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their Lordships do not possess, regard the signature as good, having compared it with the undoubted specimens of the testator's writing. The answer to this, however, is, that no forgery is of the least value, unless it closely resembles the real signature; and when witnesses are available to prove that a man actually made a signature, any evidence of a general nature to the effect that the signature appears to be genuine is of little worth in the absence of the material witnesses. Finally, their Lordships are greatly impressed with this fact—that no evidence whatever has been forthcoming to show when this document was found, where it was found, by whom it was found, or why it was that it was kept back until after the claim by the male agnatic relations was made, and the widow's evidence has never been taken nor any explanation offered of her absence. The history of a document such as this is of the most material importance for the purpose of determining its validity, and in the present case this history is a complete blank.

Their Lordships are of opinion that there has been no trustworthy evidence to establish the alleged signature of Babu Bijai Singh. There has been no adequate explanation of why the witnesses were not called who could have proved it, and they are forced to the conclusion that the document is not genuine and that this appeal should be allowed with costs and the judgment of the District Judge restored. They will humbly advise His Majesty accordingly. *Appeal allowed.*

Solicitor for appellant:—*Edward Dalgado.*

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SARDAR SINGH AND OTHERS (PLAINTIFFS) *v.* KUNJ BIHARI LAL AND OTHERS (DEFENDANTS).

P.C.*
1922
*June*, 30.

**[On appeal from the High Court at Allahabad.]**

*Hindu law—Hindu widow—Alienation of property of deceased husband—Small fraction alienated—Spiritual benefit of husband.*

A Hindu widow in possession of the estate of her deceased husband made a gift by deed of immovable property forming about one-seventy-fifth of the whole estate for the observance of *bhog* (food offerings) to a deity, and for the maintenance of the priests. The gift, which was made in performance of a vow taken upon a pilgrimage to the temple, was stated by the deed to be for the salvation of the deceased husband, his family, and the widow. The

*Present*:—Lord PHILLIMORE, Lord CARSON, Sir JOHN EDGE and Mr. AMEER ALI.

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widow had sufficient income to provide for the observances without an alienation of part of the estate.

*Held* that the alienation was valid, since the property given formed only a small fraction of the whole estate, and the gift was for the continuous spiritual benefit of the deceased husband, though not for an observance essential to his salvation according to Hindu religious law.

Observations in *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1) and *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry* (2) followed.

*Rama* v. *Ranja* (3), *Vuppuluri Tatayya* v. *Garimilla Ramakrishnamma* (4) and *Khub Lal Singh* v. *Ajodhya Misser* (5) approved.

*Ram Kawal Singh* v. *Ram Kishore Das* (6) distinguished.

Judgment of the High Court (I. L. R., 41 All., 130) affirmed.

APPEAL (No. 58 of 1921) from a judgment and decree of the High Court (6th of June, 1918,) reversing a decree of the Subordinate Judge of Moradabad (23rd of August, 1915).

The suit was brought by Laltu Singh, the predecessor of the present appellants, to recover possession of certain immovable property which formed part of the estate of Raja Gur Sahai, deceased, whose reversionary heir the plaintiff claimed to be. In 1876 the Raja's widow, while in possession of his estate, had made a gift of the property in suit to the temple of Jagannath at Puri, by a deed which is set out in the judgment of the Judicial Committee. The gift was made in performance of a vow made by the widow on a pilgrimage to Puri, and was for *bhog* (food offerings) to the deity, and the maintenance of the priests in charge. It was found that the property represented about one-seventy-fifth of the whole estate, which produced an income of Rs. 60,000 per annum. The temple authorities had sold the land to the first respondent; the second respondent (defendant) was a lessee from him.

The Subordinate Judge made a decree for possession and mesne profits. He bases his judgment on the view that the purpose of the gift was not the performance of any religious duty which was essential, and that the donor had sufficient income out of which to make the gift.

On appeal to the High Court the learned Judges (PIGGOTT and WALSH, JJ.) after a consideration of the authorities, reversed the

(1) (1861) 8 Moo. I. A., 529.
(2) (1869) 13 Moo. I. A., 209.
(3) (1885) I. L. R., 8 Mad., 552.
(4) (1910) I. L. R., 34 Mad., 288.
(5) (1915) I. L. R., 43 Calc., 574.
(6) (1895) I. L. R., 22 Calc., 506.

decision, and dismissed the suit. The appeal is reported at I. L. R., 41 All., 130.

*1922, May 11, 12. De Gruyther, K. C.*, and *Dube*, for the appellants.

