

Before Mr. Justice Muhammad Rafiq and Mr. Justice Stuart.

SHAM DEI (DEFENDANT) v. BIRBHADRA PRASAD AND OTHERS
(PLAINTIFFS).*

Hindu law—Mitakshara—Hindu widow—Alienation by widow for religious or charitable purposes—Spiritual benefit of husband—Building dharamsala—Succession—Atma Bandhus.

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February, 9.

Unless it can be established that the alienation of a portion of her husband's estate by a Hindu widow is for the performance of religious acts supposed or intended to be for the spiritual benefit of the deceased, the alienation cannot operate to the prejudice of the reversioners, even though the portion of the property alienated be not excessive.

Collector of Masulipatam v. Cavalry Vencata Narrainayah (1), *Puran Dai v. Jai Narain* (2), *Khub Lal Singh v. Ajo bhya Missar* (3), and *Kunj Bihari Lal v. Lalbu Singh* (4) referred to.

Amongst *atma bandhus* the paternal grandfather's son's son is a nearer heir than the sister's daughter's son.

THE facts of this case are fully set forth in the judgment of the Court.

Dr. Kailas Nath Katju, for the appellant.

Pandit Uma Shankar Bajpai, Babu Piari Lal Banerji and Munshi Purushottam Das Tandon, for the respondents.

MUHAMMAD RAFIQ and STUART, JJ. :—The facts in the suits out of which these five appeals arise are as follows :—

Bal Kishan Khattri died at the end of the last century leaving a widow Sham Dei and a daughter Amru. The daughter has since died childless. On the 3rd of April, 1916, Sham Dei executed a deed, by which she dedicated a house in Benares, the property of her deceased husband, as a dharamsala. Bir Bhadra instituted a suit for a declaration that he is entitled to succeed to the estate of Bal Kishan on the death of Sham Dei as reversionary heir under the Mitakshara law, and for a declaration that the deed of dedication is not binding upon him. Ranjit Singh and Ranbir Singh instituted another suit for a declaration that they are entitled to succeed to the estate of Bal Kishan on the death of

* Second Appeal No. 947 of 1918 from a decree of W. F. Kirton, District Judge of Benares, dated the 26th of April, 1918, modifying a decree of Shekhar Nath Banerji, Additional Subordinate Judge of Benares, dated the 30th of April, 1917.

- (1) (1861) 8 Moo., I. A., 523. (3) (1915) I. L. R., 43 Calc., 574.
(2) (1882) I. L. R., 4 All., 482. (4) (1918) I. L. R., 41 All., 180.

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Sham Dei, and for a declaration that the deed of dedication is not binding upon them. Both suits were decided by Mr. S. N. Banerji, Subordinate Judge. He found that Sham Dei was not authorized to alienate the house in Benares to the prejudice of the reversionary heirs, and that Ranjit Singh and Ranbir Singh were the reversionary heirs of Bal Kishan.

Appeals were filed in the court of the District Judge, Benares. The District Judge found that Sham Dei was not authorized to alienate the house in Benares to the prejudice of the reversionary heirs. He arrived at a conclusion different to that of the Subordinate Judge as to who was the reversionary heir. He found that Bir Bhadra was the reversionary heir.

Against his decision Sham Dei appeals in S. A. No. 947 of 1918, and Ranjit Singh and Ranbir Singh appeal in S. A. Nos. 1032, 1033, 1034 and 1101 of 1918. The five appeals have been heard together. They are decided in this judgment.

We take first Sham Dei's appeal. The learned District Judge agreeing with the Subordinate Judge found that Sham Dei had no authority from her deceased husband to make the endowment. This is a finding of fact, which cannot be impugned in second appeal. The learned counsel for Sham Dei argued that she had under the provisions of the Mitakshara law authority to alienate a portion of her husband's property for religious or charitable purposes, and that she had not exceeded that authority in making this particular alienation. The limits of the power of the Hindu widow under the Mitakshara law to make such alienations are defined in the frequently quoted passage of the judgment in the case of *Collector of Masulipatam v. Cavalry Vencata Narrainapak* (1):—

“The widow cannot of her own will alien the property except for special purposes. For religious and charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband she 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.”

