

## **PRIVY COUNCIL**

Nawab Humayun Begam

Vs.

Nawab Shah Mohammad Khan

P.C.A.No.42 of 1941

(Lords Atkin, Thankerton Clauso, Sir George Rankin and Sir Madhavan Nair JJ.)

24.02.1943

### **JUDGMENT**

#### **LORD ATKIN J.**

1. This is an appeal from a decree from the Chief Court of Oudh, which had reversed the decree of the Subordinate Judge of Lucknow, who had made a decree in favour of the plaintiff, the present appellant. The claim was contained in a suit which was commenced-and the date is for some purposes important-on 15th September 1934. It was a case in which, as originally framed, the plaintiff instituted a suit against her husband, his son, defendant 2, and two banks in India with whom money had been deposited on fixed deposit receipt and the claim was brought by the lady for a declaration that certain sums of money which were held by the banks on deposit receipt were her property and not her husband's. The facts appear to be that the lady was married in 1928 to the defendant, and in 1929 she had handed certain money-the only sum which their Lordships need trouble with at present is a sum of Rs. 99,000-which belonged to her, to her husband to be put on deposit in the bank in their joint names. The lady is a purdahnasheen lady and illiterate, except that she can write and read elementary Urdu. At different times the husband had transferred the money from the joint account in the name of himself and his wife into, in some cases, his own name, and in other cases into the joint names of himself and his son; and at the time that the suit was brought, by a series of different renewals of the deposit receipts, a substantial amount, which probably by this time had grown to a lakh, was in the name of the husband and his son on a deposit receipt which expired on 1st October 1934.

2. The lady made the banks, as well as the husband and the son, defendants to the suit. Certain defences were put up, one being that the money never was the plaintiff's at all;

and secondly, a somewhat inconsistent defence, that she had given the money to her husband. However, both those defences were held by both Courts to be bad, and their Lordships are not concerned with them; they have not been contested here, there being concurrent findings on those important questions of fact. Therefore, the position would seem to be that the lady was entitled to say, when she issued her plaint, that these sums of money which then stood in the bank were hers. It is to be remembered that at this time the amount on the contract, if she was at all bound by the contract, was not due, because the time had not fully expired. There is only one further fact that need be mentioned, which is that in order to manage her affairs she had given to her husband a power of attorney with full authority to act for her and in her name. The Subordinate Judge, having come to the findings mentioned, held the lady was entitled to the declaration claimed and decreed accordingly. In the Chief Court the point was made, as indeed had been made before the Subordinate Judge, that under section 42, Specific Relief Act, the lady was not entitled to the declaration that, she asked. Section 42 is quite plain that any person entitled to any right to any property may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

3. The Chief Court held that the lady was entitled to ask for other relief and, therefore, she could not merely get her declaration of title. No doubt, as has been suggested, at any rate, one of the reasons for the proviso is to protect the revenue from having a suit brought without the proper ad valorem stamp fee having been paid. The stamp of a declaration is a nominal stamp fee, whereas, if other relief had been claimed it would have been ad valorem. It appears to their Lordships that in this case the plaintiff was clearly entitled to the declaration that she asked for and that she was not able to ask for any other relief. Soon after the suit was brought, but after the period at which the fixed deposit had expired, in other words, in December 1934, on an application made before the Sub-ordinate Judge, the banks submitted to pay to whomsoever the Court should decide had the title and thereupon they were discharged from the Suit. Their Lordships do not stay to comment upon that, except possibly to say that it is not quite clear that that was the right course to take in a case where a declaration was claimed. It might well have been thought fit to allow the banks to remain in the suit for the purpose of being bound by the declaration that was sought, but they have in fact been dismissed from the suit and the action then proceeded against the present defendant

who may be treated for practical purposes as being the husband-the minor son for this purpose does not count. In those circumstances it seems to their Lordships that the lady was entitled to a declaration against the husband and there was no other relief she could properly claim against him; indeed, once the banks had been treated as out of the case, which their Lordships think is the right way of treating it for this purpose, it is conceded, quite rightly by counsel for the respondents, that there was no other relief which could be claimed against the husband. The money was in the banks and at the disposal of the plaintiff and it would have been impossible to make any other claim against the husband except for a declaration that the money in the banks was money which the plaintiff was entitled to have paid out to her.

4. In those circumstances it appears to their Lordships that the decision of the Chief Court has ignored the true position, and that they ought to have dealt with the matter as though the respondent was the sole defendant and on that footing to have given the lady the declaration that she asked for. It may be desirable, however, to add a word or two about the position supposing the case was to be treated as one in which the banks had remained parties to the suit and whether relief could be asked against them. Upon that, all that is necessary to say is that any such claim would have involved what might have been a very difficult cause of action against the banks at that time. What is suggested is that the lady could have sued the banks straightway for the recovery of the money; but in fact the banks would no doubt have said :

5. This is a case where we entered into relations with the husband who had actual authority under a power of attorney to act for his wife; he had obviously ostensible authority and probably actual authority and we cannot be bound to pay the money until the time fixed for the deposit has expired because the lady, in those circumstances, would be bound by the terms of the deposit.

It seems to their Lordships impossible to suppose the lady in those circumstances would have been bound to claim relief against the banks for immediate payment of the money. That is an argument which has been used before their Lordships. But it appears to be unnecessary to decide that matter because it is quite sufficient for their Lordships to determine the matter on the position, as in fact it is and was when it arose before the Chief Court, namely, that the banks were no longer there, they having been dismissed. Therefore, the proviso is quite irrelevant in so far as it relates to possible relief claimed against the defendants. It is well settled that the "other relief" mentioned in the proviso must be "other relief" against the defendant himself against whom the

declaration is sought, and the banks have ceased to be defendants. For these reasons it appears to their Lordships that this is a very plain case of the lady being entitled to a declaration in respect of property of which otherwise she would have been deprived. She seems to have been properly advised to claim the relief which she did claim and in their Lordships' opinion it ought to be granted. In the result therefore their Lordships have come to the conclusion that this appeal should be allowed, the decree of the Chief Court set aside and the decree of the Subordinate Judge restored. Their Lordships will humbly advise His Majesty accordingly. The respondent must pay the costs in the Chief Court and of this appeal.

Appeal allowed.