APPELLATE CIVIL.

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

1927 August, 26.

THAKUR DURGA PRASAD SINGH (PLAINTIFF-APPELLANT) *v.* THAKUR BISHNATH SINGH AND OTHERS (DEFENDENTS-RESPONDENTS).*

Pre-emption—Foreclosure decree—Pre-emptor obtaining a decree for pre-emption in respect of foreclosed property is a transferee by operation of law—Execution of foreclosure decree by person obtaining decree for pre-emption —Decree-holder of a foreclosure decree certifying satisfaction of his decree by judgment-debtor's executing a fresh mortgage, effect of, as against pre-emptor.

Where a decree for foreclosure was made final and the mortgage became foreclosed but the decree-holder did not give notice required under the Oudh Laws Act to the persons entitled to exercise the right of pre-emption and the plaintiff instituted a suit to have his right of pre-emption declared and obtained a decree, *held*, that the plaintiff had placed himself in respect of the final foreclosure decree in the exact position which was held by the decree-holder on the date when he obtained his foreclosure decree. He had obtained this position by the operation of the rights conferred on him under a statute, namely, Act XVIII of 1876, and was thus clearly a transferee by operation of law. As a transferee by operation of law he had a right to execute the foreclosure decree by obtaining possession of the property in question.

Held further, that the action of the decree-holder in withdrawing his rights as decree-holder and certifying, after the passing of the decree, to the court that his foreclosure decree had become satisfied by the execution of a fresh mortgage by the judgment-debtor, can have no effect as against the pre-emptor. *Munna Singh and others* v. *Bihari Singh and others* (1), followed.

*Execution of Decree Appeal No. 21 of 1927, against the order of Pandit Bishnath Hukku, Subordinate Judge, of Partabgarh, dated the 6th of April, 1927, dismissing the appellant's application.

(1) (1916) 19 O.C., 183.

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Mr. *M. Wasim*, holding brief of Mr. Niamat-Ullah, and Mr. *Naimullah*, for the appellant.

Messrs. *A. P. Sen* and *Radha Krishna*, for the respondents.

STUART, C. J., and RAZA J. :—The facts in this appeal are simple. Ram Kumar obtained a decree for foreclosure against Thakur Bishunath Bakhsh Singh in respect of the property in suit. This decree was made final on the 27th of July, 1925. Under the provisions of Chapter II, Act XVIII of 1876 (the Oudh Laws Act) as soon as this decree was made final and the mortgage become foreclosed within the meaning of section 10 of that Act it was the duty of Ram Kumar to give notice to the persons entitled to exercise a right of pre-emption. If such person did not pay the amount due under the foreclosure decree to Ram Kumar within three months of the receipt of this notice, he forefeited his right to pre-emption. Ram Kumar did not issue notice to any one. On the 1st of September, 1925, he certified to the Court that his foreclosure decree had become satisfied by the execution of a fresh mortgage by Bishunath Bakhsh Singh. Thakur Durga Prasad Singh, the present appellant, instituted a suit to have his right of pre-emption declared against Ram Kumar and obtained a decree on the 1st of September, 1926. He did not make Bishunath Bakhsh Singh a party to the proceedings which resulted in this decree. Under the terms of this decree he deposited the amount due to Ram Kumar on the mortgage—the amount in question being Rs. 31,698-14-0—and he then proceeded to execute the foreclosure decree. Thakur Bishnath Bakhsh Singh as judgment-debtor objected to execution on two grounds. He stated that as the foreclosure decree had been satisfied in full there was no decree to execute. He also took the ground that Thakur Durga Prasad Singh was not entitled to execute

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the decree as he was not the assignee of Ram Kumar. The learned Subordinate Judge decided the first point against Bishunath Bakhsh Singh and the second point in his favour. He, therefore, dismissed the application for execution, and referred Durga Prasad Singh to a remedy by a regular suit. Durga Prasad Singh appeals. The learned Counsel for Bishunath Bakhsh Singh has endeavoured to support the dismissal of the application on the ground which was decided against him. We shall take his plea upon this point very shortly. The decision in *Munna Singh and others* v. *Bihari Singh and others* (1) states the law on the subject correctly, and agreeing with that decision we hold that the action of Ram Kumar in withdrawing his rights as decree-holder against Bishunath Bakhsh Singh, as evidenced by the application of the 1st of September, 1925, can have no effect as against Thakur Durga Prasad Singh. The right of pre-emption in favour of Thakur Durga Prasad Singh accrued on the 27th of July 1925. He exercised that right according to law. He has paid the money into the court which he was required to pay. The result is, according to our view, that Thakur Durga Prasad Singh became what the Act calls the "purchaser of the property" as from the 27th of July, 1925, and that any action of Ram Kumar subsequent to the 27th of July, 1925, affecting that property can have no effect as against Thakur Durga Prasad Singh. This disposes of the first point.

