APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Butler.

1934, February 14.

YELLAMRAJU VENKATASUBBA RAO (FIRST DEFENDANT—FIRST RESPONDENT), APPELLANT,

v.

LAKKARAJU ANANDA RAO AND TWO OTHERS (PLAINTIFF, SECOND DEFENDANT AND PLAINTIFF'S LEGAL REPRESENTATIVE), RESPONDENTS.*

Hindu Law—Widow—Sale by—Reversioners if and when bound by—Necessity justifying sale by her—Daughter's son's thread and marriage ceremonies if and when.

When a sale by a Hindu widow is of a reasonable portion of her husband's estate and the occasion of the disposition is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner.

Held, accordingly, that a sale by a Hindu widow of a reasonable portion of her husband's estate for debts contracted for the thread and marriage ceremonies of one of her daughter's sons was binding on the reversioners, even in a case in which the daughter's sons were not so indigent as to be dependent upon their grandmother.

Sardar Singh v. *Kunj Bihari Lal*, (1922) I.L.R. 44 All. 503 (P.C.), relied upon.

APPEAL under Clause 15 of the Letters Patent against the decree of ANANTAKRISHNA AYYAR J., dated the 7th day of October 1929 and made in Second Appeal No. 250 of 1926 preferred to the High Court against the decree of the Court of the Subordinate Judge (Additional) of Bapatla in Appeal Suit No. 89 of 1925 (Appeal Suit No. 271 of 1924, District Court, Guntur)—Original Suit No. 361 of 1922, District Munsif's Court, Repalli at Tenali.

* Letters Patent Appeal No. 10 of 1930.

P. Satyanarayana Rao for appellant.
G. Lakshmanna for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by JACKSON J.—One Lakshmayya died leaving a widow (defendant No. 2) and daughter Subbamma mother of two sons, third defendant and plaintiff, who are the nearest reversioners to Lakshmayya's estate. JACKSON J.

On 20th November 1918 with the assent of third defendant, the widow, defendant 2, sold a parcel of the estate for Rs. 1,500 for debts contracted for family expenses and the thread and marriage ceremonies of the plaintiff. Four years later the plaintiff with more sense of humour than of decency sued to invalidate this sale on the ground that the estate had been dissipated for improper purposes.

The District Munsif decreed, the Subordinate Judge dismissed, and this Court decreed the suit : and it now comes up for final decision with the vendee as appellant.

The facts as stated above are not in dispute. The elder brother's participation in the transaction has precluded any question of fraud, and there is the plain first issue : " Whether the suit alienation in favour of first defendant was made for legal necessity and for purposes binding on third defendant and plaintiff ? "

The third defendant and plaintiff were not so indigent as to be dependent upon their grandmother ; and it cannot be said that her giving them this help was an act of compelling necessity. The question is whether the act was conducive to the spiritual welfare of Lakshmayya when

VENKATASUBBA RAO v. ANANDA RAO. — JACKSON J.

admittedly it would be justifiable. That this is a question which admits of no simple answer is clear not only from the conflict of decisions in the reported cases, but from this case itself; for it so happens that we have on this very case the opinion of two learned Judges of this Court, either of whom we should have been prepared unhesitatingly to follow in a matter of Hindu Law, *cf.* the judgment under appeal and the comment upon it in *Mallayya* v. *Bapi Reddi*(1).

An ancient text of Brihaspathi runs:

> "A widow inheriting her husband's estate should honour with food and presents . . . a daughter's son."

As pointed out in *Mallayya* v. *Bapi Reddi*(1), it is the daughter's son who offers the funeral oblation, and who therefore is particularly worthy of honour. Mr. Lakshmanna argues that this is mere sentiment, but it is just here that the line of cleavage appears. Who is to distinguish positively between sincere religious feeling and idle sentiment? All that can safely be said is that, where the point is doubtful and where there is not the slightest suspicion of ulterior motive or fraud, the benefit of the doubt should be given to religious feeling. It is not for a Court of law to disparage the pious acts of devout people. And this principle has been followed by the Judicial Committee. In *Sardar Singh* v. *Kunj Bihari Lal*(2) an alienation by a widow was being considered where its avowed object was to offer food to an idol; and the following passage from *Tatayya* v. *Ramakrishnamma*(3) was quoted with approval:

(1) (1931) 62 M.L.J. 39, 44. (2) (1922) I.L.R. 44 All. 503 (P.C.).
(3) (1910) I.L.R. 34 Mad. 288, 291.

"We think we are warranted in holding that if the property sold or gifted bears a small proportion (which it is impossible to define more exactly) to the estate inherited, and the occasion of the (disposition or) expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner."

And the Judicial Committee proceeds :

"In the present case the purpose for which the alienation was made was undoubtedly not for the performance . . . of any such duty as might be regarded as obligatory under the Hindu law. But at the same time there can be no question that it was a pious act."

And accordingly the alienation was allowed.

The quantitative ratio approved in this judgment is not at first sight easy to understand. If a small gift to an idol is conducive to the husband's spiritual bliss, would not a larger gift be still more conducive? Probably, human nature being what it is, Courts are not prepared to sanction transactions which offend ordinary common sense and good husbandry. If a widow devotes the whole of her estate to an idol, there may be suspicion of fraud or undue influence. In our present case there is no suggestion of undue extravagance, and it must be remembered that the quantitative ratio works in both directions. Her pious duty for her husband's satisfaction is to honour the daughter's son, and some meagre gift for his ceremonies which would only make him ridiculous in the eyes of the neighbours would not fulfil this obligation. It may be taken then that the quantum of this alienation is reasonable, and one need not embark on an argument as to whether feeding an idol is or is not more meritorious than honouring a daughter's son. Both involve an expenditure "reasonable according to the common

VENKATASUBBA RAO v. ANANDA RAO.

JACKSON J.

notions of Hindus" and that is sufficient justification for the impugned sale.

In the judgment under appeal it is stated: "we have here no purpose connected with the husband's spiritual welfare"; a proposition which we should not think of questioning as an authoritative statement of Hindu doctrine, but we are not so much concerned with what is the correct doctrine as with "the common notions of the Hindus". The pious endeavour of this widow to promote her husband's spiritual bliss by honouring his daughter's son may for aught we know in its result fall short of her intention; but so long as she acted with piety and in consonance with prevalent notions we do not think it incumbent upon us to interfere any more than the Judicial Committee interfered with the gift to the idol. No doubt there is much conflict in the authorities as observed by our late Chief Justice in *Srinivasaraghavachariar* v. *Rajagopalachariar*(1), and little will be gained by attempting to piece them together into a coherent pattern—for instance discussing whether if a daughter's daughter may be honoured at marriage, the same does or does not apply to a son and so on. We prefer to base our judgment simply upon *Sardar Singh* v. *Kunj Bihari Lal*(2), with the satisfaction that substantial justice has been done; and the result is not, as is candidly admitted in the judgment under review, one which a Court of law would like to avoid.

The appeal is allowed with costs throughout.

A.S.V.

(1) (1926) 54 M.L.J. 618.

(2) (1922) I.L.R. 44 All. 503 (P.C.).