ALLAHABAD HIGH COURT

Fateh Singh

Vs

Thakur Rukmini Ramanji Maharaj

(Grimwood Mears, C.J. and Pramada Charan Banerji, Piggott and Walsh, Ryves, JJ.)

26.01.1923

JUDGMENT

Grimwood Mears, C.J. and Pramada Charan Banerji, Piggott and Ryves, JJ.

1. This second appeal raises certain questions regarding the position of a reversioner who has succeeded to immovable property on the death of a Hindu widow, in respect of an alienation by way of gift or endowment made by the said widow. The essential facts may be stated as follows. The property with which, we are concerned belonged to one Tulsi Ram, who died leaving a son, Daulat Ram. The latter died childless and was succeeded in the possession of the property, first by his own widow, Musammat Man Tumwar, and, afterwards, by his mother Musammat Munian, the widow of Tulsi Ram. On the 19th of April, 1905, Musammat Munian made a gift of certain immovable property in favor of the family idol, who is impleaded as the defendant in this suit, which is contested by Mahant Puran Das, the manager of the temple in which the idol is installed. At the time of this transfer the nearest reversioners to the estate of Daulat Ram were the grandsons of one Daya Nand, who was the own brother of Sukhdeo, the father of Tulsi Ram. On the 12th of May, 1905, two of these reversioners, by name Fateh Singh and Bandar, executed a document which has been referred to in the pleadings and arguments as a deed of relinquishment. The third reversioner, by name Duli Chand, instituted a suit, in the year 1907, claiming a declaration that the transfer effected in favor of the idol was not valid beyond the life-time of Musammat Munian and would not bind the reversioner or reversioners who might succeed to the estate on that lady's death. He obtained, after contest, a decree granting him the declaration sought for. It is not suggested that there was any kind of fraud or collusion in connection with the passing of this decree in favor of Duli Chand. Musammat Munian lived until the 12th of December, 1916. When she died the succession opened in favor of Fateh Singh and Duli Chand, Sundar having died in the interval. For some reason with which we are not concerned, Duli Chand has, up to the present, taken no effective steps to recover possession of any part of the property covered by the deed of gift of the 19th of April. 1905. The suit out of which this appeal arises was instituted by Fateh Singh the 31st of July, 1918. The plaintiff asserts that he is actually in possession of some of the property covered by the deed of gift of the 19th of April, 1905 but

he claims to recover a one-half share of the remainder, admitting that the other half share has passed by inheritance to Duli Chand. The suit was resisted on various grounds, with two of which only we are now concerned. It was contended on behalf of the plaintiff that the decree in favor of Duli Chand in suit No. 163 of 1907 was conclusive as to the invalidity of the gift beyond the life-time of Musammat Munian, so that the court was bound to accept that decision and to decree the plaintiff's claim accordingly. On behalf of the defendant it was denied that the decree in favor of Duli Chand could operate as res judicata in favor of Fateh Singh in respect of any of the questions raised. It was further contended that, in any event, Fateh Singh was bound by the terms of his own deed of relinquishment of the 12th of May, 1905, and was, therefore, debarred from contesting the validity of the alienation.

2. The case was argued before a Bench of two Judges, by whom it was referred to a Full Bench in order that the questions of law raised might be finally determined.

3. The question regarding the effect of the decision in favor of Duli Chand in suit No. 163 of 1907 need no detain us long, indeed it was not argued before us. In the case of *Kesho Prasad Singji v. Sheo Pargash Ojha*[1] it was held that, on the principles laid down by their Lordships of the Privy Council in *Venkatanaryana Pillai v. Subbammal*[2] a decision in favor of one reversioner in a declaratory suit such as that brought by Duli Chand would ordinarily, in the absence of fraud or collusion, bind the whole body of reversioners. We are satisfied that we could have treated the judgment in favor of Duli Chand as conclusive in respect of all matters actually decided in that litigation. The point is not really material, so far as the result of the present appeal is concerned. By way of precaution, in order that the other point which we have to decide with respect to the deed of relinquishment of the 12th of May, 1905, might come before us as a definite question of law, clear of all possible controversy as to matters of fact, we remitted certain issues for further investigation by the lower appellate court. One result of this has been a finding that the gift made by Musammat Munian in favor of the defendant idol covered about two-thirds of the estate in the possession of the said donor as a Hindu widow. We have no doubt that such an alienation, for the purpose stated in this deed of gift, could not be justified per se and that the suit brought by Duli Chand was rightly decided.