(1) (1861) 8 Moo., I. A., 529.

The learned counsel for Sham Dei contends that this passage lays down a proposition that a widow has authority to alienate a reasonable portion of her husband's property for religious and charitable purposes, whether the alienation is or is not supposed to conduce to the spiritual welfare of her husband. We do not accept this contention. The proposition is not as wide as he would have it. Following an interpretation, which has prevailed since the decision in question was passed in 1861, we hold that in order to justify an alienation by a widow enjoying a widow's estate under the Mitakshara law of a portion of her husband's property for religious or charitable purposes, it must be established that the alienation is supposed to conduce to the spiritual welfare of her husband. This principle was accepted in 1882 by a Bench of this Court in *Puran Dai v. Jai Narain* (1). There it was held that an alienation by such a widow which effected a pious and lawful act made for her own spiritual welfare and not for that of her deceased husband, was not valid. The point was discussed in 1915 by a Bench of the Calcutta High Court in *Khub Lal Singh v. Ajudhya Misser* (2). One of the members of the Bench which decided that appeal was a very distinguished Hindu lawyer. Although we do not see our way to accept every observation in the learned judgment in question, the conclusion (p. 583) states what appears to us to be the correct law on the matter:—

“The true rule thus appears to be that there is a distinction between legal necessity for worldly purposes on the one hand, and the promotion of the spiritual welfare of the deceased on the other hand, and that within proper limits the widow may alienate her husband's property for the performance of religious acts which are supposed to conduce to his spiritual benefit.”

We are not, however, in accord with the view pressed by the learned counsel for Sham Dei that an act supposed to conduce to the spiritual benefit of the widow is necessarily an act supposed to conduce to the spiritual benefit of the husband. This proposition appears to have been looked at

(1) (1882) I. L. R., 4 All., 432.

(2) (1915) I. L. R., 43 Calc., 574.

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not with disfavour by the learned Judges who decided *Khub Lal Singh v. Ajulhya Misser* (1). We should not go so far as to say that they accepted it. Whatever be its application to persons governed by the Dayabhaga law, it would not appear to be a doctrine applicable to persons governed by the Mitakshara law. It is obvious that an act done by a widow supposed to conduce to the spiritual benefit of her husband would confer spiritual benefit on herself, but the converse does not appear to follow. An act done by the widow supposed to conduce to the spiritual benefit of herself would not confer spiritual benefit on her husband. In any circumstances we should have been precluded from accepting this view in face of the decision in *Puran Dai v. Jai Narain* (2).

The decision in *Khub Lal Singh v. Ajulhya Misser* (1) was recently discussed by a Bench of this Court in *Kunj Bihari Lal v. Lattu Singh* (3). That Bench derived similar assistance to the assistance which we have derived from the exposition of the law therein.

The conclusion at which we arrive is, this, that unless it can be established that the alienation in question was for the performance of religious acts which were supposed (in this case intended) to be for the spiritual benefit of Bal Kishan, the alienation cannot operate to the prejudice of the reversioners, even if the portion of the property alienated be not excessive.

How do the facts stand? Bal Kishan died at the end of the last century. The widow made the alienation on the 3rd of April, 1916. She stated in the deed that she had the authority of her husband to make the alienation. She has been unable to prove that allegation. The terms of the deed do not suggest that the dedication was made to confer spiritual benefit on Bal Kishan. There is nothing in the evidence to justify the conclusion that the intention was to confer spiritual benefit on Bal Kishan, or that there was any belief in the mind of the widow that the dedication would confer spiritual benefit upon him. The creation of a dharamshala is ordinarily a pious and religious act. Usually such an act would confer spiritual

