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BHUGWAN DAS v. THE NETHERLANDS INDIA SEA AND FIRE INSURANCE COMPANY OF BATAVIA.

of the open cover. The asking for two policies did not prevent the acceptance being sufficient, as Bertram absolutely refused to give any policy.

The letter of the 1st April 1885, refusing to issue a policy, and of the 2nd April, refusing to recognize the transfer to Bhugwandas of the open cover, have been noticed. It is to be observed that neither in the interviews with Bhugwandas, nor in the letters, was it said that the paper given to Macrory was not intended to be an open cover. Indeed, in the letter of 2nd April it is so called. It was argued by the learned Counsel for the appellant that the contract became complete when the charter-party was signed, and the proposal to insure was acted upon. It is not necessary for their Lordships to give any opinion upon this contention, as they hold that the acceptance by Bhugwandas was made whilst the offer to insure was subsisting, and was sufficient to complete the contract. The plaintiff is entitled to specific performance, and their Lordships will humbly advise Her Majesty to reverse the decree of the Recorder's Court, and to make a decree that the defendants or their agents do make and issue a policy of insurance in terms of the opon cover, and for the amount therein mentioned, and do pay the costs of the suit. The respondents will pay the costs of the appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Bramall & White.*

Solicitors for the respondents: Messrs. *Freshfield & Williams.*

ORIGINAL CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Wilson.

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March 18.

SOWDAMINI DASSI (PLAINTIFF) *v.* BROUGHTON AND OTHERS (DEFENDANTS).*

Hindu Law—Widow—Accumulations—Period up to which accumulations may be dealt with—Intention to accumulate.

Under the will of *N. C. M.* the testator left his estate to his brother provided that, within a term of eight years, no son should be born to such brother, capable of being adopted as a son of the testator, in accordance

* Appeal No. 1 of 1889, from the decision of Mr. Justice Trevelyan, dated 12th August 1887, in suits numbered 53, 64 and 141 of 1887.

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with certain conditions made in the will. These conditions failed, and on the expiration of the term of eight years, the estate vested in the brother. The will made no provision for disposal of the rents and profits of the estate during the period the succession thereto was in abeyance. Disputes having arisen between the widow of the testator and his brother, as to the right to such rents and profits, the brother eventually agreed to pay, and did pay over to the widow a large sum by way of settlement of these disputes, for which sum the widow executed a release.

The widow invested the sum so received in Government Securities, and twenty years afterwards created, with this fund, a trust in favour of one *G. C. R.*, and appointed *B.* trustee thereof. On the death of the widow, the daughter of the testator tried to set aside this trust, claiming the funds as a portion of their father's estate with which the widow had no right to deal: *Held* that, as the accumulations were handed over to the widow by the person entitled to the reversion after the estate had vested in him, and a release had been entered into between them, no presumption arose that the fund in question had been accumulated by the widow for the benefit of other heirs of the testator, and that there being no such presumption, the facts of the case must be looked at to ascertain the intention of the parties regarding this fund; *held*, as to this, that the conduct of the widow evidenced no intention to accumulate the sum received by her for the benefit of any person but herself, or that she ever intended to give up the power of disposing, expending, or dealing with it in any way.

THIS was an appeal against the judgment of Mr. Justice Trevelyan, dated the 12th August 1887.

The case in the Court below is to be found reported in I. L. R., 14 Calc., 861, under the name of *Grish Chunder Roy* v. *Broughton*. That report purports, on the face of it, to be solely a report of one case brought by Grish Chunder Roy against Mr. Broughton Surut Kumari and Sowdamini Dassi to enforce the trusts set out in the deed of trust and deed of settlement executed by Badam Kumari Dassi, on the 12th July 1886; but, at the hearing of the suit before Mr. Justice Trevelyan, two other cases were heard with it, *viz.*, a suit brought by Sowdamini Dassi against Mr. Broughton and Grish Chunder Roy and Surut Kumari Dassi to have the trust deed of the 12th July 1886 set aside, and an application for probate of the will of Badam Kumari Dassi; for the sake of convenience, one of these cases only was reported in the lower Court; the appeal from this judgment of Mr. Justice Trevelyan, which gives a judgment in all three of the above cases, was appealed against by Sowdamini alone.