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In respect of the second point the learned Subordinate Judge has held that order XXI, rule 16 bars the application for execution. We do not agree with this view. We consider that the interests of the decree-holder, Ram Kumar, were transferred by operation of law to Thakur Durga Prasad Singh when, as we have already said, he purchased "the property". The words

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"the property" in reference to the facts in this case can only mean the right of the decree-holder under the foreclosure decree. By his action Thakur Durga Prasad has placed himself in respect of the final foreclosure decree of the 27th of July, 1925, in the exact position which was held on that date by Ram Kumar the decree-holder. He has obtained this position by the operation of rights conferred on him under a statute, namely, Act XVIII of 1876, and is thus clearly a transferee by operation of law. As a transferee by operation of law he had a right to execute the decree and we accordingly allow him to execute the decree by obtaining possession of the property in question. We thus allow the appeal, and direct that Thakur Bishunath Bakhsh Singh shall pay his own costs and those of the appellant Thakur Durga Prasad Singh.

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Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.

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THAKUR INDRAJ BUX SINGH (DEFENDANT-APPELLANT) v. THAKUR SHEO NARESH SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Hindu Law—Alienation by Hindu widow—Widow's power to alienate her husband's property for religious purposes—Endowment by widow of a small portion of property for upkeep of temple erected by her, how far valid in law—Temple, erecting of, by a Hindu widow, if an act of religious merit.

Held, that a Hindu widow has, no doubt, power to alienate her husband's estate for the purpose of acts conducing to the spiritual benefit of her husband's soul, but with this qualification that it must be exercised within proper and reasonable limits. If she makes a gift of the entire property for the

*First Civil Appeal No. 86 of 1926, against the decree of Bhudhar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 26th of February, 1926, decreeing the plaintiffs' claim.

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purpose of creating an endowment, it cannot be held to be valid even though such an endowment may tend to confer spiritual benefit on the soul of her deceased husband. If, however, she, in the exercise of this right, transfers comparatively a small portion of the property left by her husband, the transfer ought to be considered as valid in law. The question whether an alienation covered a reasonable portion of the property of her husband was a question which must be determined with reference to the circumstances of each particular disposition.

It is a well established religious belief amongst the Hindus of this country that the erecting of a temple and making an endowment for its upkeep is considered to be an act of high religious merit, and as one, which, if done by a widow, would benefit not only her soul but also the soul of her husband. *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1), *Panachand Chhotalal* v. *Manoharlal Nandlal* (2), *Balkishan Bharthi* v. *Sat Ram Singh and others* (3), *Rama* v. *Ranga* (4), and *Ram Kawal Singh* v. *Ram Kishore Das* (5), referred to. *Kunj Behari Lal* v. *Laltu Singh* (6), *Gobind Upadhya* v. *Lakhrani* (7), *Tatayya* v. *Ramakrishnamma* (8), *Khub Lal Singh* v. *Ajodhya Misser* (9), and *Sardar Singh* v. *Kunj Bihari Lal* (10), relied upon.

Messrs. *Niamatullah* and *Naimullah*, for the appellant.

Mr. *Zahur Ahmad*, for the respondents.

MISRA, J. :—This is an appeal in a suit brought by a Hindu reversioner and his transferees for possession of the property in suit after the death of a Hindu widow.

