forfeiture under the Hindu law, and that it would be necessary for the party claiming that the estate has been forfeited on account of remarriage to prove that there is a custom of such forfeiture in such contingency.

Let our answer to the reference be sent to the Bench concerned.

PRIVY COUNCIL.

BISHNATH PRASAD SINGH (Plaintiff) *v.* CHANDIKA PRASAD KUMARI and others (Defendants)

*J. C.**
1932
December, 15.

[On appeal from the High Court at Allahabad.]

Hindu law—Gift—Construction of deed—Gift of immovable property to female—Gift for maintenance—"Malik mustaqil"*—Absolute or life interest.*

By a registered deed a Hindu stated that, as he desired to provide for the support and maintenance of his daughter-in-law, he had made a gift of specified immovable property to her for that purpose, and he thereby declared that she should remain absolute owner (*malik mustaqil*) of the property and pay the Government revenue: *Held* that the deed conferred upon the donee an absolute estate in the property with power to make alienations giving titles valid after her death.

Decree of the High Court affirmed.

Appeal (No. 43 of 1930) from a decree of the High Court (March 2, 1926) affirming a decree of the Subordinate Judge of Jaunpur (December 21, 1921).

The only question arising upon the present appeal was whether a registered deed of gift executed by a Hindu on the 16th of September, 1862, in favour of his daughter-in-law conferred upon her an absolute or only a life interest in the immovable property which it mentioned. The terms of the deed appear from the judgment of the Judicial Committee.

The High Court, affirming the trial Judge, held that the donee took an absolute interest and that alienations made by her were valid after her death. Lindsay, J.,

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* *Present:* Lord Blanesburgh, Lord Russell of Killowen, Lor Macmillan, Sir John Wallis, and Sir Dinshah Mulla.

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referred to the following passage in the judgment delivered by Lord DAVEY in *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (1): "There are two cardinal principles in the construction of wills, deeds and other documents, which their Lordships think are applicable to the decision of this case. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is . . . that technical words or words of known legal import must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense." The learned Judge said that applying the first of these principles it was difficult, having regard to the words of the deed, to argue that there was a gift of anything less than the full proprietary interest in the property; the language was quite definite and precise. According to the above rule no general expression of intention would suffice to control or qualify the clear dispositive words. The argument was that, as the intention appearing was to make a gift for the maintenance and support of the donee, the gift was for her life only; it was sought to support that by the consideration that the gift was to a Hindu female. But in the present case there was no room for the presumption that the gift being for maintenance was for life only, because the deed declared in the plainest terms that she was to have an absolute estate. Applying the second cardinal principle laid down by Lord DAVEY, the learned Judge said that a long line of decisions by the Board established that the word "*malik*" had a definite meaning and connoted the possession of all the rights of a full owner unless the context or circumstances showed a different intention. It could not be presumed that the donor did not know the real meaning of the words

(1) (1897) I.L.R., 24 Cal., 834 (846); L.R., 24 I.A., 76 (85).

"*malik mustaqil*", and there was nothing to show that he did not use them in their natural and proper sense.

MUKERJI, J., after referring to the judgments of the Privy Council in *Surajmani* v. *Rabi Nath Ojha* (1), *Ramachandra Rao* v. *Ramachandra Rao* (2) and *Bhaidas Shivdas* v. *Bai Gulab* (3) as to the construction of a gift or bequest to a Hindu female, said that it was no longer true to say that an attempt should be made to read into a document, which on its face gave an absolute estate to a Hindu female, the intention to give her only a life interest. In his view the wish to provide maintenance was only the motive for the gift and should not be read as a measure of the extent of the gift.

