

ORIGINAL CIVIL.

Before Greaves J.

RAM LAL SEN

v.

BIDHUMUKHI DASÍ.*

1919

July 3.

Will—Construction—Accumulation, provision for—Hindu Law.

R. in his will gave and devised the rest and residue of his property to B. his widow and executrix, for life, thereafter to his five sons in equal shares with a direction to make certain payments and for accumulation of the surplus income during the lifetime of the widow for the benefit of the sons :—

Held, that the provision for accumulation of the surplus income is not invalid.

A direction to accumulate with a gift of the accumulation is not fundamentally bad ; it fails only if it offends some independent rule of Hindu Law.

Watkins v. Administrator General of Bengal (1) followed.

In re Poultney, Poultney v. Poultney (2) referred to.

Saunders v. Vautier (3) distinguished.

Ram Gopal Sen, a Hindu governed by the Bengal School of Hindu Law, died on the 16th November 1880 leaving a widow Bidhumukhi Dasi, five sons Bolai Chand, Sham Lal, Ram Lal, Adhar Lal and Heera Lal and two grandsons Bepin Behary and Amrita Lal, sons of a predeceased son named Doyal Chand. Ram Gopal also left a will, dated the 9th October 1878, by which he appointed Bidhumukhi Dasi his executrix and trustee, and after making provision for some specific legacies went on to say—

“ I give devise and bequeath rest and residue of my estate movable and immovable unto my said wife and her assigns for life interest to collect

* Original Civil Suit No. 44 of 1916.

(1) (1914) See Foot-note, p. 88. (2) [1912] 2 Ch. 541.

(3) (1841) Cr. & Ph. 240.

the rents issues and profits thereof and pay the ground rents taxes and assessments payable in respect of the immovable property and keep the same in repair and in the second place to spend according to her discretion a sum not exceeding rupees three thousand and six hundred a year towards the maintenance and education of my family consisting of my said wife, my five sons hereinafter named and their wives and children and the widow and children of my deceased son Doyal Chand Sen and defraying other family and customary expenses and in the next place to accumulate the surplus income for the benefit of my said five sons, they all living in commensality in the dwelling house, and I direct that in case any of my said sons should live apart from the rest of my family he shall be paid a monthly sum of rupees twenty five for his maintenance.

"On the death of my said wife I give devise and bequeath my house No. 30 Sanker Halder Lane and sum of rupees five thousand and seven hundred and five East Indian Railway Shares standing in the name of my deceased son Doyal Chand Sen to my infant grandsons Amrita Lal Sen and Bepia Behary Sen, to be divided between them in equal share and proportion, but subject to the charge of maintaining their mother Srimati Bhuban Money Dasi. In the event of either of them dying without male issue his share will pass to the survivor subject to the charge of maintaining his widow and female issue (if any) and marrying the latter. In the event of both grandsons dying without male issue the subject matter of this bequest with the exception of my said Railway Shares (which will pass to the survivor's heirs) shall revert to and become a part of the residue of my estate to devolve on my said five sons and their heirs subject to the limitation hereinafter provided.

"And as to the rest and residue of my estate movable and immovable I give devise and bequeath the same (on the death of my said wife) to my five sons Bolai Chand Sen, Sham Lal Sen, Ram Lal Sen, Adhar Lal Sen and Heera Lal Sen, in equal shares and proportions but in the event of any of them dying without male issue his share will pass to the survivors or survivor, subject to the charge of maintaining the widow and marrying the daughter of the son so dying (should he leave any) and also paying such widow or daughter (as the case may be) rupees one thousand."

In 1882 Bidhumukhi obtained probate of the said will from this High Court.

Thereafter, in 1885, Adhar Lal died leaving a widow Champa Dasi and four daughters, three of whom are dead and the fourth is still alive. In 1895 Bolai Chand died leaving three sons Sankar Lal, Rash Behary and Gosto Behary.

1919

RAM LAL
SEN
v.
BIDHU-
MUKHI DAS

1919
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DASI.

On the 10th January 1916 Ram Lal Sen, one of the sons of Ram Gopal Sen, filed this suit against the executrix Bidhumukhi Dasi and the other members of the family for construction of the said will, administration of the estate and partition of the residue with all accretions.

Pending suit in 1918 Heera Lal died leaving three sons Manik, Netye and Gour, who were brought on the record.