The facts of the case are that one Thakur Rudra Bakhsh Singh was the owner of the property in suit, that on his death in 1875 his widow Thakurain Bhagwant Kunwar succeeded him and remained in possession of the property left by him, that she died on the 22nd of November, 1921, and that on her death plaintiff No. 1, Thakur Sheo Naresh Singh, became entitled to the

(1) (1861) 8 M.I.A., 508.
(2) (1918) I.L.R., 42 Bom., 136.
(3) (1908) A.W.N., 202.
(4) (1884) I.L.R., 8 Mad., 552.
(5) (1895) I.L.R., 22 Calc., 506.
(6) (1919) I.L.R., 41 All., 130.
(7) (1921) I.L.R., 43 All., 515.
(8) (1910) I.L.R., 34 Mad., 288.
(9) (1916) I.L.R., 43 Calc., 574.
(10) (1922) I.L.R., 44 All., 503.

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said property. The plaintiffs Nos. 2 and 3 are transferees from plaintiff No. 1 and hence they have joined him in bringing the present suit. There were several persons, who were impleaded as defendants in the suit on the ground that on the death of the widow they were found by the Revenue Courts to be in possession of the property left by her and consequently mutation of names had been effected in their favour. One of the defendants was Thakur Indraj Bakhsh Singh, the appellant before us, who was appointed by the widow as manager of an endowment created by her in favour of a temple (*Thakurdwara*) built by her for the benefit of her soul as well as that of her husband's and who was as such in possession of the endowed property. It is not necessary to mention for the purposes of this appeal the names of the other defendants.

The defence in the case was a denial of the plaintiff's reversionary right. A further defence raised by the appellant Indraj Bakhsh Singh was to the effect that the plaintiff was not entitled to recover possession of the property endowed by the widow, since a very small fraction of the estate of her husband had been so endowed by her, and that the endowment was for the benefit of the soul of her husband and it was, therefore, valid in law.

The learned Subordinate Judge of Bahraich, who tried the suit, held that the plaintiff's reversionary right was established and he was, therefore, entitled to a decree for the property in suit. He decided against the validity of the endowment and, therefore, passed a decree in favour of the plaintiffs for the possession of the entire property, at least to the extent that it had been established. On the question of the endowment his opinion was that it had been created by the widow in order to prejudice the interests of the reversioner, and that there was no satisfactory evidence on the record to show that the

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two deeds of endowments were executed by her for the benefit of the soul of her deceased husband.

Thakur Indraj Bakhsh Singh alone has appealed against the decree passed by the learned Subordinate Judge, and the chief ground urged on his behalf is that the learned Judge has erred in holding that the endowment created by the widow was not *bona fide* and was not valid in law, and this is the point, which we have to decide in appeal.

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The first question which we have to decide is whether the endowment made by the widow is a *bona fide* transaction. We may mention that it was created by two deeds, one dated the 15th of February, 1900 (exhibit A24) and the other dated the 4th of April, 1900 (exhibit A2). We have been taken through the entire evidence on the record and we regret we do not see our way to accept the finding of the learned Subordinate Judge to the effect that the two deeds of endowment constituted a fictitious transaction entered into merely with the object of injuring the interests of the reversioner. The learned Subordinate Judge has held that the execution of these documents is fully established, and we have read the evidence of the witnesses examined on behalf of the defendent-appellant to prove the execution of those deeds. Nothing has been elicited in their evidence which might go to show that these deeds were fictitious transactions executed in order to injure the interests of the reversioner. The only reason which the learned Subordinate Judge has mentioned, and which seems to have influenced him a great deal is that one of these deeds, namely, exhibit A24 was executed on the 15th of February, 1900, the date when a will was executed by Thakurain Bhagwant Kunwar. In our opinion this circumstance alone is insufficient to warrant the conclusion arrived at by the learned Subordinate Judge. It appears to us that in the

two deeds of endowment executed by the widow no benefit has at all been conferred upon the appellant, who has been appointed as a manager to look after the endowed property. The property has really been gifted to the idol installed in the temple and the defendant-appellant has merely been asked under the deed to manage the endowed property. The learned Counsel for the plaintiff-respondent could not rely on any other circumstance before us showing that the deed was not *bona fide*. His main argument was that the deeds ought to be held as not having been executed out of good motives, because the widow did not appoint the plaintiff, who was the next reversioner, as a manager of the endowment. We do not consider that there is any force in this plea. It is clear from the evidence on the record that the relations between the family of the reversioner and that of the husband of the widow were not good and this sufficiently explains why the widow did not appoint the plaintiff No. 1 as the manager of the endowment. Indeed, the learned Counsel for the plaintiff-respondent admitted frankly before us that if the widow had appointed his client as the manager of the endowment, he would not have raised any objection to the transaction at all. Under these circumstances we are compelled to hold that the endowment created by the widow under the two deeds, dated the 15th of February, 1900, and the 4th of April, 1900 (exhibits A24 and A2) is a *bona fide* transaction with the object of creating an endowment in favour of the temple (*Thakurdwara*) built by her in village Hariharpur, district Bahraich.