The alienation was invalid. The property in the possession of the Rani produced a large income, amply sufficient to provide for the observances referred to in the deed of gift. That being so, she was not entitled to alienate any part of the corpus of the property, even if the observances had been of an indispensable character. The observances here provided for, though proper, were not essential for the deceased husband. Further, by the deed they purported to be for the benefit of the family of the deceased and the widow herself, as well as for the benefit of the deceased. A general review of the authorities shows that the decision of the Subordinate Judge was right in substance. So far as the cases lay down a general rule, they do not exclude the view that necessity to alienate must be proved; any of the cases which appear to do so are not supported by the general body of authority. (Reference was made to the following cases, here given in order of date: *Cossinaut Bysack* v. *Hurrosoondry Dossee* (1), *Ram Chunder Surma* v. *Gungagovind* (2), *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (3), *Kartick Chunder Chuckerbutty* v. *Gour Mohun Roy* (4), *Huro Mohun Audhikaree* v. *Aulak Monee Dassee* (5), *Raj Chunder Deb Biswas* v. *Sheeshoo Ram Deb* (6), *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhri* (7), *Mahomed Ashruf* v. *Brijessuree Dassee* (8), *Muteeram Kowar* v. *Gopal Sahoo* (9), *Runjeet Ram Koolal* v. *Mahomed Waris* (10), *Puran Dai* v. *Jai Narain* (11), *Rama* v. *Ranga* (12), *Lakshminarayana* v. *Dasu* (13), *Ram Kawal Singh* v. *Ram Kishore Das* (14) *Churaman Sahu* v. *Gopi Sahu* (15), *Vuppulari Tatayya* v. *Garimilla Ramakrishnamma* (16),

(1) (1819) 2 Morley's Digest, 193.
(2) (1826) 4 Mad. Sel. Rep., 147.
(3) (1861) 8 Moo. I. A., 529.
(4) (1864) 1 W. R., C. R., 48.
(5) (1864) 1 W. R., C. R., 252.
(6) (1867) 7 W. R., C. R., 146.
(7) (1869) 13 Moo. I. A., 209.
(8) (1873) 19 W. R., C. R., 426.
(9) (1873) 20 W. R., C. R., 187.
(10) (1873) 21 W. R., C. R., 49.
(11) (1882) I. L. R., 4 All., 482.
(12) (1885) I. L. R., 8 Mad., 552.
(13) (1887) I. L. R., 11 Mad., 288.
(14) (1895) I. L. R., 22 Calc., 506.
(15) (1909) I. L. R., 37 Calc., 1.
(16) (1910) I. L. R., 34 Mad., 288.

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*Khub Lal Singh* v. *Ajodhya Misser* (1); also to MacNaghten Hindu Law 1874 edn.) p. 211 and Sarkar's Vyavastha Chandrika Vol. 1, paras. 105, 106.)

*Sir George Lowndes, K. C*, and *Kenworthy Brown*, for the first respondent.—

The amount of the gift being small in relation to the whole property, the alienation was valid. Gifts of this character by a widow on making a pilgrimage are usual observances for the spiritual benefit of the husband. Gifts to temple Brahmins are recognized as proper throughout Manu, see Manu, ch. 11, v. 6 and ch. 7, v. 85. A Hindu widow has absolute discretion over the income of the property vested in her; there is no authority for the contention that she must exhaust the income before she can alienate any part of the corpus for spiritual purposes. The result of the authorities upon the general question was correctly stated by the High Courts in *Vuppuluri Tatayya* v. *Garimilla Ramakrishnamma* (2) and *Khub Lal Singh* v. *Ajodhya Misser* (1). In the century covered by the decisions referred to, the passage in the judgment in *Mahomed Ashruf* v. *Brijessuree Dasee* (3) alone supports the view that the widow could not for the purpose alienate any part of the corpus unless the income was insufficient. (They were stopped).

The other respondents did not appear.

*June 30.*—The judgment of their Lordships was delivered by Mr. AMEER ALI.

This is an appeal from a judgment and decree of the High Court at Allahabad, dated the 6th of June, 1918, and arises out of a suit brought by the plaintiff Lallu Singh, since deceased, in the court of the Subordinate Judge of Moradabad on the 13th of September, 1913. The object of the suit was to set aside an alienation purporting to have been made for a religious or pious purpose by a Hindu lady of the name of Rani Kishori on the 5th of January, 1876. The point involved in the determination of the appeal relates to the powers of a Hindu female on whom property devolves upon the death of the husband, son or father, as a limited estate, to alienate any part of the property for religious purposes. Rani Kishori was the widow of Raja

(1) (1915) I. L. R., 43 Calc., 574. (2) (1910) 1 L. R., 34 Mad., 288.
(3) (1873) 19 W. R., C. R., 426, 427.