Mr. N. N. Sircar (with him *Mr. L. P. E Pugh*, *Mr. H. C. Majumdar* and *Mr. B. C. Ghose*), for the plaintiff. The provision for accumulation is bad. It is bad not on the ground of being tied up but on the ground of repugnancy. As the accumulation has no owner during the widow's lifetime it is bad: Trelvelyan's Hindu Law, 2nd Ed., page 41. There is a vested interest created under the will, the possession only is postponed *Cally Nath Naug Chowdhry v. Chunder Nath Naug Chowdhry* (1).

Mr. B. Chakraverty (with him *Mr. C. C. Ghose*), for the defendants Sankar Lal and Rash Behary. There is no beneficial disposition of the property in favour of the widow. If it is not divisible until her death, it cannot remain in abeyance: Hindu Wills Act, s. 90; Succession Act, s. 118; *Kristoromoney Dossee v. Maharaja Narendro Krishna* (2) *Lalit Mohan Singh v. Chulkan Lal Roy* (3).

Mr. N. Mukerjee, for Champa Dasi. The share I claim had already vested in my husband at the date of the testator's death. "In the event of any of them dying without male issue" referred to death during the testator's lifetime: *In re Poultney, Poultney v. Poultney* (4).

(1) (1882) I. L. R. 8 Calc. 378.

(2) (1888) L. R. 16 I. A. 29.

(3) (1897) L. R. 24 I. A. 76.

(4) [1912] 1 Ch. 245.

Mr. S. C. Bose (for *Bipin Behary Sen*). I am entitled to maintenance under clause (4) of the will. It is a present gift, only the possession is postponed, so I am immediately entitled to the properties given to me.

1919
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DAS.

Mr. S. N. Banerjee, for the defendants Manik, Netye and Gour. The widow took an interest for life. The accumulation if bad, would go to the widow. The sons took a vested interest liable to be divested. *Bhupendra Krishna Ghose v. Amarendra Nath Dey* (1).

Mr. D. Bose, for the defendant Barai Dasi.

Mr. S. K. Chukerbatty, for the defendant Gosto Behary Sen.

Mr. B. K. Ghosh, (with him *Mr. H. D. Bose*), for the defendant Sham Lal Sen. The sons take a vested remainder and the widow takes for life: *Norendra Nath Sircar v. Kamal Basini Dasi* (2).

Mr. C. R. Das (with him *Mr. B. L. Mitter*), for the defendant Bidhumukhi Dasi. The time for partition has not arrived yet. The provision for accumulation is good: *Watkins v. Administrator General of Bengal* (3). If the accumulation is bad then the widow takes a life-estate: *Bhupendra Krishna Ghose v. Amarendra Nath Dey* (4), *Amulya Charan Seal v. Kali Das Sen* (5). The widow gets a life-estate by implication and the Court should not infer a trust: *Strahan's Interpretation of Wills and Settlements*, page 133; *In re Hamilton, Trench v. Hamilton* (6), *In re Williams, Williams v. Williams* (7), *In re Conolly, Conolly v. Conolly* (8). The words here do not amount to a trust.

(1) (1915) 20 C. W. N. 169.

(5) (1905) I. L. R. 32 Calc. 861.

(2) (1896) I. L. R. 23 Calc. 563.

(6) [1895] 2 Ch. 370.

(3) (1914) See Foot-note p. 88.

(7) [1897] 2 Ch. 12.

(4) (1915) L. R. 43 I. A. 12.

(8) [1910] 1 Ch. 219.

1919
 ———
 RAM LAL
 SEN
 v.
 BIDHU
 MUKHI DASI.

Mr. Pugh, in reply, you cannot by appointing a trustee do what you cannot do under the Hindu Law.

Cur. adv. vult.