The next question which we have to decide is whether the said endowment is valid under Hindu law. Under the first deed, dated the 15th of February, 1900 (exhibit A24), the widow transferred land measuring 225 bighas *kham*, situate in village Maqam, pargana Hisampur, known as Patti Naktichak, the annual gross rental of which amounts to Rs. 115, and a single storeyed tiled

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kachcha house situate in Bahraich, yielding an annual rent of Rs. 9. It would thus appear that the annual income of the property endowed under this deed comes to Rs. 124. Under the second deed, dated the 4th of April, 1900 (Exhibit A2) the widow made a further transfer of land measuring 225 bighas *kham*, situate in village Harduaha, and 2 biswas *kham parti* land, situate in Bahraich. The annual income of this land amounts to Rs. 101-7-0, and that of the *parti* land amounts to 9 annas, in all Rs. 102. It will thus appear that the total annual income of the land endowed by the widow comes to Rs. 226. Calculated at 20 years' purchase, the value of the property endowed would come to a little over Rs. 4,500. The total value of the property in suit is stated by the plaintiffs to be roughly 2 lakhs, 50 thousand (*vide* paragraph 10 of the plaint). It will, thus, appear that the property endowed comes to about 1/55th of the entire property left by the husband of Thakurain Bhagwant Kunwar. We have to bear these facts and circumstances in our mind while determining the validity of the endowment created by her.

The first thing which we have to determine is whether the endowment created by a widow for the upkeep of a temple built by her can be considered to be an act for the spiritual benefit of her husband. No authority need be quoted to show that among the Hindus the building of a temple by a Hindu is considered to be a pious act intended to confer spiritual benefit upon his soul. It is this desire that has led a large number of Hindus in this country to build temples whether in the places of their own residence or in holy places. The religious merit acquired by the construction of a temple and its dedication to the worship of a particular divinity has been extolled in numerous sacred books of Hindus. In *Vishnu Rahasya* it is stated that those who in the sports of childhood create out of dust a temple for *Vasudeva*, even they

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sojourn to the regions sacred to that divinity. In *Agni Purana* it is stated that of those persons who are ever contemplating the construction of a temple for *Hari*, the sins of a previous hundred births are destroyed, and the man who causes a temple to be built for *Hari*, carried to the mansion of *Vishnu* ten thousand past and future generations. In *Narsinha Purana* it is stated that whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule. It is stated in Hindu religious books that he who dies after making the first brick for the construction of a temple obtains the religious merit of a complete *Yagya*. In *Skanda Purana* it is laid down that on beginning the construction of a temple for *Krishna*, the sins committed in seven births are annihilated, and the ancestors rescued from hell. It is not necessary to quote more texts in proof of such an obvious religious sentiment so largely prevalent among the Hindus. As to the creating of endowment it may be stated that the ruling motive for a Hindu in making such an endowment is also a religious one, namely, the acquisition of pious merit or the removal of effects of sins with a view to happiness in this world and in the next. [*Vide* P. N. Sarswati on Hindu Law of Endowments (T. L. L.) 1892, page 29].

It is also a well-known principle of Hindu law that the husband and wife are considered to be a part and parcel of one body. According to *Vrihaspati* the husband and wife participate in the effects of good and evil action and this mutual relation is not dissolved by the death of either partner. It is, therefore, a well established religious belief amongst the Hindus of this country that the erecting of a temple and making an endowment for its upkeep is considered to be an act of high religious merit, and as one which, if done by a widow, would benefit not only her soul but also the soul of her husband. In the

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two deeds of endowment which we have before us Thakurain Bhagwant Kunwar expressly states that she has erected the *Thakurdwara* and made the endowment for its upkeep for benefit of her soul as well as that of her husband and his ancestors. We are, therefore, of opinion that the act of Thakurain Bhagwant Kunwar in building the temple at Hariharpur and her further act of making an endowment for its upkeep was an act, which conferred spiritual benefit upon her husband Thakur Rudra Bakhsh Singh.

