

the accused has already served more than six weeks pending the appeal to the Sessions Judge, the result of order will be that the re-arrest of the accused will be unnecessary and the bail bond will be discharged.

1910

EMPEROR
v.
KADIR
BAKHSI.

Appeal allowed.

APPELLATE CIVIL.

1911

November 24.

Before Mr. Justice Richards and Mr. Justice Tudball.

CHATARBHUJ AND ANOTHER (DEFENDANTS) v. CHATARJIT AND ANOTHER (PLAINTIFFS) AND HAR PRASAD (DEFENDANT.) *

Hindu law--Gift--Gift in favour of an idol which is to be subsequently consecrated--Possession given to manager.

By a deed of gift certain zamindari property was expressed to be given to an idol which was not at the time of execution in existence and possession of the property was made over to a certain person as *pujari*. Held that the deed was valid and created a trust in favour of the idol. *Mohar Singh v. Het Singh* (1) and *Bhupati Nath Smrititirtha v. Ram Lal Maitra* (2) referred to.

THE facts out of which this appeal arose were as follows :—

Mathura Prasad and Chhatarjit acquired a certain share in a village. They made a gift of it in favour of "Thakur Ramlalaji Mandir (or Dewalaya), mauza Kailiya," an idol which was not then in existence, and, appointing one Bhola as *pujari* and manager of the said idol, made over the property to him for the idol. After Mathura Prasad's death his widow and the other donor, Chhatarjit, sued to have the gift set aside on the ground that the gift was void. The courts below set aside the gift. The defendants appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* (with him Dr. *Tej Bahadur Sapru*), for the appellants :—

The validity of the gift does not depend on there being any idol of that name ; the gift was in favour of a specific deity. I rely on *Mohar Singh v. Het Singh* (1) and *Bhupati Nath Smrititirtha v. Ram Lal Maitra* (2). These were cases of wills, but on principle there is no difference between a bequest and a gift of this kind.

* Second Appeal No. 310 of 1910 from a decree of J. C. Smith, District Judge of Jhansi, dated the 3rd of February, 1910, modifying a decree of Udit Narain Singh, Subordinate Judge of Jhansi, dated the 21st of June, 1909.

1911

CHATARBHUIJ
v.
CHATARBHUIJ.

The respondents were not represented.

RICHARDS and TUDBALI, J.J.—This appeal arises out of a suit brought for possession of certain property on the setting aside of a deed of endowment, dated the 5th of December, 1905. The suit was based on two grounds; first, that undue influence and fraud had been practised, and secondly, that on the date of the endowment the image had not been duly consecrated and that therefore under the Hindu law the gift was invalid. The lower appellate court held that no fraud or undue influence had been established, but found that the idol had no legal existence at the time of the execution of the gift and that therefore the gift is invalid under the Hindu law.

On appeal it is urged that in view of the ruling of this Court in *Mohar Singh v. Het Singh* (1), which followed the ruling of the Calcutta High Court in *Blupati Nath Smrititirtha v. Ram Lal Maitra* (2), the decision of the lower court is wrong. The only difference between the case which is now before us and the cases which were the subject-matter of the two above-mentioned decisions, is that the gift in the latter cases came into force on the death of the donor, whereas in the present case the gift was made during the lifetime of the donor. In principle there is no difference whatsoever between the two cases. A trust was clearly created in the present case for the worship of an idol which was to be consecrated and placed in a temple, and the original defendant, Bholu, was made manager and trustee thereof.

Following the two abovementioned decisions we hold that the lower court was in error on this point of law and therefore the suit should have been dismissed.

We allow the appeal and set aside the decrees of the courts below, the plaintiffs' suit standing dismissed with costs in all courts.

Appeal allowed.

(1) (1910) I. L. R., 32 All., 337.

(2) (1909) I. L. R., 37 Calc., 133.