PRIVY COUNCIL.

HAR NARAYAN AND ANOTHER (PLAINTIFFS) *v.* SURJA KUNWARI (SINCE DECEASED) AND ANOTHER (DEFENDANTS).

(On appeal from the High Court at Allahabad).

*P. C. 1921 *March*, 1.

Hindu Will—Gift to Idol—Provision for heirs—Construction—Charge on Estate.

In determining whether the will of a Hindu gives the testator's estate to an idol subject to a charge in favour of heirs or makes the gift to the idol a charge upon the estate, there is no fixed rule depending upon the use of particular terms in the will; the question depends upon the construction of the will as a whole.

Thus, although a will provides that the property of the testator "shall be considered to be the property" of a certain idol, the further provisions such as that "whatever may be saved after defraying the expenses of the temple and the pay of the servants, shall be used by our legal heirs to meet their own expenses" and the circumstances, such as that the expenditure upon the idol was fixed and would require only a small proportion of the income, may indicate that the intention was that the heirs should take the property subject to a charge for the performance of the religious purposes named.

Sonatun Bysack v. *Sreemutty Juggutsoondree Dossee* (1) followed.

Judgment of the High Court affirmed.

APPEAL (No. 25 of 1919) from a judgment and decree (4th January, 1917), of the High Court reversing a decree of the Additional District Judge of Gorakhpur.

The suit was instituted by the appellants under section 14 of the Religious Endowments Act (XX of 1863), by leave of the court, to eject the respondents from certain property and for an account of the profits.

The question for determination in the appeal depended upon the true construction of the will of a Hindu, Sukh Mangal Singh, who died in 1912 leaving two widows. On the death of the testator the respondents had obtained possession of his property, and after defraying the expenses of the religious purposes mentioned in the will had themselves enjoyed the surplus income.

The material provisions of the will are stated in the judgment of their Lordships.

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* *Present* :—Lord BUCKMASTER, Lord DUNEDIN, Lord SHAW, Sir JOHN EDGE, and Mr. AMEER ALI.

(1) (1859) 8 Moo. I. A., 66.

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The trial Judge held that by the will the testator created an endowment of his whole property in favour of the idol, subject to a charge for the maintenance of his widows, the respondents.

The High Court upon an appeal reversed the decision holding that the will created only a charge upon the estate for the religious purposes named, and that subject to that charge the legal heirs of the testator were entitled to appropriate the income. The learned Judges (the Chief Justice and Banerji, J.) said:—"We are of opinion that the contention that no endowment was created by the will of Sukh Mangal Singh is well founded. The will no doubt states that a waqf was created, but from the clauses contained in it it is manifest that what was intended by Sukh Mangal Singh was that the idols should be maintained out of the income." After submitting the various provisions of the will to a detailed examination the learned judges added:—"All this is inconsistent with the dedication of the property to the idols. On the contrary, the inference to be drawn from the will read as a whole is that it created a charge on his property for the expenses of the idols; subject to that charge the property was to go to his legal heirs who were fully entitled to appropriate all the income of the property."

On this appeal:

De Gruyther, K. C., and *Narasimham*, for the appellants.

Dunne, K. C., and *Kenworthy Brown*, for the respondents.

The arguments were as to the construction of the will, reference being made to the cases mentioned in the judgment of their Lordships and to Mayne's Hindu Law, 8th edition, paragraph 438.

1921, March 1.—The judgment of their Lordships was delivered by Lord SHAW:—

This is an appeal against a decree of the High Court of Judicature for the North-Western Provinces at Allahabad, dated the 4th of January, 1917, which reversed a decree of the Additional District Judge of Gorakhpur, dated the 11th of February, 1915.*

As their Lordships have come to be of opinion that the judgment of the High Court is correct, they also agree that it is

* Cf. *Surja Kunwari* v. *Har Narain Ram*, I. L. R., 39 All., 311.

unnecessary to deal with another question opened on this appeal, namely, whether the plaintiffs have a title to sue as interested persons within the meaning of section 14 of the Religious Endowments Act, 1863.

The question on the merits concerns the construction of the will of Babu Sukh Mangal Singh, who died on the 2nd of August, 1912, leaving two widows, who were chief defendants in the action and of whom the second respondent is the sole survivor.

