

## PRIVY COUNCIL.

P.C.\*  
1889  
November  
19.

GOBIND LAL ROY (PLAINTIFF) AND HEMENDRA NARAIN  
ROY CHOWDHRY (DEFENDANT).

[On appeal from the High Court at Calcutta.]

*Lease—Construction of lease, as to the inheritance of it by the heir on the lessee's death.*

An ijara for one hundred and twenty-five years granted to a wife stated that it was for the performance of pious acts by her, and that on her death her sons were to take. Her only son died before her, leaving a son.

*Held* that the construction that the grandson inherited the term on the death of the lessee was correct.

*Tej Chund Bahadoor v. Srikanth Ghose* (1) referred to.

APPEAL from a decree (13th May 1887) of the High Court, affirming a decree (22nd March 1886) of the Subordinate Judge of Rungpore.

This suit was brought by the present appellant against the respondent to obtain possession of three villages. It raised the question whether the plaintiff, within whose putni estate the villages, but for an outstanding ijara, would have been included, was entitled to treat that ijara as ended by the deaths of the grantees.

The defendant's grandfather, Bhairabendra Narain Surma, within whose zemindari the villages then were, granted an ijara, dated February 17th, 1843, of the villages for a hundred and twenty-five years to his wife Hara Sunderi in these words:—"The ijara is granted to you for the performance of pious acts. At present you have a son, Jagadindra Narain Surma, and if other sons or another son be born, and if during the term of the ijara you die, then they will in equal shares enjoy the profits down to the end of the ijara."

Jagadindra, having inherited the zemindari of which the villages were part, granted a putni to the present plaintiff. It contained the words "I convey to you my powers of making measurement, and jumabundi assessment of rent, and enhancement, making settlement, and ejection of tenants."

\* *Present*: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

(1) 3 Moore's I. A., 261.

Jagadindra died in 1883, and his mother Hara Sunderi died in 1884. But Jagadindra left a son, Hemendra Narain, whom the plaintiff now sued, alleging that the ijara was only to last for the lives of Hara Sunderi and her sons, and that upon the deaths of her son Jagadindra and herself it came to an end, so that the plaintiff as putnidar was entitled to khas possession of the three villages.

1889  
 GOBIND LAL  
 ROY  
 v.  
 HEMENDRA  
 NARAIN ROY  
 CHOWDHRY.

The defence was that the ijara vested in Hara Sunderi and her heirs down to the end of the term of years.

Both the Courts below construed the ijara in favour of the defendant. The High Court (MITTER and BEVERLEY, JJ.) held that the ijara was to Hara Sunderi and her heirs.

On this appeal,

Mr. T. H. Cowie, Q.C., and Mr. J. D. Mayne, for the respondent, argued that upon the true construction of the ijara it was a personal grant to Hara Sunderi and her sons. When her son died and she died it ceased to operate, not being intended for the benefit of any heirs more distant than those specified. Although in *Tej Chund Bahadoor v. Srikanth Ghose* (1) it was said that the grantor was not to be taken to have limited his grant, when made agreeably to law and custom, unless he had done so by qualifying words, the expressions used here were sufficient to make a limitation to the sons only.

Mr. R. V. Doyne, for the respondent, was not called upon.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—Their Lordships are of opinion that the decision of the High Court was correct. Each case must be determined on its own circumstances, and each document must be construed according to the words which are contained in it. Their Lordships are of opinion that the High Court put a proper construction upon the document. In their judgment they say:—"There is nothing in that lease which would go to show that it was the intention of the grantor to limit it to a shorter period." That is quite in accordance with the decision in *Tej Chund Bahadoor v. Srikanth Ghose* (1) which was cited by Mr. Mayne in the course of the argument. Then on the same page of their judgment the High Court say:—"In this case it seems to us that the reference

(1) 3 Moore's I. A., 261, at p. 272.

1880 to the sons was made in order to indicate that the ijara was not  
 GOBIND LAL ROY  
 v.  
 HEMENDRA NARAIN ROY  
 CHOWDHRY.  
 to come to an end on the death of Hara Sunderi. Even if  
 these words were not used the lease, under its terms, would have  
 descended to the heirs of Hara Sunderi; but it was probably  
 thought necessary to make that point clear; and in order to  
 make it clear the last condition, that the ijara should continue  
 to the benefit of the son or sons of Hara Sunderi, was inserted.”  
 Their Lordships are of opinion that the ijara was to Hara  
 Sunderi and her heirs, and that is the proper construction to be  
 put upon the lease. In this case the widow had no daughters,  
 and it is stated that the only issue was the son who was named.  
 Their Lordships think that the High Court have put the proper  
 construction upon the document, and they will therefore humbly  
 advise Her Majesty that the decision of the High Court be  
 affirmed. The appellant must pay the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellant : Mr. G. Thatcher.

Solicitors for the respondent : Messrs. T. L. Wilson & Co.

C. B.

P. C.\*  
 1880  
 November  
 22.  
 BISESWAR ROY AND ANOTHER (PLAINTIFFS) AND SHOSHIL SIKAR  
 ESWAR ROY AND ANOTHER (DEFENDANTS).  
 [On appeal from the High Court at Calcutta.]

*Court of Wards Act (Bengal Act X of 1879), s. 55—Suit rejected when  
 filed on behalf of a minor under the Court of Wards without sanction  
 of that authority to proceed with it.*

Where, under section 55 of the Bengal Court of Wards Act, IX of 1879,  
 the manager of an estate authorised the plaintiff, in order to save limitation,  
 to institute a suit on behalf of the Court of Wards, which refused afterwards  
 to sanction the proceeding with the suit, held that the Judge rightly  
 ordered that the suit be rejected, as incapable, under the above section,  
 of being prosecuted.

APPEAL from a decree (26th January 1880) of the High Court,  
 affirming orders (14th August 1880 and 27th February 1884) of  
 the Subordinate Judge of Rajshahye.

\* Present : LORD HONHOUSE, LORD ASHBURNE, LORD MACNAGHTEN, SIR  
 B. PEACOCK, and SIR R. COUCH.