Gur Sahai, who died in 1868 and was at the time of his death possessed of a considerable estate, yielding an annual income of some Rs. 60,000. He left two minor sons, both of whom died in infancy in 1873, five years after the death of their father. The property then devolved on Rani Kishori in succession to her sons. The Rani died on the 16th of August, 1907, when succession opened to the reversioners of Raja Gur Sahai. There was some litigation as to the right of reversion, which was finally adjudged in favour of Laltu Singh, the plaintiff, and he, as stated before, brought the suit on the 13th of September, 1913, to set aside the alienation referred to above. It appears, upon the evidence, that after the death of her sons the widowed mother, according to the custom of pious Hindus, especially females, made pilgrimages to different sacred cities, among them Benares, Gaya and Puri. She appears to have visited Puri in the year 1875, and there made a *sankalpa* or vow to create a dedication for the observance of *bhog* or food offerings to the presiding deity, and for the maintenance of the priests (pandas) who were charged with the performance of that duty. In 1876 she gave effect to her *sankalpa* by executing, as it is alleged on behalf of the defendants, a document purporting to be a gift for the purpose referred to.

That document, so far as is material for the purposes of this judgment, is in the following terms :—

"I, Musammat Rani Kishori Kunwar, widow of Raja Gur Sahai, deceased, by caste a Jat, 'rais' and resident of Moradabad, do declare as follows :—

Whereas I, according to the custom prevailing among the Hindus, happened to go on a pilgrimage to Prayagji and Kashiji and on a visit to Jagannath in 1282 Fasli, and at the time of paying a visit to, and performing the worship of, Jagannathji Maharaj, made a charitable gift and 'shankalp' of a moiety of a 'pakka' built house facing the east in mahalla Sambhal Darwaza in Moradabad and of a 15 biswa 9 biswansi 2 kachwansi 3 tanwansi share in mauza Sherpur, a 15 biswa 9 biswansi 2 kachwansi 3 tanwansi share in Sarai-Kazi, a 15 biswa share in Rustampur Hayat and a 15 biswa share in Shahzadapur Hayat, the zamindari villages in pargana Hasanpur, together with all the culturable and unculturable lands, 'abadi,' houses that are let on rent, artisan's cess, grazing charges, barren land, water produce, tanks, lakes, groves, fruits and timber trees, *i.e.*, all the inherent and adventitious rights and interests in the revenue paying zamindari property in the said villages and also of two pakka 'havelis' (houses) in mauza Sherpur aforesaid, in favour of Jagannathji Maharaj, installed in the temple at Jagannathpuri

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and of Anant Ram, son of Gobardhan, 'khurd' (junior), resident of Puri aforesaid, and Jai Ram, son of Bhawani Das, resident of Durgapur, appertaining to Puri aforesaid, district Katak, both the Pandas of Jagannathji Maharaj. But no document was executed at the time the 'shankalp' was made. Now this document is executed with the following conditions:—Both the Pandas aforesaid should enter into possession and make management of the aforesaid property and after paying the Government revenue and village expenses out of the annual income, spend half of the net profits on the daily 'bhog' (food offering) of Jagannathji Maharaj, and bring the other half to their own use, in equal shares. After them, their descendants and successors should enter into possession and enjoyment, generation after generation, and should, in due order, distribute the profits, according to the specification given above and daily spend money on the 'bhog' of Maharaj. Whoever will be my successor and representative after me shall have no claim or objection to the gifted and endowed property, by reason of the execution of this deed. If, perchance, they bring any claim it shall not be entertainable by the court, inasmuch as the property of which I have made a charitable gift and 'shankalp' is of the nature of 'devatra' (?) and 'tulsipatra' property. According to the Hindu Law, the income of the said property is not such as may be brought by me or my successors to our own use. The said property is the self-acquired and exclusive property of my deceased husband, Raja Gur Sahai. I have made a charitable gift and 'shankalp' of the property for the salvation of my husband and his family members and for my own salvation. The gift property is worth Rs. 2,500. I have, therefore, executed these few presents by way of a deed of gift, so that they may serve as evidence and be of use when needed."