We have now to determine whether the endowment made by Thakurain Bhagwant Kunwar can be supported under the Hindu law.

In *Viramitrodaya* (chapter III, part I, section 3) it is stated that " it is established that in making gifts for spiritual purpose as well as in making sale or mortgage for the purpose of performing what is necessary in a spiritual or temporal point of view, the widow's right does certainly extend to the entire estate of her husband." The principle laid down in this text has been followed in so far that a Hindu widow is considered to have, no doubt, power to alienate the husband's estate for the purpose of acts conducing to the spiritual benefit of her husband's soul, but with this qualification that it must be exercised within proper and reasonable limits. In the case reported in the *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1) their Lordships of the Privy Council observed as follows :—(pages 550 and 551)—

> " 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

(1) (1861) 8 M.I.A., 508.

than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necesssity."

In the case reported in *Panachand Chhotalal* v. *Manoharlal Nandlal* (1), it was held that it was not competent to a Hindu widow to make a religious gift of the whole or practically the whole of her husband's property for the religious benefit of her husband. The question was discussed elaborately by their Lordships of the Bombay High Court, and SHAH J., observed as follows on page 154 :—

"The result is that while the widow has wider powers of disposition over property inherited from her husband in making gifts for religious purposes, which are calculated to benefit her husband spiritually, those powers must be exercised within proper and reasonable limits in dealing with the immovable property of her husband. It is not necessary nor is it possible to define precisely the limits within which the widow may exercise her powers of disposition for a proper religious purpose over her husband's immovable property. The propriety of the gift must be considered with reference to the facts and circumstances of each case."

In the case reported in *Balkishan Bharthi* v. *Sat Ram Singh and others* (2) it was held by BANERJI, J., that although a Hindu widow was capable of alienating a portion of her deceased husband's estate for purposes supposed to be conducive to his spiritual benefit, the law would not support a gift of almost the entire estate in favour of the husband's spiritual preceptor. In *Rama* v. *Ranga* (3) and in *Ram Kawal Singh* v. *Ram Kishore Das* (4) the same view was taken, both by the Madras and

(1) (1918) I.L.R., 42 Bom., 136. (2) (1908) A.W.N., 202.
(3) (1884) I.L.R., 8 Mad., 552. (4) (1895) I.L.R., 22 Calc., 506.

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Calcutta High Courts respectively. It is thus clear that if the widow makes a gift of the entire property for the purpose of creating an endowment, it cannot be held to be valid even though such an endowment may tend to confer spiritual benefit on the soul of her deceased husband.

It has, however, been held that if in the exercise of this right the widow transfers comparatively a small portion of the property left by her husband, the transfer ought to be considered as valid in law. In *Kunj Bihari Lal* v. *Laltu Singh* (1) the question was discussed at great length by PIGGOT and WALSH, JJ. It was held in that case that for religious or charitable purposes or those which are supposed to conduce to the spiritual welfare of the husband, a Hindu widow has a larger power of disposition than that which she possesses for purely worldly purposes, and that there was 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. It was also held that a gift of moderate portion of the property of her husband by the widow with a view to his spiritual benefit is valid. The question whether an alienation covered a reasonable portion of the property of her husband was a question which must be determined with reference to the circumstances of each particular disposition. In that case the income of the property gifted in favour of a *panda* as a *sankalap* at the time of visiting and worshipping at the temple of Jagannath at Puri was 1/75th of the annual income enjoyed by the widow from the property left by her husband and the gift was upheld. In *Gobind Upadhya* v. *Lakhrani* (2) MEARS, C.J., and WALSH, J., upheld the gift made by a widow in favour of her husband's *purohit* (priest) on her return from Gaya. The property gifted consisted of permanent tenancy land of about 4½ bighas in area out of a total of 50 to 60 bighas of land left by her husband,

(1) (1919) I.L.R., 41 All., 130. (2) (1921) I.L.R., 43 All., 515.