1932. December 13, 15. *De Gruyther, K. C.*, and *Parikh*, for the appellant: The deed of gift recites the donor's desire to provide for the "support and maintenance" of his daughter-in-law, and again uses those words as describing the purpose of the gift. *Prima facie* a gift for maintenance is only for the lifetime of the donee: *Karim Nensey* v. *Heinrichs* (4). The word "*malik*" confers an absolute estate only if the context does not show an intention to give only a life interest: *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (5). Effect should be given to the real meaning of the donor rather than to the expressions used: *Hunooman Persaud's case* (6). The real meaning of the donor was to give the property for the maintenance of his daughter-in-law and therefore for her life only. The words "*malik mustaqil*" merely define the quality of her rights during the period of enjoyment of the gift, the intention being that the donee should have the full estate during her life as if she had taken as heir. *Sarajubala Debi* v. *Jyotirmayee Debi* (7) is distinguishable, because

(1) (1907) I.L.R., 30 All., 84; L.R., 35 I.A., 17.
(2) (1922) I.L.R., 45 Mad., 320 (328).
(3) (1921) I.L.R., 46 Bom., 153; L.R., 49 I.A., 1.
(4) (1901) I.L.R., 25 Bom., 563; L.R., 28 I.A., 198.
(5) (1897) I.L.R., 24 Cal., 834; L.R., 24 I.A., 76.
(6) (1856) 6 Moo. I.A., 393 (411, 412).
(7) (1931) I.L.R., 59 Cal., 142; L.R., 58 I.A., 270.

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the grant there expressly conferred a right to transfer and the donee as *mirasidar* had a permanent heritable estate.

Dunne, *K. C.*, and *G. D. McNair*, for the respondent No. 1: In *Jogeswar Narain Deo* v. *Ram Chandra Dutt* (1) it was held by the Board that although the words "for your maintenance" were attached to a gift by will the legatee took an absolute interest, a power of alienation being given by the will. Here the declaration that the donee was to be "*malik mustaqil*" equally shows that that was the intention. In *Naulakhi Kunwar* v. *Jai Kishan Singh* (2), also a case of a gift to a daughter-in-law, the Allahabad High Court held that the words "*malik mustaqil*" were even stronger than "*malik*" alone as showing an intention to confer an absolute estate. The fact that the gift was of immovable property to a female is not a ground for cutting down the effect of the words: *Jagmohan Singh* v. *Sri Nath* (3) and cases there mentioned.

Parikh replied.

December 15. The judgment of their Lordships was delivered by Lord BLANESBURGH:—

In this case many questions were canvassed in the courts in India but all, except one, have passed into history. They survive merely as an excuse for the over elaborate and bulky record which is before their Lordships.

The one issue which remains effective concerns a moiety share of a taluqa known as Jakhanian in the Jaunpur District in the Province of Agra which by a registered deed of gift, dated the 16th of September, 1862, was given by Pirthipal Singh, the head of his family, to Musammat Balraj Kunwar, his daughter-in-law. The question is whether that lady had under the deed power to make alienations of the property giving to the

(1) (1896) I.L.R., 23 Cal., 670; L.R., 23 I.A., 37.

(2) (1918) I.L.R., 40 All., 575.

(3) (1930) L.R., 57 I.A., 291.

respondents titles which are valid after her death. That question has been answered in the affirmative by the Subordinate Judge of Jaunpur and the result is embodied in his decree of the 21st December, 1921, which on appeal was affirmed by a decree of the High Court of Judicature at Allahabad, dated the 2nd March, 1926. The surviving plaintiff claiming under the donor Pirthipal Singh, who is long since deceased, again appeals.

The deed in question is short and in terms simple. Its true effect falls to be determined by the construction placed upon the following passages from it, read together :—

"A moiety share of 'taluqa' Jakhania . . . belongs to me by virtue of purchase made at auction . . . As I have attained old age now, as it is possible that some dispute might arise after my death, and as it is my desire to make some arrangement for the support and maintenance of Musammat Balraj Kunwar, my daughter-in-law, I, the executant, have . . . made a gift of the entire above mentioned property . . . i.e., the zamindari rights appertaining to a moiety share of the above mentioned 'taluqa' to my daughter-in-law . . . for her support and maintenance. I declare and give it in writing that the said Musammat should remain absolute owner (*malik mustaqil*) of this property under this deed of gift and pay the Government revenue. I, the executant, and my heirs and representatives neither have nor shall have anything to do with the above mentioned gifted property. If any person brings any sort of claim in future it shall be considered false and invalid in face of this document. I shall get the name of the said donee to be entered in the Government papers under this deed."

