

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Greender Chunder Ghose v. Troylockhonauth Ghose and others, from the High Court of Judicature at Fort William in Bengal; delivered November 11th, 1892.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

THERE were two questions raised in this Appeal. One depends upon the true construction of the will of Anundonarain Ghose, the father of the Appellant, Greender Chunder Ghose, and of his two younger brothers who were minors at the date of the will and at the date of the death of the testator. The other depends upon the construction and effect of certain instruments made between the three brothers after the two younger had attained their majority. Unless both can be answered in accordance with the contention of the Appellant, the appeal must fail. Their Lordships are of opinion that one at least of these questions must be answered in favour of the Respondents.

Under the will of Anundonarain the three brothers were entitled in equal shares to the residuary estate of the testator. The question on the will is:—Did the two younger brothers on attaining majority take an absolute interest, which they could deal with as they pleased, or did they take an interest liable to be divested or defeated in the event of death without issue,

natural or adopted? Mr. Justice Trevelyan decided in favour of the latter view. The inclination of the opinion of the Appellate Court was the other way, but the matter was not finally decided.

Their Lordships also will leave this question undetermined. They are not prepared at present to assent to the view which commended itself to Mr. Justice Wilson. But as they have not heard counsel for the Respondents it would not be proper to express an opinion upon the point.

Assuming that Mr. Justice Trevelyan was right so far, their Lordships agree with the Appellate Court that the instruments executed by the Appellant on the occasion of the compromise and partition operated to pass every interest of every kind which the Appellant had or could claim to have in the shares allotted to the younger brothers. So long as those instruments stand it appears to their Lordships impossible for the Appellant to contend with success that any interest, present, future, or contingent, was reserved to him.

Their Lordships may add that there is nothing on the face of the deeds, or in the previous agreement, or in the position of the parties, to suggest that this was not in accordance with the intention of every one concerned. They agree with Mr. Justice Wilson "that looking at the  
" deeds, the object of the parties was once for  
" all to dispose finally of the father's estate, and  
" of all questions connected with the father's  
" estate."

The parties were acting under legal advice. They were effecting a separation of interests derived under the will. It is very unlikely that an obvious provision of the will should have been overlooked. It is almost inconceivable that the younger brothers, who were in a position to

dictate terms, would have consented to take their shares subject to an executory gift in favour of their elder brother, which, however remote and however inconsiderable at the time, would have had the effect of making it impossible for them during their lives to dispose of the property by sale or mortgage. Their Lordships therefore entirely concur in the judgment of the Appellate Court.

There is one other point which perhaps ought to be mentioned. Their Lordships very much regret that, in order to assist them to determine these two simple questions, it should have been thought necessary to furnish them with a record of such enormous length. Nearly 300 pages are taken up by the schedules to the answer in the original suit, not one word of which in any circumstances could have any bearing on the questions before their Lordships. Their Lordships have more than once commented upon the bulk of records sent from India. They will consider whether some means cannot be devised to save litigants in future from this idle expense.

Their Lordships will humbly advise Her Majesty that this Appeal ought to be dismissed, and the Appellant must pay the costs.