the fraction coming to about 1/11th. In *Tatayya* v. *Ramakrishnamma* (1) BENSON and KRISHNASWAMI-AYYAR, JJ., upheld the gift of a small portion of the property by a Hindu daughter on the occasion of her performing the *shradh* ceremony of her father at Pushkaram at Rajahmundry, an event considered to be peculiarly holy amongst the Hindus. The gift consisted of 49 cents out of 19 acres left by the father, the fraction working out in that case to about 1/38th of the entire property. Their Lordships observed at page 291 : " 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." In *Khub Lal Singh* v. *Ajodhya Misser* (2) MOOKERJEE and NEWBOULD, JJ., laid down the same rule. That was a case where a widow had granted two permanent leases of a portion of the property left by her deceased husband at nominal rent to raise money for the excavation and consecration of a tank and for the erection of a wall in connexion with a temple founded by her husband shortly before his death. The premium for the two leases was Rs. 528, and the amount raised was duly applied for the aforesaid purpose. It was found that the amount of land left by the husband consisted of 10 bighas and the area of the land leased permanently was about 2 bighas. It was held under the circumstances of that case that the area alienated did not constitute unreasonably a large fraction of the entire estate.

The question came recently before their Lordships of the Privy Council in an appeal from a decision of the Allahabad High Court, already referred to above, *Kunj Bihari Lal* v. *Laltu Singh* (3). The case will be found to

(1) (1910) I.L.R., 34 Mad., 288. (2) (1916) I.L.R., 43 Calc., 574.
(3) (1919) I.L.R., 41 All., 130.

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be reported in *Sardar Singh* v. *Kunj Bihari Lal* (1). Their Lordships have discussed the entire question and quoted with approval the case decided by the Madras High Court reported in *Tatayya* v. *Ramkrishnamma* (2) and case decided by the Calcutta High Court reported in *Khub Lal Singh* v. *Ajodhya Misser* (3). In the end of their judgment their Lordships remarked, as follows :—

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> " 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 powers, having regard to the fact that the dedication related to one-seventy-fifth of the property, and was made specially for the creating of a permanent benefit."

The same principle of law will be found to be mentioned in the text books on Hindu law (*vide* Mayne's Hindu Law, 9th edition, pages 917 to 920) and Golapchandra Sarkar Sastri on Hindu Law (5th edition, page 627).

We are, therefore, of opinion that the proportion of the property endowed by Thakurain Bhagwant Kunwar for the upkeep of the temple (*Thakurdwara*) built by her at Hariharpur was, in the circumstances of the present case, a reasonable and proper one, and that the endowment made by her was, therefore, valid in law. We, therefore, declare that the two deeds of endowment executed by Thakurain Bhagwant Kunwar on the 15th of February, 1900, and the 4th of April, 1900 (exhibits

(1) (1922) I.L.R., 44 All., 503 : S.C., L.R., 49 I.A., 383.
(2) (1910) I.L.R., 34 Mad., 288.
(3) (1916) I.L.R., 43 Calc., 574.

A24 and A2) in favour of the said *Thakurdwara* are valid, and must be maintained.

We, therefore, accept the appeal and set aside the decree of the learned Subordinate Judge in respect of the property covered by these two deeds of endowment. The appellant will get his costs from the plaintiffs-respondents both in this Court as well as in the lower Court.

HASAN, J. :—My learned brother has written this judgment on behalf of both of us after we had agreed that the appeal succeeds. The judgment is so full and clear, if I may say so, that I cannot profitably add anything more to it. It may be mentioned that though the memorandum of appeal covers every question which was in controversy between the parties in the trial court the arguments in the appeal were confined to the sole question of the validity of the two deeds of endowment and every other question was expressly abandoned by the learned Advocate for the appellant. I, therefore, agree in the order proposed that the decree of the lower court should be modified by dismissing the plaintiff's suit in respect of the property covered by the two deeds of endowment, dated the 15th of February, 1900 (exhibit A24) and the 4th of April, 1900 (exhibit A2).

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By the Court.—The appeal is allowed in so far that the decree of the lower court is modified and the plaintiff's suit dismissed in respect of the endowed property covered by the deeds, dated the 15th of February, 1900 (exhibit A24), and the 4th of April, 1900 (exhibit A2). The defendant-appellant will get his costs from the plaintiffs-respondents in both courts *qua* the endowed property. The rest of the appeal is dismissed with costs.

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Appeal partly allowed.