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It will only be necessary to state so much of the facts of these cases as refer to the one question, as to whether Badam Kumari had power to deal with, under the deeds of the 12th July, the sums of money paid to her by Shama Charan, or whether such sum had become a portion of the corpus of her husband's estate, which she could not so deal with according to Hindu law.

One Nobo Kumar Mullick died on the 16th March 1856, having made his will, and leaving him surviving, his brother Shama Charan, his widow Badam Kumari and four daughters, amongst which latter were Surut Kumari Dassi and Sowdamini Dassi referred to above.

By his will Nobo Kumar appointed his widow and his brother executrix and executor. The 9th clause of the will was as follows: "Should my executor, Shama Charan, my younger brother, have more than two sons, within eight years from this date, in that case such son shall be made my adopted son; should such adopted son die within the said appointed period of eight years, in that case should there be other sons of my brother within the specified time of eight years, power is reserved for adopting up to the extent of a third time; should my brother have no more than two sons, or the adopted sons should die one after the other, in that case the share belonging to me of Company's Paper, and lands, and houses, and gardens, and so forth, the whole, real and personal estate will be received by my younger brother Shama Charan."

Under the events which happened, the residuary estate referred to fell to Shama Charan. No provision was made by the testator for the disposal of the rents and profits of the estate during the period, eight years, above referred to, during which the succession to the property remained in abeyance.

Disputes having arisen between Badam Kumari and Shama Charan as to their respective rights to the income accrued, due during the aforesaid period of eight years, Shama Charan, in August 1866, in settlement of these disputes, paid over to Badam Kumari a sum of Rs. 2,89,000, and she thereupon executed, in favour of Shama Charan, a deed of release, in which release she described this sum of money as being the accumulations of the property of Nobo Kumar Mullick.

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After dealing with portion of this sum, and investing interest accruing on the principal in the same way in which the principal was invested, *viz.*, in Government Paper, she, on the 12th July 1886, made over to Mr. Broughton a sum of Rs. 2,69,500 in Government Paper to be held by him as trustee for the benefit of her grandson, Grish Chunder Roy, executing on that day a deed carrying these trusts into effect. On the 7th September 1886, Badam Kumari died. The suits above referred to were in 1887 filed for the purpose mentioned, and this was an appeal from the judgment of Mr. Justice Trevelyan in those cases.

Mr. *Pugh*, Mr. *Evans* and Mr. *Allen* for the appellant.

Mr. *Bonnerjee* and Mr. *Roberts* for Surut Kumari.

Mr. *Woodroffe* and Mr. *Hill* for Grish Chunder Roy.

Mr. *Phillips* and Mr. *Stokoe* for Mr. Broughton.

Mr. *Pugh*.—There was an intestacy as regards the accumulations of income for the eight years. Under the deeds, the accumulations were treated as an increment to the estate: at the time Badam Kumari received them, she might have spent them. [WILSON, J.—But she never received them.] Yes, under the arrangement with Shama Charan; the deed of settlement recites that she is entitled to the eight years' accumulations for her own use and benefit. Twenty years after the release she is said to have desired to set up Grish Chunder Roy. Whatever she saved she kept separate, as also her *stridhan*. I submit that the accumulations were part of the residuary estate of N. K. Mullick, and a portion of it was made over to her, and kept apart by her. As to the law, I refer to Mayne's Hindu Law, para. 580 *et seq*: *Grose* v. *Amirtamayi Dasi* (1) [that case has never been departed from in this Court], *Rabutty Dossee* v. *Sibchunder Mullick* (2), *Soorjeemoney Dossee* v. *Denobundoo Mullick* (3), *Gonda Kooer* v. *Kooer Oodey Singh* (4),

(1) 4 B. L. R., O. C., 41.
(2) 6 Moore's I. A., 1.
(3) 9 Moore's I. A., 123.
(4) 14 B. L. R., 159, 165.

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Isri Dutt Koer v. *Hansbutti Koerain* (1), *Puddo Monee Dossee* v. *Dwarka Nath Biswas* (2), *Sheolochun Singh* v. *Saheb Singh* (3), *Rivett-Carnac* v. *Jivibai* (4).