GREAVES J. The plaintiff in this suit seeks to have the will of one Ram Gopal Sen construed and the rights shares and interests under the said will of the parties to the suit ascertained and for administration of the estate of Ram Gopal Sen under the direction of the Court and for an account of the estate from the defendant Bidhumukhi Dasi, from the testator's death and for partition. The plaintiff is a son of Ram Gopal Sen, the 1st defendant is his widow and the executrix of his will, the defendant Sham Lal Sen is a son, the defendants Manick Lal Sen, Nitya Lal Sen and Gour Lal Sen are sons of a deceased son Heera Lal Sen who survived the testator and died after the institution of the suit, the defendants Sankar Lal Sen, Rash Behary Sen and Gosto Behary Sen are sons of another son of the testator named Bolai Chand Sen who survived the testator and died in the year 1895, the defendant Champa Dassi is the widow of another son Adhar Lal Sen who survived the testator and died in 1885 without leaving a son but leaving four daughters, three of whom are dead two of them having left male issue, the defendant Bepin Behary Sen is a son of Doyal Chand Sen, a son of the testator who predeceased him and the defendant Srimati Barai Dassi is a daughter of another son of Doyal Chand named Amrito who is dead. Srimati Barai had a son born to her last April. Amrita had a son Ganesh who died some time in or after the year 1905.

Ram Gopal Sen died on the 16th November 1880 a Hindu governed by the Bengal School of Hindu Law leaving a will dated the 9th October 1878, probate

whereof was granted out of this Court in the year 1882 to the defendant Srimati Bidhumukhi Dasi the executrix therein named. The heirs of Ram Gopal Sen at the time of his death were his five sons Bolai Chand, Sham Lal, Ram Lal, Adhar Lal and Heera Lal and his two grandsons Bepin Behari and Amrita Lal.

1919
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DASI.
 GREAVES J.

The testator by his said will appointed his wife, the defendant Srimati Bidhumukhi Dasi, executrix and trustee thereof and directed her to pay his debts and funeral and testamentary expenses and to expend a certain sum therein named on his first *Shrad* and after giving certain legacies, including a sum of Rs. 20,000 in Government 4 p. c. securities, to his wife for her life, to the end that she might spend and enjoy the interest thereof during her life, gave devised and bequeathed the rest and residue of his estate moveable and immoveable unto his wife and her assigns for life interest to collect the rents, issues and profits thereof and to pay the ground rents taxes and assessments payable in respect of the immoveable property and to keep the same in repair, and in the second place to expend according to her discretion a sum of not more than Rs. 3,600 a year towards the maintenance and education of his family, consisting of his wife his five sons thereafter named, and their wives and children and the widow and children of his deceased son Doyal Chand Sen, and in defraying other family and customary expenses, and in the next place to accumulate the surplus income for the benefit of his said five sons, they all living in commensality in his dwelling house, and he directed that in case any of his said sons should live apart from the rest of his family he should be paid a monthly sum of Rs. 25 for his maintenance. The testator then upon the death of his wife gave devised and bequeathed his house No. 30, Sunker Halder Lane, and certain shares to his infant

1919
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DASL.
 GREAVES J.

grandsons Amrita Lal and Bepin Behary in equal shares, subject to the charge of maintaining their mother and provided that in the event of either of them dying without male issue his share would pass to the survivor, subject to the charge of maintaining his widow and female issue (if any) and marrying the latter, and he provided that in the event of both his grandsons dying without male issue the bequest except the Railway shares which were to pass to the survivor's heirs should revert to and become a part of his residue, to devolve on his said five sons and their heirs subject to the limitation thereunder provided. And he gave the rest and residue of his estate moveable and immoveable on the death of his wife to his five sons, whom he names, in equal shares and proportions, but he provided that in the event of the death of any of them without male issue his share should pass to the survivors or survivor, subject to the charge of maintaining his widow and marrying the daughter of the son so dying, should he leave any, and paying to such widow or daughter Rs. 1,000 or more, at the same rate if more than one.

The plaintiff contends that the provision for accumulation is bad not on the ground of the length of the period of accumulation but as being repugnant, and he contends that if there is no gift until the wife dies there is an intestacy as to the amounts directed to be accumulated until her death. The widow contends that the accumulation is good and that the suit is premature and that nothing is divisible until her death, alternatively she contends that she takes a life-estate in the whole income the provision for accumulation being merely discretionary and in the further alternative she contends that she gets a life estate by implication.

If the widow's main contention, namely that the provision for accumulation is not invalid, prevails then no question at present arises for decision and the suit is premature as no case for an account has been made out. But it seems to me that to decide if the provision for accumulation is valid, it is necessary first to see whether under the will the sons took immediate vested interest under the will or if vesting is postponed until the widow's death. If the sons took vested interests at the testator's death then one of the arguments levelled against the provision for accumulation goes, namely that the accumulations having no owner until the widow's death the provision for accumulation is bad. This argument is based on a passage in Trevelyan's Hindu Law, 2nd Ed., p. 41, where it is laid down that every part and interest in a property must have an owner, it can not remain in suspense or abeyance without an owner, it must vest in some one.

