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family properties in the hands of defendants 2 to 4 could be held liable for the debt contracted by the guardian. This question will have to be decided in the light of the principle laid down in *Ramajogayya* v. *Jagannadhan*(1).

We accordingly set aside the decree of the lower Court and send the case back for disposal in the light of the above observations. We would however add that as the appeal has been limited to Rs. 800 the properties of the minor defendants 2 to 4 will not, in any event, be held liable for more than Rs. 800. Costs of this appeal will abide the result. Any application for relief under the Madras Agriculturists Relief Act will have to be made to the lower Court to which the case has been remanded.

Court-fee paid on the memorandum of appeal will be refunded.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Krishnaswami Ayyangar.

1938, August 29.

BODA VIRARAJU (PLAINTIFF), APPELLANT,

v.

VETCHA VENKATARATNAM AND TWENTY-FOUR OTHERS (DEFENDANTS 1 TO 19 AND 21 TO 24 AND NIL), RESPONDENTS.*

Hindu law—Widow—Nature of estate owned by—Powers of alienation of.

A Hindu widow in possession of her husband's estate is in no sense a trustee for the ultimate reversioner. She is the

(1) (1918) I.L.R. 42 Mad. 185 (F.B.).
* Appeal No. 288 of 1932.

owner for the time being, fully capable of representing the estate in her transactions with the outside world so long as she acts *bona fide* and in the interests of that estate, but it is an ownership qualified by limitations which are of the very essence of her estate. For purposes which are purely secular or temporal, her powers of alienation are no wider than those which inhere in the manager of an infant's estate. But in respect of those other purposes which the Hindu law regards as religious or charitable, she possesses a larger discretion, and a wider authority. For obligatory, observances essential for the salvation of her husband's soul, she could go the length of disposing of the entirety of the estate, where it is not considerable, and where the requirements of the particular occasion demand it. For other but less peremptory purposes, though in themselves meritorious yet not indispensable, her authority is necessarily circumscribed. She may, for such objects, dispose of only a small and no more than a reasonable portion of the estate, the *quantum* to be measured by the custom and sentiment prevalent in the community to which she belongs.

Case-law reviewed and discussed.

APPEAL against the decree of the Court of the Subordinate Judge of Rajahmundry, dated 28th April 1932, and passed in Original Suit No. 60 of 1930.

P. V. Vallabhacharyulu for appellant.

V. V. Srinivasa Ayyangar for *V. V. Ramadurai* for twenty-fifth respondent.

Other respondents were not represented.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by KRISHNASWAMI AYYANGAR J.—We have found very little difficulty either in the ascertainment of the true principle of law or in the application of it to the facts disclosed in this appeal. Whether and to what extent a Hindu widow in possession of her husband's estate can make a gift in favour of a dependent relation or for objects considered meritorious by the Hindu religion was the question discussed before us

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at the hearing of this appeal. It is unnecessary for a decision of this question to carry a research into the ancient texts of Hindu law, or indeed to do anything more than refer to two decisions of the Privy Council in which the principle has, if we may say so with respect, been clearly and precisely defined. As early as 1861, it was laid down in *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*(1) that

> "for religious and charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband she" (the widow) "has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last, she must show necessity."

The principle received further elucidation by their Lordships in 1922 in a case, *Sardar Singh* v. *Kunj Bihari Lal*(2), in which the widow had made a gift of a small fraction of the estate for the observance of *bhog* (food offerings) to the deity at Puri. The gift was upheld in spite of the fact that she had sufficient income available in her hands to provide for it without an alienation. Their Lordships drew a sharp distinction between obligatory religious ceremonies and those other observances which are merely optional though conducive to spiritual good. They said:

> "There can be no doubt upon a review of the Hindu Law taken in conjunction with the decided cases that the Hindu system recognises two sets of religious acts. One is in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed by the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. In the later cases this distinction runs clearly through the views of the learned Judges .... With reference to the first class of acts the powers of the Hindu

(1) (1861) 8 M.I.A. 529. (2) (1922) I.L.R. 44 All. 503 (P.C.).

female who holds the property are wider than in respect of the acts which are simply pious and, if performed, are meritorious so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purposes she may have in view."

These observations have furnished valuable guidance for the Courts in India in approaching the decision of questions relating to a widow's power of alienation. The principles that emerge from the decided cases may be stated in these terms: A Hindu widow in possession of her husband's estate is in no sense a trustee for the ultimate reversioner. She is the owner for the time being, fully capable of representing the estate in her transactions with the outside world so long as she acts *bona fide* and in the interests of that estate, but it is an ownership qualified by limitations which are of the very essence of her estate —limitations which the law imposes not out of a tender regard for the right of the reversioner, for none such exists during her life, but for reasons which are intimately bound up with the ideals of life and conduct considered proper and appropriate for a person in her position. A simple life of abstinence and piety devoted to the acquisition of merit for the departed soul of her husband and a cessation from mere sense enjoyments in the pursuit of pleasure for its sake lie at the bottom of the restrictions on her powers of disposal. It is to be remembered that, according to the ancient law givers, restriction was indeed the rule, absolute power an exception, whether the holder was a female or even a male. For purposes which are purely secular or temporal, her powers are no wider than those which inhere in the manager of an infant's estate.

