowlakhbati in her written statement pleaded amongst other things that the widows being disqualified persons and their estate being under the management of the Court of Wards, they had no authority to execute the

alleged deed of surrender without the sanction of the Court of Wards and that the plaintiff's father did not acquire any valid title under the said deed, and also did not admit as correct the view of the law pro pounded in paragraphs 12 and 13 of the plaint and put the plaintiff to proof of his title.

17. The defendant Rudra Pratab Singh in his written statement pleaded amongst other things that the alleged deed of surrender was not a surrender of the whole interest of the Maharani's and was void and illegal, and also that it was void and ineffectual as not having the sanction of the Court of Wards. Rudra Pratab Singh by his written statement put the plaintiff to proof of his title.

18. The Subordinate Judge framed twelve issues, of which the fifth is in the opinion of their Lordships the crucial issue in this case. It was "5. Is the deed of surrender valid having regard to the provisions of Section 60 of the Court of Wards Act (IX of 1879)?" If it is found that the deed of the 18th December 1918, was in contravention of that section the plaintiff's suit fails and this appeal fails, and it is not necessary for their Lordships to consider whether the widows understood the deed or had executed it under any misrepresentation as to its object or effect, or with out any independent advice, or to consider any other issue or the questions of law raised in the eleventh paragraph of the written statement of the Maharani Nowlakhbati, which was that "the plaintiff should prove that he is entitled to a moiety share in the Sonbarsa Estate, even if the said deed of surrender be held to be a valid document." Whilst saying this, their Lordships feel it right to say that the lengthy and elaborate judgments of the Courts below have been of assistance to them in understanding the facts which were in dispute between the par ties to this suit.

19. In this case no question, that there was any necessity for the surrender, arose. There was in fact no necessity for a surrender of the interest of the widows. The Subordinate Judge and the High Court in appeal concurrently found in effect that the parties to the deed of the 18th December, 1918, intended by that deed that the widows should surrender some of their interests in the Sonbarsa Estate to Gobind Singh and Rudra Pratab Singh, and that the so called surrender was void as being in contravention of Section 60 of the Court of Wards Act, 1879. Those learned judges might have found on the facts that the deed was void independently of Section 60 of the Act.

20. The question as to whether a surrender without necessity by a Hindu widow of her widow's interest in her deceased hus band's estate, even in favour of the nearest

reversioner, is valid was considered by the Board in *Rangasami Gounden v. Nachiappa Gounden* In the judgment of the Board in that case, at page 84, it was said that :

The result of the consideration of the decided cases may be summarized thus :
(1), An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioner's at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner."

21. In *Sureshwar Misser v. Mahashrani Misrain* the Board affirmed that pronouncement of the law. In the latter case in which the parties were subject to the law of the Mithila school, the widow of the deceased proprietor on the death of her infant son took absolutely the moveable property. In that case there were serious disputes in the family as to title and the next reversioner's to the son sued the widow and her daughters to set aside the Will of her husband under which the daughters were entitled to succeed to the immovable property on the death of the son without issue. A family compromise was agreed to, and in performance of it the widow surrendered all her rights of succession to the immovable property and the plaintiff the next reversioner, and her daughters gave her for her life a small portion of the land for her maintenance. The Board held that the compromise was a *bona fide* surrender of the estate, and not a device to divide it with the next reversioner, the giving of a small portion of it to the widow for her maintenance not being objectionable, and consequently that the transaction was valid under the principles laid down by the Board in *Rangasami Gounden v. Nachiappa Gounden*

22. The so called surrender in the present case was, as stated above, void in law, and was also void as being in contravention of section 60 of that Act.

23. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

[1919] 42 Mad. 523 : 46 I. A. 72 : 36 M. L. J. 493 : 17 A. L. J. 536 : 29 C. L. J. 539 : 21 Bom. L. R. 640 : 10 L. W. 105 : 23 C. W. N. 777 : (1919) M. W. N. 262 : 26 M. L.

T. 5 (P. C.).

[1920] 48 Cal. 100 : 47 I. A. 233 : 39 M. L. J. 161 : 18 : A. L. J. 1069 : 25 C. W. N. 194 : 12 L. W. 461 : (1920) M.W. N. 472 : 23 M. L. T. 154 (P. C.).

[1919] 42 Mad. 523 : 46 I. A. 72 : 36 M. L. J. 493 : 17 A. L. J. 536 : 29 C. L. J. 539 : 21 Bom. L. R. 640 : 10 L. W. 105 : 23 C. W. N. 777 : (1919) M. W. N. 262 : 26 M. L. T. 5 (P. C.)