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## CASE COMMENT: ANNADA MOHAN ROY V. GOUR MOHAN MULLICK

~*Kanak Kumari*

### ABSTRACT

The decision that has been come in the case of Annada Mohan Roy v. Gour Mohan Mullick by the Privy Council's judicial Committee in the year 1923 is a significant landmark case in the Indian Contract Act and The Property Law. The decision upheld the rule that a simple expectancy of succession, or Spes Successionis, cannot be transferred under Section 6(a) of the Transfer of Property Act, 1882<sup>1</sup>. In the dispute, reversionary heirs of a Hindu who belonged to the Dayabhaga school tried to transfer their rights to future inheritance while widows with modest estates were still alive. Such transfers, or even contracts that contemplate future transfers, are void ab initio, the Privy Council clarified. Furthermore, the court decided that the Plaintiff cannot use these grounds for restitution or damages. The decision has long-term implications for defining the parameters of contractual freedom since it shows that contracts involving forbidden subject matter cannot be enforced either directly or indirectly.

### INTRODUCTION

Indian law distinguishes clearly between transferable and non-transferable rights. Categories of interest which is non-transferable under the Transfer of property Act, 1882 has been discussed in the section 6 of the Transfer of property Act, 1882<sup>2</sup> and the clause (a) of this very section expressly forbids the transfer of the likelihood / expectancy that an heir apparent will inherit an interest. The term heir apparent is an English term and is based on the maxim *nemo est here viventis* which mean that a living person does not have any heir. It is never known who will be the heir or what property,

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<sup>1</sup> Transfer of property Act, 1882 §6(a).

<sup>2</sup> Transfer of property Act, 1882 §6(a).

if any, will be left for inheritance before a person passes away. Property can be disposed of by the owner's will or during their lifetime, and the heir-apparent may even pass away before then. Consequently, succession is not a given, but rather a hope or possibility. For this reason, the law forbids transfers based on such hazy expectations and employs the term "chance" and "heir apparent," which denote mere probability. The *Annada Mohan Roy v. Gour Mullick*<sup>3</sup> case is a significant source on the application of this rule, particularly in relation to reversionary heirs under Hindu law. It raised the important questions of whether contracts to transfer such expectations could be maintained once succession had started.

## **FACTS**

A wealthy Hindu who practiced law according to the Dayabhaga school, Gopal Lal Seal passed away in 1902, leaving behind two widows Srimati Kumudini Dasi and Srimati Nayanmuhjari Dasi and a number of nephews who were the sons of his sisters. One nephew had a will proposed in his favor, but the widows' life estates and the nephews' status as reversionary heirs were confirmed when the Calcutta High Court and the Privy Council rejected the probate. The respondent/reversioners were in great difficulties in matter of financing, The Appellant came to their aid and gave them substantial loans based on the Respondents' claims that the aforementioned will was authentic and that they were entitled to their respective shares. On May 7, 1908, the Respondents signed separate agreements in favor of the Appellant, each backed by an affidavit. According to the aforementioned agreements, the Respondents committed to selling the Appellant their individual shares for a monthly payment of Rs. 300, which would be paid to each of them, their heirs, and their representatives in perpetuity.

## **ISSUE RAISED**

Under Section 65 of the Indian Contract Act, 1872<sup>4</sup>, which addresses restitution of benefits under void agreements, the Privy Council was asked to decide whether the agreements made by the reversionary heirs to sell their future shares in the estate upon the widows' deaths were legitimate and enforceable, whether the appellant was entitled to specific performance once succession had opened, and whether the appellant could recoup the money advanced to the respondents.

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<sup>3</sup> *Annada Mohan Roy v. Gour Mohan Mullick*, 1923 SCC OnLine PC 28.

<sup>4</sup> Indian Contract Act, 1872 §65.

## **ARGUMENT BY PARTIES**

The appellant argued that contracts for the future sale of future expectations were not inherently impossible and that such contracts were not specifically prohibited by Hindu law. He insisted that the agreements should be enforceable after succession had opened, citing previous precedents. As an alternative, he invoked Section 65 of the Indian Contract Act, claiming that since the invalidity was discovered later, he was entitled to restitution of the amounts advanced even if the contracts were void.

On the other side the respondent contended that the agreements were not valid thus void under section 6(a) of the Transfer of Property Act, 1882<sup>5</sup> on the ground that they dealt with merely expectancies. They further contended that the appellant was not entitled for equitable relief or restitution under section 65 of Indian Contract Act, 1872<sup>6</sup>, because he had intentionally entered into the contract that was specifically forbidden by law.

