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the benefit of the family ; but this she has altogether failed to do. We resolve therefore to modify the decree of the Civil Judge, and to pass judgment for the amount there stated against the first defendant personally, with all costs of suit.

Our decree will thus relieve the second defendant as well as the lands in question, from all liability on account of the decree.

Appeal allowed.

ORIGINAL JURISDICTION (*a*)

Original Suit No. 94 *of* 1863.

ARUMUGAM MUDALI *against* AMMI AMMÁL.

Under a bequest by a Hindu of ten rupees per month, followed by a direction to the following effect : " in this manner continue to pay in the legatee's name so long as he shall be alive : after his death continue to pay the same to his descendants from generation to generation."

Held :—1st. That the legatee took only a life-interest under the bequest.

2nd. That the words " from generation to generation, " did not import more than " absolutely " and " for ever " import in an English instrument.

3rd. That the descendants in existence at the time of the tenant for life's death took absolutely as a class ; and

4th. That such descendants were entitled in equal shares to an amount sufficient to produce the monthly sum of ten rupees.

Remarks on the construction of Hindu wills.

' Descendants' of A in a Hindu will would include children and grand-children living at his deceased, but does not include A's brother or widow.

There is no rule of Hindu law imposing any restriction in point of time on the operation of a bequest creating a series of successive life-interest in each generation of a legatee's descendants. But

Semble : the grounds of the rule against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period.

1863. *June* 30. *August* 4 & 7 *O. S. No.* 94 *of* 1863.

THE plaintiffs P. Árumugam Mudali and his wife Sundaram Ammál by her husband and next friend sought to recover rupees 935 from the defendant as sole surviving executrix with probate of Manali Lutchmana Mudali deceased, being the arrears of a monthly sum of ten rupees bequeathed by the testator to M. Shanmuga Mudaliyár deceased and his descendants, due from the end of July 1855, when the last payment was made, to the 19th May 1863, when the plaint was filed.

(*a*) Present : Scotland, C. J. and Bittleston, J.

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The plaintiffs also sought, if the Court shall be of opinion that the bequest amounted to a gift of an annuity in fee, that an amount sufficient to produce such monthly sum might be paid over by the defendant to the plaintiffs out of the testator's assets.

The female plaintiff was the daughter and only legal personal representative of the annuitant, who died intestate, and all the parties were Hindus.

The bequest in question was in the following terms :— "Continue to pay ten rupees per month to Shanmuga Mudaliyár, the son of T. Lutchu Ammál, and just about the time when the said Shanmuga Mudaliyár's son shall intend to marry pay him two hundred and fifty rupees. Pay at the rate of five rupees per month to Gopálakrishna Mudaliyár. Pay three and a half rupees per month to Rámasvámi Mudaliyár, the younger brother of Tambu Mudaliyár. Pay five rupees per month to Sabápati Mudaliyár. Pay three and a half rupees per month to Vadageri Mudaliyár. Pay three and a half rupees per month to Chengalràyan, the son of Seshammál. Pay three and a half rupees per month to Gopála the son of Kámátchi Ammál. Pay three and a half rupees per month to the son of Periyanáyaga Ammál. In this manner continue to pay respectively in the names of the aforementioned persons so long as they shall be alive : after their deaths continue and pay the same to their descendants from generation to generation."

The case came on for hearing on the 30th June 1863.

Mayne, for the plaintiff, contended that Shanmuga the annuitant either took absolutely, or that if he only took a life-interest then that his descendants took absolutely: *Bird* v. *Webster* (*a*) : *Agnew* v. *Matthews* (*b*) : *Ex parte Wynch* (*c*) : *Audsley* v. *Horn* (*d*).

Branson, for the defendant, submitted that Balakistna, the annuitant's brother, and Mánikka, his grand-daughter, should be made parties as each having an interest.

Balakistna appeared in person and concurred in *Branson's* application.