Mr. *Evans* on the same side.—The old law was that a widow should frugally enjoy the estate (3 Colebrooke, 576). The onus is on the person contending that the accumulations do not go with the husband's estate to show special circumstances. This is how it stands on the later authorities cited. The questions are, What had happened up to the date of the release? And what was the intention of the parties to the release? [WILSON, J.—There are statements of the widow's intentions which are in your favour, namely, that she was claiming the money as part of her husband's estate.] Yes, at the time she so declared her views, and it was not till long after that that she set up a claim to treat it as part of her own *stridhan*. The presumption is in my favour unless displaced by strong facts. The facts are also in the appellant's favour; for during the eight years before the release, there was nothing done to alter the position of matters. The widow was waiting to see if a son was adopted. If she had so desired (she was co-executrix with Shama Charan), she could have demanded and spent the money; but that was not a proper course, and she did not adopt it. Then at the time of the release she claimed it as a part of her husband's estate and not as her *stridhan*.

Mr. *Hill* for Grish Chunder Roy.—I contend the release shows that the widow claimed the income as belonging to herself; there is, first, a series of colourless acts, and then express acts declaring her intention, and what her intentions had always been. The question is rather one of fact than of law, did she treat it as part of her husband's estate? [WILSON, J.—The cases say that you have to show affirmatively that there was something done to take it out of her husband's estate.] We have to see the intention with which the accumulation was made, and I say the facts show that she took it out of her husband's estate. On the entire facts we start with an indication that it is not to

(1) L. R., 10, I. A., 150; I. L. R., 10 Calc., 324.
(2) 25 W. R., 335 (341).
(3) I. L. R., 14 Calc., 387.
(4) I. L. R., 10 Bom., 478.

go with the bulk of the estate, and she claims it as her own. The long continued investment is enough to show that it was severed. The cases cited are distinguishable; no case shows that when there is no other estate of the husband in a widow's hands, and she is dealing only with a lump sum, the cases as to increment to the husband's estate apply. *Panalal Seal* v. *Bamasundari Dasi* (1) shows that the widow is entitled absolutely to the accumulations of income from her husband's estate.

Mr. *Woodroffe* on the same side.—In the old books, accumulations and accretions are treated conjointly. The case of *Grose* v. *Amirtamayi Dasi* (2) differs from previous decisions, and is not warranted by them, and is contrary to *Soorjeemoney Dossee* v. *Denobundoo Mullick* (3); here there was an accumulation by the widow, and, if so, was there any intention to make it an increment to the estate? There was not, there was only a saving of income. There is no evidence that she made the investment for the benefit of her husband's heirs. The husband had determined by his will that his heirs were not to have his estate. The mere fact of investment raises no presumption of intended accretion. The use of the word "accumulations" in the release is not conclusive, it is merely in the sense of monies being unexpended. As to the widow's power over income, see *Puddo Monee Dossee* v. *Dwarkanath Biswas* (4). The case of *Sheolochun Singh* v. *Saheb Singh* (5) is authority for showing that her prior intention may be gathered from the actual disposition that she made.

Mr. *Phillips* for Mr. Broughton.—The widow had a lakh of rupees left her under the will: her husband imposed upon her no duty to accrete to his estate. Is there any duty on the part of the widow to accrete to the husband's estate when it is left away from her? I submit not. Here the widow does not stand in the ordinary position of a Hindu widow; here there was nothing to which the accumulations could accrete. As to the investment, Government Paper is the most realisable form for it to take, next to leaving it in money. As to the form of the release, it does not show an intention to accrete the money.

(1) 6 B. L. R., 732.
(2) 4 B. L. R., O. C., 41.
(3) 9 Moore's I. A., 123.
(4) 25 W. R., 335 (339).
(5) I. L. R., 14 Calc., 387.

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Mr. *Pugh* in reply.—The main contention on the other side is that the monies are not "accumulations." As to what an accumulation is, see Macnaghten's Hindu Law, 258, and 1 Strange's Hindu Law, 246.