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But in respect of those other purposes which the Hindu law regards as religious or charitable, she possesses, as might naturally be expected, a larger discretion and a wider authority; *see* the texts collected in *Ram Sumran Prasad* v. *Gobind Das*(1). For obligatory observances essential for the salvation of her husband's soul, she could go the length of disposing of the entirety of the estate, where it is not considerable and where the requirements of the particular occasion demand it. For other but less peremtory purposes, though in themselves meritorious yet not indispensable, her authority is necessarily circumscribed. She may, for such objects, dispose of only a small and no more than a reasonable portion of the estate, the *quantum* to be measured by the custom and sentiment prevalent in the community to which she belongs. It is impossible to define her powers in this behalf with any more precision. The circumstances of the family, the extent of its property, the demands upon it of other legitimate calls, and all those social customs and sentiments which make up what one may call the conscience of the community, must, it seems to us, be among the main factors to be considered. We think that it is this same principle, though expressed in different language, which we find laid down in *Gobindchund Bysack* v. *Cossinaut Bysack*(2), where Lord GIFFORD said that care must be taken to avoid impressions derived from the English law and to consider in what way a Hindu Court of Justice would have decided the point.

Marriages of girls born in the family and the maintenance of female members stand on a higher footing. For, it is a legal obligation cast on the father, the *karta*

(1) (1926) I.L.R. 5 Pat. 646, 677 to 679.
(2) (1826) Montr.ou, Cases of Hindu Law, 477, 498.

or whoever happens to be in possession of the family estate, to defray, out of it, the expenses necessary for these purposes, which accordingly come under the head of strict legal necessity. How exactly this obligation is to be carried out, whether by a mortgage, sale or other means, is not to be determined by strict rules or legal formulæ, but must be left to the reasonable discretion of the party bound. In the absence of *mala fides* or extravagance, and so long as it is neither unfair in character nor unreasonable in extent, the Court will not scan too nicely the manner or the *quantum* of the alienation. A widow, like the manager of a family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to the expectant heir [*see* at page 582 of *Khub Lal Singh* v. *Ajodhya Misser*(1)] and in a manner conformable to the legitimate wishes of her husband or the prescriptions of Hindu religious law. It may also be observed that, in respect of pious or charitable acts, what a husband might have done, the widow is competent to do after his death. For, according to an ancient text of Brihaspati [see *Venkaji Shridhar* v. *Vishnu Babaji Beri*(2)] the husband and wife participate in the effects of good and evil actions and this mutual relation is not dissolved by the death of either partner; *Khub Lal Singh* v. *Ajodhya Misser*(1) and *Venkaji Shridhar* v. *Vishnu Babaji Beri*(2). Her position will be much stronger if the husband had himself instructed or directed her to incur the particular charge or specified the objects for which the alienation was to be made. Such directions, though short of the requirements of a valid bequest, are, we think, a sufficient justification for her acting upon them.

(1) (1915) I.L.R. 43 Cal. 574, 582. (2) (1893) I.L.R. 18 Bom. 534.

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Bearing these principles in mind we proceed to refer to the facts found or established in the case. The disputed alienations are all gifts of land made by Mahalakshmi, a widow who had succeeded to the estate of her husband, Sarayya, who died on 18th December 1890, leaving him surviving besides her, two daughters, Suramma and Mariamma.

[His Lordship considered the evidence and proceeded:]

Mahalakshmi died on 19th July 1930. The appellant claiming to be the son adopted by Mahalakshmi's daughter Suramma and her husband Seshayya has now succeeded to the estate of Sarayya as his daughter's son. His adoption, though disputed in the trial Court, has not been challenged before us. By the suit out of which this appeal arises the appellant has impugned the gifts as being beyond the powers of Mahalakshmi and consequently not binding on him and has sought the recovery of the properties conveyed, together with mesne profits. According to him the gift to Venkamma is invalid as no necessity for making it has been proved, and as Mahalakshmi had in her hands at the time sufficient income from the assets from which she ought to have met the expenses of maintaining Venkamma. This circumstance is no doubt an element to be taken into account, but no serious importance can be attached to it, for we find it existed in *Sardar Singh* v. *Kunj Bihari Lal*(1) but made no difference to their Lordships' decision. As regards the other gifts, it is argued that the purposes for which the gifts were made have not been sufficiently established, as there was nothing to indicate that the widow acted from motives of religion or piety, and apart from this, that such gifts

(1) (1922) I.L.R. 44 All. 503 (P.C.).

even though of small portions of the estate cannot be made except on special ceremonial occasions.

[His Lordship discussed the evidence and concluded as follows :]

The appellant's Advocate also contended that the burden of proof is on the alienees to justify the gifts and that it has not been discharged by them. Though none of the donees except the tenth defendant actually contested the claim, yet we must hold that in this case the burden has been discharged, as there is satisfactory evidence to show that there was ample justification for this widow to make the gifts. Concurring with the Subordinate Judge, we hold that the gifts to the Brahmins are also valid. The appeal therefore fails and has to be dismissed with costs of the twenty-fifth respondent. We may mention that, as between the appellant and respondents 1, 2 and 4 to 8, there has been a settlement by a compromise which has been made a decree of Court on 31st August 1937. The twenty-fifth respondent will receive the costs proportionate to his interest in the subject-matter of the appeal.

G.R.