

# CALCUTTA HIGH COURT

Promotha Nath Ray Chaudhuri

Vs

Dinamani Chaudhurani

(Mitra and Caspersz, JJ.)

15.02.1907

## JUDGMENT

**Mitra , J.**

1. The questions raised before us in these appeals relate to the plea of limitation.
2. Golucknath Ray was the owner of the lands in controversy. He died many years ago leaving him surviving a widow Jahnavi Chaudhurani and after giving her an authority to adopt a son or three sons in succession. In pursuance of the authority to adopt Jahnavi adopted Baikuntath Ray, but when the latter had attained the age of majority, disputes arose between them as to the management of the estate left by Golucknath. Jahnavi sought to keep the management and control to the exclusion of Baikuntath. These disputes, however, were settled by an ekrarnama executed on the 22nd Bhadra 1272 B.S., corresponding with 6th September 1865. Baikuntath married the plaintiff Dinamani Chaudhurani and on his death, without male issue in 1887, Dinamani, as his widow, became his heiress. Jahnavi, however, continued to be in possession in the same way as before Baikuntath's death. She died in 1900, and then Dinamani took possession of the estate left by her father-in-law Golucknath and her husband Baikuntath. During the lifetime of Jahnavi the defendants or their predecessors-in-title had taken possession of the disputed lands and their possession had lasted for more than twelve years before the institution of the suits under appeal.
3. If Jahnavi had an estate for life under the ekrarnama of 1865, and if Baikuntath was the remainderman or reversioner, the death of Jahnavi would be the starting point for calculating the period of limitation under Article 140 of the Second Schedule of the Limitation Act. The lower Courts have construed the deed as giving Jahnavi an estate for life and have decided the question of limitation in favour of the plaintiff. The contention on behalf of the defendants is, that the ekrarnama did not create an estate for life, but that it merely empowered her to manage during her natural life, that it was only an irrevocable power-of-attorney, the estate continuing to be vested in Baikantath in the same way as before the execution of the deed. The further

contention on their behalf is that, even if the deed be not an irrevocable power-of-attorney, the estate created by it was not strictly a life-estate, and Baikuntnath was neither the remainderman nor the reversioner, and his heiress is not entitled to the benefit of Article 140. The case admittedly does not come under Article 141, as Jahnavi was not in possession as a Hindu widow or mother. The contention of the defendants, therefore, is that the plaintiff is barred either under Article 142 or 144 of the Second Schedule.

4. The question of the construction of this deed is not res integra. In 1897 it was construed in this Court at the instance of some of the defendants who, in a suit instituted by Jahnavi for possession of land, pleaded that she had no real right entitling her to sue for possession but that she was merely a manager under the deed. The Court held that the deed gave Jahnavi an estate for life. In two other appeals *Dinamoni v. Elahudad Khan*<sup>1</sup> and *Dinamoni v. Elahadut Khan*<sup>2</sup> in which the present plaintiff was appellant and one Elahudad Khan was the respondent, it was held that the deed gave Jahnavi an estate for life.

5. The conduct of the parties to the deed also tends to show that they thought that Jahnavi was not merely a manager, that she had an estate which entitled her to possession and enjoyment of the profits during her lifetime, and that Baikuntnath was not entitled to re-enter until after her death. A deed of doubtful import is best construed by evidence of the conduct of the parties to it—*optimus interpres rerum usus*.

6. We have carefully examined the document both in the vernacular and the translation in English, and our conclusion is substantially the same as that arrived at by the learned Judges who had to deal with it. The Anumati patra under which Jahnavi obtained her power to adopt a son gave her authority to manage or preserve her husband's estate but without prescribing any period or extent. It created no estate in her. The ekrarnamah, however, executed by her son, distinctly gave her the power to possess and enjoy the property for her life (Bhogbanodahhalikar). The son thereby withdrew all claims to possession of the property covered by the instrument except as to certain villages specified in it. Jahnavi was to perform all acts of possession, to sue and be sued as owner during her life and to appropriate to her own use the profits, conditionally on her paying household and marriage expenses, etc. The son reserved the right to enter into possession only after her death and thereby created in himself the right of a remainderman. He could not exercise any acts of possession or sue for possession a wrong-doer against Jahnavi during the latter's lifetime. These are indicia of an estate for life strictly so-called.

7. But there are other expressions and conditions in the ekrarnama which appear to be anomalous. Jahnavi had not the power of alienation, even of her life-estate, and any accretions and accumulations made during her lifetime were not to go to her heirs or heiresses of stridhan but to her son and his heirs. It would seem that the deed was merely intended to give the rights and impose the obligations of a Hindu widow and to postpone the period of the adopted son's possession until his mother's death. The estate was not a life estate and Baikuntnath was not a

remainderman strictly so Called; Jahnvi's right to possession under the ekrarnamah was also materially different from what right she had under the words in the power of adoption.

8. It is, however, immaterial whether the deed conferred on Jahnvi a life-estate properly so called, and whether Baikanta was a remainderman or reversioner, taking after the lapse of a life estate in its strict sense. Article 140 of the Second Schedule of the Limitation Act contemplates a suit by a remainderman or reversioner for possession of immoveable property, when his estate falls into possession. Baikantanath, and on his death, during Jahnvi's lifetime, his widow Dinamani, were entitled to possession only after the determination of the limited or particular estate held by Jahnvi, whatever its precise nature may have been. The estate did not fall into possession until Jahnvi's death, and we see no bar to the application of Article 140 to the facts of the case, and if that Article applies, the plaintiff's suit is not time-barred.

9. Articles 142 and 144 cannot apply as the plaintiff [which word, according to the interpretation Clause (section 3) includes also any person from or through whom a plaintiff derives his right to sue] was not dispossessed and the possession of the defendants did not become adverse to her until Jahnvi's death.

10. No other question has been argued before as, and, the plea of limitation failing, the appeal must be dismissed with costs.

#### Cases Referred.

17 C.W.N. 678

28 C.W.N. 843