

PRIVY COUNCIL

RANIMONI DASÍ

v.

RADHA PRASAD MULLICK.

* P. C.
1914

March 30.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

Hindu law—Will—Construction of will—Bequest to daughters in equal shares—Subsequent event of death of one daughter leaving male issue—Gift to a class some of whom born out of time.

In this case their Lordships of the Judicial Committee upheld the decision on appeal of the High Court in *Radha Prasad Mullick v. Ranimoni Dasi* (1) to the effect that on the death of Premmoni Dasi leaving male issue, the moiety of the testator's estate enjoyed by her did not pass by survivorship to her sister Ranimoni Dasi, but devolved on the sons of Premmoni Dasi who were in existence at the date of the death of the testator. Their Lordships did not decide the question whether the High Court was wrong in holding that no grandson of the testator born or adopted after his death could take under his will, but said that their decision in the present appeal was not to prejudice the position of Jugal Kissore Sen, the second appellant, if and when such question came before a Court for decision.

APPEAL from a judgment and decree (1st August 1910) of the High Court at Calcutta in its Appellate Jurisdiction, which reversed an order (4th March 1910) of the same Court in its Ordinary Original Civil Jurisdiction.

The plaintiff was the appellant to His Majesty in Council.

The suit out of which this appeal arose related to the construction of the will of one Hari Das Dutt, dated 30th October 1875, on which day he died, leaving him surviving his widow, a daughter Ranimoni Dasi,

*Present: LORD MOULTON, LORD PARKER, SIR JOHN EDGE AND MR. AMEER ALI.

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(the appellant), and another daughter Premmoni Dasi, who had five sons two of whom, Peary Lal Mullick and Behary Lal Mullick, were born after the death of the testator; and another son Jyoti Prasad Mullick died in January 1881 unmarried.

The widow of the testator died on 14th August 1904, and on 19th December 1904 the present suit was brought by Ranimoni Dasi, whose husband, since deceased, adopted one Jugal Kissore Sen in 1890. The defendants were the other daughters of the testator, Premmoni Dasi also a widow, and her four sons Radha Prasad Mullick, Kasi Prasad Mullick, Peary Lal Mullick, and Behary Lal Mullick, and Jugal Kissore Sen (now the second appellant).

The plaint prayed, *inter alia*, that the will of the testator might be construed, and the rights of all parties thereunder ascertained and determined, and that it might be declared that on the true construction of the will, and in the events that had happened, the plaintiff and the defendant Premmoni Dasi were each entitled to a moiety of the estate of the testator absolutely.

In the written statements filed on behalf of Premmoni Dasi and her two youngest sons Peary Lal Mullick and Behary Lal Mullick, it was pleaded, *inter alia*, that there was an intestacy, on the death of the testator, as to the residue of his estate, and in the events which had happened, the defendant Premmoni Dasi, being a daughter with sons, was a preferential heir to the plaintiff who was a widow without a son being born to her at the date when the succession opened out, and that the defendant Premmoni Dasi succeeded to the estate of the testator.

The material portion of the will is set out in the report of the case in the High Court which will be found in I.L.R. 38 Calc. 188.

The first Court (WOODROFFE J.) held that the two daughters of the testator took absolute interests under the will ; and on appeal to a Full Bench of the Court the decree of the first Court was on 23rd April 1906 upheld on that point. The report of that appeal will be found in I. L. R. 33 Calc. 947 ; and the judgment of the first Court is set out on pages 951 to 955 of that report.

Radha Prasad Mullick, and Kasi Prasad Mullick thereupon filed an appeal to His Majesty in Council from the decree of the Appellate Court.

On that appeal their Lordships of the Judicial Committee of the Privy Council delivered judgment on 14th May 1908. After observing that the only question raised upon the appeal was as to the nature of the estate which, in the events that had happened, the testator's daughters took under the terms of the will their Lordships decided that according to the true construction of the will, the intention of the testator was to create, in favour of his daughters, an estate for life, with a remainder over to their sons, and that the High Court ought to have held that, in the events that had happened, the daughters of the testator were entitled to his estate in equal shares for life, and with benefit of survivorship between themselves. The judgment of the Judicial Committee will be found in I. L. R. 35 Calc. 896.