The will is dated the 29th of October, 1903. The point in issue is not unfamiliar. It is whether the property conveyed by the will was an absolute gift to a certain idol, namely Sri Thakurji, or whether the property is truly destined to the testator's own heirs under the will, subject to a charge of maintaining Sri Thakurji and meeting all the suitable expenses of the Thakurdwara, the cost of its repairs and the pay of the servants connected with it, as these are set out in the will itself.

In such cases no fixed and absolute rule can be set up, derived alone from the use of particular terms in one portion of the will. The question whether the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, these heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the will.

This may be briefly given. As it happens there is no grant in express words to Sri Thakurji, but the movable and immovable property of the testator "shall be considered to be the property of Sri Thakurji." The question, however, may be considered in the same light as if words of express grant had occurred. The testator makes provision that the *waqf* is such that "whatever money and grain produced by the *sir* land will remain after meeting (the requirements of) *raj* and *bhog* of Thakurji shall be used and appropriated by my successors generation after generation."

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The question as to whether "successors" means "heirs" and "heirs" means "successors" throughout this will might raise in differing circumstances differing considerations, but these do not arise in the present case, there being in the person of the surviving widow a true contradictor to the rights of the idol, which rights must be conserved and the extent of which is now to be determined.

A further sentence occurs in clause 6 of the will:—

"But whatever profit will remain after meeting the expenses of the Thakurdwara, the costs of its repairs, the pay of the servants connected with it, and the costs of repairs of other buildings, out of the said profits, shall be spent in the estate."

Clause 7 of the will deals with the powers of the heirs, and includes the hypothecation or mortgage of the shares of two villages. It then proceeds, however, to provide that, in the event of a famine occurring or the villages falling into arrears and the heirs beginning "to die of starvation," then these starving heirs may support themselves by an hypothecation of two houses named. It is further provided that no successor should have power to make any gift or any kind of transfer in favour of any relative, and that no improper loans should be taken ("as might imperil the Thakurji's property.")

With regard to Sri Thakurji itself, the restrictions are very clear, namely, "nothing more nor less than what is done at present should be done" in connection with a long description of various duties of attendance and worship. And it is provided that they (the Managers) "shall perform the service of Sri Thakurji and the other idols mentioned above in the same way as it is performed in my time."

These clauses occur in section 5 of the will. By section 8 the matter is made still clearer by the clause:—

"They should continue the management just as it is at present and get *rajbhog*, *utsava*, etc., of Thakurji carried on; and our successors should be maintained as they are maintained at present."

It is plain accordingly that this was in no sense what might be termed an expanding trust, but one in which the maintenance and expenses in the life-time of the testator were considered as a substantial standard of maintenance and expenses in all time coming. The importance of this consideration is that it was

not seriously questioned that the value of the property left by the testator amounted to Rs. 50,000, with an income of Rs. 7,000 per annum, whereas the total expense of the worship, maintenance, etc., of the establishment of the idol would amount to a much smaller sum, which one of the parties puts at Rs. 500 per annum.

One question accordingly which forces itself upon the attention is what under this will, according to the appellants' construction of it, would happen if, the scale of the idol's expenses being as stated, there should, as would inevitably occur, be an accumulation of surplus revenue. Upon this subject the will is not silent. For instance, the rights of the daughters include as follows:—

"The daughter who is now two years old and is unmarried and all other sons or daughters who may be born in future will be married into high caste Brahman families and their *chhatti*, *barhi* and marriage ceremonies will be performed, and dowries, etc., given according to the old custom, viz., in the same way in which these things were done during the time of my ancestors. The daughters will, till their marriage, be maintained by our successors in the same way in which girls have been brought up to this time."

It becomes fairly clear accordingly that up to this point a family settlement has been made, and the idea of the administration is much more consonant with the idea of a grant in favour of the ultimate destination being under the will to the family as such than to the idol and its managers as such. Two brothers-in-law are named in section 8 of the will as managers "to make collections, pay the Government revenue, etc., and make over the profits to my two wives."

Then by section 9 of the will:—

"In the event of my successors having no issue, my wives and those of my successors will remain in possession, and when the wives also cease to exist, my daughters will remain in possession and occupation during their life-time, and after performing the *rajbhog*, etc., shall use the savings for their own maintenance."