The judgment of the Court (PETHERAM, C.J., and WILSON, J.) was delivered by

PETHERAM, C.J.—This appeal arises out of three proceedings. The first of them was a petition for obtaining the probate of the will of a person called Badam Kumari, which is numbered 53 of 1887; the second was a suit brought by Grish Chunder Roy against Mr. Broughton, the Administrator-General of Bengal, Surut Kumari Dassi and Sowdamini Dassi to carry out the trusts of two deeds, dated the 12th July 1886, and that is numbered 64 of 1887; and the third was a suit brought by Sowdamini Dassi against Mr. Broughton Grish Chunder Roy and Surut Kumari Dassi to obtain a declaration that the deed of trust of the 12th July 1886 is void, and that the plaintiff Sowdamini is entitled to a share of the funds dealt with by that deed, and that suit is numbered 141 of 1887.

The property which is in dispute in these suits are the savings from the income of an estate left by a person called Nobo Kumar Mullick. Nobo Kumar Mullick died on the 16th March 1856, leaving him surviving his widow Badam Kumari, whose will is in dispute in these proceedings, and four daughters of whom one is Sowdamini the plaintiff in the third proceeding, and another Surut Kumari, one of the defendants in that suit and in the other suit.

Nobo Kumar Mullick left a will, and by the terms of that will, and that is the only thing in it which is material here, he appointed his widow and his brother, Shama Charan Mullick, his executrix and executor, respectively, and in the 9th clause of the will he provided that "should my executor Sreeman Shama Charan Mullick, my younger brother, have more than two sons within eight years from this date, in that case such son shall be made my adopted son; should such adopted son die within the said appointed period of eight years, in that case should there be other sons of my brother, within the specified time of eight years, power

is reserved for adopting up to the extent of a third time; should my brother have no more than two sons, or the adopted sons should die one after the other, in that case the share belonging to me of Company's Paper, and lands and houses and gardens, and so forth, the whole real and personal estate, will be received by my younger brother, Sreeman Shama Charan Mullick."

Shama Charan Mullick had not more than two sons within eight years of the date of the testator's death, and so the residuary estate became his. The testator made no provision for the disposal of the rents and profits for the eight years during which the succession to the property remained in abeyance, and then his widow, as his heiress, became entitled to them; but during these eight years she did not receive these rents and profits.

Disputes arose between Badam Kumari and Shama Charan Mullick regarding their respective rights to the accumulations of these eight years, and in settlement of those disputes Shama Charan, on or about the 13th August 1866, paid Badam Kumari a sum of Rs. 2,89,000.

The dispute which arises in these proceedings is with reference to that sum, and the first point which it is necessary to note here, it is not specifically noted in Mr. Justice Trevelyan's judgment, is that at the time that sum was paid by Shama Charan Mullick to Badam Kumari, the eight years had expired, and Shama Charan Mullick had himself become entitled to the entire estate of the deceased, and was actually in possession.

That being the state of things, when that money was paid over Badam Kumari executed a deed of release to Shama Charan Mullick, and she recites in it that a question had arisen between her and Shama Charan as to who was entitled to this money, she describes it as the accumulations of the property of Nobo Kumar Mullick, which was then in the hands of Shama Charan Mullick, and that upon the payment of that sum of money by him to Badam Kumari, she, Badam Kumari, executes to him an absolute release.

Badam Kumari lived for twenty years after executing that release. During that time these funds remained in her hands, and were dealt with by her, a portion of the income from that sum being spent by her, and a portion of it re-invested in Government

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Securities in the same way as the fund itself had been, and on the 12th of July 1886, she handed over a large sum of money to Mr. Broughton, and endorsed notes to the extent of Rs. 2,69,500, part being principal and part the accumulations of the interest which she herself had invested in that way, to Mr. Broughton, and executed a deed by which she constituted him the trustee of that fund, settling it upon one of her grandchildren, the son by a daughter; and these proceedings are now brought by the other daughters to contest that transaction. First of all they say that as a matter of fact, at the time this deed was executed and this will was made, this being done about the same time, she did not know what she was doing, and that the documents were not explained to her, and that consequently they must be set aside; and in the next place they say, even if that were not so, she legally had not power to dispose of this property, because it consisted of accumulations to her husband's estate, and so could not be dealt with by her.

The first point was a question of fact as to whether this transaction was explained to her, so that she knew what she was doing, and her mind went with what she was doing. Mr. Justice Trevelyan has come to the conclusion that the deeds were properly explained to her, and that she knew what she was doing, and intended to do what appears by the documents she has done; and I do not think it necessary to say more as to that than that I agree with the view taken by Mr. Justice Trevelyan on the facts, so that if she had power to make this disposition of the property, this disposition is valid.

