

Seth Nemi Chand Vs. Ganesh

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Court : Allahabad

Decided On : Jan-29-1910

Reported in : 5Ind.Cas.503

Judge : Richards and ;Karamat Husain, JJ.

Appellant : Seth Nemi Chand

Respondent : Ganesh

Judgement :

Richards, J.

1. The facts of the case referred are very simple. The defendant by usufructuary mortgages mortgaged to the plaintiff his proprietary rights in a holding. Since the date of the mortgage, that is to say, for nine years before the institution of the suit, the defendant has continued in occupation of certain lands comprised in the holding which were prior to the mortgages in his own cultivation. The present suit was instituted to recover possession of inter alia this land. Both the Courts below gave the plaintiff a decree subject to the occupancy rights of the defendant in the land in his own cultivation. Section 41 of Regulation II of 1877 of the Ajmere Code is as follows Any person who may have, whether before or after the passing of this Regulation, lost or parted with his/proprietary rights in any holding, either, temporarily or permanently and has since continued in occupation of any of the lands comprised in such holding which, as proprietor, he retained under his own

cultivation, shall have a right of occupancy in such lands, at a rent five annas four pies in the rupee less than the prevailing rate payable by tenants at will, for lands of similar quality and with similar advantages.

2. Such persons are hereinafter called exproprietary tenants.

3. Any agreement executed, whether before or after the passing of this Regulation by an ex-proprietary tenant to pay a higher rate of rent than that prescribed by this Section, shall be void.'

4. The only question for decision is has the defendant a right of occupancy as prescribed by the section in the lands which were before the mortgages and have since been in his own cultivation. I think he has and that the Courts below were right. The case is important because a contrary decision will, I think, unsettle what has heretofore been considered the law in Ajmere. The plaintiff contends that by the usufructuary mortgages the defendant did not lose or part with his proprietary rights either temporarily or permanently within the meaning of the section. Very much the same question came before this Court in the case of Indar Sen v. Naubat Singh 7 A. 553 and in the case of Madho Bharthi v. Barti Singh 16 A. 337. The question in these cases arose under the provisions of Section 7 of the old Rent Act, XII of 1881. That Section 7 is as follows: 'Every person who may hereafter lose or part with his proprietary rights in any mahal shall have a right of occupancy in the land held by him as sir in such mahal at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants at will for land of similar quality with similar advantages.' In the case of Indar Sen v. Naubat Singh 7 A. 553 three Judges decided that a usufructuary mortgagor by virtue of a usufructuary mortgage lost or parted with his proprietary rights. It seems to me that from the year 1885 up to the time of the decision of Madho Bharthi v. Barti Singh 16 A. 337, 'the decision in the case of Indar Sen v. Naubat Singh 7 A. 553 was accepted. Strange to say, however, the learned judges in the case of Madho Bharthi v. Barti Singh 16 A. 337 overruled the Full Bench decision, which had been accepted and acted upon for about nine years without expressing any view on the propriety of the decision in Madho Bharthi v. Barti Singh 16 A. 337. I would undoubtedly follow it if I were called upon

to give a decision on the provisions of Section 7 of Act XII 1881 or on any other Act containing exactly similar provisions. It is necessary, however, to point out that Section 41 of the Regulation contains very important words, which were omitted from Section 7 of Act XII of 1881. These words are the expressions, 'either temporarily or permanently.' Sometime after the decision of *Madho Bharthi v. Barti Singh* 16 A. 337, the present Tenancy Act was passed and Section 10 of that Act expressly provides that on any transfer otherwise than by a gift or exchange between the co-sharers, a proprietor shall have a right of occupancy in his sir. The Regulation, like many other enactments in this country, is not very artistically drawn up ; but I think the intention of the Legislature is made sufficiently clear and that it was intended to include the case of a usufructuary mortgage. I think if the section can legally be interpreted to include the case of a usufructuary mortgage, we ought to interpret it, 'and I need hardly point out that it is very undesirable that the law on this question should be different in Ajmere to what it is in these.' provinces. A usufructuary mortgagor by a usufructuary mortgage places the usufructuary mortgagee in his shoes subject of course to his right of redemption. During the continuance of a mortgage the usufructuary mortgagee is entitled to collect and receive all the rents and profits that would, but for the mortgage, be paid to the proprietor. It is very difficult to see how a proprietor making a usufructuary mortgage could temporarily lose or part with his proprietary rights if he did not do so by a usufructuary mortgage. I think it can hardly be argued that the Legislature intended to refer and to refer only to a case of conditional sale. Indeed it seems to me that a conditional sale differs very little, if at all, from a mortgage. The word temporarily' appearing in the section shows that it was intended to include something more than an absolute and complete transfer of all proprietary rights. Holding as I do that we are not bound by the decision in the case of *Madho Bharthi v. Barti Singh* 16 A. 337, I think the decisions of the Courts below are correct and ought to be confirmed. I would answer both the questions in the affirmative.

