

the father's share in that debt. The Judge before whom the application came declined to grant her the certificate unless the applicant paid the two per cent. duty on the whole debt, namely, the debt of eleven lakhs of rupees. His refusal was supported by this Court, and the learned Judges before whom the appeal came observed that there had been a uniform series of decisions in this Court, according to which a certificate cannot be granted to collect a part only of a debt. We have been referred to no case breaking this uniformity of decisions, with the exception of one case, *Albar Khan v. Billisara Begam*. This case has not been reported in the authorized law reports, and we say no more about it than this that the learned Judges, while professing, and one of them with diffidence, to follow the precedent of *Muhammad Ali Khan v. Puttan Bibi*, seem, in the conclusion at which they arrived, to have overlooked the real point decided in *Muhammad Ali Khan v. Puttan Bibi*. We are not prepared to decide otherwise than this Court decided in the case of *Muhammad Ali Khan v. Puttan Bibi*. Hard cases may arise if parties elect to make applications under the Succession Certificate Act, and this case may be one of such hard cases. But in most, if not in all of them, the difficulty can be avoided, it appears to us, by proceedings taken under the Probate and Administration Act. We reject the petition with costs.

*Petition rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Richards and Mr. Justice Tudball.*

MOHAR SINGH AND OTHERS (DEPENDANTS) *v.* HET SINGH (PLAINTIFF).  
*Hindu law—Will—Validity of bequest to complete a temple and instal an idol.*

*Held* that a bequest to complete the building of a temple which had been commenced by the testator and to instal and maintain an idol therein is a valid bequest under the Hindu Law. *Bhupati Nath Smrititirtha, v. Ram Lal Moitra*, (1) followed.

THIS was an appeal arising out of an application for probate of the will of one Umrao Singh, the material portion of which is set forth in the judgment of the Court. The application was opposed by the widows of the testator, as also by one Het Singh,

\*First Appeal No. 255 of 1908 from a decree of Jagat Narain, Additional Subordinate Judge of Aligarh, dated the 30th of June 1908.

(1) (1909) 14 C. W. N., 18.

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his half-brother. Probate was, however, granted. Het Singh then brought the present suit for cancellation of the will. His claim was decreed by the additional Subordinate Judge of Aligarh. The defendants thereupon appealed to the High Court.

Babu *Girdhari Lal Agarwala*, for the appellants, cited *Bhupati Nath Smrititirtha v. Ram Lal Moitra* (1).

Pandit *Mohan Lal Sandal*, for the respondent, cited Ghose's Hindu Law, pages 757 and 759, *Nogendra Nundini Dassi v. Benoy Krishna Deb* (2) and *Rojomoyee Dasse v. Troylukho Mohiney Dasse* (3).

RICHARDS and TUDBALL, JJ.—The facts out of which this appeal arises are very simple. One Umrao Singh made a will to the following effect:—

"I have attained the age of 60 years, but I am childless. I am in a sound state of body and mind. The temple which I am building is only half built. It is my intention to instal an idol of Sri Radha Kishanji in it. I have despaired of my life, and hence I will that the zamindari property in *patti* Kamal, holding No. 5, mauza Kukurgaon, pargana Sadabad, be devoted to the completion of the temple and to *rag bhog* and other expenses. Musammat Sobha Kuuwar and Gian Kuuwar, my wives, and Mohar Singh and Girwar Singh, whom I have brought up from infancy, shall be the superintendents. And the remainder of my property which is in mauza Kukurgaon, Gari, Avram, pargana Sadabad, district Muttra, and Chandpur hamlet of Gopi, pargana Akrahad, district Aligarh, shall, after the death of the Musammats, be applied in defraying the *rag bhog* and other expenses of Sri Thakurji Maharaj. Mohar Singh and Girwar Singh shall be the superintendents of this temple and they shall be at liberty either to do the management themselves or get it done by others. The entire property shall stand in the name of Sri Thakur Radha Kishanji Maharaj and the superintendents shall have no power to sell or mortgage it. Mohar Singh shall realize the outstanding debts due to me and therefrom pay my creditors. The balance he shall spend on the temple. If the above-mentioned persons do any thing against the temple, one or two or all of them shall be removed from their office. Bohre Sri Ram, resident of Jaunpur, Thakur Anand Singh, resident of Bhakulara, and Lala Radha Raman, resident of kasba Adin, shall have power either unanimately or by majority of votes to replace the said superintendents by others. As regards my three houses, the one in which the Musammats live shall continue to be occupied by them till their death, when it shall devolve upon Mohar Singh and Girwar Singh. The second house, whose entrance is towards the west, shall be occupied by Mohar Singh, &c."

The appellants applied for probate of this will. This application was opposed by the widows of the testator as also by Het

(1) (1909) 14 C. W. N., 18. (2) (1902) I. L. R., 30 Calc., 521.

(3) (1901) I. L. R., 29 Calc., 260.

Singh, respondent, who is a half-brother of Umrao. Probate, however, was granted. Besides, in the present case there has been a finding in favour of the will. The only question which now arises is whether or not the bequest of the testator of his property to the trustee for the purpose of completing the building of the temple and the subsequent installation and maintenance of the idol is valid. The only argument against its validity is based on the ground that at the time of the will and the testator's death the idol was not in existence and that, therefore, the gift to a non-existent person was void under the Hindu Law. The doctrine that such a gift was void for some time found favour in the Calcutta High Court, extending as it did the decision of their Lordships of the Privy Council in *Ganendro Mohun Tagore v. Juttendro Mohun Tagore* (1) to gifts to unconsecrated idols. The question recently came before the Calcutta High Court in the case of *Blupati Nath Smritibirtha v. Ram Lal Moitra* (2). In principle the will in that case is identical with the will in the present case. The question as to the validity of the gift was referred to a Full Bench consisting of Jenkins, C. J., and Stevens, Mookerjee, Coxe and Chatterji, JJ. The Court were unanimous in holding that the principle laid down in *Tagore v. Tagore* did not apply to gifts like the present, and that the bequest was a valid gift. We agree with the decision of the Calcutta Full Bench and we think it unnecessary, having regard to the lengthy judgement delivered by the Calcutta Judges, to merely repeat their reasons. The result is that we allow the appeal, set aside the decree of the court below, and dismiss the plaintiff's claim. We direct each party to abide his own costs in all courts.

*Appeal allowed.*

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(1) (1874) L. R., 1 I. A., 387 ; 9 B. L. R., 377.      (2) (1909) 14 C. W. N., 18.