Now the clause in the will directing the accumulations contains no express gifts of the accumulations and I do not think that any gift can be implied from the words "for the benefit of my said five sons." The sons are entitled to be maintained out of the sum of Rs. 3,600 or if they separate they get Rs. 25 a month from the estate, and if the words "for the benefit of my said five sons" were intended to confer an immediate gift of surplus income it is at least unlikely that there would have been as well provision for their maintenance. Presumably therefore if the provision for accumulation is valid the accumulations fall into residue and pass under the gift of the rest and residue of the estate to the five sons on the death of the widow. Did then this gift vest in the sons on the death of the testator or is vesting postponed until the widow's death? I think that the gift vested

1919

RAM LAL
SEN

v.

BIDHU-
MUKHI DASI.

GREAVES J.

1919
 ———
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DASI.
 ———
 GREAVES J.

on the death of the testator. Section 47 of the Hindu Wills Act, which is section 106 of the Succession Act, provides that where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is, from the testator's death, said to be vested in interest and the explanation to the section states that an intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed or whereby a prior interest therein is bequeathed to some other persons or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives or from a provision that if a particular event shall happen the legacy shall go over to another person. I can not see that in the will before me any contrary intention appears, and the fact that there is a gift over to the surviving sons, in certain events, of a son's share (and the expression "his" share certainly looks like a vested interest) is not in my opinion a contrary intention and in fact the section so states.

That such a gift is a valid gift (see section 59 of the Hindu Wills Act) and it does not make the interest any less a vested interest but merely divests in certain events the estates or gift which has already vested. I think the five sons upon the death of the testator took immediate vested interests in the residue, which includes the accumulations, but I think that the estate of any son was liable to be divested upon his death

without male issue during the lifetime of the widow. Counsel for Champa Dassee contended in reliance on *In re Poultney, Poultney v. Poultney* (1); that “dying without male issue” meant death in the testator’s lifetime, but unfortunately for his argument he has failed to notice that the decision of Joyce J. in *In re Poultney, ubi supra* was reversed on appeal see *In re Poultney—Poultney v. Poultney* (2). I think that “dying without male issue” upon the true construction of the clause means death in the widow’s lifetime and that Adhar’s vested interest was divested upon his death in the widow’s lifetime, without male issue, but of course under the terms of the will the share of Adhar passed to the surviving sons, subject to the charge imposed on the gift of residue of maintaining Champa Dassee when the residue falls into possession and of making the payments to the widow and daughters directed by the will. It did occur to me that a possible solution of any difficulty with regard to the accumulations might be found in holding that as under the gift of residue the accumulations pass to the sons eventually they might upon the principle of *Saunders v. Vautier* (3) and like cases stop the accumulations at any time and claim the surplus income as it accrues. But two difficulties present themselves (i) the gift over to the surviving sons in the event of a son dying without male issue in the lifetime of the tenant for life, (ii) the rights of Champa Dassee and her daughters respectively to maintenance and legacies out of Adhar’s divested share of the residue, which includes the accumulations. The 1st point might be got over by the sons agreeing *inter se* to give up their rights of survivorship but the 2nd point remains and could only be got over by

1919
 ———
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DAS
 ———
 GREAVES J.

(1) [1912] 1 Ch. 245.

(2) [1912] 2 Ch. 541.

(3) (1841) Cr. & Ph. 240.

1919
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DAS.
 GREAVES J.

Champa Dassee releasing her right of maintenance against the accumulations and by payment to her and her daughters of their legacies. But as matters stand I am of opinion that the principle of *Saunders v. Vautier* *uli supra* has no application.