4. We are equally satisfied, however, that the decision in Duli Chand's suit did not, and could not, determine the further question which arises in the present litigation, namely, whether Fateh Singh personally, by reason of the deed of relinquishment of the 12th of May, 1905, is precluded from raising the question whether or not Musammat Munian has exceeded her powers of alienation in making the gift in question. The trial court seems to have relied principally on certain dicta in the decision of their Lordships of the Privy Council in the case of *Amrit Narayan Singh v. Gaya Singh*[4] Undoubtedly this is authority for the proposition that, when he joined in the execution of this deed on the 12th of May, 1905, Fateh Singh possessed no interest in the property therein referred to which, he could assign or relinquish; his right became concrete only on the demise of Musammat Munian, until then it was a mere spes successionis. Without in any way questioning

the correctness of this principle, we are nevertheless of opinion that the lower appellate court, the learned District Judge of Agra, was right in holding that Fateh Singh is so bound by the terms of his own deed of the 12th of May, 1905, that he cannot successfully impugn the alienation to which he then gave his unqualified assent. ,We have examined this document and we find that it is drawn up in the strongest possible terms. The two executants, Fateh Singh and Sundar, purport to renounce whatever rights and relinquish whatever interest they might conceivably possess under the Hindu law in respect of the property covered by the deed of gift; but they do even more than this. They expressly covenant that at no time hereafter will either of them, or their heirs, successors or representatives, set up any right or claim whatsoever to the property specified at the foot of the deed, which is of course the property conveyed to the defendant idol by Musammat Munian in her deed of the 19th of April, 1905.

5. One minor matter in controversy was whether Paten Singh and Sandar received any consideration for the execution of this deed of relinquishment. We have obtained a finding from the District Judge that no such consideration passed. We are not concerned with the question of the correctness of this finding. In the deed of relinquishment itself the executants state that their motive for executing the same is that the gift was-one in favor of the tutelary deity of the family and they purport to be actuated by pious and religious motives. We are content to deal with the matter on this footing.

6. On the question of law involved we were referred, in the course of argument, to a number of decided cases; we do not think it will be necessary for us to refer to more than a few of these. The latest decision of this Court is clearly in favor of the defendant idol. The learned Judges who decided the case of *Mahadeo Prasad Singh v. Mata Prasad*[4] after a review of previous authorities, held that a reversioner who had joined in making, or had ratified, a particular transfer by a Hindu widow could not, in the event of the succession opening in his favour, be permitted to question the validity of that transfer. We appreciate the fact that one of the reasons for the reference made; to a Full Bench in the present case was to have the decision above quoted fully considered and discussed; but the respondent is clearly entitled to have it noted that the latest authoritative pronouncement of this Court on the question in issue is directly in his favour. Much of the argument before us has turned upon two cases of the Bombay High Court *Bai Parvati v. Dayabhai Manchharam*[5] and *Basappa v. Fakirappa*[6] The first of these decisions may fairly be described as the sheet-anchor of the plaintiff appellant's case and, at first sight, it is very much in his favour. It is a clear instance of a transfer made by a Hindu widow, jointly with the reversioner entitled to succeed upon her death, being set aside, at the instance of the same reversioner, after the succession had opened. In the later case, however, the learned Judges of the Bombay High Court themselves pointed out that the decision in Bai Parvati v. Dayabhai Manchharam proceeded upon a peculiar and exceptional state of facts. The alienation there contested was made under a deed by which the widow purported to assign-her life-interest only, while the reversioner purported to convey whatever rights belonged to her on the date of the execution. It was rightly held that the reversioner possessed no rights capable of assignment in the life-time of