Karamat Husain, J.

5. This is a reference under Section 18 of the Ajmere Court Regulation No. I of 1877. The facts are these:

6. The plaintiff sued for possession of certain land mortgaged to him under two registered mortgages of an anomalous form dated the 15th January and the 17th June 1892, and for ejectment of the defendant from the same. The defendant contended that he was an ex-proprietary tenant within the meaning of Section 41 of the Ajmere Land and Revenue Regulation No. II of 1877, and that he could not be ejected except as provided for in that Regulation. On behalf of the plaintiff it was urged that the defendant was in wrongful possession and was not an ex-proprietary tenant. The Court of first instance finding that the defendant was allowed to remain in possession by the plaintiff, held, that he could not be ejected. On appeal the decree of the first Court was affirmed by the Court of Appeal. Both Courts were of opinion that in a usufructuary mortgage all proprietary rights temporarily passed to the mortgagee and that the case was not, therefore, governed by *Madho Bharthi v. Barti Singh* 16 A. 337, because the words 'lost or parted with proprietary rights temporarily or permanently' were to be found in Section 41, Regulation II of 1877, while they did not exist in Section 7, of Act XII of 1881, which was interpreted in *Madho Bharthi v. Barti Singh* 16 A. 337.

7. On the application of the plaintiff, the following two questions are referred to us:

(a) Whether the respondent, Ganesh, who executed a usufructuary mortgage deed in favour of the appellant (applicant) and therein promised to make over possession of the mortgaged property to the applicant, but did not do so, can be said to have parted with proprietary rights within the meaning of Section 41 of the Ajmere Land and Revenue Regulation II of 1877.

(b) Whether taking into consideration the facts of the case, Section 41 of the Regulation is applicable to the present case.

8. Before dealing with the above questions, it is necessary to determine the orbit of 'usufructuary mortgage' and to see if that is co-extensive with the orbit of 'ownership'. It is also necessary to set forth such canons of the interpretation of a statute as are applicable to the case before us.

9. There can be no doubt that under the law of British India, the orbit of 'usufructuary mortgage' does not coincide with the orbit of 'ownership' but covers

only a portion of it. 'Ownership' in the language of the law is a convenient term and denotes a multitude of proprietary rights which a person (the subject of right) may have in a thing (the object of right) and is comprised in the Roman Law in the Jus utendi, the Jus fruendi and the Jus abutendi. The term is a symbol for the largest aggregate of proprietary lights known to the law which a person can have in a thing. All other aggregates of real rights including a usufructuary mortgage are but portions of ownership and carved out of it. Whatever the form of the mortgage, it operates as a transfer of an interest in the land which is given as security. But the interest which passes to the mortgagee is not the ownership or dominium which notwithstanding the mortgage resides in the mortgagor.' Ghose on Mortgages, p. 94, 3rd Ed.

10. The above remarks of the learned author are based on the law laid down in *Saadat Ali Khan v. The Collector of Sarun S.D.R.* (1858) 840, in the following terms:

It is quite clear that under the mofussal law of mortgages, the right of ownership in the mortgaged property does not pass to the mortgagee, leaving only the equity of redemption in the mortgagor ; the right of ownership together with the right of redemption remain, with the mortgagor, and until the property be actually foreclosed and the sale become absolute, the right of ownership does not pass. This doctrine holds equally applicable to conditional sales or usufructuary mortgages; it follows, that the mortgagees in the present suit, who, whatever the nature of the mortgage, were in possession, were simply usufructuaries and as such they enjoy no right of ownership. Such being the case, the registration of their names incorrectly as proprietors, or the entries of their names in the sale advertisement as such, when, in fact and admittedly, they were no such thing, cannot alter the nature of their rights, or convert a lower into a higher title. Being as they are usufructuaries they should, with a view of saving their right, have paid the revenue and stayed the sale and they would thus have an action against the actual proprietors for money paid on their account to protect an interest of the payer in the property; this they have failed to do, the estate has consequently been sold, and standing as they do in the rank of usufructuaries and not of owners, they have no right, under Section XXV, Regulation XI of 1822, which gives the power to

proprietors and to proprietors alone to sue for the reverse of the sale.