It purports to have been executed for the lady by her general attorney Ajab Singh, and a question was raised on behalf of the plaintiffs that the deed of gift was fraudulently executed by Ajab Singh in collusion with the donees, and was not the act of the Rani herself. In the view he took of the case the Subordinate Judge did not deal with the question of the authenticity of the document, but the High Court, on the examination of the evidence, came to the conclusion that the deed was the deed of Rani Kishori. The contention against the genuineness of the document has not been pressed before the Board, and their Lordships think upon the evidence there is no real foundation for the charge that it was not the act of the Rani. Before the first court the trial proceeded on the question of the power of the lady to make an alienation, the plaintiff contending that it was invalid, while the defendants urged that it was fully within her competency. The Subordinate Judge decided in favour of the plaintiffs on two grounds—first, that it was not competent for

the lady to make the alienation, as it was not for the performance of any religious duty which amounted to a necessity under the Hindu law; the second ground of his decision was that the lady had abundant means for giving effect to her pious intention, the *sankalpa*, to which she refers in the deed of gift, and that consequently the gift was invalid. He accordingly made a decree in favour of the plaintiffs. On appeal the High Court came to a different conclusion. They held that her alienation, although not in performance of a necessary duty, was nevertheless a pious act and was, therefore, valid. They held also that the lady had inherited a large estate, and that the dedication covered a very small fraction of the property, something like one-seventy-fifth. They accordingly dismissed the plaintiff's suit.

On appeal to the Board the question has been argued with great ability and fullness by counsel for the appellants who are Laltu Singh's representatives.

The earlier cases bearing on the question cited from Sutherland's Weekly Reporter, extending from 1864 to 1873, no doubt give colour to the view taken by the Subordinate Judge, and their Lordships have little doubt that he was largely influenced in his conclusion by the notion that justifiable necessity for the validity of religious alienation must be of the same character as in the case of alienation for secular purposes. This idea seems to be predominant in the minds of the learned Judges who decided the cases reported in the Weekly Reporter. Their Lordships cannot help regarding the criticism of the High Court on the Subordinate Judge's judgment as unduly severe. In support of the plaintiff's contention the Board were referred to the paragraph 105 in the *Vyavastha Chandrika*, vol. 1, page 138:—

> "Without the consent of her husband's reversioners a widow is, however, competent to sell so much, and no more, of his property as may be required for the performance of the indispensable duties (nitya-karma). If such acts cannot be performed without selling the whole property, the whole may be sold by her for that purpose, because such duties *must* be performed. But for the performance of an optional religious act (Kamya karma) she may, without their consent, dispose of only a small portion of the estate."

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Then follows paragraph 106, which, it is contended, imposes a further limitation on her power :—

"If, however, the expenses for those acts including maintenance could possibly be defrayed with the accumulated wealth, or with the income of the estate left by the deceased, then his widow cannot sell any part of his estate for the performance of any such act, much less on account of any debt contracted by her for her own purpose."

The commentator's note to paragraph 105 is as follows :- -

"An indispensable act or duty (nitya-karma) is that which *must* be performed, and cannot be neglected without sinning, as the first sraddha of the father or of the husband, the marriage of his daughter, or the like. And an optional religious act is such as the performance of it rests upon option, and there is no sin on the non-performance, but religious merit (punya) on the performance thereof, as pilgrimage to Benares and the like."

Reference was also made to the dictum of their Lordships in the case of *Collector of Masulipatam* v. *Cavaly Venkata Narrainapah* (1) where the Board pointed out the difference between alienations made by a widow for secular purposes and those made with religious motives. The Master of the Rolls, who delivered the judgment in that case, says as follows:—

"It is admitted, on all hands, that if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or 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."

In *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry* (2) the Board gave expression to the same opinion. In *Rama* v. *Ranga* (3) the Madras High Court laid down that alienation by a Hindu widow for religious purposes must be confined to ceremonies indispensable for spiritual benefit, such as funeral obsequies and the periodical ceremonies incidental to those obsequies. But the learned Judges went on to add :—

"We cannot recognize a sale by a Hindu widow as valid against her husband's reversioner, when it is made in view to raise money for doing pious acts which are not in the nature of spiritual necessities, unless such sale is reasonable in the circumstances of the family, and the property alienated is but a small portion of the property inherited from her husband."

The case of *Ram Kawal Singh* v. *Ram Kishore Das* (4) has no analogy to the present. There the alienation was not

(1) 8 Moo I. A., 529, 550, 551.
(2) 13 Moo. I A., 209.
(3) (1885) I. L. R., 8 Mad., 552.
(4) (1895) I. L. R., 22 Calc., 506.

for the maintenance of an idol which had been established by the husband of the widow, and the dedication was *primâ facie* for the widow's own spiritual welfare and not for the husband.

There can be no doubt upon a review of the Hindu law, taken in conjunction with the decided cases, that the Hindu system recognizes two sets of religious acts. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. In the later cases this distinction runs clearly through the views of the learned Judges. The confusion which has arisen in this case arises from mixing up the indispensable or obligatory duty with a pious purpose which, although optional, is spiritually beneficial to the deceased.