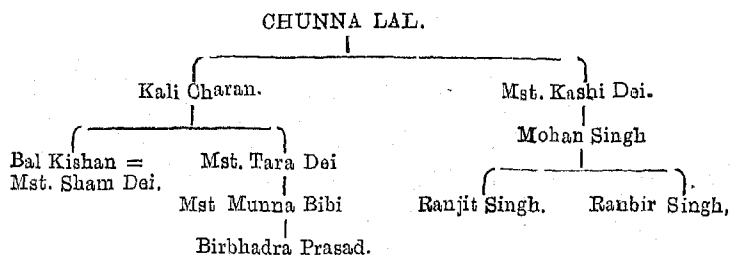
(1) (1915) I. L. R., 43 Cal., 574. (2) (1932) I. L. R., 4 All., 492.

(3) (1919) I. L. R., 41 All., 130.

benefit upon the dedicator. It does not follow that it would purport to confer spiritual benefit upon a third party. We are alive to the consideration that no mundane court can decide whether spiritual benefit is conferred. But mundane courts can decide for whom spiritual benefit is intended to be conferred. That is a point which has to be decided in each individual case. In this case we decide that there is nothing to justify the conclusion that Sham Dei, when she made this dedication, either intended to confer spiritual benefit on Bal Kishan, or was doing an act which she supposed conferred spiritual benefit on Bal Kishan.

We, therefore, dismiss appeal No. 947. Musammat Sham Dei will pay her own costs and those of Ranjit Singh and Ranbir Singh (one set).

This brings us to the contest between the rival reversionary heirs. We find the following to be a correct pedigree of the parties concerned.



From this it will be seen that Birbhadra Prasad is the son of Bal Kishan's father's daughter's daughter, and that Ranjit Singh and Ranbir Singh are the sons of Bal Kishan's father's father's daughter's son. All are "Atma Bandhus."

The learned Subordinate Judge applied the rule laid down in Trevelyan's Hindu Law, Second Edition, pages 403, 404. According to this rule Ranjit Singh and Ranbir Singh as father's father's daughter's son's sons are in the thirteenth place and Birbhadra Prasad as father's daughter's daughter's son is in the seventeenth place. He decided accordingly in favour of Ranjit Singh and Ranbir Singh. The learned District Judge applied the same rule, but arrived at a different conclusion. It is unnecessary to pursue his reasoning. It is sufficient to note that, if the rule be applied, the conclusion of the learned

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ordinate Judge is the correct conclusion, and the decision of the learned District Judge that Birbhadra Prasad has the preferential claim must be reversed. The learned counsel for Birbhadra Prasad admits that if the rule in question be applied his client must fail. He argues that the rule is not a sound rule and should not be applied.

The rule in question was evolved from a study of the texts and commentaries by Professor Rajkumar Sarvadhikari, and is stated in full in his treatise on the Principles of the Hindu Law of Inheritance (Tagore Law Lectures, 1880). Professor Sarvadhikari's work is an accepted authority on the Law of Hindu succession. The accuracy of certain of his observations, which have no bearing on the decision of this appeal, has been questioned later, but his views have always been regarded as of great value, and this treatise is recognized as a standard work on the subject. We have examined the reasoning upon which the rule in question is based, and find it convincing. We do not consider that the learned counsel for Birbhadra Prasad has succeeded in establishing any flaws therein. The most that he has been able to show is that certain courts have not accepted other conclusions contained in the treatise. The conclusions in question are not the conclusions before us. The force of this argument, such as it might have been, is minimized if not nullified by the fact that in these decisions the courts have failed to agree among themselves or set up an alternative standard. After examining the reasons supporting the rule we are content to follow them as logical and faithful deductions from principles based upon recognized texts and commentaries. We, therefore, accept the rule, and decide that Ranjit Singh and Ranbir Singh are the nearest reversionary heirs to Bal Kishan.

We, therefore, allow Second Civil Appeals Nos. 1032, 1033, 1034 and 1101 of 1918. Birbhadra will pay his own costs and those of Ranjit Singh and Ranbir Singh in all courts.

Appeal decreed.