APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Fforde.

1923

April 30.

MUNSHI LAL (PLAINTIFF) Appellant,

versus

Mst. SHIV DEVI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2131 of 1913.

Hindu *Law—Widow—gift of one-fourth of her deceased husband's estate to a charitable institution—without mention that it is for the spiritual welfare of her husband—whether valid*—Quaere, *what constitutes a "moderate" portion of the estate?*

Held, that a gift by a *Hindu* widow of a moderate portion of her deceased husband's estate can only be valid if it is expressly made for the spiritual welfare of the deceased. An act supposed to conduce to the spiritual benefit of the widow is not necessarily an act supposed to conduce to the spiritual benefit of the husband.

Sham Dai v. *Birbhadra Prasad* (1), and *Sardar Singh* v. *Kunj Bihari Lal* (2), followed, also *Puran Devi* v. *Jai Narain* (3), and *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (4).

Held consequently, that although the gift by the widow in this case was admittedly made for a pious and charitable purpose approved of by the *Hindu* religion it was not binding on the reversioner as it was not made for the spiritual welfare of her deceased husband.

Held also, that it is doubtful whether one-fourth of the estate can be called a "moderate" portion of the husband's estate.

Sardar Singh v. *Kunj Bihari Lal* (2), *Churaman Sahu* v. *Gopi Sahu* (5), and *Khub Lal Singh* v. *Ajodhya Misser* (6), referred to; also *Ramchunder Surmah* v. *Gunga Govind Bunhoojiah* (7), referred to in the Tagore Law Lectures of 1879, at page 307.

Second appeal from the decree of Rai Bahadur Misra *Jwala Sahai, District Judge, Ludhiana, dated the 28th July* 1919, *reversing that of* Lala *Chuni Lal, Senior Sub-*

(1) (1921) I. L. R. 43 All. 463.
(2) (1922) I. L. R. 44 All. 503 (P. C.)
(3) (1882) I. L. R. 4 All. 482.
(4) (1861) 8 Moo. I. A. 529.
(5) (1909) I. L. R. 37 Cal. 520.
(6) (1915) I. L. R. 43 Cal. 574, 585.
(7) (1826) 4 Sel. Rep. 147.

ordinate Judge, Ludhiana, dated the 21st November 1918. and dismissing the plaintiffs' suit.

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J. G. SETHI, for Appellant.

G. C. NARANG, for TEK CHAND, for Respondents.

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FFORDE J.—The main question for our consideration is whether a gift made by a *Hindu* widow to a charitable institution of a portion of her deceased husband's estate is valid as against the reversioners.

The gift admittedly amounts to a little more than one-fourth of the whole estate of the deceased, and it is admittedly made for a charitable purpose.

The Court of first instance in a very clear and well-reasoned judgment held the gift to be invalid for two reasons. *Firstly*, because it was not made for the spiritual benefit of the deceased husband but for her own good, and, *secondly*, because it comprised too large a portion of the entire estate.

The first appellate Court reversed this decision, holding that as the widow had done a virtuous act according to her personal notions,

"there was nothing in the eye of the law to stand in her way, provided it is ascertained that she has not behaved recklessly and has gifted a reasonable portion of her husband's estate."

Mr. Jai Gopal Sethi for the appellant contends that a gift by a *Hindu* widow of a portion of her deceased husband's estate is only valid in law if it is made—

(1) for necessity;

(2) for the purpose of defraying the expenses of the obsequial rites, etc., of the deceased;

(3) for recognised charitable purposes for the spiritual benefit of the deceased, and then only if it comprises a small portion of his estate.

In the first two cases the entire estate may be alienated if only by so doing the necessary funds can be obtained.

Dr. Gokal Chand Narang for the respondents on the other hand advances the bold proposition that any

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gift by a widow for a pious purpose, recognized as such by *Hindu* Law, is valid even though admittedly made for the widow's own spiritual benefit alone. He argues that such a gift, having regard to the *Hindu* view of the relationship of husband and wife, must necessarily be for the deceased husband's spiritual benefit. He agrees, however, that only a reasonable portion of the deceased's estate can be alienated for this purpose,

The power of a *Hindu* widow to alienate for necessity, whether the necessity be her own or to defray the obsequial expenses arising out of her husband's death, need not be considered here. It is true that the widow pleaded necessity in her answer to the plaint but that plea is not relied upon.

The only questions we need consider are :—

(1) Can the proportion of the estate alienated, *viz.*, one-fourth of the whole, be held to be justifiable ?

(2) Was it alienated for the spiritual benefit of the deceased husband ?

(3) Is the alienation valid if made for the spiritual welfare of the alienor alone ?