With reference to the first class of acts, the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and, if performed, are meritorious so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view. In the present case the High Court has found that the lands alienated form a small fraction of the whole estate. Had the Rani made the alienation for the purpose of defraying the expenses of the pilgrimage itself, while she possessed ample means for the performance of the journey and other acts connected therewith, there might have been some substance in the objection that she was not entitled to alienate any part of the immovable property, having ample means at her disposal. But the alienation she has purported to effect was for the perpetual performance of acts recognized in the Hindu system as pious. It was a dedication of a very small fraction of the property. The law with reference to this part of the case appears to their Lordships to have been set out with considerable

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clearness in a recent judgment of the Madras High Court, *Vuppuluri Tatayya* v. *Garimilla Ramakrishnamma* (1), where the learned Judges, after an examination of the authorities on the point, say as follows: —

"We think we are warranted in holding that if the property sold or gifted bears a small proportion (which it is impossible to define more exactly) to the estate inherited and the occasion of the disposition or expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner. We are obliged to express ourselves somewhat guardedly because almost every gift according to Hindu notions is as such calculated to promote spiritual merit and the occasions for the performances of ceremonies calculated to bring spiritual reward are so innumerable that almost any expenditure not for a sinful object and any alienation by way of gift may be attempted to be justified as ministering to spiritual benefit."

In the case of *Khub Lal Singh* v. *Ajodhya Misser* (2) a widow had raised money upon immovable property for the purpose of excavating a tank in connection with a temple founded by her husband, and a suit was brought by a reversioner to set aside the alienation. Mr. Justice MOOKERJEE referred to the words of Lord GIFFORD in the case of *Cossinaut Bysack* v. *Hurrosoondry Dossee* (3), that it was absolutely impossible to define the extent and limit of the power of the widow to dispose of her husband's property for religious purposes,

"because it must depend upon the circumstances of the disposition whenever such disposition shall be made, and must be consistent with the law regulating such disposition;"

and held that the alienation for the purpose of excavating the tank could not be impeached by the reversioner.

In the present case the purpose for which the alienation was made was undoubtedly not for the performance of obsequial rites, or any such duty as might be regarded as obligatory under the Hindu law. But at the same time there can be no question that it was a pious act in the Hindu system. The estimation in which the deity installed in the temple of Jagannath is held throughout the Hindu world is set out in Hunter's *Gazetteer*, Vol. II, under the title "Puri Town," where it is said as follows:—

"The true source of Jagannath's undying hold upon the Hindu race consists in the fact that he is the god of the people. The poor outcast

(1) (1910) I. L. R., 34 Mad., 288. (2) (1915) I. L. R., 43 Calc., 574.
(3) (1819) 2 Morley's Digest, 197.

learns that there is a city on the far eastern shore, in which priest and peasant are equal in the presence of the 'Lord of the World.' In the courts of Jagannath, and outside the Lion Gate, 100,000 pilgrims every year join in the sacrament of eating the holy food, the sanctity of which overleaps all barriers of caste, race and hostile faiths. A Puri priest will receive food from a Christian's hand. The worship of Jagannath, too, aims at a Catholicism which embraces every form of Indian belief and every Indian conception of the deity. He is Vishnu, under whatever form and by whatever title men call upon his name. The fetishism of the aboriginal races, the mild flower-worship of the Vedas, and the lofty spiritualities of the great Indian reformers have alike found refuge here. Besides, thus representing Vishnu in all his manifestations, the priests have superadded the worship of the other members of the Hindu Trinity in their various shapes; and the disciple of every Hindu sect can find his beloved rites, and some form of his chosen deity, within the sacred precincts."

In their Lordships' opinion the Hindu law recognizes the validity of the dedication or alienation of a small fraction of the property by a Hindu female for the continuous benefit of the soul of the deceased owner. It is clear in this case that the act which the Rani did was fully in accordance with Hindu religious sentiment and religious belief, and was not, therefore, in excess of her powers, having regard to the fact that the dedication related to one-seventy-fifth of the property, and was made specially for the creation of a permanent benefit. The dedicated property has now passed into other hands. What the legal position of the defendants, who are assignees from the original grantees, may be with reference to the obligations created by the deed of gift is a matter that does not arise in the present case, and on that their Lordships do not express any opinion.

On the whole their Lordships are of opinion that there is no substance in the present appeal and that it should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

*Appeal dismissed.*

Solicitor for appellants: *H. S. L. Polak.*

Solicitors for first respondent: *T. L. Wilson & Co.*