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ADAMI, J.

attesting witness. Therefore, taking the signature of the Sub-Registrar as an attestation, together with the attestation of Girdhari Prasad Roy, the requirements of section 50 have been fulfilled.

It has not been argued before us that the Will was a forgery and in fact the respondent's case is not that the Will was not executed but that some years after execution the original Will was torn up by the executrix. The respondent did not produce any evidence to prove this

In my opinion the Will has been attested according to the requirements of law, and therefore, the appeal must be allowed. The decree of the Lower Court will be set aside and letters of administration with a copy of the Will annexed will be granted to the petitioners, appellants, in respect of the entire estate of the testatrix.

DAS, J.—I agree.

Appeal allowed.

PRIVY COUNCIL.

SHIB NARAYAN CHOWDHURY.*

v.

SHIB NARAYAN CHOWDHURY.*

1921.

Dec. 2

Hindu Law—Will, construction of—malik, *meaning of*—*Practice—official translation, procedure for correction of, when challenged.*

The term *malik*, when used, in a Will or other document, as descriptive of the position which a devisee or donee is

* PRESENT.—Lord Buckmaster, Lord Carson, Sir John Edge and Sir Lawrence Jenkins.

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intended to hold, means an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred.

But the meaning of every word in an Indian Will must always depend upon the setting in which it is placed, the subject to which it is related and the locality of the testator from which it may receive its true shade of meaning.

Bhaidas Shivadas v. *Rai Gulab*(1), *Fatch Chand* v. *Rup Chand*(2), *Amarendra Nath Bose* v. *Shuradhani*(3), *Mussammath Surajmani* v. *Robi Nath Ojha*(4), *Lalit Mohan Singh* v. *Chukkun Lal Roy*(5), *Punchoo Manee Dasee* v. *Troylooko Mohiopne Dassee*(6), *Mussammat Kollany Koer* v. *Luchmey Prasad*(7) and *Maulavi Muhammad Shamsul Hooda* v. *Shewukram*(8), referred to.

Where the correctness of the official translation of a document is challenged evidence as to its correctness or incorrectness should be recorded in the court in which the correctness of the translation is challenged.

Appeal of the defendant from a decision of the High Court (Chapman and Roe, J.J.), dated the 23rd February, 1917, in *Mussammat Sasiman Chowdhrani* v. *Shib Narayan Chowdhury*(9), affirming a decision of Babu Prasanna Kumar Gupta, Subordinate Judge of Darbhanga, dated the 9th April, 1914.

De Gruyther, K. C. (with him *H. N. Sen*), for the appellants: In the absence of anything in the context to shew that the devise, which was expressed in terms of an absolute estate, was not intended to take effect as an absolute estate, the mere fact that the devisees happen to be the testator's widows will not have the effect of cutting down the estate taken by them. [Reference was made to *Mussammat Surajmani* v. *Rabi Nath*

(1) (1922) L. R. 49 I. A. 181.
(2) (1916) 21 Cal. W. N. 102.
(3) (1909) 14 Cal. W. N. 458.
(4) (1907) I. L. R. 30 All. 84.
(5) (1897) I. L. R. 24 Cal. 34.
(6) (1884) I. L. R. 10 Cal. 342.
(7) (1876) 24 W. R. 395.
(8) (1874) 22 W. R. 409.
(9) (1917) 39 Ind. Cas. 755.

Ojha(1), *Fateh Chand* v. *Rup Chand*(2), *Moulvie Mahomed Shamsool Hooda* v. *Shewkram*(3), *Amarendra Nath Bose* v. *Shuradhani Dasi*(4) and *Suresh Chandra Palit* v. *Lalit Mohan Dutt Chaudhuri*(5)]. Under the *Mithila* School of Hindu Law the widows took the movables absolutely and from the Will it appears that the testator intended the movables and immovables to be enjoyed in the same way.

B. Dube, for the respondents: The devise to the widows is as heirs and, therefore, they could alienate for necessity only. The use of the word *malikiyat* or *malik* is not conclusive. [Reference was made to *Moulvie Mahomed Shamsool Hooda* v. *Shewukram*(3), *Shib Lakshan Bhakat* v. *Srimati Taragini Dasi*(6) and *Janki* v. *Bhairan*(7)].

De Gruyther, K. C. replied.