11. The following remarks of Mahmood, J., in *Indar Sen v. Naubat Singh* 7 A. 553 also in very distinct terms lay down that a usufructuary mortgage is not co-extensive with ownership but comprises only some of its incidents: 'Before I can go into the question referred to the Full Bench it is necessary to consider the meaning of the words 'proprietary rights' in Section 7 of the Rent Act (XII of 1881). I understand these words to be equivalent to the term 'ownership' which is not merely a word of technical legal meaning, but which I hold must, according to the general canons of construction, be interpreted in its broadest possible meaning in the absence of words to restrict such interpretation. In that light, the idea of full ownership corresponds to what in the Roman Law is termed *dominium*', or to what in the English Law is called the fee simple estate'. This has been defined by Austin in the following manner:

The idea of absolute property is a right indefinite in point of user, unlimited in extent of duration and alienable by the actual owner from every successor who, in default of alienation by him, might take the subject of it.' This appears to me to correspond to the meaning of the term 'proprietary rights' as used in Section 7 of the Rent Act. It is, as I take it, an elementary proposition of jurisprudence that *dominium* is an aggregate of component rights, such as the right of actual possession, the right of enjoying the usufruct of land, the power of sale, and so on. In my judgment in the case of *Gopal Pandey v. Parsotam Das* 5 A. 121, I explained what full ownership means, and what its incidents are and also what the exact nature of occupancy right is in these Provinces. I there said that a person in full ownership can alienate any one or more of its component elements. The question before the Court in 'that case related to simple mortgage or hypothecation, but my argument applies also to the case now before us because I said, adopting another passage from Austin, that the full ownership being composed of these rights 'indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration', any alienation of these rights would be a mortgage, so long as the object of the alienation was security for the payment of a debt in money. I further said, quoting from another jurist, that any one or more of the subordinate elements of ownership, such as a right of possession or user,

may be granted out while the residuary right of ownership, called by the Romans *nuda proprietor*, remains unimpaired. The elements of the right which may thus be disposed of without interference with the right itself--in other words, which may be granted to one person over an object of which another continues to be the owner--are known as *jura in re aliena*.' Holland on Jur. p. 144. Such being my views as to the nature of proprietorship, I am unable to hold that the right of the usufructuary mortgagee is a right which can be called a transfer of proprietorship, and having regard to Section 58 of the Transfer of Property Act, and especially Clause (a) governing the whole section, and Clause (d) referring in particular to usufructuary mortgage, I cannot agree in holding that the execution of usufructuary mortgage amounts to a transfer of the proprietary right.

12. Apart from the theoretical distinctions between the Juristic conceptions of usufructuary mortgage and of ownership¹, if one closely examines the legal incidents of a usufructuary mortgage, one irresistibly comes to the conclusion that what passes to a mortgagee with possession is not ownership but some of its incidents. The mortgagor by paying off the mortgage debt may put an end to the right which the mortgagee has in the property mortgaged. His right to hold it, therefore, is limited in point of duration and is less than ownership, one of the characteristics of which is to be unlimited in point of duration.

13. A mortgagor may create any number of successive mortgages and if the first mortgage with possession be supposed to pass the full ownership for a time, subsequent mortgages could pass no interest in the property mortgaged, while, according to the notion of mortgage in India, subsequent mortgagees undoubtedly have an interest in the property mortgaged.

14. The equity of redemption is without the least doubt a real interest in the property mortgaged which, together with the rights which a usufructuary mortgagee has, constitutes ownership, see remarks of Stanley, C.J., in *Ramshankar v. Ganesh Prasad* 29 A. 385 : 4 A.L.J. 273 : R.W.N. (1907) 97 : 2 M.L.T. 248. Such being the case, to say that a usufructuary mortgagee is temporarily the owner of the property is incorrect.

15. A mortgagor may sell or make a gift of the property mortgaged and had he not been the owner of that property the law could not have allowed him to do so. It, therefore, follows that the interest in 'specific immovable property' which passes in a mortgage with possession is not the full ownership for a time. It comprises only some of the incidents of ownership.

