APPELLATE CIVIL.

Before D. Chatterjee and Newbould JJ.

JAGAT BIJOY BHATTACHARJEE

v.

TOMIJUDDI HOWLADAR.*

1916

May 18.

Will—Construction—Bequest by Hindu testator to widow, daughter, and daughter's daughter—Succession Act (X of 1865), s. 111.

Where a testator intended that his wife, daughter and daughter's daughter should each have an absolute interest in the property, and so long as anybody descended from himself was in existence, his brother's son or the latter's descendants should have no interest in the property and where the provisions of his will ran thus—"If my wife die before, my daughter Gangamoni Debya shall get the property etc." :—

Held, that under the provisions of s. 111 of the Succession Act the daughter takes only a life interest.

Lallu v. *Jagmohan* (1), *Mahendra Lal* v. *Rakhal Das* (2), *Tripurari Pal* v. *Jagat Tarini Dasi* (3), *Sures Chandra Palit* v. *Lalit Mohan Dutta Choudhuri* (4), referred to.

SECOND APPEAL by Jagat Bijoy Bhattacharjee and Sarat Bijoy Bhattacharjee, the plaintiffs.

The disputed properties formed the *brahmottar* of one Iswar Chandra Bhattacharjee who died, leaving Rukmini Debia a widow, Gangamoni a daughter, Soudamini a daughter's daughter (*i.e*, Gangamoni's daughter) and Gouri Bijoy a deceased brother's son him surviving. Rukmini died in 1297 B. S. (corresponding with the years 1890 and 1891) leaving Ganga-

* Appeal from Appellate Decree, No. 3597 of 1914, against the decree of Jadav Chandra Bhattacharjee, Subordinate Judge of Barisal, dated Aug. 31, 1914, reversing the decree of Kunja Behary Ray, Munsif of Barisal, dated Aug. 4, 1913.

(1) (1896) I. L. R. 22 Bom. 409.
(2) (1912) 17 C. L. J. 630.
(3) (1912) I. L. R. 40 Calc. 274.
(4) (1915) 20 C. W. N. 463.

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moni and Soudamini her surviving. Soudamini died in 1310 B. S. corresponding with the years 1903 and 1904, leaving Jiban Kumar an only son her surviving. Gangamoni died in Bysack 1313 B. S. corresponding with the years 1906 and 1907. By a will dated the 14th Chaitra 1279 B. S. corresponding with the 26th March 1872 Iswar gave an absolute interest in the properties in suit to Rukmini, and the will contained the following provision: "If my wife should die before, then my daughter Gangamoni Debya shall get the said property, etc." The plaintiffs who are the sons of Gouri Bijoy in 1908 brought a suit for recovery of possession of the properties in suit against Jiban Kumar, who subsequently compromised the said suit. When the plaintiffs by virtue of this compromise attempted to recover possession of the said properties, the defendants resisted on the ground that they had obtained a "*osat taluk patta*" from Gangamoni. The plaintiffs then filed a suit for recovery of possession of the said properties.

The original Court decreed the suit, holding that by Iswar's will an absolute interest was vested in Rukmini; that if the latter had died during the testator's lifetime, Gangamoni would then have had an absolute interest after Rukmini's death; that as Gangamoni had only a life interest in the property as a Hindu widow, she could not give a permanent lease in the absence of proof of legal necessity.

On appeal, the lower Appellate Court reversed the decision of the Court of first instance on the points stated above. From this decision the plaintiffs appealed to the High Court.