THE judgment of the Board was delivered by :—

SIR JOHN EDGE.—The suit in which this appeal has arisen was brought on the 12th August, 1912, in the court of the Subordinate Judge of Darbhanga in Behar by the plaintiffs, who are the presumptive reversioners of Bachcha Chowdhury, deceased, who in his lifetime was a land-holder in, and a resident of Mouza Subhankarpur in Tirhut. Bachcha Chowdhury died in 1865. The principal defendant is Mussammat Sasiman Chowdhurain, who is the surviving widow of Bachcha Chowdhury. His other widow was Mussammat Subast Chowdhury; she died before suit. Bachcha Chowdhury died possessed of considerable moveable and immovable properties, which, on his death came into the possession of his widows. Part of Bachcha Chowdhury's immovable property was ancestral, and the remainder of it had been purchased by him.

Mussammat Subast, shortly before she died, executed, on the 12th February, 1887, an instrument

(1) (1907-08) 35 I. A. 17.
(2) (1915-16) 43 I. A. 183.
(3) (1874-75) 2 I. A. 7.
(4) (1909-10) 14 Cal. W. N. 458.
(5) (1915) 22 Cal. L. J. 316.
(6) (1908) 8 Cal. L. J. 20.
(7) (1897) I. L. R. 19 All. 133.

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by which she bequeathed her half-share in the property to Mussammat Sasiman.

The suit relates to the nature of the title of Mussammat Sasiman to the immovable properties of which her husband, Bachcha Chowdhury, had died possessed, and to the nature of her title to other immovable properties, which she and Mussammat Subast or one of them acquired by purchase, it being alleged by the reversioners that those immovable properties which were acquired by the Mussammats were purchased by them with moneys saved from the usufruct of the immovable properties of which Bachcha Chowdhury had died possessed. The object of the suit is to obtain a declaration that Mussammat Sasiman neither had nor has any power to alienate any of the immovable properties. Her right, if any, to alienate, except for necessity, depends upon the nature of her title. Mussammat Sasiman and some of the other defendants are appellants here. The plaintiffs and others of the defendants are the respondents.

The Hindu family to which Bachcha Chowdhury had belonged was governed by the law of the *Mithila* School of Hindu Law. Bachcha Chowdhury had separated from that family. The suit and this appeal depend upon the true construction of a testamentary document which, although described as an *atainama* (deed of gift) must be regarded as a Hindu Will, which Bachcha Chowdhury made on the 5th of June, 1864. On behalf of the plaintiffs it is contended that the Mussammats took no greater interest in the immovable property which had belonged to Bachcha Chowdhury in his lifetime than that allowed by the law of the *Mithila* to the widow of a separated and childless husband. On behalf of Mussammat Sasiman and those claiming under her it is contended that she and Mussammat Subast took in that property under the Will a full absolute, and heritable interest as proprietors, with full rights of alienation, and not merely the interest of Hindu widows under the law of

the *Mithila*. If her contention as to the construction of the Will is correct, this suit must fail and should be dismissed, and it would not be necessary to consider whether the immovable properties which were purchased by the Mussammats, or either of them, were purchased with moneys derived by them after their husband's death from the usufruct of the immovable properties which were left by him.

According to the official translation of the Will of the 5th June, 1864 (15th *Jeth*, 1217, *F.S.*) Bachcha Chowdhury stated that:

"I am Bachcha Chowdhury, resident of Mouza Subhankarpur, pargana Hati, zila Tirhut."

He then mentioned lands, some of which were ancestral lands, and others of which he had purchased, and states, as were the facts, that:

"the ancestral and purchased properties are held and possessed by me, without participation or interference on the party of any person,"

and proceeded:

"I, the declarant, have no issue: I have, to obtain bliss in the next world, caused to be sunk several ponds, and have constructed a temple of Sri Murli Manohar Ji within the compound of my own house, at a considerable cost; I often remain ill, although at present I am well, still on account of having no child, and placing no certainty in life I intended to go on pilgrimage to Kashi and other places. Therefore, I, the declarant, of my own accord and free-will in order to avoid future disputes and to perpetuate my name gave all the *mauzas* in entirety or in part, both ancestral and purchased, *thika* properties, and all goods, and assets, articles of copper and silver, elephant, oxen, she-bullocks, and all other properties, to both my first and second wives, Mussammat Subast Chowdharain and Mussammat Sasiman Chowdhurain, who after my death will be heirs to all the movable and immovable properties. It is desired that the said Mussammats by holding possession and occupation of all the movable and immovable properties should pay the Government revenue thereof, and they should collect rent of, and keep watch over, the *mauzas* either in entirety or in part and scattered lands, orchards, oxen, and elephant, etc., and they should give alms and charities. The said Mussammats, after my death, shall have, in every way, full power and all proprietary rights over all the movable and immovable properties, and they should, under the deed executed by me, pay, annually, Rs. 360 to Mussammat Lachhmi Chowdhurain, widow of my brother, Dular Chowdhury, until her death for her maintenance, and by this deed the said Mussammats should get their names

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recorded in the Government *Sherista* in the column of proprietors. To this, I, the declarant, neither have nor shall have any objection. I have, therefore, given into writing these few words by way of a deed of *atainama* so that they may be of use when required."