16. Under the English law, 2 a mortgage involves an actual transfer of ownership with a condition for its re-transfer upon due payment of the debt, but we are not dealing with that law.³

13. So much as to the orbit of usufructuary mortgage.

14. Coming to the rules of the Interpretation of Statutes the following rules need only be mentioned.

(a) The words and phrases are used in their technical meaning if they have acquired one.

(b) If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.

(c) When the words admit of but one meaning, a Court is not at liberty to speculate on the intention of the Legislature and to construe them according to its own notion of what ought to have been the enactment.

15. I give in the foot-note the extract from Maxwell which contains the above canons and many others.⁴

16. The above canons set forth in Maxwell are not peculiar to English Law. Being the outcome of common sense and judicial experience of ages, they are applicable to India and to any other country in which the statute law and its Judicial interpretation have reached an appreciable stage of evolution. Some of them have already been adopted by the Privy Council and the Indian High Courts.

17. In *Mohesh Chandar v. Madhub Chunder* 13 W.R. 85, the learned Judges remark: 'it is not for us, I think, nor for the Court below to speculate as the Judge

has done, upon what was in the mind of Legislature when it passed Act VIII of 1859. We must be bound by the words of the Act judicially construed.'

18. In *Balkaran Rai v. Govind Nath Tewari* 12 A. 129, Edge, C.J. is reported to have said:

A practice which is in contravention of the law, even if such practice be the practice of a High Court cannot make lawful that which is unlawful; nor can a practice of a Court justify a Court in putting upon an Act of the Legislature a construction which is contrary to the plain wording of the Act.' P. 153.

19. In *Kadir Bakhsh v. Bhuwani Prasad* 14 A. 143, Edge, C.J., is reported to have remarked: It appears to me that when a Court has to put a construction on statute, whether of the Imperial Parliament or of the Legislative Council of India it is the statute alone to which the Court is entitled to look.'

20. The learned Chief Justice further on remarks:

It is within one's experience that parties to legislation sometime fail to express themselves in the statute so as to carry out the intention they had in passing the statute and that subsequent legislation is necessary in order, by an amendment of the original statute, to express in statute language the meaning of the Legislature,' pp. 149-50.

21. In the *Administrator-General of Bengal v. Prem Lal Mullick* 22 C. 788 : 22 I.A. 107, their Lordships of the Judicial Committee say: But it was maintained that although the language of the clause is framed in such general terms as to exclude every executor, who has obtained a grant of probate under the 179th and the following sections of the Indian Succession Act of 1865, it must nevertheless be held to exclude the executor of Hindu Will, because it appears aliunde that the Legislature so intended it. It is conceivable that the Legislature, whilst enacting one clause in plain terms, might introduce into the same status other enactments which to some extent qualify or neutralise its effect. But a positive enactment in a Statute of 1874 cannot be qualified or neutralised by indications of intention gathered from previous legislation upon the same subject;' p. 797.

22. In *Norindra Nath Sircar v. Kamal Basini Dasi* (1891) A.C. 107, the judgment of the Judicial Committee of the Privy Council shows that a Court interpreting a statute is not to make any assumption that the intention of the Legislature was to leave unaltered the law.⁵

23. Turning to Section 7 of the Rent Act (XII of 1881), I have no hesitation in saying that with reference to the notion of mortgage in British India and the meaning of the words proprietary interests in Section 7, the interpretation put upon that section in *Madho Bharthi v. Barti Singh* 16 A. 337 was the correct interpretation and that the Full Bench case of *Indar Sen v. Naubat Singh* 7 A. 553 was rightly overruled. The majority of the Judges who decided *Indar Sen's* case 16 A. 553 were, it would seem, influenced by the English notion of mortgage. The fact that since the date of the ruling in *Madho Bharthi v. Barti Singh* 16 A. 121, the trend of the case-law in this Court has been that, may completely vindicate the correctness of the ruling see *Brijmohan Das v. Algu* 26 A. 78, *Babu Lal v. Ram Kali* 3 A.L.J. 40, *Sheo Lal Singh v. Sukhdeo Singh* 6 A.L.J. 437 : 31 A. 368 : 2 Ind. Cas. 462 and *Bhika v. Omra Singh* 5 Ind. Cas. 82. The facts that the construction placed upon Section 7 in *Madho Bharthi* 16 A. 337, frustrates the object with which that section was enacted ought not to weigh with a Court, for according to the rules of interpretation it has to look to the plain and natural meaning of the words employed and is not to be influenced by the consideration that the interpretation frustrated the object with which the Legislature framed Section 7.