the widow, and that it is not a correct proposition of law to say that the widow and the nearest reversioner between them represent the entire estate. These principles once recognized, it becomes obvious that the widow herself having conveyed nothing but her life-interest, nothing more than this could pass under the deed. In the case of Basappa v. Fakirappa (1921) I.L.R. 46 Bom. 292(Supra) the learned Judges of the Bombay High Court explained their earlier decision and held, that a gift by a Hindu widow of a portion of her late husband's estate in her hands as such widow, if made with the consent of the nearest reversioner living at the time of the conveyance, was valid as against the reversioner who had so consented, in the event of the succession opening in favor of the said reversioner. The learned Judges there pointed out that, with the exception of their own previous decision, which they distinguished for the reasons already explained, their attention had not been drawn to a single reported case in which a reversioner had been permitted, after he had succeeded to the estate, to challenge a conveyance made by the widow to which he had expressly assented before the succession opened. We find ourselves in the same position and it might almost be sufficient for us to say that the whole weight of authority is in favor of the respondent to this appeal. We were referred in argument to a number of cases of this Court, both reported and unreported, in which similar attempts by a reversioner who had succeeded to an estate to set aside a conveyance by the widow, to which he had assented, or which had been ratified by him before the succession opened, had been defeated. The argument before us really turned upon an attempt to define with precision some general principle of law upon which these decisions could all be based. We are of opinion that such a principle is to be found upon a consideration of two important decisions of their Lordships of the Privy Council, *Bajrangi Singh v. Manokarnika Bakhsh Singh*[7] and *Rangasami Gounden v. Nachiappa Gounden*[8] The former was a case from Oudh, and it was an attempt to contest an alienation which had been made by a Hindu widow with the express concurrence of practically the entire body of reversioners living at the time. Their Lordships repelled this attempt; but in so doing made use of expressions about which considerable controversy arose in the courts in India. For this reason their Lordships themselves, in the later case above referred to, entered upon an elaborate review of the entire question of the legal effect upon the validity of transfers made by a Hindu widow of her deceased husband's estate held by her as such widow, of the concurrence, consent or ratification of the nearest reversioners living at the time of the transfer. It is towards the close of their judgment that their Lordships laid down the principle upon which the controversy now before us ought, in our opinion, to be determined. After discussing various aspects of the question, and explaining the decision in Bajrangi Singh's case, their Lordships entered upon this particular aspect of the question in an important paragraph which begins with the words, "No doubt there is another view which is not estoppel, but is expressed by, one learned Judge as ratification. It is scarcely that, though it might be hypercriticism to object to the use of the word. What it is based on is this. An alienation by a widow is not a void contract. It is only voidable." For this last proposition express authority is quoted in the case of *Bijoy Gopal Mukerji v. Krishna Mahishi Debi*[9] Their Lordships go on to point out that, if a reversioner who had actually succeeded to the estate, thereupon did something which showed that he treated the alienation as good, he would lose his right of complaint. "This may be spoken of, though

scarcely accurately, as ratification. In some cases it has been expressed as an election to hold the deed good." They then pointed out that a presumptive reversionary heir was not bound to challenge an; alienation by the widow in possession of the estate as soon as if came to his knowledge, but was entitled to wait till "the death of the widow has affirmed his character." They added; "Of course something might be done even before that time which amounted to an actual election to hold the deed good." If these words are carefully considered with reference to their context, it seems to us quite beyond question that they refer to something done by the reversioner before the death of the widow has "affirmed his character." Applying this principle, the conclusion we arrive at is that no reversioner could well have done anything before the death of the widow which so clearly amounted to an actual election to hold good the transfer effected by the widow, while in possession of the estate to which he had since succeeded, as what Fateh Singh did when he executed the deed of the 12th of May, 1905. Having made this election he cannot be permitted, now that the succession has opened in his favor in respect of half of the estate formerly in Musammat Munian's possession, to challenge the validity of the transfer which he had expressly bound himself to accept. Whether his action be spoken of as a ratification of the transfer, or as an election to hold good the deed of the 19th of April, 1905, we are satisfied that it is binding upon Patch Singh so that he personally is not permitted to challenge its effect.