Their Lordships have quoted from the translation which was made of the Will by the official translator in India but it is admitted on behalf of the parties to this appeal that the vernacular word which has been translated as "gave" should have been translated as "give".

The important words in the Will which in the official translation have been rendered as giving to the Mussammats after the testator's death, "in every way, full power and all proprietary rights", are in the vernacular *kuli o kul haquq malkiyat har hak akhtear Mussammat Majkuran ko hasil hai*, and were understood by the trial Judge as a declaration by the testator of the rights which the Mussammats would have in the properties by inheritance after his death, and not as giving them any greater right in the properties, or implying that they should have any greater right, such as a right of alienation, except for necessity. The trial Judge, by his decree of the 9th April, 1914, made a declaration in favour of the plaintiffs as reversioners. From that decree Mussammat Sasiman appealed to the High Court.

The appeal to the High Court was heard by Chapman and Roe, J.J., and was dismissed by the decree of that Court of the 23rd February, 1917. The leading judgment in the High Court was delivered by Roe, J., with which Chapman, J., concurred. Mr. Justice Roe was of opinion that in one respect the official translation of the Will of the 5th June, 1864, was not quite accurate. In his judgment he said :—

"A more accurate translation of the clause beginning 'The said Mussammats after my death .....' would be, 'And in respect of all the movables and immovable after my death all and complete rights, the power of a landholder in every circumstance, accrues to the said Mussammats'. The Urdu words which I have translated 'accrues'

are '*hasil hai*'. The Urdu word which I have translated 'of a landholder' is *malkiat*. There is no such word in the language. Either the long *a* is a mistake or the word is a manufactured word. The point has been pressed at some length in the argument. It is not to my mind material. '*Milkiat*' or '*malkiat*' would equally imply something appertaining to a *malik*. The word '*malik*' means literally one who holds *mulk* or land. The translation with the amendments which I suggest represents the terms of the deed."

There does not appear to their Lordships to be any material difference in that respect between the official translation and that suggested by Mr. Justice Roe. In their Lordships' view they mean the same thing. But if they materially differ, their Lordships hold that they must accept the official translation as correct. If that translation was incorrect there was ample opportunity to have it judicially corrected in the High Court after evidence as to its correctness or incorrectness had been taken and recorded in the Court in which the correctness of the official translation was challenged. The Judicial Committee has no means of enquiring into the correctness of an official translation of a document in a vernacular language of India, except by sending the case back to the Court with a direction to make such enquiry. It is not necessary to adopt that course in this case.

The following decisions which it has been contended should guide their Lordships in construing this Will, have been cited in argument at the Bar. Their Lordships may observe that it is always dangerous to construe the words of one Will by the construction of more or less similar words in a different Will, which was adopted by a Court in another case. Their Lordships will briefly refer to the decisions which have been cited in the order of their dates.

In 1874, in *Maulavi Mahomed Shumsool Hooda* v. *Shewukram* (1) which came on appeal from the High Court of Calcutta, and related to the construction of a testamentary document executed by Roy Hurnarain, a Hindu of Bihar, the Board held that, "In construing the Will of a Hindu it is not improper

(1) (1874) L. R. 1 I. A. 7 (14).

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to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the distribution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family, and it may be assumed that a Hindu knows that as a general rule at all events, women do not take absolute estates of inheritance which they are enabled to alienate".

The Board, having regard to those considerations, and to the document as a whole, all the expressions of which should be taken together, held that Hurnarain, in using the expression "except Mussammat Ranee Dhun Kowar aforesaid, none other is or shall be my heir or *malik* ", intended that Ranee Dhun Kowar should take in his property "a life interest immediately succeeding him, without that interest being shared by her daughters or by any other person", but that she should not take an absolute estate which she should have power to dispose of absolutely. The Board so decided, although it held that there were expressions in the document which, if they stood alone, showed that Hurnarain intended to make an absolute gift to Ranee Dhun Kowar. She was the widow of Hurnarain's deceased son, by whom she had had two daughters, who were living at the date of the document, and were named in it.