(*a*) 22, L. J., Ch. 483. (*b*) Supra, p. 17 : 1, Ind. Jur., 74, S. C.
(*c*) 5, D. M. & G., 206. (*d*) 26, Beav. 195 : Deg. I. & J. 226.

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SCOTLAND, C. J. :—Section 73 of the Code of Civil Procedure applies. We cannot say that Balakistna and Mánikka have no interest. Let the case stand over for the purpose of making them parties as defendants. Notice must be given to Mánikka. In Balakistna's case it is unnecessary. The costs will be considered at the disposal of the case.

The case accordingly stood over till the fourth of August 1863, when Balakistna appeared in person, and much evidence, which the construction subsequently given to the bequest renders it unnecessary to state, was brought forward as to whether Shanmuga and his brothers were divided.

Norton, for the plaintiff. Shanmuga took only a life-interest, and on his death the plaintiff Sundaram and the defendant Mánikka became entitled in equal shares to a corpus capable of producing ten rupees a month. Nothing can be more opposed to the testator's intention than that his brother Balakistna or other collaterals should take : "descendants" in a Hindu will cannot mean collaterals. So his intention would be defeated if Shanmuga's widow took in preference to his daughter and grand-daughter. The widow cannot be considered a "descendant."

By English law Shanmuga would take absolutely. But the English cases do not apply. Hindu instruments should not be construed with reference to decisions resting on the effect of the technical words of English law.

BITTLESTON, J. :—What effect do you give to the expression "from generation to generation ?"

Norton :—I submit that it is merely equivalent to "for ever" in an English grant to A and his heirs for ever.

BITTLESTON, J. :—The testator probably intended to create a corpus capable of producing ten rupees a month to be paid for ever to successive descendants of Shanmuga. This of course cannot be done by English law. Can it be done by Hindu law ? Would it not be contrary to public policy ?

SCOTLAND, C. J. :—Suppose this case arose on a gift *inter vivos* and not under a will ?

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Norton :—Then possibly the words might be construed as giving Shanmuga the absolute interest conditionally on his having descendants, and there is nothing in Hindu law against she efficacy of a conditional gift.

SCOTLAND, C. J. :—I remember nothing in any Hindu law-book recognising the validity of such a gift.

Norton :—Mr. Stokes has been kind enough to refer me to a case in the Madras Sadr Judgments for 1860, p. 137, which shows that the late Sadr Court would have upheld a gift on condition.

BITTLESTON, J. :—But the gift here is under a will. It is generally agreed that the Hindu law knows nothing of wills, and that the testamentary power has been engrafted by English lawyers on the Hindu jurisprudence. Then, if so, is not such power engrafted with the limitations on its exercise which exist in English law? Here if the legacy vested absolutely in Shanmuga it would go to his 'heir,' under which title his widow would take—that is, of course, assuming that he was divided. [His Lordship here referred to the Mitákshará, chap. II, sec. 1, and to Elberling's *Treatise on Inheritance, &c.*, sections 153, 164.] If, however, Shanmuga was undivided, and if there is no distinction as to property separately acquired by gift or will, his brother Balakistna would take.

Branson, for the defendant, merely submitted that he was entitled to costs.

SCOTLAND, C. J. :—We will consider this case.

Cur. adv. vult.

On the 7th August the following judgment was delivered by

SCOTLAND, C. J. :—We are called upon in this case to put a construction upon the words of a bequest in the will of a Hindu testator ; and the proper rule of construction by which we must be guided is, we think, correctly laid down in *Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mulick* (*a*), and acted upon in *Sonatun Bysack* v. *Sreemutty Jugutsundree Dossee* (*b*). It would be improper and very unsafe

(*a*) 6, Moore, I. A., 5, 150. (*b*) 8, Moore, I. A., 66, 85.

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in construing Hindu wills to follow decisions of the English Courts upon the construction of English wills which are founded upon the peculiar effect ascribed to technical words and to terms ordinarily used by conveyancers with reference to the Real Property law of England.

