

APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Agha Haidar.*

YUSAF ALI (PLAINTIFF) Appellant

versus

ALIBHOY AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2379 of 1924.

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Nov. 1.

Interpretation of document—Deed of gift—intending to cover the whole of donor's estate—but describing part of it as less than the donor's actual share.

The rule governing the interpretation of a deed is that the deed must be read as a whole in order to ascertain the true meaning of several clauses, and that the words of each clause should be so construed as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible. Indeed, it is competent to the Court to disregard the literal meaning of the words and give them another meaning if the words are sufficiently flexible to bear that interpretation. The duty of the Court is to find out the intention of the executant from the language used by him, but parol evidence to vary the contents of the document cannot be admitted.

North-Western Railway v. Lord Hastings (1), referred to.

Thus, where the donor clearly intended to gift the whole of her estate and owing to the mistake of her legal adviser described part of it as being 1/6th share in her deceased son's estate, while her legal share consisted of 1/6th plus 5/96ths —

Held, that the document should be construed as conveying the whole of her legal share in her deceased son's estate.

First appeal from the decree of Malik Ahmad Yar Khan, Senior Subordinate Judge, Rawalpindi, dated the 1st July 1924, dismissing the plaintiff's suit.

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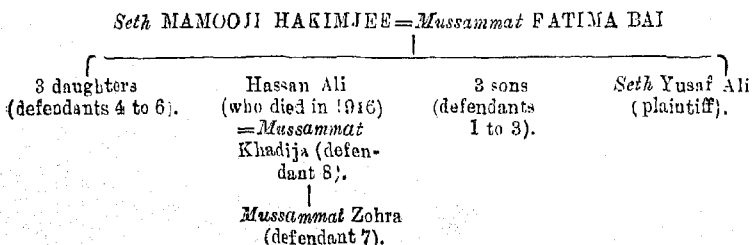
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HAR GOPAL and H. S. ROY, for Appellant.

AZIZ AHMAD and B. P. KHOSLA, for Respondents.

The Judgment of the Court was delivered by—

SIR SHADI LAL C. J.—This appeal arises out of an action brought by one Seth Yusuf Ali, and the dispute in this Court has been narrowed down to the question whether he is entitled to a share in the estate of his mother *Mussammat* Fatima Bai. The following pedigree-table explains the relationship of the persons concerned in this dispute :—



It is common ground that *Mussammat* Fatima Bai died in 1918, and that her estate consisted of a bungalow in the Rawalpindi Cantonments and her share in the estate of Hassan Ali who had died on the 6th of July 1916.

The contesting defendants, who are three sons of the lady, resist the suit on the ground that on the 23rd of May, 1917, more than a year before her death, she had gifted her entire estate to them; and that she did not, therefore, leave any property which could devolve upon her heirs. Now, the deed of gift, which is printed at pages 67 to 69 of the paper book, was undoubtedly executed by her; and the evidence of the scribe Shiv Ram shows that she had given him instructions as to what was to be written in the deed, and that the draft prepared in accordance with her instructions was not only read out to her but approved by her. The testimony of Shiv Ram receives support

from the evidence of her father *Seth Adamji Sheikh Jewanji* who attested the instrument and was present at the time of its registration. There is also satisfactory evidence to the effect that the whole of the document was read over to her at the time of the registration, and that she admitted its correctness.

It appears that at the time of the execution of the document *Mussamat Fatima Bai* was suffering from cough, and the plaintiff has examined two medical men who have expressed their opinion that the prescriptions of the medicines used by her show that she was suffering from tubercular cough. It must, however, be remembered that the lady lived for nearly fourteen months after the execution of the deed of gift, and even if she was suffering from tuberculosis at that time, it does not follow that she was not in a fit mental condition to dispose of her property. It is to be observed that by making this disposition she excluded from participation in her estate, not only the plaintiff, but also her three daughters and her father; and these four persons do not dispute either the genuineness or the validity of the gift. The reason why she gave the whole of her estate to her three sons and excluded the fourth son is not far to seek. Her father and other witnesses depose to the fact that the plaintiff, who had separated from the family in 1912, was not on good terms with his mother; and that the donees served her in her old age. It was, therefore, only natural that she should gift her estate to the sons who were living with her and showed filial affection towards her.