## **COURT HOLDING**

The agreements between the Appellant and Respondents were declared void at law by the Privy Council sitting as one in a unanimous decision. court held that neither Hindu law nor the Transfer of Property Act could acknowledge or enforce transfer of future rights of inheritance, which were a Mere Expectancies.

The following are the overriding principles applied by the court, no person can pass or take property which does not exist or is without a specific object (Section 6(a) TPA). So also under Section 65 of the Contract Act even in a case where the consideration is virtually non-transferable it cannot be claimed if such a contract turns out to be void.

Furthermore, the Dayabhaga School of Hindu Law, the right by birth does not accrue at the time when there is a living holder. died and thus such expectations could not be considered as property rights or transferred before they occurred. These guidelines actually served as a foundation for the court's determination that the disputed agreement is void.

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<sup>5</sup> Transfer of property Act, 1882 §6(a).

<sup>6</sup> Indian Contract Act, 1872 §65.

The major basis of court's ruling was that a contract to relinquish future and contingent rights to inheritance was void as under the Hindu law an expectant estate did not tantamount to transferable property and Transfer of Property Act specifically provided against the transfer in respect of properties which had not already vested. To allow such agreements would be to make the law uncertain and statutory safeguards would be so far weakened. Therefore, there was no legally enforceable agreement on which such a claim could be made.

## ANALYSIS

The ruling reaffirms unequivocally the requirement that contracts have a legitimate subject matter in order to be enforceable. The law aims to stop trafficking in such ambiguous rights because a reversioner's chances of inheriting an estate are speculative and unpredictable. The Court underlined that an invalid transfer cannot be disguised as an agreement for a future transfer in order to get around the prohibition under Section 6(a)<sup>7</sup>. As a result, contingent agreements and immediate assignments are equally null and void.

It was incorrect for the appellant to rely on Section 65 of the Indian Contract Act<sup>8</sup>. The Privy Council clarified that "discovery" does not imply a belated realization of an obvious legal prohibition, but Section 65 applies when an agreement is found to be void. It is assumed the parties knew the law since the Transfer of Property Act explicitly prohibited the transfer of expectancies at the time of the contracting. This strict interpretation of Section 65 reaffirmed the position that explicit statutory prohibition cannot be overridden by principles of equity.

The importance given to following precedent was also addressed in the ruling. The Madras High Court had previously ruled in *Sri Jagannada Raju v. Sri Rajah Prasada Rao*<sup>9</sup> that agreements to transfer reversionary interest are void ab initio, and the Privy Council ruled the same in *Harnath Kuar v. Indar Bahadur Singh*<sup>10</sup>. In *Annada Mohan Roy*, the appellant had intentionally entered into the illegal contract and had even given up on restitution issues earlier, whereas in *Harnath Kuar*, restitution was allowed because the plaintiff had been misled. Which result in the ruling of Privy

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<sup>7</sup> Transfer of property Act, 1882 §6(a).

<sup>8</sup> Indian Contract Act, 1872 §65.

<sup>9</sup> *K.L. Jagannada Raju Garu v. Rajah K.V.S.V.L.N.V.J.B. Prasada Rao Garu*, 1915 SCC OnLine Mad 457.

<sup>10</sup> *Harnath Kuar v. Indar Bahadur Singh*, 1922 SCC OnLine PC 64.

council that guarantees doctrinal clarity and forbids parties from transferring something that the law expressly forbids.

This case also raises wider issues relating to the parameters of contractual freedom. The policy considerations of the public good outweighed any suggestion that fairness required the appellant at least to be compensated for the advancement. The law gives less weight to individual agreements based on the contemplation of speculative inheritance than it does to the notion of stability and protection of a family property scheme. While this strict approach may seem harsh, it discourages speculative litigation and supports the legislative intention of Section 6(a).

## **CONCLUSION**

In *Ananda Mohan Roy v. Gaur Mohun Mullick*, the court ruled that speculation could not be treated as transferable property for any purpose, just as future interest in inheritance cannot. According to the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or according to Dayabhaga law, property rights must be enforceable, ascertainable, vested, and recognized by the law. The Court noted that contracts cannot displace a statute rule, and an inheritance right does not take effect until the death of the life-holder. The ruling provides an important precedent in the law of property and inheritance; it protects heirs, requires that any transfer be valid from completed claims, and establishes a measure of security in real property transactions.