The bequest which we have to consider in this case is in these words "continue to pay ten rupees per month to Shanmuga Mudaliyár the son of T. Lutchu Ammál . . . . " Pay at the rate of five rupees a month to Gopála Kristna Mudaliyár" (and so on in like terms to several other legatees). Then "in this manner continue to pay respectively in the names of the aforementioned persons so long as they shall be alive. After their deaths continue and pay the same to their descendants from generation to generation."

This language in an English will would probably be held to give an absolute interest to Shanmuga; but the English authorities bearing upon such a construction, depend upon the peculiarities of the English law of property and upon distinctions between real and personal property which are altogether unknown to Hindu law. And the effect of adopting as a rule of construction that a bequest by a Hindu to A, and his descendants or children, or issue, must operate to vest an absolute estate in the first taker would be very frequently to defeat the real intention of the Hindu testator. In the present case we do not doubt that the testator's intention would be defeated if Shanmuga's brother Balakistna were held entitled to take; and this would be the result of applying such rule of construction here if he was undivided, and if the law as to succession between undivided brothers extends to property separately acquired by gift or will, as to which we desire to express no opinion; but we may refer to the case of *Bezan Persad* v. *Mussumat Badha Beeby*(*a*) as throwing some light upon the point. So again, we think the intention of the testator would be defeated by holding that Valli Ammál, the widow of Shanmuga, was entitled to take in preference to his daughter and grand-daughter. In using the term "descendants," neither the brother nor the widow could, we think, have been intended. And giving effect, as we must do, to the words of the bequest in terms

(*a*) 4, Moore, I. A., 174.

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limiting Shanmuga's enjoyment of the legacy to the period of his life, we come to the conclusion that the testator's intention will best be effectuated by holding that Shanmuga took only a life-interest.

We have next to consider who upon his death became entitled to take as his descedants and what estate or interest they took. The words of the bequest are "continue to pay the same to their descendants from generation to generation." Now the term 'descendants,' if it stood alone, would, we think describe the class of persons to be benefited, and would include both children and grand-children living at Shanmuga's death, who would take absolutely. But the question arises as to the effect to be given to the additional words "from generation to generation." If these words are to be construed as creating a series successive life-interests in each generation of descendants, there is no existing rule of Hindu law that we are aware of, which imposes any restriction in point of time upon the operation of such a bequest; and the fund must be held to be inalienable for all time. Such a result has from an early date been resolutely resisted by English Courts on the grounds of general utility and public convenience; upon which grounds the doctrine against perpetuity rests. The same grounds appear in reason equally applicable to the property of Hindus, nor are they opposed to any of the principles of Hindu law or usage, and the Court would be very reluctant at the present day in dealing with Hindu dispositions of property by will to adopt a rule of construction which would have the effect of tying up property, it may be to a very large amount, for an indefinite period. Can we then in the present case say that the use of the words "from generation to generation," clearly imports an intention on the part of the testator so to tie up his property? In the next clause of the will he uses the same words when disposing of the mirási share in a village. There he directs the first taker Manela Ráma Mudaliyár to be put in possession and to have a deed given to him expressing that the same should be held and enjoyed *by him*, his sons and grandsons, from generation to generation. The reasonable construction of this clause seems to be that the testator intended to pass the whole interest to Manela Rama, and if so, we see no reason for giving a different