The learned counsel for the appellant invites our attention to the well-known rule that a person dealing with a *pardah nashin* woman is bound to show affirmatively that she understood the nature of the trans-

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action and that she was a free agent. But, as pointed out above, there is sufficient proof on the record that *Mussammat* Fatima Bai fully understood the terms of the document and its effect, and that there was good ground for giving the whole of the estate to her three sons.

The estate of *Mussammat* Fatima Bai consisted of a bungalow in the Rawalpindi Cantonments and her share in the estate of her deceased son Hassan Ali. Now, according to the *Shia* school of the Muhammadan Law, which admittedly governed the distribution of the estate of Hassan Ali, only three persons, namely, the widow, the daughter and the mother, were entitled to succeed to it; and the mother was entitled to $\frac{1}{3}$ th share which was her fixed share, and also to $\frac{5}{96}$ ths share which she got under the doctrine of Return. It is, however, contended that the deed of gift disposes of the bungalow and only $\frac{1}{3}$ th share in the estate of Hassan Ali, and consequently there was intestacy with respect to $\frac{5}{96}$ ths share in that estate. Now, the principle, on which an instrument of this description, should be construed is not open to any doubt. The rule is clear that the deed must be read as a whole in order to ascertain the true meaning of several clauses, and that the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible. Indeed, it is competent to the Court to disregard the literal meaning of the words and give them another meaning if the words are sufficiently flexible to bear that interpretation—*North-Western Railway v. Lord Hastings* (1). The duty of the Court

(1) 1900 A. C. 260.

is to find out the intention of the executant from the language used by him, but parol evidence to vary the contents of the document cannot be admitted.

The person who drafted the document in question was evidently under the impression that *Mussammat* Fatima Bai was entitled only to $\frac{1}{6}$ th share in the estate of her deceased son, and he consequently used the following language in describing that portion of the property: "Seth Hassan Ali, my son, died on the 6th of July, 1916. I have got $\frac{1}{6}$ th share in the entire moveable and immoveable property belonging to him according to the Muhammadan Law governing the *Shia* sect." Consequently this share, along with the house in the Cantonments, was given by her to her three sons. Now, it is clear that she intended to gift the whole of her estate, and it was due to the mistake of her legal adviser that only $\frac{1}{6}$ th share in the property of Hassan Ali was mentioned in the document. There was absolutely no reason for assuming that, while she gifted $\frac{1}{6}$ th share to her sons, she intended that the remaining small fraction, namely, $\frac{5}{96}$ ths, should remain undisposed of and go to her heirs according to the law of intestate succession. Upon an examination of the language of the whole of the document we have no hesitation in endorsing the conclusion of the trial Judge that the donees are entitled to the whole of the estate which belonged to their mother.

It appears that the estate of Hassan Ali consisted, *inter alia*, of a share in a partnership business, and the partnership was dissolved owing to his death in July, 1916. The amended plaint claiming his share in that estate was not, however, filed by the plaintiff until the 1st of March 1923, and the claim for the recovery of the assets in the partnership concern devolving on *Mussammat* Fatima Bai would be governed

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by the three years' rule prescribed by Article 106 of the Limitation Act. The learned counsel for the appellant, however, contends that that claim is governed by the six years' rule as contained in Article 120. But even if we accept that contention, the suit is equally barred by time. It is, however, unnecessary to pronounce any final opinion on the question, because, as stated above, the plaintiff's suit must fail on the short ground that *Mussammatt Fatima Bai* had gifted the whole of her estate to her three sons and that the plaintiff is not entitled to any share therein.

We accordingly affirm the decree of the Subordinate Judge and dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

DHANNA SINGH, ETC. (PLAINTIFFS)

Appellants

versus

MST. NAMI AND ANOTHER

(DEFENDANTS) AND

MEHRA AND ANOTHER (PLAINTIFFS)

} Respondents.

Civil Appeal No. 2076 of 1923.

Custom—Alienation—Ancestral property—Hindu Jats—village Mangowal—tahsil Nawan Shahr—district Jullundur—Gift by a sonless proprietor to married daughter in lieu of services—whether valid—Riwaj-i-am—Residential house—whether presumably also ancestral.

Held, that among Hindu Jats of village Mangowal, tahsil Nawan Shahr, district Jullundur, a sonless proprietor is not competent to make a gift of the whole of his ancestral estate to his married daughter in lieu of past and future services