PRIVY COUNCIL.

GURAN DITTA AND ANOTHER (DEFENDANTS)

v.

RAM DITTA (PLAINTIFF).

P. C.
1928

April 24.

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER, NORTH-WEST FRONTIER PROVINCES.]

Gift—Hindu depositing own money in Bank—Deposit in names of depositor and wife—Deposit payable to either or survivor—Death of depositor—Resulting trust—Form of decree—Partial partition.

The deposit by a Hindu of his money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife.

Gopeekrist v. *Gungapersaud* (1), applied.

Kerwick v. *Kerwick* (2), followed.

Decree, which necessitated a partial partition, varied to a declaration, a suit for partition having since been instituted; no decision was given whether a decree of the above nature was permissible.

APPEAL (No. 40 of 1927) from a decree of the Court of the Judicial Commissioner of the North-West Frontier Province (March 11, 1923), affirming a decree of the Divisional Judge of Peshawar.

In 1919 one Teku Ram, a Hindu, deposited with the Alliance Bank of Simla a lakh of rupees which was his self-acquired property; the deposit was in the names of himself and his wife Gujri (the second appellant), and was made payable to either or the survivor. He died in 1920 being survived by his said wife and

* *Present:* LORD PARMOOR, LORD CARSON, SIR LANCELOT SANDERSON.

(1) (1854) 6 Moo. I. A. 53.

(2) (1920) I. L. R. 48 Calc. 260; L. R. 47 I. A. 275.

three sons. After his death Gujri withdrew the money with interest through her son Guran Ditta, the first appellant. In 1921, respondent, the eldest son, brought the present suit against his mother and his two brothers; he alleged that he and his brothers formed a joint Hindu family and prayed for a decree for a third of the money against any of the defendants who was in possession of the fund. The defendants by their written statement alleged that the money belonged to Gujri under a will made by her husband, alternatively that it was a gift by him to her; they also pleaded that the suit was incompetent since it was for a partial partition.

By a preliminary judgment the Subordinate Judge held that the suit lay; issues were subsequently framed and evidence adduced.

The Subordinate Judge found that the deceased had cancelled the alleged will and held that there was no gift of the money to the widow. A decree for a sum equal to a third of the money paid over, together with interest, was made against the appellants, namely the widow and the son to whom the money had been paid.

An appeal and cross-objection were heard by the Additional Judicial Commissioner and were dismissed.

The Judicial Committee granted special leave to appeal.

Dunne K. C. and *Wallach*, for the appellants. Having regard to the terms of the deposit and the oral evidence there was a gift of the deposited money to the widow. If that was not so the money, upon Teku Ram's death, was joint family property and the present suit. being in effect one claiming a partial partition, did not lie: *Haridas Sanyal* v. *Pran Nath*

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Sanyal (1), *Jogendra Nath Mukerji* v. *Jugobundhu Mukerji* (2), *Shivmurteppa* v. *Virappa* (3).

De Gruyther K. C. and *Parikh*, for the respondent. The oral evidence does not show an intention by the deceased to make a gift of the money to his wife. In the cancelled will he refers to the money as his own. There was a resulting trust in his favour as owner. There is no presumption in India of an intended advancement in favour of a wife: *Gopeekrist* v. *Gungapersaud* (4), *Kerwick* v. *Kerwick* (5), *Rai Motivahoo* v. *Purshotam Dayal* (6). In the circumstances of the present case it was competent to the Court to decree to the plaintiff his share of the money: *Iburamsa Rowthan* v. *Theruvenkatasamin Naik* (7). Further the real dispute was whether the money belonged to the widow or not; even if there was an irregularity in the form of the suit the decree was properly affirmed having regard to s. 99 of the Code of Civil Procedure. If the Board is of opinion that the plaintiff is not entitled to a decree for a third, there should be an order directing payment of that share to him on behalf of the joint family; a suit for partition has now been instituted. But the appellants are not entitled to rely on any technical difficulty, since the only question raised by their petition for special leave to appeal was whether there was or was not a gift.

Dunne K. C., in reply. Every point is open to the appellants; there is no rule confining an appellant to the points raised in his petition: *Sheo Singh Rai* v. *Dakho* (8). The plaintiff could and should have

(1) (1886) I. L. R. 12 Calc. 566.
(2) (1886) I. L. R. 14 Calc. 122.
(3) (1899) I. L. R. 24 Bom. 128.
(4) (1854) 6 Moo. I. A. 53.
(5) (1920) I. L. R. 48 Calc. 260; L. R. 47 I. A. 275.
(6) (1904) I. L. R. 29 Bom. 306.
(7) (1910) I. L. R. 34 Mad. 269.
(8) (1878) L. R. 5 I. A. 87, 114.

brought a suit for partition instead of bringing this suit; having regard to s. 42 of the Specific Relief Act, 1877, he is not entitled to a declaration.

