

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

NAULAKHI KUNWAR AND OTHERS (DEFENDANTS) v. JAI KISHAN SINGH (PLAINTIFF).*

Hindu law—Gift—Gift to a Hindu female—Construction of document—“ Malik mustaqil.”

1918
April, 20.

A Hindu, being the full owner of certain property, made a gift thereof to his widowed daughter-in-law, describing the donee in the deed as *malik mustaqil*. There was no circumstance to counter-indicate that the donor intended that the donee should take less than the full estate in the property comprised in the deed.

Held, that the donee took all the estate of the donor. *Surajmani v. Rabi Nath Ojha* (1) referred to.

THE facts of this case, shortly stated, were as follows :—

The plaintiff sought for a declaration that a deed of gift executed by Musammat Naulakhi Kunwar in favour of the other defendants was null and void after her death, because, if she took anything under the deed of gift in her own favour executed by her father-in-law, Dirgaj Singh, it was only a life interest. He further alleged that his father and Dirgaj Singh were joint. The defence was that the plaintiff's father and Dirgaj were separate and that Musammat Naulakhi had taken an absolute estate under the deed of gift and was competent to make the gift in question. Both the courts below held that the family was not joint, but while the Subordinate Judge held that Musammat Naulakhi Kunwar took an absolute estate, the District Judge decreed plaintiff's suit on the ground that Dirgaj Singh was unaware of the introduction of the words "*malik mustaqil*" in the deeds of gift or he was unaware of their true significance, and that at any rate he never intended to convey an absolute estate to his widowed daughter-in-law. The defendants appealed.

Babu *Surendra Nath Gupta* (for Dr. *Surendra Nath Sen*), for the appellants :—

The learned District Judge has made out an entirely new case for the plaintiff. In construing the terms of a deed the question

* Second Appeal No. 710 of 1916, from a decree of E. E. P. Rose, District Judge of Azamgarh, dated the 28th of February, 1916, reversing a decree of Suraj Narain Majhi, Subordinate Judge of Azamgarh, dated the 17th of December, 1915.

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is not what the parties may possibly have intended, but what is the meaning of the words they had used; *Manindra Chandra Nandi v. Durga Prasad Singh* (1). Whenever the word "malik" is used in a deed of gift or will, the donee or devisee, whether he is a male or female, always gets an absolute heritable and alienable estate, unless there is something in the document to qualify the same, and that inasmuch as no restrictions had been imposed upon the donee's power of alienation, the word "malik," which in this case is further strengthened by the use of the word "mustaqil" is to be given its natural significance; *Surajmani v. Rabi Nath Ojha* (2). The same rule of construction has been laid down in *Padam Lall v. Tek Singh* (3) and *Thakur Prasad v. Jumna Kunwar* (4). The mere use of the word "maintenance" cannot take away from the absolute nature of the grant, in the absence of anything qualifying and restricting, the grantee's powers of disposition over the property.

Babu Lalit Mohan Banerji (with him the Hon'ble Dr. Tej Bahadur Sapru and Mr. J. M. Banerji), for the respondent, supported the judgment of the lower appellate court and contended that according to the ordinary notions and wishes of Hindus with respect to the devolution of property, it was proper to assume that there was always a desire in their minds that an estate, especially ancestral estate, should be retained in the family, and as a general rule, women would not take absolute estate of inheritance which they could alienate.

Babu Surendra Nath Gupta was not heard in reply.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises out of a suit brought by the plaintiff for a declaration of his title to certain property. On the findings the only question which is open to consideration is whether or not Musammat Naulakhi Kunwar took an absolute estate under a deed of gift executed by one Dirgaj Singh. The court of first instance dismissed the plaintiff's suit. The lower appellate court held that on the true construction of the deed of gift, the lady took only a life-estate. Under the terms of the deed the lady is made absolute owner. The words used are "malik mustaqil." Their Lordships of the

(1) (1917) 15 A. L. J., 492.

(3) (1906) 4 A. L. J., 68.

(2) (1907): I. L. R., 30 All., 84.

(4) (1909) I. L. R., 31 All., 309.

Privy Council held in the case of *Surajmani v. Rabi Nath Ojha* (1) that the word "*malik*" alone, unless there were something definite to the contrary in the surrounding circumstances to qualify the meaning of the expression, indicates an absolute estate. Here we have the word "*malik*" followed by the word "*mustaqil*" which even makes it stronger. The learned District Judge seems to have treated Dirgaj Singh as if he had been a *parda-nashin* lady. He says that Dirgaj Singh may not have been aware of the meaning of the expression *malik mustaqil*. We cannot agree with this line of reasoning. The grant should be construed rather in favour of the grantee than of the grantor. Admittedly Dirgaj Singh had sufficient estate in him to enable him to make a full grant to the Musammat. There are absolutely no surrounding circumstances to indicate that the donor wished the lady to take mere life-estate. He does not say in the deed that she is to have it only for her life, nor does he even say that she is to have no power of alienation. We think that the learned District Judge was wrong in the view that he took of the construction of the deed of gift. The result is that we allow the appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

REVISIONAL CRIMINAL:

Before Justice Sir George Know.

EMPEROR *v.* SAHDEO RAI.*

Act No. XLV of 1830 (*Indian Penal Code*), section 173—*Summons—Refusal to receive summons when tendered no offence.*

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Under the Code of Criminal Procedure the mere tender to a person of a summons is sufficient, and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under section 173 of the Indian Penal Code.

THE parties were not represented.

The facts of this case are stated as follows in the order of reference by the Sessions Judge :—

"This is an application for revision of an order, dated the 7th of February, 1918, of Maulvi Muhammad Wajib, Magistrate, 1st

* Criminal Reference No. 237 of 1918.

(1) (1907) I. L. R., 30 All., 84.