Premmoni Dasi died intestate on 8th May 1909, and on 17th February 1910 Radha Prasad Mullick under the liberty to apply contained in the High Court's decree of 23rd April 1906 made an application to the High Court in its Appellate Jurisdiction for a declaration of his own and Kasi Prasad Mullick's rights as the only sons who were born in the life-time of the testator, to the half-share which was given to their mother Premmoni Dasi and her sons : and he prayed

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that the suit might be further proceeded with in order that the issues and questions in the suit remaining undetermined, which, having regard to the decrees of the High Court and Privy Council already made in the suit, were fit and proper to be determined, might be disposed of by the further decree of the High Court or otherwise as should seem proper.

The application was heard by a Judge of the High Court (FLETCHER J.) who, on 4th March 1910, dismissed it with costs on the ground that after the decision of their Lordships of the Judicial Committee of the Privy Council, dated 14th May 1908, it was not open to the parties to say that the daughters did not take the estate for life with benefit of survivorship.

An appeal by Radha Prasad Mullick was heard by SIR LAWRENCE JENKINS C. J., and WOODROFFE J. who on 1st August 1910 reversed the decree of FLETCHER J. and declared, *inter alia*, that on the true construction of the will, and having regard to the fresh events that had happened, the defendants Radha Prasad Mullick, Kasi Prasad Mullick, and the representatives of Jyoti Prasad Mullick, the brother of theirs who died in 1881, were entitled absolutely in three equal shares to a moiety or one equal half part of the estate of the testator. With regard to the respondents, Peary Lal Mullick and Behary Lal Mullick, the Appellate Court held that they could not take under the will, as they were not in existence at the time of the testator's death. Peary Lal and Behary Lal did not appeal from that decision but were made respondents in the present appeal and filed a case.

The report of the case before the High Court where the judgments of both the first Court and the Appellate Court are set out, will be found in I. L. R.

38 Calc. 188. Pending this appeal Radha Prasad Mullick on 14th June 1912 died intestate leaving his sons Ram Prasad Mullick, Sham Prasad Mullick, and Khetter Prasad Mullick (the two last being infants) his heirs and representatives him surviving, and they were made respondents in this appeal.

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On this appeal,

Sir R. Finlay, K.C., and *Kenworthy Brown*, for the appellants, contended that the moiety of the testator's estate enjoyed by Premmoni Dasi for her life, on her death passed not to her sons, but by survivorship to the appellant Ranimoni Dasi; and that the Appellate Court was wrong in holding that no grandson of the testator born since 1875 could take under his will. Reference was made to the judgment of their Lordships of the Judicial Committee in *Radha Prasad Mullick v. Raneemoni Dasse* (1), and Mayne's Hindu Law, page 762; and it was submitted that the appellate judgment of the High Court should be reversed.

DeGruyther, K. C., and *A. M. Dunne*, for the respondents the heirs and representatives of Radha Prasad Mullick and for Kasi Prasad Mullick.

Ross, K.C. and *G. C. O'Gorman*, for the respondents Peary Lal Mullick and Behary Lal Mullick.

The respondents were not called upon.

The judgment of their Lordships was delivered by LORD MOULTON. Their Lordships have had an opportunity of considering the judgment of the Court below on the question as to whether on the death of Premmoni leaving male issue the estate passed over for life to Ranimoni, and they are of opinion that it

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(1) (1908) I.L.R. 35 Calc. 896, 901 : L.R. 35 I.A. 118, 127.

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is correct, and is based on correct reasons. They will therefore humbly advise His Majesty to dismiss this appeal.

With regard to the contention of the appellants that the Court was wrong in holding that no grandchildren of the testator born, or adopted, after the death of the testator on 30th October 1875 could take under his will, their Lordships will not advise His Majesty to make any order except that the present advice is not to prejudice the position of the second appellant if and when such question comes before a Court for decision.

The costs of all parties as between solicitor and client will come out of the estate.

Appeal dismissed.

Solicitors for the appellants : *T. L. Wilson & Co.*

Solicitors for the respondents Ram Prasad Mullick, Sham Prasad Mullick, Khetter Prasad Mullick and Kasi Prasad Mullick : *Watkins & Hunter.*

Solicitors for the respondents Peary Lal Mullick and Behary Lal Mullick : *Gush, Phillips, Walters & Williams.*

J. V. W.