

ORIGINAL CIVIL.

Before Mr. Justice Fletcher.

ADVOCATE-GENERAL OF BENGAL

v.

BELCHAMBERS.*

1908

December 8.

Will—Bequest to a charity—General charitable intention—Death of executors—Charity not established—Accumulations of interest on fund—Residue of estate—Cy-pres doctrine.

Where a testator has manifested a general charitable intention, the bequest will not fail merely because the executors are dead, and the land which the testator desired for his charity is not available for the purpose. The fact that a charity has not been established earlier does not render the interest accrued on the fund applicable as a portion of the residue of the estate.

Accumulations of interest form part of the capital for the purpose of carrying out the object of the charity.

ORIGINAL SUIT.

THIS was a suit brought by the Advocate-General of Bengal for construction of the Will of one Kanai Lall deceased under the following circumstances. The testator died on the 25th November 1884 possessed of considerable property and leaving him surviving Gopal Lall Seal his only son. The Will, which was dated the 10th August 1883, contained, amongst other things, a direction to his executors to set apart a sum of Rs. 16,000 for a Charitable Dispensary and Rs. 50,000 for its up-keep, and the testator directed his executors to demarcate a portion of his garden house at Ramkristopore for the erection of the Dispensary. On the 11th December 1884, the executors obtained probate of the Will. Subsequently, on the 24th November 1886, the executors transferred all the property of the testator to the Administrator General of Bengal. Thereafter, on the 13th December 1886, Gopal Lall Seal brought a suit against the surviving executors and the Administrator General for construction of the Will of his father.

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On the 11th March 1887, a decree was made in favour of Gopal Lall Seal whereby it was held he took the property subject to valid legacies, annuities, and charitable trusts, and it was also referred to Mr. Robert Belchambers, at that time Registrar of the High Court, to enquire into and report upon certain matters including the charitable bequest. On the 26th April 1887, Mr. Robert Belchambers filed his report, by which Rs. 66,000 was to be deposited in Court to the credit of a separate account to be opened in the suit and entitled 'Charitable Dispensary,' and part of the joint property at Ramkristopore belonging to the deceased and his four brothers, should be set apart for the creation of a building for the Dispensary. This report was confirmed by the High Court on the 5th May 1887. The joint property at Ramkristopore was however partitioned in 1884, and in consequence it became impossible to carry out the wishes of the testator.

The funds now accumulated in Court to the credit of the 'Charitable Dispensary' account amounted to Rs. 20,411-1-6 in cash and Rs. 1,02,100 in Government paper. The plaintiff submitted, that the charitable bequest should be carried out in a manner as nearly in conformity with the wishes of the testator as the altered circumstances would permit, from the fund now standing to the separate account opened in suit No. 481 of 1886 and called a 'Charitable Dispensary,' and further that a proper scheme for the management of the charity should be settled by the Court.

Mr. W. H. Knight and *Mr. N. N. Sircar* for the defendants. Shamul Dhone Dutt, Norendra Lall Dey, Noyan Munjori Dassee and Panna Lall Seal. The first question is on clause 3 of the Will as to whether there is a particular intention. My submission being, that it must be a particular intention, for a particular poor, and at a particular spot. There is no idea of a general intention. Even if the testator had manifested a general charitable intention, the bequest must fail, because the discretion the testator gave to his executors was a personal one to erect a dispensary on a particular piece of land, but by reason of the death of all the executors and

certain partition proceedings, the testator's estate ceased to have any interest in the land in question. Consequently the intention of the testator must fail. Further the clause in the Will is too wide for a charitable gift. None of the requisities of a valid charitable gift exist there. It is a condition precedent, and the condition having become impossible the gift is void. On the question of the surplus of Rs. 60,000, the testator did not contemplate multiplying his charity by two. He never contemplated that the fund should go as from his death to the charity. The testator contemplated an interval of uncertain duration, and it was not until that interval had elapsed that the charitable gift would arise. Is the position altered by the fact that instead of a year elapsing or six months, a period of 20 years had elapsed? I submit it makes no difference at all. The Court has not only to look to the intention, but to the express intention. *Forbes v. Forbes* (1) distinguished.

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Mr. B. C. Mitter and *Mr. Eggar* for the Advocate-General. My contention is that this is not a gift to a particular charity. [Fletcher J. I do not want to hear you any further.]

