PRIVY COUNCIL

(Thakur) Bageshwari Charan Singh

Vs.

Thakurain Jagarnath Kuari

P.C.A.No.98 of 1930
(Viscount Dunedin, Lords Blanesburgh, Sir John Wallis, Sir George Lowndes and Sir Dinshah Mulla JJ.)

04.12.1931

JUDGMENT

VISCOUNT DUNEDIN J.

1. This is an appeal from a decree of the High Court of Judicature at Patna, dated 9th January 1929, which affirmed a decree of the Additional Subordinate Judge of Hazaribagh, dated 25th April 1926, dismissing the plaintiff-appellant's suit.

2. *Thakur Jadu Charan Singh*, the plaintiff's grandfather, was the owner of an impartible estate known as the Dhargulli Estate, in the District of Hazaribagh. He was heavily in debt, and by an order passed under section 2, Chota Nagpur Encumbered Estates Act (6 of 1876) in 1894, the management of the whole of his estate was vested in a Manager appointed under that Act. The management of the estate continued under the Act until 15th May 1909, when the estate was released and made over to him according to the provisions of the Act.

> Section 12-A, paras. 1, 2 and 3 of the Act, provide :
> " 12-A.-(1) When the possession and enjoyment of property is restored, under the circumstances mentioned in Clause 1 or Clause 3, Section 12, to the person who was the holder of such property when the application under Section 2 was made, such person shall not be competent, without the previous sanction of the Commissioner : (a) to alienate such property, or any part thereof, in any way, or (b) to create any charge thereon extending beyond his lifetime. (2) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final. (3) Every alienation and charge made or attempted in contravention of Sub-Section (1) shall be

void."

3. In 1909 *Jadu Charan Singh*, without having obtained any sanction from the Commissioner, executed a deed of gift of certain lands in favor of his second wife, who is now his widow and the respondent in this appeal. She entered into possession of these lands and was in possession up to 1920, when she transferred the lands to her son, also a respondent in this appeal. Jadu Charan Singh died on 21st February 1924. His eldest son being dead, he was succeeded in the estate by his grandson, the plaintiff-appellant. The present suit was instituted by him on 24th February 1925, and sought to recover the lands which had been transferred without sanction in 1909. The only effective defense was under the Limitation Act, and this defense was found to be good by the Subordinate Judge and by the Court of Appeal, and the suit was dismissed. Both these Courts held that it was a case of adverse possession and therefore fall within Article 144, Schedule 1, Lim. Act, 1908. In their Lordship's view inasmuch as it has been found as a fact that after the deed of 1909 the late Thakur discontinued his possession and never resumed it, it is rather a case which falls within Article 142. The result however is the same if the 12 years ran from 1909. But the appellant pleads that the 12 years do not run from 1909, owing to the following facts. In March 1916, the Thakur filed a petition with the Commissioner in which he related the deed of gift to his wife, expressed a doubt as to whether the deed of gift was valid, and asked the Commissioner either to declare that the deed was valid or to give his sanction to the execution of a fresh deed of gift. At the same time the wife. the present respondent, filed a petition in these terms :

> " The humble petition of Thakurain Jagarnath Kuari, wife of Thakur Jado Charan Singh, proprietor of Gadi Dhurgulli, Parganna Rampore, District Hazaribagh, most respectfully sheweth.
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> " That in view of the petition filed by Thakur Jado Charan Singh, your petitioner begs to file the original deed of gilt and prays that your Honour may be pleased to sanction the same or order a fresh grant on the same terms to be executed. "

4. This petition was signed by Selfher.

> Section 19, Lim. Act, is as follows :
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> " 19.-(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through

whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

" Explanation 1.-For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right."

5. The appellant urges that this is an acknowledgment of liability in terms of the section and that therefore the period of limitation only began in 1916, and 12 years had not elapsed when the suit was raised in 1925. Both the Subordinate Judge and the Judges of the High Court disposed of this in a single sentence by simply saying that they found no such acknowledgment. Their Lordships are unable to agree with this view. The petition produces the deed of gift and asks that it may be sanctioned or that a fresh grant may be ordered. This is a clear acknowledgement that unless one of the two things is done, she has no title at all, or, in other words, that she recognizes that the title is in the Thakur, her husband, and not in herself.

6. The Subordinate judge however raised another point. He says that the acknowledgment contained in the petition, not being registered cannot be received in evidence, and he quotes in support of this the case of *Faki v. Khotu [1879] 4 Bom. 590*. The section of the Registration Act on which the question depends is Section 17(1), which is as follows:

" The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which Act 16 of 1864 or the Registration Act, 1866, or the Registration Act, 1871, or the Registration Act, 1877, or this Act came or comes into force, namely :

" (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property."