The first question, though it has arisen in the course of argument, has not been pressed upon us. In fact counsel on both sides seem to have assumed that if the gift is valid in law in other respects, it cannot be deemed to be excessive in proportion to the estate. This view appears to me to be very doubtful. The authorities on the point are all agreed in holding that a gift of a moderate portion of the property only is valid. The difficulty lies in the practical application of this principle. How is a Court to decide what is a moderate portion ? In the case of *Ram Chander Surmah* v. *Ganga Govind Bunhoojiah* (1), referred to in the Tagore Law Lectures of 1879, at page 307, the *Pandits* gave it as their opinion that the widow has the power of alienating from one to $\frac{3}{16}$th of her husband's property " for the benefit of his soul, " but I can find no case in which as large a portion as $\frac{3}{16}$ths has been held valid in this respect. It is true that in *Churaman Sahu* v. *Gopi Sahu* (2) cited with approval in *Khub Lal Singh* v. *Ajodhya Misser* (3),

(1) (1826) 4 Sel. Rep. 147. (2) (1909) I. L. R. 37 Cal. 1.
(3) (1915) I. L. R. 43 Cal. 574, 585.

the Court held that between ¼th and ⅓rd of an estate was a reasonable amount to expend on the occasion of a daughter's *Gowna* ceremony, but the principles upon which that case was decided can hardly be held to be exactly analogous to those under consideration here.

In *Sardar Singh* v. *Kunj Behari Lal* (1) which came before the Privy Council in June of last year, Mr. Ameer Ali who delivered the judgment of the Board says as follows :—

"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 authorities as I have already observed all are agreed that a gift of a "moderate portion", or a "small portion", may be valid when made for the husband's spiritual benefit, but the difficulty is to fix the limit at which the portion gifted ceases to be moderate or small. It must, of course, depend largely upon the facts of each particular case, but I very much doubt if any Court could reasonably hold that a gift amounting to ¼th of an inheritance could be fairly regarded as "a small fraction of the property". As we do not intend to decide the present case on the question of the validity of the amount of the alienation, I need not discuss this aspect of the case further. I have only dwelt on it to the extent I have done, so that it may not be said that this Court has acquiesced in the view that an alienation of ¼th of an inheritance is valid so far as *quantum* is concerned.

The second question is largely one of fact. The Court of first instance has decided it in favour of the appellant, holding that the gift was not made for the spiritual benefit of the husband, who had at the time of the alienation been dead for nearly eleven years, but for the alienor's own good.

(1) (1922) I. L. R. 44 All, 503 (P. C.)

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In my opinion this finding is wholly in accordance with the facts of this case.

The deed of gift itself nowhere suggests that its object is in any way referable to the spiritual benefits of the husband. It in fact rebuts such a suggestion. The donor declares that the property in question is owned and possessed by herself absolutely and she recites that the donees "have been declared absolute owners of the gifted property like myself."

In her answer to the plaint she makes the case that the alienations in question were for consideration and lawful necessity, and further pleads that the land in question and the houses are not ancestral but were in fact purchased by the father-in-law, Gobind Ram. It must be conceded, however, that there were other alienations referred to in the plaint in addition to the one in question, and moreover a litigant in this country should not be too strictly bound by pleadings, but the fact remains that in her final defence the case now made, namely, that the alienation was for her husband's spiritual benefit, is nowhere even suggested.

In the defence to the amended plaint, it is true that she does suggest this plea, but in her statement in Court, made on the 25th June 1918, she definitely declares that her two sons, one of whom died at the age of 14 and the other at the age of 11 years, told her that the property should be given in charity and directed that it be given "in the name of the *Granth Sahib.*"

In a further statement made on the 24th of August she appears to have reconsidered her position and expressed her reasons, as follows:—

"I am a *Sikh* woman. I believe in *Granth Sahib.* My husband gave me instructions to give the land and the site in charity. He was not a *Sikh*. This house, *i.e.*, stable, is haunted. My sons used to say that I should get the land and the site entered in papers in the name of the *Pujari* of the *Granth Sahib.*"

This is the first time she makes any suggestion that the gift is in any way referable to her husband, and I have no doubt that the improvement in her statement is due to the progressive legal enlightenment which she received in the course of the suit.

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The lower appellate Court's view that her present contention that the gift was intended to spiritually benefit her husband "can very well be inferred from the virtuous way in which she has made use of this portion of her husband's estate" is in my opinion inconsistent with the facts and unsound in law.

I am quite satisfied that until the present suit was instituted, it had never even occurred to the widow to consider whether or not the gift might promote her dead husband's spiritual welfare.

