

Sir Lal Gopal Mukerjee

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India has been singularly lucky in its judiciary. Sir Charles Arbuthnot, a member of the Madras Executive Council, once remarked that India could be proud of Judges like Mahmood and Muthuswamy Iyar. He could have added a few more. Subramania Iyer and Bhashyam Iyengar in Madras, Ameer Ali who attained the highest water mark in the Privy Council, R. C. Mitter, in Calcutta, Ranade and Tyabji in Bombay; Banerjee and Sulaiman at Allahabad. I shall unhesitatingly include in the list Sir Lal Gopal Mukerjee. By the way, Ameer attained great distinction' as a scholar, author and historian. So did Sulaiman as a - Scientist.

On the retirement of Sir P. C. Banerjee in 1923, Lal Gopal Mukerjee succeeded him. His fame as the ablest member of the subordinate Judiciary had preceded him. He was a marked man at every stage in his life. He topped the list in B. Sc. from the Muir Central College. He belonged to the batch almost every member of which won laurels in Jife. Sir Wazir Hasan, Chief Judge, Lucknow, Rai Bahadur Narsingh Prasad of Gorakhpur, Rai Bahadur, Vikramajit Singh of Kanpur, Sir Jwala Prasad, Judge, High Court, Patna, Sir Seraimal Bapna, Prime Minister, Indore. To very few in the world is it given to be marked out at every stage. But, he was an exception. As a Munsif, as a Subordinate Judge and as a District Judge, he was the first among equals.

There was no branch of law in which he was not well versed. Of the Law of Transfer, easily the most abstruse, he was almost a master. Even as a District Judge, he was singled out to serve as the Secretary of the Transfer of Property (Amendment) Act Committee. His treatise is a tribute to his mastery of the subject. Nothing in the Muslim Law is so difficult as the Chapter on Succession, particularly the working out of shares. I marveled at the way he or, P. C. Banerjee or Sulaiman did it.

The reputation he had built up as a Subordinate Judge will be illustrated by an incident which happened in my presence. A First Appeal against his Judgment was going to be taken up before Sir Grim wood Mears and Sir P. C. Banerjee. The Bench was likely to break up soon. Sir Grim wood put it to Mr. P. O'Connor, who appeared for the Appellant, how long he would take. Mr. O'Connor replied, to quote his very words;

"It is an uphill task, my Lord; it is one of the usual insurmountable judgments of Lal Gopal Mukerjee."

I know of no member of the Subordinate Judiciary, in recent" times, who enjoyed this reputation. It was a pleasure to see him working and a privilege to argue before him. He was endowed with a nature which could never be ruffled. I appeared before him in numberless cases and cannot recall to my mind an unkind word uttered by him. On his well chiseled face, almost a Grecian Sculptor's model sat a serene dignity, which shed benigence all round. A master of adjective law, he never allowed substance to be sacrificed at the altar of procedure. He believed with Lord Penzance that—

"Procedure is but a machinery and its object is to facilitate and not to obstruct the cause of justice."

Kendal *versus* Hamilton.

(1878) 4 Appeal Cases 525.

The weak and the oppressed found in him a warm advocate. So did charitable and beneficent institutions. Of the latter, the case of Fazal Ahmad *versus* Rahim Bibi, 1929 A. L. J. R., pp. 6-20 is an apt instance. It was the case of a Muslim Waqf and its fate depended upon the interpretation of a deed in the light of Section 8 of the Transfer of Property Act. It was one of the best argued cases by Mr. O'Connor for the Appellant, and Sir Tej Bahadur Sapru, for the Respondent. It was heard by Sir Henry Kendall and Mr. Justice Niamatullah. They differed. It was then referred to Sir Lal Gopal Mukerjee; who agreed with Sir Henry Kendall. The Privy Council agreed with Justice Niamatullah, 1933 A. L. J. R. P. C. 331. The presumption is that that August Assembly is right, but speaking with

the utmost respect, it is not infallible. Sir Dinshaw Mulla, who delivered the judgment of the Privy Council, in holding that—

"It is doubtful if Section 8 applied",

failed to enter into the spirit of that Section. The judgments of Sir Lal Gopal Mukerjee and Sir Henry Kendall gave effect to the intention of the author of the Waqf. They had the effect of preserving the charity. The Privy Council virtually pronounced its doom.