The judgment of their Lordships was delivered by

April 24.

LORD PARMOOR. This is an appeal, by special leave, from a decree of the Court of the Judicial Commissioner of the North-West Frontier Province, affirming a decree of the Divisional Judge at Peshawar.

The respondent is the eldest son of Teku Ram, who died on the 20th May, 1920. The appellant, Guran Ditta, is a son, and the appellant, Mussammat Gujri, is the widow of the said Teku Ram. Teku Ram, on the 17th May, 1919, opened a deposit account for Rs. 1,00,000 with the Peshawar Branch of the Alliance Bank of Simla, in the name of himself and his wife, "payable to either or survivor." The receipt of the Bank was dated the 24th May, in the following terms: "Received from L. Teku Ram, house pro- "prietor, and his wife, Bibi Gujri, payable to either or "survivor, rupees one lakh only, as a deposit, bearing "interest at 5½ per cent. per annum, requiring twelve "months' notice of withdrawal and subject to the "general rules of the Bank with respect to such "deposit." A notice of withdrawal was given when the account was opened as follows: "Notice given "this 17th day of May 1919, as on the 24th April, "1919."

After the death of Teku Ram, the deposit was renewed for a further period of one year in the name of Mussammat Gujri alone. On the 14th May 1921, Mussammat Gujri wrote requesting the Bank to pay to Guran Ditta, the bearer of the letter, "my deposit "of Rs. 1,00,000 (rupees one lakh), together with the "arrears of the interest on it due to me." In

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accordance with these instructions, the principal and interest of the deposit were paid to Guran Ditta.

On the 20th August, 1921, the respondent instituted his suit in the Court of the District Judge of Peshawar against the appellants and a younger brother, who is not a party to this appeal. Several questions arose for decision in the Courts below. A preliminary issue, "Does the suit lie in its present form?" was decided in both Courts in favour of the respondent, and will be referred to later. Issues were framed by the Divisional Judge of Peshawar, and re-stated by the Divisional Judge as follows:—

(*i*) Was the deposit the sole property of Mussammat Gujri by gift, will or otherwise?

(*ii*) Did Teku Ram leave any subsisting will?

(*iii*) If so, was such will valid so far as it dealt with joint-family property?

(*iv*) To what relief is plaintiff entitled and against whom?

After full enquiry, and much conflicting evidence, both Courts have found, as a question of fact, that Teku Ram did not leave any subsisting will. There was no attempt in the argument before their Lordships to reverse this concurrent finding of the two Courts below on a question of fact. This issue having been decided in the negative, the third issue became no longer material.

The main issue decided in the Courts below, and which was relied on the application for special leave to appeal, was whether the sum deposited became the sole property of Mussammat Gujri by gift. On the application for special leave to his Board, it was urged that the question whether a fixed deposit in a Bank in the name of two persons payable to either or survivor was in fact payable to the survivor, or belonged to the estate of the person who originally supplied the money, was a substantial

question of law, and of great importance to Banks in India, and to persons in whose names such deposits had been made. It appears from the record that this was the only question raised when special leave to appeal was granted.

The money deposited in the Bank was at the time of deposit the property of Teku Ram. The Courts below decided that this money belonged to the estate of Teku Ram, as the person who originally supplied the money. The money in dispute being upwards of Rs. 10,000, the appellants applied to the Judicial Commissioner for leave to appeal on the ground that there was a substantial question of law involved, bringing the application within the terms of section 110 of the Code of Civil Procedure, 1908 :

" Where the decree or final order appealed from affirms the decision of " the Court immediately below the Court passing such decree or final order, " the appeal must involve some substantial question of law."

In the case of *Raghunath Prasad Singh* v. *Deputy Commissioner of Partabgarh* (1) it was held that a substantial question of law, within the last clause of section 110 of the Code of Civil Procedure, does not mean a substantial question of general importance but a substantial question of law as between the parties in the case involved. The leave to appeal was refused, but, as stated above, special leave to appeal was granted on the petition to the Board.

In the argument before their Lordships, and in the Courts below, it was admitted that the money deposited belonged to Teku Ram, who had supplied it from his own resources, by a transfer from his current account at the Bank. It was argued on behalf of the appellants that, apart from outside evidence, there was a presumption that the sum deposited constituted an advancement, or resulting trust, in

(1) (1927) L. R. 54 I. A. 126.

