

Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay to the respondent his costs of the appeal.

SRI RAJA
LAKSHMI
DEVI GARU
AND
SRI RAJA
SURYA
NAHAYANA
DHATRAJU
BAHADUR
GARU.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

MAHADEVI AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
APPELLANTS,

1896
November 19.

v.

NEELAMANI (PLAINTIFF), RESPONDENT.*

Hindu Law—Po-Brahman—Alienation by widow for religious purposes—Res judicata—Decision on title in proceedings under Land Acquisition Act, 1870.

When a Po-Brahman receives a salary for the performance of his duties, a gift to him by the widow of the person whose exequial rites he has been appointed to perform to reward him for having performed any of those exequial rites is not a gift binding on the reversioners.

In proceedings under the Land Acquisition Act, 1870, to apportion the compensation payable, a decision by the Judge on a question of title does not operate as *res judicata* between the parties to those proceedings.

APPEAL against the decree of J. P. Fiddian, District Judge of Ganjam, in Original Suit No. 9 of 1894.

The plaintiff brought this suit to recover possession of a village with mesne profits. The village in question had formed part of the estate of the late zamindar of half of Tekkali taluk and had been given to the plaintiff by the late zamindar's widow. The first and second defendants were the daughters of the zamindar and, having, on the death of his widow, succeeded to his estate, had obtained possession of the village in question, which till then had been in possession of the plaintiff. The other defendants were the ryots of the village.

The circumstances under which the gift had been made were as follows:—In accordance with a custom prevailing among the Oriya zamindars, the late zamindar had appointed the plaintiff Po-Brahman (son Brahman) to perform his exequial rites. After

* Appeal No. 148 of 1895.

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the death of the zamindar without male issue his widow succeeded to his estate, and requested the plaintiff to offer the *pinda* to the zamindar at Gaya. This the plaintiff did, and some seven or eight years after he had done so, the widow on the 10th August 1874 executed in his favour the deed of gift in question. The motive for the gift was stated in the deed to be the fact that the plaintiff, having been appointed Po-Brahman by the late zamindar, had, in accordance with the custom prevailing in the late zamindar's family, "performed just like a son *pindathanam* and other ceremonies at Sri Gaya" in order that the late zamindar might attain salvation. The plaintiff, however, did not allege that he had performed any ceremonies at Gaya except the *pindathanam*.

The deed was attested by the first and second defendants, but under circumstances which their Lordships hold did not create an estoppel.

The first and second defendants pleaded that the gift did not bind them. Their contention on this point as set out in their written statement was as follows:—

"The plaintiff was appointed (not adopted) to the office of Po-Brahman by the late Sri Gopinadha Devi Garu, and he performed the duties thereof in consideration of receiving the perquisites attached thereto.

"The offering of *pinda* is not outside the duties of the said office, nor is it an indispensable ceremony. It is rather a spiritual luxury than a spiritual necessity. The plaintiff made the pilgrimage to Gaya and other holy places at the expense of the late Sri Radika Patta Mahadevi Garu as much on his own as on her account and took advantage of the occasion to perform the said *pindathanam* and received the usual dues for it.

"There was no agreement that he should be given a village in consideration of making the said *pindathanam*. It is not in any case such an act as deserved to be remunerated by a free and absolute gift of a valuable village like the plaint village, which is one of the best villages in the defendants' *Khandam* of the Tekkali taluk, and which yields an income of over Rs. 1,000 per annum, and which is worth more than Rs. 20,000.

"The alienation is not, therefore, for a family necessity and is not such as, when made by a widow with limited powers, would bind the reversioners."

At the trial the first and second defendants adduced evidence to the effect that it was usual to give a Po-Brahman a salary and certain mamools and perquisites, and that the plaintiff as Po-Brahman had received Rs. 2 per mensem and 2 gaeecs of paddy per annum.

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The plaintiff also relied on a decision of the District Judge in proceedings under the Land Acquisition Act X of 1870. In 1891 about 14 acres of land in the village in question were compulsorily acquired for the East Coast Railway. The Collector inquired into the matter under section 11 of the Act, and under section 15 of the Act referred the case to the District Judge "to determine the amount of compensation to be paid to the person interested." The District Judge in giving judgment said: "Before fixing the amount it is necessary to decide who is entitled to it, in order that the owner may adduce evidence as to its value." And he framed the following issue:—

"How far the deed of gift (exhibit A) by the Mahadevi (second claimant) to the first claimant is valid as against the reversioners (daughters), claimants 3, 4 and 5."