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construction to the same words in the clause in question. On the contrary, considering what the bequest is, namely, ten rupees per month, and how in the course of a few generations the number of descendants would probably be multiplied, there is, as regards this bequest, one more reason for holding that the testator's intention was, that the "descendants" at the time of the death of the tenant for life should take absolutely as a class. The words "from generation to generation" cannot be called technical words: they are not unfrequently used, in common with words of a like kind,—such as "while the sun and moon endure,—in Hindu written instruments, and by themselves when so used they do not in their ordinary signification import more than 'absolutely,' and 'for ever.' Upon the use and meaning of such expression we may mention that, we have met with a passage in a Minute of Sir Thomas Munro of the year 1822, in connection with a decision of the late Supreme Court and published in the Appendix to Mr. Gleig's *Life*, in which the words "from generation to generation" are classed with the terms "for ever," and "while the sun and moon endure," and spoken of as mere forms of expression, and are he adds, never supposed by either the donor or the receiver to convey the durability which they imply. This latter observation he makes in commenting upon the decision of the late Supreme Court from which he differed with reference to a royal grant. We only refer to the Minute for the purpose of showing that both the Supreme Court and Sir Thomas Munro agree in considering the expression "from generation to generation" as equivalent only to the words "for ever," and "while the sun and moon endure." In this general sense we think the testator used the expression in his will, and that he thereby meant to pass all the interest in the property from himself to the objects of his bounty: and had no reference to the creation of a perpetual series of limited estates or interests for life in successive generations. This conclusion derives some additional support, we think, from the fact that the testator has made no provision for the case of a failure of descendants.

Upon this construction of the bequest it becomes unnecessary to advert to the evidence given as to division between Shanmuga and his brothers. The result of our

judgment is that the female plaintiff Sundaram and the female defendant Mánikka Ammál are entitled in equal shares to an amount sufficient to produce the monthly sum of ten rupees.

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NOTE.—Here follows the passage from Sir Thomas Munro's Minute to which the Chief Justice refers in the judgment last reported.

"*In Consultation, 15th March* 1822.

"In 1783 Azim Khán, Diwán of the Nawáb Wallaja, obtained a jágir, which, was confirmed to him by a parwána, dated 29th *July* 1789, "by way of an áttamghá ina'am" of the Kámil Jamma of 64,000 chakrams 11 ánás. The grant is in the usual form,—"to be enjoyed by him and his descendants for ever, from generation to generation." He is authorized to divide it amongst his descendants, and the local officers are required to consider the parwána "as a most positive peremptory mandate, and not to require a fresh sanad every year."

"The terms employed in such documents, "for ever," "from generation to generation," or in Hindu grants, "while the sun and moon endure" *(a)*, are mere forms of expression, and are never supposed, either by the donor or the receiver, to convey the durability which they imply, or any beyond the will of the sovereign. The injunction with which they usually conclude,—"Let them not require a fresh sanad every year," indicates plainly enough the opinion, that such grants were not secure from revocation." Gleig's *Life of Sir Thomas Munro*, Vol. II, p. 314-5.

Regarding the law of succession to the self-acquired property of an undivided brother, see *Varadiperumal Udaiyan* v. *Ardanari Udaiyan*, infra, p. 412, and the recent case in the Privy Council, *Kattama Nauchear* v. *The Rajah of Shivagunga*, 30th November 1863.

APPELLATE JURISDICTION. (*b*)

Regular Appeal No. 20 *of* 1863.

KUMÁRADEVA MUDALI, and another .....*Appellants.*
NALLATAMBI REDDI, and others.....*Respondents.*

Lands held on the terms of an ordinary roytwary settlement with annual patta and left waste by the pattádár may be legally granted by the revenue authorities.

Special Appeals 55 and 69 of 1858, 101 and 482 of 1860 followed.

The ryot has an indefeasible right of occupation only so long as he pays the Government assessment.

1863. *August* 8. *R. A. No.* 20 *of* 1863.

THIS was a Regular Appeal from the decision of C. Collett, the Acting Civil Judge of Chitur, in Original Suit No. 14 of 1861. This suit was brought to recover certain lands in the ryotwary district of North Arcot which were possessed and cultivated by the plaintiff's father up to about the year 1850, as an ordinary pattádár. In 1850 and 1851 he voluntarily abandoned the lands, which were consequent-

(a) Compare Teutonic legal formulæ such as *also lang als diu sonne schint : so lange der wind weht, der hahn kraht und der mond scheint*, cited in J. Grimm's *Deutsche Rechtsalterthuemer* 2te Ausg. 38.

(*a*) Present : Phillips and Frere, JJ.