It remains therefore to consider under the circumstances of this case whether the provision for accumulation of surplus income during the lifetime of the widow is valid according to Hindu Law, bearing in mind the fact that according to the construction which I have put upon the residuary gift the sons took immediate vested interests upon the testator's death. Now the question of the validity in a will of a provision for accumulation of surplus income was recently discussed by the Appeal Court in *Watkins v. The Administrator General of Bengal and Others*, Suit No. 611 of 1907, Appeal No. 92 of 1913.* The case has escaped the vigilance of the reporters or perhaps I should rather say is unreported owing to their lack of vigilance. There Sir Lawrence Jenkins in delivering the judgment of the Court in unequivocal terms lays down, after discussing the cases that "A direction to accumulate with a gift of the accumulations is not fundamentally bad: it only fails if it offends some independent rule of Hindu Law. Thus it may infringe the rule against perpetuities, and so far as that goes it must be a question for consideration in each case whether there is such an infringement or not. Or the direction to accumulate may be repugnant and so void, as an attempt to deprive a person of the enjoyment of that which has become his property." And later in the judgment he states "What then is the period during which an accumulation can be validly directed? On principle I think it must be for so long a time as the absolute vesting of the entire

* See Foot-note at p. 88.

“interest can be withheld” (and I take him to mean by absolute vesting vesting in possession), “or, for so long a time as that during which the corpus of the property can be rendered inalienable or its course or devolution can be directed and controlled by a testator.” This decision of course is binding on me and I have not accordingly thought it necessary to refer to the authorities which are discussed and referred to in the judgment. It remains to apply this decision to the will before me. Now accumulation is only directed during the lifetime of the widow, consequently there is no perpetuity as this is a period, namely a life in being, during which the corpus can be rendered inalienable and its course and devolution directed and controlled by the testator. Nor in my opinion is the provision for accumulation repugnant having regard to the form of the residuary gift, and for the reasons which I have already stated. Consequently I hold upon the authority of the above case that the provision for accumulation of surplus income in the will now before me is not invalid. This disposes of the suit and it is not necessary in the view I take for me to decide whether the widow took a life-estate in the whole income, as I understand that she only desired to press this in the event of the provision for accumulation being held bad. I have expressed my view with regard to Adhar Lal’s share, as it was I think necessary for me to do so for the purposes of this judgment; but I do not propose to make any declaration with regard to this share as Adhar Lal’s daughters and their representatives are not before the Court and accordingly no declaration which I made would be binding on them. The suit accordingly fails and must be dismissed.

Attorney for the plaintiff: *J. N. Mitter.*

Attorney for Bidhumukhi Dasi: *J. C. Dutt.*

1919

RAM LAL

SEN

v.

BIDHU-

MUKHI DASI.

GREAVES J.

1919
 ———
 RAM LAL
 SEN
 v.
 BIDHU-
 MUKHI DAS.

Attorneys for Sham Lal Sen : *Chatterjee & Co.*
 Attorney for Manik Netye and Gour : *J. K. Laha.*
 Attorney for Sankar Lal and Rash Behary : *S. C. Dutta.*
 Attorney for Gosto Behary Sen : *P. C. Dutt.*
 Attorney for Champa Dasi : *K. N. De.*
 Attorney for Barai Dasi : *P. C. Dutt.*
 Attorneys for Bipin Behary Sen : *Mitter & Mitter.*

—————
Before Jenkins C. J. and Woodroffe J.

1914
 ———
 March 4.

WATKINS

v.

ADMINISTRATOR-GENERAL OF BENGAL.

[APPEAL No. 92 OF 1913.]

JENKINS C. J. Once more the will of Haridass Dutt is before the Court.

The testator by this will made provision, as he thought, for the adoption of a son or sons. He died in 1875, and in the following year an adoption ceremony was performed as contemplated by the will. In 1881 the boy died and after the lapse of a month the testator's widow, Swarnamoyee Dassee, again purported to make an adoption, the boy this time being Amrita Lal Dutt. This boy was married in the family and throughout treated as a validly adopted son until he instituted a suit No. 535 of 1894, against Swarnamoyee Dassee and her daughter and their sons, claiming the corpus of the estate and in any event the surplus income notwithstanding the provision for postponement of vesting and accumulation contained in the will.

By way of defence the validity of Amrita's adoption was denied and this plea was upheld by this Court on appeal and by the Privy Council. Since then the will has been the subject of two more appeals to the Privy Council, and, if the forecast of counsel is correct, there are probably as many more appeals to that tribunal in store.

The determination of this suit turns on the true construction of clause 9 of the will which is in these terms :—

“ I direct my executors and executrix and trustees to pay out of the income and interest of my estate and effects monthly all necessary household