The question that then arises is as to whether she had power to deal with this fund, or whether it had become a portion of the *corpus* of the husband's estate which she could not deal with.

As to that, it is to be noticed that her position was that she had a Hindu widow's estate for the eight years which elapsed before Shama Charan's interest vested. And he took possession of the residue, and this claim is not made by Shama Charan, the person who is now entitled to the *corpus* of Nobo Kumar's estate and who took possession of it on the expiration of the eight years, but is made by the daughters of Nobo Kumar who

would have been the persons who would have taken anything which remained of the accumulations of those eight years if this woman had died pending the eight years, and who would not have been entitled to the *corpus* of the estate in any sense whatever, because that was to go to Shama Charan by the will of Nobo Kumar if no son were adopted.

Therefore the present claim is made not by the person entitled to the estate of Nobo Kumar, but by persons who would have been entitled only to a small share of it, if this woman had died before the expiration of the eight years.

The cases on the subject are fully examined and discussed in the case of *Isri Dutt Koer* v. *Hansbutti Koerain* (1), and the discussion is continued in the case of *Sheolochun Singh* v. *Saheb Singh* (2), and so much of the law as is applicable to this case is to be found in the judgment of Sir Richard Couch in the last case. He says there, when a widow comes into possession of the property of the husband, and receives the income, and does not spend it but invests it in the purchase of other property, their Lordships think that, *primâ facie*, it is the intention of the widow to keep the estate of the husband as an entire estate, and that the property purchased would, *primâ facie*, be intended to be accretions to that estate. If the case here were that the persons who were claiming this fund were the persons who were entitled to the entire estate of Nobo Kumar, that *dictum* would be strong to show that, *primâ facie*, this money having accumulated in the hands of the person possessed of a particular estate, and having been invested by her, must be taken to have been so accumulated and so invested in order to increase the estate of the husband. But that is not the case here, and that cannot be the case here, because the accumulations were handed over by the person entitled to the reversion to this woman after the entire estate had vested in him, and the matters were released as between themselves. Therefore it seems to me that there is no presumption here of its having been accumulated by her for the benefit of the other heirs of Nobo Kumar. Then the case of *Sheolochun Singh* v. *Saheb Singh* (2) would indicate that, if

(1) L. R., 10, I. A., 150. (2) I. L. R., 14 Calc., 387.

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there is no presumption of that kind, then you must look to the facts of the case to ascertain what the intention of the parties was with regard to this fund.

Mr. Justice Trevelyan, in his examination of the evidence in this case, has come to the conclusion that there is nothing to indicate an intention on the part of Badam Kumari to invest these monies for any one's benefit but her own. There is nothing from what took place, to indicate that she intended to hold this money for the benefit of any other person, or to give up the control of it by herself. In my opinion, that view is a correct view of the evidence in this case. I think that the conduct of Badam Kumari during these years shows that she had no intention of accumulating this fund for any one's benefit but her own or that she ever intended to give up the power of disposing, spending, and dealing with it any way, and, as in this case it does not seem to me that the presumption that the money, *primâ facie*, was supposed to be accumulated for the benefit of the husband's estate arises, I think that the conclusion to which Mr. Justice Trevelyan came was correct, and that this appeal must be dismissed with costs.

T. A. P. *Appeal dismissed.*

Attorneys for the appellant: Messrs. *Remfry and Rose*, Baboo *Ashutosh Dhur*.

Attorneys for the respondents: Messrs. *Watkins and Co.*

APPELLATE CIVIL.

Before Mr. Justice Beverley and Mr. Justice Banerjee.

1889
April 11.

KHUDIRAM MOOKERJEE (OBJECTOR) *v.* BONWARI LAL ROY (PETITIONER).*

Hindu law—Guardian—Right to guardianship of Hindu widow—Grant of certificate of administration under Act XL of 1858.

The relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. A certificate of administration, under Act XL of 1858, was therefore granted to one of the former in preference to the latter.

* Appeal from Order No. 25 of 1889, against the order of R. F. Rampini, Esq., Judge of Burdwan, dated the 12th of January 1889.