7. For these reasons we are of opinion that the decision of the learned District Judge of Agra was in substance correct and that Fateh Singh's suit must fail. We have before us another small matter with which it is necessary for us to deal. The respondent has petitioned this Court pointing out a small error in the decree of the lower appellate court, in which a sum of Rs. 100 paid on account of pleader's fees has been omitted, apparently by mere oversight, from the schedule of costs incurred by the respondent. We order that this omission be made good by the insertion of the said sum of Rs. 100 in the schedule, part from this small rectification, we affirm the judgment and decree of the lower appellate court, dismissing this appeal with costs.

Walsh, J.

8. I entirely agree. In my judgment, the so-called deed of relinquishment, which is not an accurate description of a deed of confirmation and consent, is an absolute bar to a suit by either Fateh Singh, or those who claim under him, for his share. It does not matter whether it is called an estoppel, an election, or an equitable bar; we have to give effect to the acts and intentions of parties as evidenced by their conduct, unless prevented by some statute, or by some rule of law or equity. The proportion of the estate given by the widow's deed of gift or endowment is exceptionally large, and could not stand proprio vigore. But it is an endowment for religious purposes, and, if within the limits as regards amount permitted by law, would be valid. The only question, as it seems to me, which arises in this appeal is whether Fateh Singh, in view of his conduct, could be heard to say that it was in excess of what was legally permissible. No question is raised as to the right of any other reversioner to challenge the propriety of the gift. Nor is it an adequate answer to the question propounded, merely to show that there was no binding

agreement under the Indian Contract Act. The District Judge, in dealing with the issues referred by the Full Bench has, perhaps inevitably, confined himself to the question of a simple contract. But the clear terms of Fateh Singh's deed, the circumstance that it was almost contemporaneous with the deed of endowment, and with an attempt by the donor to confer some benefit on Fateh Singh by will, and, further, the fact that Fateh Singh's brother, Sundar, solemnly joined, all go to show that the three parties, from high motives and for adequate reasons, approved of and desired to encourage this religious endowment, and that as a fundamental element in such mutual arrangement, Fateh Singh agreed not to claim his share of the reversion if he ever became entitled to one. The principle that, when such a course of conduct is clearly established, the person who has consented or elected to approve cannot afterwards make a claim inconsistent with his own solemn act, has been established by the courts in India in a long series of cases. The distinction between such a case and the attempt to transfer a spes successionis contrary to the provisions of Section 6 of the Transfer of Property Act, is clearly marked by a comparison of Bai Parvati v. Dayabhai Manchharam (1919) I.L.R. 44 Bom. 488(Supra) with Basappa v. Fakirappa (1921) I.L.R. 46 Bom. 292(Supra). The decision of the District Judge in this case has not been shown to conflict with any rule laid down by their Lordships of the Privy Council, and was clearly right.

9. The question of the effect of the decree in favor of Duli Chand does not, in my opinion, arise, and the point was conceded at the Bar during the hearing.

Cases Referred.

1(1921) I.L.R. 44 All. 19
2(1915) I.L.R. 38 Mad. 406
3(1917) I.L.R. 45 Calc. 590
4(1921) I.L.R. 44 All. 44
5(1919) I.L.R. 44 Bom. 488
6(1921) I.L.R. 46 Bom. 292
7(1907) I.L.R. 30 All. 1
8(1918) I.L.R. 42 Mad. 523
9(1907) I.L.R. 34 Calc. 320