7. Now the case of *Faki v. Khotu [1879] 4 Bom. 590*. undoubtedly goes the whole length that the respondents desire. It was a case where limitation was pleaded The judgment on p. 593, after reciting the document in question goes on thus:

" The plaintiff wishes to use it (i. e., the document) as an admission or

> acknowledgment of his title to the lands, and as proof that, at the date of the document, the defendant's possession was not adverse to him. The document undoubtedly contains such an acknowledgment and if it be genuine and relevant, a Court which had to determine the question of fact, would probably consider that acknowledgment sufficient proof that the defendant's possession was really the plaintiff's possession.....
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> " The Assistant Judge has held that the document is inadmissible in evidence, because it is not registered; and we are of opinion that this decision is right. The plaintiff wishes to use the document as an acknowledgment of a right, title and interest in immovable property, which is admittedly of a higher value than one hundred rupees. If admitted, it will " operate to declare " such a right, title and interest, and it thus appears to come within the terms of Section 17 Act 20 of 1866."

8. But the question remains whether that case was rightly decided. Their Lordships are of opinion that it was not and that it was inconsistent with a long track of decisions which are incompatible with it. The first of these will he found in the case of *Sakha Ram Krishnaji v. Madan Krishnaji [1880] 5 Bom. 232*. The question there was as to a document in the following words :

> " Our eldest brother M. has built houses and is building new houses on property appertaining to his share.....To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should prefer any claim, then the same is to be null. This release paper we have duly passed in writing jointly and severally and in sound mind."

9. The document had not been registered and it was objected that it could not be put in evidence in order to contradict a witness. Dealing with it West, J., said :

> "Here.... the document is not itself one which declares a right in immovable property, in the sense probably intended by Section 17. There "declare" is placed along with "create," "limit" or "extinguish" a " right, title or interest," and these words imply definite change of legal relation to the property by an expression of will embodied in the document referred to. I think this is equally the case with the word " declare." It implies a declaration of will, not a mere statement of fact, and thus a deed of partition, which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense; but a letter containing an admission direct or inferential, that a partition once took place, does not "declare" a right within the meaning of the section."

10. Now it is quite clear in comparing these two cases that they took diametrically opposite views as to the proper meaning of the word "declare" in the 17th section, and it is upon that point that the whole question turns. Subsequent decisions have given full effect to the view of West, J., in the Krishnaji's case.

11. In the case of *Jiwan Ali Beg v. Basa Mal [1886] 9 All 108=(1886) AWN 310 (FB)*, the head-note accurately sets forth one of the points in the case :

> "An instrument to come within Section 17(b), Registration Act (3 of 1877), must in itself purport or operate to create, declare, assign, limit or extinguish some right, title or interest of the value of Rs. 100 or upwards in immovable property."

12. Then in the case of *Runganayaki Animal v. Virupakshee Rao Naidu* the learned Judge in the High Court expressly cites the words of West, J., in Krishnaji's case, and in the case of *Baldeo Singh v. Udal Singh 4 (of 43 All.)* precisely the same thing is done.

13. Their Lordships have no doubt that this track of decision is right. Though the word " declare" might be given a wider meaning, they are satisfied that the view originally taken by West, J., is right. The distinction is, between a mere recital of a fact and something which in itself creates a title. The distinction has been acted on in cases connected with mortgages by deposit of documents of title. A comparison of the case of *Mahomed Ismail Ariff v. Dawood* will show that, according to this distinction, a document requires registration or not. In the present case the statement in the petition of tire respondent did not create any right in the Thakur. It merely acknowledged as a fact that such right was his. There was therefore no necessity for registration. It is not out of place to remark that this exactly fits in with Expl.1. If you take the case of an acknowledgment contained in a communication addressed to a third party registration is not practicable; it is scarcely conceivable that it could be required.

14. Their Lordships will therefore humbly advise His Majesty to allow the appeal and to set aside the decrees of both the Courts below with costs, and in lien thereof that judgment ought to be entered for the appellant. The respondents will pay the costs of the appeal.

Appeal allowed.

Cases Referred.

AIR 1923 Madras 621=72 IC 456 at p. 102 (of 45 MLJ),

AIR 1921 Allahabad 248=58 IC 732=43 All 1 at p.

AIR 1916 PC 132=35 IC 30=43 IA 127=43 Cal 1085 (PC), with that of Subramanian v. Lutchman AIR 1923 PC 50=71 IC 650=50 IA 77=1 Rang 66=50 Cal 338 (PC)