Babu Sarat Chandra Roy Chaudhury (with him *Babu Bhupendra Nath Guha* and *Babu Nukleswar Mookerjee*), for the appellants, submitted that s. 111

of the Indian Succession Act applied to the facts of the present case, and under the provisions of that section the legacy to Gangamoni could not take effect, as the event, *i.e.*, the death of Rukmini, did not take place during the lifetime of her husband when the legacy became payable and distributable: *Mahendra Lal* v. *Rakhal Das* (1) and *Norendra* v. *Kamalbasini* (2). He contended that there being an absolute gift in favour of the widow, there was nothing left for the daughter Gangamoni to take; the provisions of the will not only authorised the widow to alienate the estate, but also directed that she was to enjoy the property as absolute owner: *Amarendra Nath Bose* v. *Shuradhani Dasi* (3), *Gobinda Chunder Gupta* v. *Benode Chunder Dutt* (4), *Sures Chandra Palit* v. *Lalit Mohan Dutta Choudhuri*(5), *Tripurari Pal* v. *Jagat Tarini Dasi* (6). The provisions of the will were different in *Hara Kumari Dasi* v. *Mohim Chandra Sarkar* (7), and *Kandarpa Nath Ghose* v. *Jogendra Nath Bose* (8).

Babu Surendra Nath Guha, for the defendants, contended that the s. 111 of the Succession Act did not apply. There was a distinction between a case in which the event was uncertain and one in which it was certain though future. Death is a certain event though future. Section 106 of the Succession Act would apply: *Lallu* v. *Jagmohan* (9).

Babu Sarat Chandra Roy Chowdhury, in reply.

CHATTERJEE AND NEWBOULD JJ. There can be no doubt that the testator in this case intended that his wife and daughter and daughter's daughter should

(1) (1912) 17 C. L. J. 630.
(2) (1896) I. L. R. 23 Calc. 563.
(3) (1909) 14 C. W. N. 458.
(4) (1906) 12 C. W. N. 44.
(5) (1915) 20 C. W. N. 463.
(6) (1912) I. L. R. 40 Calc. 274.
(7) (1908) 7 C. L. J. 540.
(8) (1910) 12 C. L. J. 391.
(9) (1896) I. L. R. 22 Bom. 409.

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each have an absolute interest in the property, and that, as far as possible, so long as anybody descended from himself was in existence, Gouribijoy or his descendants should have no interest in the property.

There is, however, a provision of law, namely, section 111 of the Succession Act, which has been applied to the wills of Hindus and which seems to be contravened in giving full force to the intention of the testator. That section provides: "Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable." Now, if this section applies, the respondent is out of Court.

The respondent, however, contends that this section does not apply, because it speaks of the happening of a specified uncertain event, and death is a certain event to which every human being is subject. So far, that is a correct proposition of law; but what is uncertain is the period when death comes. The provision in the will is: "If my wife die before, my daughter Gangamoni Debya shall get the said property etc." There is, therefore, an "if" in the will, and there is an "if" in section 111. Whether the wife would die in the lifetime of the testator or after him, is an uncertain event, and the daughter is allowed the interest that is given to her by the will only in case the wife die in the lifetime of the testator. That is an uncertain event. These circumstances seem to point to the application of section 111; and if section 111 applies, the respondent has no case.

Reference has been made by the learned vakil for the respondent to the case of *Lallu* v. *Jagmohan* (1), in which a somewhat similar provision in a Hindu

(1) (1896) I. L. R. 22 Bom. 409.

will was interpreted. Their Lordships, however, in construing the will held that the interest given to the wife was a life interest. That being so, it would not contravene section 111 which was not at all referred to before their Lordships. Then there are cases in our Court which do seem to have laid down a somewhat contrary proposition. We may refer to the cases of *Mahendra Lal* v. *Rakhal Das* (1), *Tripurari Pal* v. *Jagat Tarini Dasi* (2) and *Sures Chandra Palit* v. *Lalit Mohan Dutt Choudhuri* (3). These cases support the contention of the appellant that this is a case which is within the mischief of section 111 of the Succession Act.

It may, however, be stated in this case that the event in respect of which the testator had a fear, that is the survivor of any of his descendants being at the mercy of his nephew and his heirs, has no application; because all of them have died, except Soudamini's son, who has compromised with the plaintiff. That being so, there is no conflict in the result with the intentions of the testator.

In this view of the case we think that the judgment of the learned Subordinate Judge should be set aside, and that of the Munsif restored with costs.

L. R. *Appeal allowed.*

(1) (1912) 17 C. L. J. 630. (2) (1912) I. L. R. 40 Calc. 274.
(3) (1915) 20 C. W. N. 463.