It remains to be considered whether such a gift, which is admittedly for a pious and charitable purpose approved of by the Hindu religion, is valid merely for that reason. Dr. Narang in his able argument has relied strongly upon certain observations in the judgment in *Khub Lal Singh* v. *Ajodya Missar* (1) which undoubtedly favour his contention that if a gift is of a recognized pious nature, it must be deemed to accrue to the spiritual benefit of the departed husband. This view, however, has been expressly dissented from in very recent case on the subject, *Sham Dai* v. *Birbhadra Prasad* (2). That case not only bears a close resemblance to the present one on the facts, but the very proposition advanced by Dr. Narang was discussed in the course of the judgment where the learned Judges expressed themselves as follows :—

"We are not, however, in accord with the view pressed by the learned counsel for Sham Dei that an act supposed to conduce to the spiritual benefit of the widow is necessarily an act supposed to conduce to the spiritual benefit of the husband. This proposition appears to have been looked at not with disfavour by the learned Judges who decided *Khub Lal Singh* v. *Ajodhya Misser* (1). We should not go so far as to say that they accepted it. Whatever be its application to persons governed by the *Dayabhaga* law, it would not appear to be a doctrine applicable to persons governed by the *Mitakshara* law. It is obvious that an act done by a widow supposed to conduce to the spiritual benefit of her husband would confer spiritual benefit on herself, but the converse does not appear to follow. An act done by the widow supposed to conduce to the spiritual benefit of herself would not confer spiritual benefit on her husband. In any circumstances we should have been precluded from accepting this view, in face of the decision in *Puran Devi* v. *Jai Narain* (3).

(1) (1918) I. L. R. 43 Cal. 574. (2) (1921) I. L. R. 43 All. 462.
(3) (1882) I. L. R. 4 All. 482.

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"The decision in *Khub Lal Singh v. Ajodhya Misser* (1) was recently discussed by a Bench of this Court in *Kunj Behari Lal* v. *Laltu Singh* (2). That Bench derived similar assistance to the assistance which we have derived from the exposition of the law therein.

"The conclusion at which we arrive is this, that unless it can be established that the alienation in question was for the performance of religious acts which were supposed (in this case intended) to be for the spiritual benefit of Bal Kishen, the alienation cannot operate to the prejudice of the reversioners, even if the portion of the property alienated be not excessive."

This judgment which is in agreement with the views expressed in the Privy Council decision already referred to finally disposes of the last argument of the respondent. I have no doubt that it must now be held to be the law that a gift by a Hindu widow of a moderate portion of her deceased husband's estate can only be valid if it is expressly made for the spiritual welfare of the deceased. A gift however pious or meritorious cannot be enforced against the reversioners unless it is proved to be made with that object and unless that purpose is deemed by the Hindu religion to be fulfilled by the character of the gift in question.

For these reasons I think the appeal succeeds. The result is that the decree of the lower Appellate Court must be set aside, and that of the Court of first instance restored, the appellant to have his costs throughout.

ABDUL RAOOF J.

ABDUL RAOOF J.—I entirely agree. The judgment of my learned colleague is so full and exhaustive that I have very little to add to it. The rule enunciated in the judgment was clearly and authoritatively stated so far back as the year 1882 in the decision of a Division Bench of the Allahabad High Court in the case of *Puran Devi* v. *Jai Narain* (3). Mr. Justice Tyrrell, who delivered the judgment, following the decision in the case of *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (4), made the following observation :—

"The point is now covered by authority that acts of alienation calculated to be of religious benefit and efficacy to the widow, or to any persons other than the deceased owner, will not

(1) (1915) I. L. R. 43 Cal. 574.
(2) (1918) I. L. R. 41 All. 130.
(3) (1882) I. L. R. 4 All. 482, 483.
(4) (1861) 8 Moo. I. A. 529.

justify an alienation of any part of the property in the hands of the widow. It has been justly pleaded in the second and third grounds of appeal that there is nothing on the record sufficient to show, nor other good reason for believing, that the gift of the house in suit, made some sixteen months after the death of Ram Kishen, without any reference to him or his funeral celebrations, and specifically declared to be' *Bishenprit*, or to the honour of Vishnu' was a gift made to benefit Ram Kishen in his after-state ; and was not, on the contrary, as indeed from the terms of the deed of gift in this case it plainly appears to be, an offering by the widow to a favoured idol for her own special credit and spiritual advantage."

Every word of this observation is peculiarly applicable to the facts of this case. Here too in the deed of gift no mention is made of the name of the husband, nor is it stated that the gift is made for his spiritual benefit. Similarly the gift in this case was also made after a very long time, namely, 14 years after the death of the husband. Another significant fact is that, while the husband was an *Arya Samajist*, the gift had been made to *Kukas*. The rule laid down in the Allahabad case has been firmly established by the later decisions of the High Courts in this country as well as by the decisions of their Lordships of the Privy Council to which my learned colleague has referred in his judgment. I accordingly concur in the order made by my learned colleague.

C. H. O.

Appeal Accepted.