Not for world did he abandon the poor, the weak and the oppressed to their fate. The number must be legion, but I shall notice only two cases, which are just a type. One of them is Gopi Kissen versus Jaggo Bai. It is not reported anywhere; Jaggo, a Vaish, was married to one Sheo Nath and was then abandoned by him. She then married one Nakoo Lal, and had a son by him. The marriage was held in a most loose and perfunctory manner. The sons of Nakoo, by the first wife; challenged the right of Jagoo's son on the ground that Jagoo's marriage with Nakoo was invalid, because Sheo Nath was still alive. She and her son pleaded custom. The Subordinate Judge, Mr. Ali Mohammad, upheld the custom. In the High Court Dr. Katju argued for the Appellant with his usual skill and; in the particular case, with great pertinacity. I appeared for the Respondent and trembled in my shoes. When every thing else failed; Dr. Katju prayed that the case should be sent back, as the evidence on the question of custom had, at least in part, been wrongly shut out. Sir Moss King agreed with him and I was called upon. All I said was—

"My client is very poor. We have been deprived of all our property, if the case goes back, I cannot meet them on equal grounds.

This was enough. Sir Lal Gopal Mukerjee observed—

"Dr. Katju, you are rich, you will bring a mass of evidence—all perjured. No, no. This cannot be done."

Sir Moss King agreed. The Appeal was dismissed. I may mention that the Privy Council upheld the decision;

Gopi Kissan versus Jaggo Bai. 1936 P. C., page 198.

But his profound sympathy for the poor, the helpless and defenseless was best in evidence in the case of —

Rasoolan Bibi versus Nand Lal.

1930 A. L. J. R. 1091.

A rich Muslim of Jaunpur died, leaving behind two sons, two daughters and a large property. The names of the sons were recorded in the revenue papers, but not of the daughters. The sons embarked upon a life of dissipation and; within a few years ran through the entire fortune. The last items of the property worth over a lac was auctioned for RS.400. The daughters brought a suit for recovery of their share. It was dismissed on the finding that the auction purchaser was protected by Section 41 of the Transfer of Property Act; as the revenue papers recorded only the names of the brothers. A learned single Judge had dismissed the appeal *in limini*. The Letters Patent appeal was heard by Sir Lal Gopal Mukerji and Sir Edward Bennet.

As soon as I opened the case for the appellant, Dr. Agarwalla for the respondents stood up and said—

"My Lord, it is concluded by findings of fact."

Sir Lal Gopal—"There is nothing in your case". I almost stammered out—

"The father left a fortune. The sons simply threw it away. The last item worth over a lac was auctioned for a few hundreds."

Sir Lal Gopal—"What sort of estoppel do they plead?"

"The Khewats did not record the names of the sisters", I replied.

He had a moment's consultation with Sir Edward, who was also in favour of the ancient nobility.

Sir Lal Gopal—"Dr. Agarwalla, There could be no estoppel as a Khewat is not a document of title."

So strongly moved did he feel for the victims of man's depravity that the very first sentence in his judgment was—

"This appeal must be allowed."

Then, in a few lines he laid down the law in these terms: -

"If we were to say that Mohammedan sons, simply because their names alone are shown in the Khewat; are entitled to give a good title to the transferee and the mother and sister are not entitled to claim their shares, it would be disastrous indeed." P. 1093

It is impossible to improve upon the above dictum.

The same desire to preserve the integrity of the family, rather than disrupt it; induced him to lean strongly in favour of a family settlement and the best judgment of his on the subject is:

(1930) 1. L. R. 52 All. 716.

Pohkar Singh versus Dulari Bai.

It has since then been treated as the leading case on the subject.

I would I could write more, but the exigencies of time and space forbid any such attempt. I cannot, however, help referring to one incident. When he was appointed Acting Chief Justice he occupied the Chief Justice's chair, which was probably larger and a little higher than other chairs. He felt he almost sank into it. He good-humouredly remarked—

"This chair is too big for me."

Mr. O'Connor, who appeared before him, remarked—

"No, my Lord, there is no chair in the world too big for you.

Mr. O'Connor had the profoundest admiration for Sir Lal Gopal and what he said reflected the views of every section of the Bar. After adorning the Bench for eleven years, he retired in 1934 amidst the regrets of all. India has produced great giants in the legal world, but I doubt very much if ever sat a judge on the Bench, who could excel him in that rare virtue—justice tempered with mercy, of that justice about which, centuries ago, the poet had said

"It blesses him

that gives

And him that takes."