He then found that the gift was valid and that the plaintiff was entitled to the compensation, the amount of which he then proceeded to determine. The only parties who appeared before the Judge in these proceedings were the plaintiff in the present suit, who claimed the whole of the compensation to be awarded; the widow of the late zamindar who admitted the validity of the deed under which plaintiff claimed and requested that the compensation should be paid to the plaintiff; and the eldest sister of the first and second defendants, who denied the validity of the gift and contended that the compensation should be paid to the widow on behalf of the estate. Though the first and second defendants did not appear at these proceedings, the following notice was, prior to the proceedings, served on the agent of the first defendant:—

"The fourth claimant Muktamala Patta Mahadevi of Tekkali is hereby informed that the 1st day of February 1893 has been fixed as the date of hearing for the purpose of settling the disputes in respect of the amount of compensation fixed by the officer making reference in the matter of 14 acres 25 cents of wet and dry lands in Vallabharoyipadu village, which belong to you and which were taken possession of by Government for the East Coast Railway. You should, therefore, appear on the said date either in person or by a Vakil with the evidence and documents

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“ you possess and represent to the Court the amount of compensation you claim for the right you possess in respect of the said land and other points relating thereto.”

In the present suit, the District Judge found that the alienation had not been made for such a purpose as to bind the reversioners, *i.e.*, it was not made to secure the offering of the *pin*dam, and it was only made as a reward for services past; and as to the question of *res judicata*, he found that the first and second defendants had due notice of the enquiry into their title and must be held to be bound by the decision in the proceedings under the Land Acquisition Act of 1870.

First and second defendants appealed.

Pattabhirama Ayyar for appellants.

Bhashyam Ayyangar and *Seshachariar* for respondent.

JUDGMENT.—We agree with the Judge that there was no such necessity for the gift, by the widow as would be binding on the reversioners. As the plaintiff was already in receipt of a regular income as *Po-Brahman*, and the ceremonies performed by him at *Gaya* were performed in the same capacity, and many years before the gift, there was no justification for the grant which was purely voluntary.

The next finding of the Judge is that the question of title in regard to the plaint property is *res judicata* by reason of the decision under section 39 of the Land Acquisition Act of 1870. Assuming that the appellants were made parties to the proceedings under that section, though the question is doubtful owing to the faulty character of the notice (Exhibit III) served on the first appellant, we do not think that the finding in the Land Acquisition case in favour of the validity of the plaint gift operates as *res judicata* in this case, inasmuch as the litigation under that Act is a special form of proceeding confined to the determination of the amount of compensation due and the persons to whom it should be paid. Such a proceeding cannot be treated as a ‘suit’ within the meaning of section 13 of the Code of Civil Procedure, so as to render a decision come to therein binding when the same question arises in what is strictly a suit. Further, for the reasons stated by *Pontifex, J.*, in *Nobodeep Chunder Chowdhry v. Brojendra Lall Roy*(1), we should not be justified in holding,

(1) I.L.R., 7 Calo., 406.

on even general grounds, that an adjudication under the Land Acquisition Act should be held to be conclusive in disputes connected with property other than that to which the enquiry under that Act related. MAHADEVI
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As to the estoppel which the Judge has also found in plaintiff's favour, we must again differ from him. We find, on the statements of the appellants which have not been contradicted, that they put their signatures to the deed as attesting witnesses under pressure. There is no evidence to show that they were aware of the exact terms of the document or that, in attesting the document, they were doing anything likely to affect their reversionary rights. There is absolutely nothing to indicate that they were willing or intended to part with those rights. Considering that they were *purdanashin* and young women at the time and that the plaintiff was the confidential manager of the affairs of their mother, under whose protection they were living, it lay on the plaintiff to prove that they acted with full knowledge and with independent advice, but the plaintiff has not even attempted to prove this. In these circumstances, we could not have held the appellants bound by the deed of gift, even had they been the executing parties. In no view can their mere attestation of the document amount to an estoppel in a case such as this, where there has been no alteration of plaintiff's position in consequence of their act.

We are, therefore, of opinion that the plaintiff has failed to establish the validity of the gift upon which he sues.

We must, accordingly, reverse the decree of the Lower Court and dismiss the plaintiff's suit with costs throughout.

[REPORTER'S NOTE.—Though the case of *Ram Chunder Singh v. Madho Kumari* (1) does not appear to have been relied on in the argument for the respondents, it was considered by their Lordships before delivering judgment. The distinction between that case and the present, it is suggested, is that, in the present case, the decision which was held to be *res judicata* was made on a reference by the Collector under section 15 of Act X of 1870, and was, therefore, made in a proceeding under the Act. In the former case, however, the Judge who gave the decision that was held to be *res judicata* does not appear to have been proceeding under the Act: for both from the report in the Lower Court (2) and from the report in the Privy Council (see at p. 492) it is gathered that the Judge was proceeding not on a reference from the Collector under section 15 of the Act, nor on a reference under section 38 of the Act (which are the only ways in which the question of apportionment and a question of title as incident thereto can come before a Judge under the Act), but in a suit instituted by the plaintiff independently of the Act.]

(1) I.L.R., 12 Calo., 484.

(2) I.L.R., 9 Calo., 411 (see at p. 412).