In 1875, in *Mussammat Kollany Koer* v. *Luchmee Pershad* (1) which depended on the construction of a Hindu Will, and came to the High Court at Calcutta on appeal from a decree of the Subordinate Judge of Saran in the Patna Division of Bengal, and related to the title to immovable property, Romesh Chundar Mitter, J., in his judgment, from which the other Judge who heard the appeal, Glover, J., did not dissent, held: "Therefore the primary matter for our consideration is the language of the Will, or the words

(1) (1875) 24 W. R. 395.

in which it is expressed. As far as the words go, I think it is plain that the testator intended to make an absolute gift of his property in favour of his widow and his daughter. He says that after his death they shall be *maliks* and his entire estate shall devolve upon them."

Mr. Justice Mitter considered that there being nothing to show a contrary intention, the words which were used gave an absolute estate, and not merely the estate of a Hindu female, to the testator's widow and daughter.

In 1884, Sir Richard Garth, C. J., and Cunningham, J., in *Punchoo Money Dassee* v. *Troylucko Mohiney Dassee*(1), which was an appeal from a decree of Wilkinson, J., in a suit on the original jurisdiction side of the High Court at Calcutta and related to a Hindu Will, held that the description in the Will of a devisee, a woman, as *malik*, did not necessarily import an intention of the testator that by his Will an absolute or proprietary interest should pass to her.

In 1897, in *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (2) which was an appeal from a decree of the High Court at Calcutta, which had reversed a decree of the District Court of Hooghly in a suit which related to a Hindu Will, the Board held that the words of gift in the Will to the effect that the donee shall "become owner (*malik*) of all my estate and properties" conferred an heritable and alienable estate in the absence of a context indicating a different meaning".

In 1907, in *Mussammat Surajmani* v. *Rabi Nath Ojha* (3), in an appeal from a decree of the High Court at Allahabad which had affirmed a decree of the Subordinate Judge of Gorakhpur in a suit which related to a deed of gift or testamentary instrument, by which a Hindu gave to his first and second wives

(1) (1884) I. L. R. 10 Cal. 342. (2) (1897) I. L. R. 24 Cal. 834.
(3) (1907) I. L. R. 30 All. 84.

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and daughter-in-law respectively certain immovable property, reserving to himself a life interest, but directing after his death they shall be "*malik amain khud ikhtiyar* (owners with proprietary rights)", the Board said. "This case of *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy*(1) seems to adopt and apply the same view of the word '*malik*' as was taken in the Calcutta case in *Kollony Koer* v. *Luchmee Pershad*(2) with the result that in order to cut down the full proprietary rights that the word imports, something must be found in the context to qualify it. Nothing has been found in the context here or the surrounding circumstances, or is relied upon by the respondents, but the fact that the donee (Surajmani) is a woman and a widow, which was expressly decided in the last mentioned case not to suffice. But while there is nothing in the context or surrounding facts to displace the presumption of absolute ownership implied in the word '*malik*', the context does not seem to strengthen the presumption that the intention was that '*malik*' should bear its proper technical meaning".

In *Mussammat Surajmani* v. *Robi Nath Ojha* (3) the Subordinate Judge of Gorakhpur, who tried the suit, had held that Surajmani took a Hindu widow's estate, and was incompetent to alienate it, and the High Court on appeal held, "That under the Hindu Law, as interpreted up to the present in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate, unless the power of alienation is conferred upon her in express terms. The learned vakil for the appellants (Surajmani and others) contended that the words of the document we have to consider, and which we have cited above, did expressly convey such power, or at any rate that from them the intention of the executant to confer a power of alienation was evident. We cannot so hold".

(1) (1897) I. L. R. 24 Cal. 834.

(2) (1875) 24 W. R. 395.

(3) (1907) I. L. R. 30 All. 84.

In 1909, in *Amarendra Nath Bose* v. *Shuradhani* (1), Mookerjee, J., held that the expression "*malik* like myself" in a Hindu Will as describing the position which the donee would occupy, was an indication that the testator intended the donee to take an absolute interest in the property devised, but that the word '*malik*' by itself would not indicate that more than a limited interest was intended to be conferred.

In 1916, in *Fateh Chand* v. *Rup Chand* (2), in an appeal from a decree of the High Court at Allahabad which had varied a decree of the Subordinate Judge of Saharanpur, in a suit which related to the title to immovable property, the Board held that the words in a Hindu Will "I have bequeathed *Mouza* Khudda to Mussammat Gomi ——— after my death she shall be owner in possession (*malik o kabiz*) of the entire property in *Mouza* Khudda aforesaid", conferred full ownership upon the devisee, there being in the Will, in the opinion of the Board, nothing from which a contrary intention of the testator should be inferred.

