

1926

ACHCHER
MIRZA
v.
ABMAD
SHEH.

to village Deogawan shall not be awarded to them if they fail to pay the proportionate mortgage-money as directed above and in that event they, he or she, as the case may be, shall be liable to pay the costs of the defendant Thakur Lalji Singh in so far as his defence relates to the village of Deogawan.

Appeal allowed.

MISCELLANEOUS CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr Justice Muhammad Raza.

1926
August, 20.

RADHEY SHYAM AND ANOTHER (APPLICANTS-APPELLANTS) v. RADHEY LALL (CAVEATOR-RESPONDENT).*

Will—Bequest for kar-e-khair, whether void for vagueness and uncertainty—Kar-e-khair, meaning of.

Held, that a devise or bequest for *kar-e-khair* is void for vagueness and uncertainty.

The word *kar-e-khair* means literally a good deed but it also bears the colloquial meaning of a charitable act. [(1899) I.L.R., 23 Bom., 725 (P.C.) followed.]

Messrs. *Bisheshwar Nath Srivastava* and *Har Parshad*, for the appellants.

Messrs. *Mahesh Prasad* and *Ram Bharose Lal*, for the respondents.

STUART, C. J., and RAZA, J. :—The only point for determination in this appeal is whether the learned District Judge did, or did not, take a correct view when he decided that a certain bequest in the will before us was invalid for uncertainty. Under the terms of this bequest the testator left the residue to the executors to be devoted to such *kar-e-khair* as they considered deserving. There might have been

*Miscellaneous Appeal No. 24 of 1926, against the order, dated the 23rd of February, 1926, of C. H. B. Kendall, District Judge of Lucknow, rejecting petition for probate.

1928

RADHEY
SHYAM
v.
RADHEY
LALL.

considerable difficulty in determining this point, had there not been in existence a pronouncement of their Lordships of the Judicial Committee of the Privy Council, which, in our opinion, affords complete authority for the correctness of the learned District Judge's view. This authority will be found in *Runchordas Vandravandas v. Parvatibai* (1). The point for decision before their Lordships was whether a bequest by which interests in the testator's estates were to be devoted to *dharam* was void for vagueness and uncertainty. At page 735 their Lordships say:—

“ It is not necessary for their Lordships to refer particularly to the cases in the Indian courts where it has been held that a devise or bequest for *dharam* is void for vagueness and uncertainty. They begin at an early period, both in Bombay and Calcutta, and, according to the judgment of the appeal courts, are numerous. The reasons for the decisions of the English courts upon devises or bequests of a similar nature are stated by Lord ELDON in his judgment in the leading case of *Morice v. Bishop of Durhan* (2). He says (10 Ves., 359): ‘As it is a maxim, that the execution of a trust shall be under the control of the court, it must be of such a nature that it can be under that control; so that the administration of it can be reviewed by the court; or, if the trustee dies, the court itself can execute the trust: a trust, therefore, which, in case of maladministration, could be

(1) (1899) I.L.R., 23 Bom., 752 (P.C.). (2) (1804) 9 Ves., 399; 10 Ves., 522.

1926

RADHEY
SEYAM.
v.
RADHEY
LALL.

reformed and a due administration directed; and then, unless the subject and the objects can be ascertained, upon principles, familiar in other cases, it must be decided that the court can neither reform maladministration nor direct a due administration.' LINDLEY, L. J., refers to this judgment *in re Macduff* (1) and says: 'That is the principle of that case and has been enunciated or repeated from time to time.' In the latter case the words of the bequest were 'purposes charitable or philanthropic.' In Wilson's Dictionary *dharam* is defined to be law, virtue, legal or moral duty, and the language of Lord ELDON applies as strongly, if not more so, to *dharam* as to the words used in the English cases. The objects which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under my control."

The only question which we have to decide is whether the word *kar-e-khair* can be distinguished effectively from the word *dharam* on the ground of vagueness and uncertainty. The word *kar-e-khair* means literally a good deed but according to Fallon it also bears the colloquial meaning of a charitable act. Their Lordships took the definition of the word *dharam* to be law, virtue, legal or moral duty and they considered that the devise or bequest for *dharam* was void for vagueness and uncertainty. We have no hesitation in finding that, upon analogous reasoning, a devise or bequest for *kar-e-khair* is also void for vagueness and uncertainty.

(1) (1896) 2 Ch., 463.

The respondent, who was the brother of the testator and who filed a caveat against the will, was not allowed his costs by the learned District Judge. He has filed a cross-objection against the order disallowing his costs.

1926

RADHEY
SHYAM
S.
RADHEY
LALL.

We consider that the matter in appeal is absolutely concluded by the authority of their Lordships of the Privy Council to which we have referred. We, therefore, dismiss the appeal. In respect of the cross-objection we consider that the appellants who are the executors under the will were justified in applying for probate and that they were acting in accordance with their duty as executors in propounding the will and that they were further acting within their duty in bringing the present appeal before this Court. The respondent at the same time is entitled to his costs both in the court below and here. We, accordingly, pass the following order as to costs both in the appeal and the cross-objection. The costs of the original matter and the costs of this appeal shall be borne by the estate. Neither the executor nor the respondent will be personally responsible for the costs.

Appeal dismissed.