24. I now pass on to Section 41. The portion of that section of the Ajmere Land and Revenue Regulation II of 1877, which we have to construe, runs as follows:

Any person who may have, whether before or after the passing of this Regulation, lost or parted with his proprietary rights in any holding either temporarily or permanently and has since continued in occupation of any of the land comprised in such holding, which as proprietor he retained under his own cultivation shall have a right of occupancy in such lands'.... The language employed in this section differs from that of Section 7 of the Rent Act in several respects with two of which I am concerned:

(a) The clause either temporarily, or permanently is inserted in Section 41 of the Regulation but not in Section 7 of the Rent Act.

(b) Under Section 7 of the Rent Act the loss of or parting with the proprietary rights is the only event which creates the ex-proprietary tenancy while under the Regulation the genesis of the tenancy depends upon two events. The one is the loss of or the parting with proprietary rights and the other is the continuance in occupation of any of the lands comprised in the holding. According to Section 7 of the Rent Act the law, on a transfer of proprietary rights, at once creates an exproprietary tenancy; while under Section 41 of the Ajmere Land and Revenue Regulation (II of 1877) it confers a power upon the owner of the holding to create it by continuing in occupation of his khud kasht in the holding.

25. Considering the nature of a usufructuary mortgage in British India, I am of opinion that the term 'temporarily' in Section 41 does not justify the inference that a usufructuary mortgage passes the full ownership for a time and thus creates an exproprietary tenancy. I have already shown that in a usufructuary mortgage a transfer of entire ownership temporarily does not take place. What takes place is a temporary transfer of some of the incidents of ownership. I very much doubt if a temporary transfer of full ownership in the true sense of the expression is known to the law of British India. The nearest approach to it is the estate of a Hindu widow whose husband was not a member of a joint family.

26. The argument that such a construction defeats the intention of the Legislature goes against the most elementary rules of interpretation. A Court has to look to the plain and natural meanings of the words employed. If the Legislature does not express its intention in clear terms, it, and not the Court, is responsible for the defeat. The argument, that Clause 2 in Section 10 of the Agra Tenancy Act (II of 1901) that 'A usufructuary mortgage shall be deemed to be a transfer within the meaning of this section', shows the intention of the Legislature and that in construing Section 44 of the Ajmere Regulation, effect to that intention should be given, has no force in the face of the rules of interpretation. The argument, that in Ajmere the law has always been understood to be that a usufructuary mortgage creates an ex-proprietary tenancy is not sound. In interpreting a statute a Court

must not be swayed by what was understood to be the law in a particular locality or by a section of a community. I am of opinion that by a usufructuary mortgage of his holding its owner does not become an ex-proprietary tenant under Section 41 of the Ajmere Land and Revenue Regulation (II of 1877). This is not all. A close examination of the language of Section 41 of the Regulation shows that an ex-proprietary tenancy does not come into existence by a mere parting with the holding. In addition to the transfer the owner must also continue in occupation of his khud kasht in the holding. It thus follows that if an owner when he transfers this proprietary rights covenants to make over his khud kasht to the transferee and does not continue in occupation thereof, no ex-proprietary tenancy in his favour is created. The words continued in occupation' in Section 41 of the Ajmer Regulation, I take it, mean lawfully continued in occupation and, therefore, if the transferor in spite of a covenant to put the transferee in possession of his khud kasht continues to hold on his khud kasht, he cannot be deemed to continue in possession within the meaning of Section 41.

27. The creation of an ex-proprietary tenancy under Section 41 of the Ajmere Regulation thus depends upon the terms of the deed of transfer. If the transferor covenants that he will surrender his khud kasht, no ex-proprietary tenancy comes into being. If he stipulates that he will retain possession of his khud kasht an ex-proprietary tenancy is created in his favour. For the above reasons my answer to the two questions referred to us is as follows:

(a) An owner of a holding who has made a usufructuary mortgage of his holding has not thereby lost or parted with his proprietary right either temporarily or permanently and does not, therefore, become an ex-proprietary tenant of his khud kasht in the holding.

b. Taking into consideration the fact that the mortgage deed promised to make over possession of the mortgaged property to the mortgagee which property presumably included his khud kasht, Section 41 of the Ajmere Land and Revenue Regulation (II of 1877) has no application to the facts of the case referred to us.