It appears from some of the decisions to which their Lordships have referred and from the judgment of the Board in *Bhaidas Shivdas* v. *Rai Gulab and another* (3) that the term '*malik*', when used in a Will or other document as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred, but the meaning of every word in an Indian Will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the

(1) (1909) 14 Cal. W. N. 458

(2) (1916) 21 Cal. W. N. 102. (3) (1922) L. R. 49 I. A. 181.

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testator from which it may receive its true shade of meaning and their Lordships can find nothing in the quoted decisions contrary to this view.

Mr. Justice Chapman, in his concurring judgment in this suit said :—

"As regards the word '*malik*', I trust that a word in such common everyday use in this part of the country (Behar) will not be converted by the decision into a technical term of conveyancing."

At least outside the Presidency towns of Calcutta, Madras, and Bombay, the art of conveyancing is but little understood in India, and the drafting of documents, including Wills, is generally of a very simple, and an artificial character. [See the observations of the Board in *Gokuldass Gopaldass* v *Rambux Seochand*(1) and in *Syed Mohomed Ibrahim Hossein Khan and others* v. *Ambika Persad Singh and others*(2)].

In the present case the term '*malik*' does not occur in the Will, but the word '*malikiyat*', which has been rendered in the official translation as "All proprietary rights", does, and Mr. Justice Roe, who did not accept the official translation as literally quite accurate, considered that a mistake in the spelling of the word had been made or that the word was a manufactured word. His opinion was that whether the intended word was '*milkiyat*' or '*malkyat*' it meant the same thing, that is, the power of a landlord, and he stated that '*malik*' means literally one who holds land. Their Lordships cannot construe the words of the Will giving to the *Mussammats*, as the testator's heirs, all his movable and immovable properties, as interpreted by the declaration that after his death they, "shall have, in every way, full power and all proprietary rights over all the movable and immovable properties", as meaning anything less than that they should hold in his properties full and complete rights as proprietors, including full rights of alienation, and that was, their Lordships infer, what the testator intended.

(1) (1889) 11 I. A. 126 (133). (2) (1912) 39 I. A. 68 (81).

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Their Lordships will accordingly humbly advise His Majesty that this appeal should be allowed with costs and the suit should be dismissed with costs.

Appeal allowed.

Solicitors for the appellants: *Messrs. Watkins and Hunter.*

Solicitors for the respondents: *Mr. W. W. Box.*

FULL BENCH.

Before Dawson Miller, C. J., Das and Adami, J.J.

JUGESHAR MISRA

v.

NATH KOERI.*

1922.

January, 16.

Occupancy Holding, non-transferable—sale of portion in execution of money decree, whether binding on the tenant.

A sale of a portion of a non-transferable occupancy holding in execution of a money decree is valid against the tenant even in the absence of the landlord's express consent and whether the decree-holder be the landlord or a stranger.

Sadavi Kunwari v. *Palknath Rai*(1) and *Macpherson* v. *Debibhusan Lal*(2), overruled.

Dayamayi v. *Ananda Mohan Roy Choudhury*(3), *quoad hoc*, dissented from.

Chandra Binode Kundu v. *Ala Bux Dewan*(4), followed.

Agarjan Bibi v. *Panaulla*(5), *Dwarka Nath Misser* v. *Hurrish Chunder*(6) and *Bhiram Ali Shaik Shikdar* v. *Gopi Kanth Shaha*(7), referred to.

* Miscellaneous Appeal No. 97 of 1921, from an order of W. H. Boyce, Esq., District Judge of Muzaffarpur, dated the 23rd February, 1921, affirming an order of B. Ram Bilas Singh, Munsif of Muzaffarpur, dated the 20th November, 1919, and Miscellaneous Appeal No. 3 of 1921, from a decision of D. H. Kingsford, Esq., District Judge of Cuttack, dated the 26th May, 1920, affirming a decision of B. Nidheswar Chandra, Munsif of Balasore, dated the 21st August, 1920.

(1) (1916) 1 Pat. L. J. 257.
(2) (1917) 2 Pat. L. J. 530.
(3) (1915) I. L. R. 42 Cal. 172 (F. B.)
(4) (1921) I. L. R. 48 Cal. 184 (F. B.)
(5) (1910) I. L. R. 37 Cal. 687.
(6) (1879) I. L. R. 4 Cal. 925.
(7) (1897) I. L. R. 24 Cal. 355.