M. H. D. Bose for the defendant, Robert Belchambers.

FLETCHER J. This is a suit brought by the Advocate-General for the purpose of having a scheme framed with reference to certain charitable bequests contained in the Will of Kanai Lall Seal, who died on the 25th November 1884. He appears to have been a man of considerable wealth.

By his Will, which is dated the 10th August 1883, after appointing his sister's husband, his wife, brother-in-law and his brother, his manager, James Meak and his dewan executors and executrix, the testator makes provision for the charitable bequests in question.

The terms of clause 3 of his Will are as follows :—

“I give in charity twelve to sixteen thousand rupees for building a lower roomed house and premises for the establish-

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ment of a Charitable Dispensary, and fifty thousand rupees for carrying on the said Dispensary. The executors shall demarcate one portion of the joint garden house we have at Ramkristoporegram as my separate share, and erect the buildings thereon, and after purchasing Company's papers for fifty thousand rupees, shall, out of the interest thereof, continue to carry on the work of the Charitable Dispensary. On to the said Dispensary (they) shall put up a signboard (slab) of stone with my name written on it, and (they) shall likewise have the power of paying over the said amount, and making over the charge of carrying on the work of the said Charitable Dispensary into the hands of Government."

After the death of Kanai Lall Seal an administration suit was started by Gopal Lall Seal, his only son, for the purpose of administering the estate, and in course of that administration suit, a reference was made to the Registrar to enquire and report upon certain matters including the public charitable bequest contained in the third paragraph of his Will.

On the 26th April 1887, the Registrar reports :—" A sum of Rs. 66,000 should be deposited in Court to the credit of a separate account to be opened in this suit and entitled Charitable Dispensary."

In accordance with the terms of that report, which was confirmed by an order of this Court on the 5th May 1887, a sum of Rs. 66,000 was lodged in Court to the credit of a separate account, which was opened in Suit 481 of 1886 and entitled "Charitable Dispensary Account" and these funds by the accumulation of interest are now represented by G. P. Notes of the nominal value of Rs. 1,02,100 and Rs. 20,411-1-6, in cash. Mr. Knight on behalf of the defendants, other than the defendant Belchambers, has argued, that clause 3 of the Will does not show any general charitable intention, and that the only object the testator had in view was, that his trustee should have a license to erect a building on a part of the garden house and there carry on the business of a dispensary. To that argument I am unable to assent. The testator begins clause 3 of his Will by giving in charity.

Mr. Knight next argued that the bequest, even if the testator had manifested a general charitable intention, must fail, because the discretion the testator gave to his executors was a personal one to erect a dispensary on a particular piece of ground, and that by reason of the death of all the executors and also by reason of certain partition proceedings, the testator's estate has ceased to have any interest in the land in question, and the testator's intention must wholly fail.

But according to the doctrine of Cy-pres, it is quite clear that the testator has manifested a general charitable intention, this should not fail to be carried out merely because the executors are all dead and the particular land, on which the testator desired the dispensary to be erected, is not available for the purpose.

The next point Mr. Knight raises is that his clients are blood relations and are entitled to have the administration of the charity. On that point I am unable to accept the learned Counsel's argument; the testator meant the charities to be established by his executors and they were to carry out the charity, when established. That was a personal discretion vested in the executors. The testator must have contemplated that some day his executors would die, and it cannot be said he meant the charity to come to an end on their death, moreover the testator by his Will provides that the executors should have power to make over the charities to Government. There are no words in his Will nor is there any intention that this particular charity is to remain under the administration of any of the testator's relatives.

The last point is with regard to accumulations of interest on the fund in Court. These funds stand in Court to the credit of a separate account. It is well established that when monies have been lodged in Court to the credit of a separate account, they become separated from the general estate. The interest therefore accruing on a fund standing to a separate account does not form part of the residue, but goes so as to increase the fund in Court. Simply because the charity has not been established earlier does not render the interest, which has

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accrued on the fund in Court, applicable as a portion of the residue of the estate. The accumulations of interest therefore form part of the capital for the purpose of carrying out the charity. There must therefore be a reference to Chambers to frame a scheme for giving effect to the charity designated by the testator in clause 3 of the Will.

Mr. Knight's clients may appear on the reference.

Attorney for the plaintiff : *Eggar*.

Attorneys for the defendants : *S. D. Dutt and Ghose*.

R. G. M.