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favour of Mussammat Gujri, the wife of Teku Ram. It was said that one of the provisions of the destroyed will of Teku Ram was evidence that it was the intention of Teku Ram to make an advancement in favour of his wife under the terms of the deposit note; but in the opinion of their Lordships, no weight should be attached to this evidence. They agree in this respect with the views expressed in the judgments of the Divisional Judge of Peshawar and of the Judicial Commissioner of the North-West Frontier Province.

The question, therefore, to be decided is the construction of the terms of the deposit note.

The general principle of equity, applicable both in this country and in India, is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust, there is a resulting trust in favour of the grantor, unless it can be proved that an actual gift was intended. An exception has, however, been made in English law, and a gift to a wife is presumed, where money belonging to the husband is deposited at a Bank in the name of a wife, or, where a deposit is made, in the joint names of both husband and wife.

This exception has not been admitted in Indian law under the different conditions which attached to family life, and where the social relationships are of an essentially different character. The principle to be applied has been stated in *Kerwick* v. *Kerwick* (1):—

"The general rule and principle of the Indian law as to the resulting "trusts differs but little, if at all, from the general rule of English law upon "the same subject, but in their Lordships' view it has been established by "the decisions in the case of *Gopeekrist* v. *Gungapersaud* (2) and *Uzbur* "*Ali* v. *Bebee Ultaf Fatima* (3), that owing to the widespread and per- "sistent practice which prevails amongst the natives of India, whether

(1) (1920) I. L. R. 48 Calc. 260, 263; L. R. 47, I. A. 275, 278.
(2) (1854) 6 Moo. I. A. 53.
(3) (1869) 13 Moo. I. A. 232.

"Muhammadan or Hindu, for owners of property to make grants and "transfers of it benami for no obvious reason or apparent purpose with- "out the slightest intention of vesting in the donee any beneficial interest "in the property granted or transferred, as well as the usages which these "natives have adopted and which have been protected by Statute, no "exception has ever been engrafted on the general law of India negativing "the presumption of the resulting trust in favour of the person, providing "the purchase-money such as has, by the Courts of Chancery in the "exercise of their equitable jurisdiction, been engrafted on the corresponding "law in England in those cases where a husband or father pays the money "and the purchase is taken in the name of a wife or child. In such a case "there is under the general law in India, no presumption of an intended "advancement as there is in England."

Applying the principle thus stated to the present case, their Lordships hold that there is no presumption, in the deposit note, of an intended advancement in favour of Mussammat Gujri, and that the sum of Rs. 1,00,000 and interest, were the property of Teku Ram, and remained at his disposal at the date of his death, as found in the decisions of the Court below.

On this issue—the substantial question of law on which special leave to appeal was asked for, and granted—their Lordships will humbly advise His Majesty that the decision of the Courts below was right, and should be confirmed.

Their Lordships have considered the objections to the form of suit, and the difficulties which arise in a decree which necessitates the partial partition of the estate of Teku Ram. The ordinary rule undoubtedly is that there cannot be a partial partition, but it has been held in the Courts below that this rule is elastic, and has in several cases been departed from, if there is no inconvenience in a partial partition, apart from a final partition of the whole of the joint properties. The Courts further held that in this case no inconvenience would arise. Accordingly, it was ordered "that the plaintiff—the respondent—be, and the same "is hereby given, a decree for Rs. 37,368 with costs

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"accordingly against Guran Ditta and Mussammat "Gujri, defendants, jointly and severally." It is stated in the judgment of the Additional Judicial Commissioner of the North-West Frontier Province that the question of the rights of the widow to maintenance from the rest of her husband's property would be decided separately, and their Lordships were informed that a suit for a final partition of the whole property of Teku Ram had been instituted and was in process of decision. Their Lordships do not think it necessary to decide any general question of procedure, but are of opinion that in this case, justice could be done between the parties without entering upon any question of partial partition, and leaving open all further questions for determination in the final partition of the whole property. Their Lordships propose, therefore, to vary the decree by limiting it to a declaration, in answer in the first issue, that the deposit in suit was not the sole property of Mussammat Gujri, by gift, will or otherwise, and that the respondent is entitled as against the appellants, to a declaration to this effect.

The appellants have failed in the main issue involved, and their Lordships will humbly advise His Majesty that, subject to alteration in the form of the decree, the judgments below should be confirmed, and this appeal dismissed with costs.

Solicitor for the appellants: *H. L. Polak.*

Solicitors for the respondent: *T. L. Wilson & Co.*

A. M. T.