Selling or alienation of the property is forbidden, and finally there is this definite clause:—

"Be it known that all this *waqf* property shall be considered to be the property of Thakurji, Sheoji, Ganeshji, etc., installed in the temple at Ismailpur."

This, it will be observed, is a repetition of the expression occurring in clause 6 already quoted; but there is then added

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what appears to their Lordships to assist greatly in the construction of the deed :—

"Whatever may be saved after defraying the expenses of the temple, and the pay of the servants, shall be used by our legal heirs to meet their own expenses."

A further and more detailed analysis of this will need not be given. The passages already cited sufficiently raise the point at issue between the parties.

Their Lordships are of opinion that by this deed the provision for the worship, expenses and annual charges of the idol, Sri Thakurji, form a burden upon this estate, but that the property descends according to the destination in the will and subject to that burden. The judgment of the High Court appears to their Lordships to be correct upon a sound construction of the deed itself. But the decision now given appears to their Lordships to be in entire accordance with the judgment of Lord Justice TURNER in *Sonatun Bysack* v. *Sreemutty Juggutsoondree Dossee* (1), decided by this Board, followed by the judgment in the case of *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (2), pronounced by Sir BARNES PEACOCK. To use Lord Justice TURNER'S expression, which seems applicable to the present case, their Lordships are of opinion that "although the will purports to begin with an absolute gift in favour of the idol, it is plain that the testator contemplated that there was to be some distribution of the property according as events might turn out; and that he did not intend to give this property absolutely to the idol seems to their Lordships to be clear from the directions which are contained in" various clauses of the will.

The Board was referred to the judgment in *Jadu Nath Singh* v. *Thakur Sita Ramji* (3). The case merely illustrates the inexpediency of laying down a fixed and general rule applicable to the construction of settlements varying in terms and applying to estates varying in situation. The terms of the will referred to by Lord HALDANE in the last mentioned case show that one half of the income was to be applied to the temple purposes and that the other half was to be enjoyed by the managers without power of alienation, and that the whole net

(1) (1859) 8 Moo. I. A., 66.

(2) (1879) I. L. R., 5 Calc., 438; L. R., 6 I. A., 182.

(3) (1917) I. L. R., 39 All., 558; L. R., 44 I. A., 187.

income was to be applied to the expenses of the temple, the entire income being only Rs. 800 per annum. It is manifest that the decision has no application to a case like the present, the circumstances of which have just been described.

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Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs. *Appeal dismissed.*

Solicitor for appellants:—*E. Dalgado.*

Solicitor for surviving respondent:—*Douglas Grant.*

GHULAM ABBAS KHAN AND ANOTHER (PLAINTIFFS) *v.* AMAT-UL-FATIMA AND OTHERS (DEFENDANTS); AND MUHAMMAD JAFAR AND ANOTHER (PLAINTIFFS) *v.* BIBI AMAT-UL-FATIMA AND OTHERS (DEFENDANTS).
[Consolidated appeals.]

*P.C. 1921 *March*, 1.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Oudh taluqdari estate—Primogeniture sanad—*Construction*—"*Successors.*"

A *sanad* granted in 1862 to a Muhammadan lady conferred a taluqdari estate in Oudh upon her and her heirs for ever subject to the payment of revenue; it provided "in the event of your dying intestate or any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate." The *sanad* further made it a condition that the grantee should promote the agricultural prosperity of the estate and maintain all subordinate rights, and concluded, "as long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors."

Held that the word "successors" in the *sanad* meant those designated parties who would succeed under the *sanad* upon an intestacy, and that the estate having passed by devise out of the line of succession designated its further devolution was according to Muhammadan law.

Decision of the Court of the Judicial Commissioner affirmed.

CONSOLIDATED APPEALS (Nos. 200 and 201 of 1919) from a judgment and two decrees (*July 5, 1915,*) of the *Court of the* Judicial Commissioner of Oudh affirming a judgment and two decrees of the Subordinate Judge of Mohanlalganj, Lucknow.

The litigation related to the succession to an estate in Oudh, called Maniarpur. The estate originally belonged to Bachgoti Khanzadas, who were Rajput converts to Muhammadanism and had adopted the Shia faith. The holder at the time of the annexation of Oudh was Bibi Sughra, with whom a settlement was made. She was granted in 1862 a primogeniture sanad the

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**Present*:—Lord BUCKMASTER, Lord SHAW and Sir JOHN EDGE.