This deed of gift has been most carefully analysed by LINDSAY, J., in his judgment in the High Court and therein he has set forth with great clarity the reasons which have led him to the conclusion that the deed confers upon the donee an absolute estate in the property and not one which determined with her life.

Their Lordships find themselves in entire agreement with the learned Judge. They are satisfied that his

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reasoning, so far as based upon the terms of the deed alone, is correct and that his conclusion is completely justified by authority. Nothing said by Mr. *De Gruyther* or by Mr. *Parikh* for the appellant has weakened his judgment in any way, and their Lordships might well leave the matter there. But as they find further support for the learned Judge's conclusion in at least two cases cited to the Board, but not specifically discussed by him, they think it may be not without advantage shortly to refer to these now.

The first is *Jogeswar Narain Deo* v. *Ram Chandra Dutt* (1), and it has a bearing upon the feature of the deed of gift here to which much importance was attached by the appellant. In the deed, as was pointed out, not only do you find the "support and maintenance" of the donee recited as the purpose of the gift but you find that expression repeated also in the words of disposition.

Now in *Jogeswar Narain Deo* v. *Ram Chandra Dutt* the effect of a disposition of a 4 annas share in a certain zamindari made by will in favour of the youngest wife of the testator and their son was in question. The words of bequest of the 4 annas share were: "I give to you . . . and the son born of your womb for your maintenance," succeeded after an interval by the following words, attached, by construction, to the original gift, "and I give to you the power of making alienation by sale or gift."

Upon these words it was held by the Board that the words "for your maintenance", parcel of the words of gift, were not sufficient to cut down to life interests only the estates taken by the legatees and the reason is stated by Lord WATSON in delivering the judgment of their Lordships at page 43: "It is no doubt true that the gift of the 4 annas share of Silda bears to be made to the Rani and the appellant 'for your maintenance'; but these words are quite capable of signifying that the gift was made for the purpose of enabling them to live in comfort, and do not necessarily mean that it was to be

(1) (1896) I.L.R., 23 Cal., 670; L.R., 23 I.A., 37.

limited to a bare right of maintenance." In that case the wider construction was assisted and adopted as a result of the words conferring upon the legatees a power of disposition by sale or gift. But here the donee is described in the deed as "*malik mustaqil*" and the comprehensive intendment of that expression is illustrated in the second of the two authorities to which their Lordships think it desirable to refer.

It is the case of *Naulakhi Kunwar* v. *Jaikishan Singh* (1), where, as here, a Hindu being the full owner of certain property made a gift of it to his daughter-in-law, describing the donee to the deed as *malik mustaqil*. It appears from the argument of counsel that the gift was expressed to be for "maintenance" (see p. 576, line 13).

In these circumstances the Court pointed out that this Board in *Surajmani* v. *Rabi Nath Ojha* (2), had held that the word "*malik*" alone, unless there was something definite to the contrary in the surrounding circumstances to qualify the meaning of the expression, indicates an absolute estate. "Here," they go on, "we have the word '*malik*' followed by the word '*mustaqil*' which even makes it stronger."

The other indications in this deed pointing in the same direction and all discussed by LINDSAY, J., lend to the words in the present case a completely compelling force.

Their Lordships accordingly do not consider it necessary to go further into the authorities, being really well content to accept on the whole matter the reasoning and the conclusion of that learned Judge.

In their Lordships' judgment the appeal fails, and they will humbly advise His Majesty that it be dismissed with costs.

Solicitors for appellant: *H. S. L. Polak & Co.*

Solicitor for respondent No. 1: *T. L. Wilson & Co.*

(1) (1918) I.L.R., 40 All., 575.

(2) (1907) I.L.R., 30 All., 84; L.R. 35 I.A., 17.