28. The decision of the Courts below are confirmed. We direct that a copy of the judgments be sent to the Commissioner of Ajmere. The costs of this Court will be

sent to the Commissioner.

1. A really satisfactory definition of a right thus wide, yet necessarily limited in several respects and conceivably limited in many more, has perhaps never been suggested. It is difficult to do more than to describe it, with Austin, as a right 'over a determinate thing, indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration'. Jurisprudence II, p. 477 cf. III, p. 2.

Various attempts have been made to enumerate the attributes or powers of an owner. He is said to have rights 'utendit', 'fruendi', 'abutendi', 'fructus percipiendi', 'possidendi', 'alieandi', and 'vindicti'. But what has to be said with reference to the orbit, or contents, of the right of ownership may be conveniently arranged under three heads of possession, enjoyment; and disposition. Holland, p. 200.

2. The objects aimed at by a law of pledge are, on the one hand, to give the creditor a security on the value of which he can rely, which he can readily turn into money, and which he can follow even in the hands of third parties; on the other hand, to leave the enjoyment of the thing in the meantime to its owner, and to give him every facility for disencumbering it when the debt for which it is security shall have been paid.

The methods by which these objects can best be attained, and the degree in which they are attainable, must vary to some extent with the nature of the thing pledged. Probably the rudest method is that which involves an actual transfer of ownership in the thing from the debtor to the creditor, accompanied by a condition for its retransfer upon due payment on the debt. Such was the 'fiducia' of the older Roman Law, such is the Scotch wadset, and such is the English mortgage, of land or goods, at the present day, except in so far as its theory has been modified by the determination of the Court of Chancery and of the Legislature to continue, as long as possible, to regard the mortgagor as the owner of the property (a). Lord Mansfield was unsuccessful in attempting to induce the Courts of Common Law to take the same view (b).

(a) In vivum vadium, or Welsh mortgage, the creditor repays himself out of the profits of the property, which then reverts to the debtor, B1. 2 Comm. 157, but see

Fisher, Mortgages, In mortuum vadium if the debt be not paid by the time fixed, the property becomes absolute in the mortgagees, except that, by the intervention of the Court of Chancery the mortgagor is still allowed during a further period an 'equity of redemption.'

(b) See *Eaton v. Jacques*, Doug. 455, Holland, pp 223 to 224.

3. 'It seems to be inferred by some of the Judges in the Full Bench case to which we have referred, that when a mortgagor delivered possession to the mortgagee under the mortgage, the effect of that coupled with Section 58 of Act No. IV of 1882, was to divest the mortgagor of all proprietary rights and to make the mortgagee, for the time being at any rate, the exclusive proprietor. That proposition might be correct in the case of an English mortgage, i.e., a mortgage falling within Clause (c) of Section 58 of Act No. IV of 1882, but in our opinion it certainly cannot be correct in the case of a usufructuary mortgage falling within Clause (d) of Section 58,' *Madho Bharti v. Barti Singh* 16 A. 337, p. 341.

4. His Lordship gave an extract from Maxwell on the Interpretation of Statutes, 4th Ed., pp. 2-8.

5. 'The Subordinate Judge referred to several text-writers and cited a number of authorities to prove that, according to the law still in force in England and according to the law administered in India before the date of Succession Act, 1865, an executory gift, such as that contained in the testator's Will, would have effect, in the event of the first taker dying sonless, at any time. Then turning to the Act he held with some hesitation that it was not the intention of the Legislature to alter the law in India by departing from the law of England. The learned Judges of the High Court on appeal reversed the decision of the Subordinate Judge. They held that the Act of 1865 had altered the law and that according to Section 111 of the Act as explained by illustration (b) the original gift to the three sons in equal shares became indefeasible on the testator's death.

It is hardly necessary for their Lordships to do more than express their concurrence with the judgment of the High Court. But they think it may be useful to refer to some observations in a recent case before the House of Lords as to the

proper mode of dealing with an Act intended to codify a particular branch of the law. 'I think,' said Lord Herschell in the *Bank of England v. Vagliano* (1891) A.C. 107 the proper course is in the first instance to examine the language of the Statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute, intended to embody in a Code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions.... The learned Judges of the High Court have taken the line which was approved in the House of Lords. The Subordinate Judge followed exactly the, opposite course. His judgment with much display of learning and research is a good example of the practice which Lord Herschell condemns and the mischief which the Succession Act, 1865, seems designed to prevent.'

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