

ORIGINAL CIVIL.

Before Mr. Justice Chaudhuri.

1912
 Aug. 2.

SARAT CHANDRA GHOSE

v.

PRATAP CHANDRA GHOSE.*

Trust—Deed of Trust, construction of—Uncertainty—Gift for “religious acts” (dharmakarmarthe) and for “religious purposes” (dharmoddeshe)—Works of public good—Discretion of trustee.

A settlor by a deed of trust in the Bengali language after declaring that for religious acts (*dharmakarmarthe*), with a desire for the spiritual benefit of the deceased forefathers, and to please Vishnu she made over the properties covered by the deed for religious purposes (*dharmoddeshe*), proceeded to direct that certain Thakoors should be worshipped and maintained, and the annual *Durgotsab* performed out of the income of the trust estate and further, by the sixth clause of the trust deed, provided that out of the income which should remain after incurring the expenses aforesaid a sum not exceeding one thousand rupees should be applied in supporting the poor, the blind, and the destitute, and in imparting education, in *upanayan* (assumption of the sacred thread ceremony), in removing marriage difficulties (getting girls married), or in works of public good. It was to be paid at the discretion of the trustee toward dispensaries, hospitals, charitable societies, schools, or any students' education, feeding of the poor etc., marriage, *upanayan* etc., excavation and consecration of tanks etc., in villages having a dearth of water, or in the construction and consecration of *ghats* and *maths*. The trustee for the time being had under the deed discretion to render assistance beyond a thousand rupees and had also full power to decide where or for whose education, *upanayan*, or for whose daughter's marriage the same should be applied.

Held, that such directions as were contained in the sixth clause of the trust deed were void and inoperative for vagueness and uncertainty.

Trikumdas Damodhar v. Haridas Morarji (1), *Grimond (or Macintyre) v. Grimond* (2), *Bai Chadumbai v. Dady Nusserwanji Dady* (3), *Williams*

* Original Civil Suit No. 539 of 1910.

(1) (1907) I. L. R. 31 Bom. 583.

(2) [1905] A. C. 124.

(3) (1901) I. L. R. 26 Bom. 632.

v. *Kershaw* (1), *Surbomungola Dabee v. Mohendronath Nath* (2) and *Bunchordas Vandravandas v Parvatibai* (3) referred to.

THIS was a suit praying, *inter alia*, for a declaration that a certain deed of trust in the Bengali language dated the 7th day of May 1880 and executed by one Sreematee Padmabati Dasee, whereof the defendant, Pratap Chandra Ghose, was the sole surviving trustee was void and inoperative, and that the properties originally dealt with thereunder were divisible amongst the plaintiff and the defendants, the plaintiff being entitled to an equal one-fourth share therein. The plaintiff and the defendants, Pratap Chandra Ghose and Ganendra Chandra Ghose, were the surviving sons of Sreematee Padmabati Dasee who died on April 16th, 1900. The defendants, Jayatsen Ghose and Ranatsen Ghose together with the infant defendant, Sreematee Kanchan Kumari Dasee, were the heirs of Debendra Chandra Ghose who was the fourth and only other son of Sreematee Padmabati Dasee and who died on March 4th, 1903.

In the year 1908 a partition was effected of the joint property of the surviving sons of Sreematee Padmabati Dasee and the representatives of the deceased son Debendra Chandra Ghose.

The plaint contained various charges of fraud, undue influence, and misconduct against the defendant Pratap Chandra Ghose, which he denied in his written statement, and some evidence in respect of these charges was given at the trial. They were, however, subsequently abandoned, and the plaintiff elected to base his claim entirely upon the construction of the deed of trust. The points arising upon the construction appear with sufficient clearness from the judgment of the learned Judge.

(1) (1835) 5 Cl. & F. 111. (2) (1879) I. L. R. 4 Calc. 508.
 (3) (1899) I. L. R. 23 Bom. 725 ; L. R. 26 I. A. 71.

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Mr. H. D. Bose and *Mr. B. L. Mitter*, for the plaintiff. The deed of trust is void for uncertainty: Lewin on Trusts, 12th Edition, p. 152. A gift to trustees for *dharam* is void: *Runchordas Vandravandas v. Parvatibai* (1). A gift "to such charitable or religious institutions as my trustees may select and in such proportions to each or any as they may fix" is bad: *Grimond (or Macintyre) v. Grimond* (2). The Court could not supervise the administration of a trust of this nature: *Trikundas Damodhar v. Haridas Morarji* (3), *Bai Chadunbai v. Dady Nusserwanji Dady* (4), *Surbomungola Dabee v. Mohendro-nath Nath* (5).

Mr. B. C. Mitter and *Mr. N. N. Sircar*, for the defendant, Pratap Chandra Ghose, submitted to the judgment of the Court.

Mr. M. N. Basu and *Mr. J. K. Sinha*, for the defendant, Ganendra Chandra Ghose.

Mr. N. C. Sen for the defendants, Jayatsen Ghose and Ranatsen Ghose.

Mr. P. Roy Chaudhuri, for the defendant, Kanchan Kumari Dasee.

CHAUDHURI J. This was a suit to obtain a declaration that a deed of trust executed by Padmabati Dasee, mother of the plaintiff, affecting certain of her properties was void and inoperative, and that he and her other heirs were entitled to a partition of these properties according to their shares. The plaintiff gave some evidence, but has elected not to go on with it, and rests his claim entirely on the construction of the trust deed. He contends that the trusts

(1) (1899) I. L. R. 23 Bom. 725 ;

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(2) [1905] A. C. 124.

(3) (1907) I. L. R. 31 Bom. 583.

(4) (1901) I. L. R. 26 Bom. 632.

(5) (1879) I. L. R. 4 Calc. 508.

created by the sixth clause are void and inoperative. It is, therefore, unnecessary to deal with the evidence recorded.

The reason for executing the trust deed is given in the following passage, taken from the Court translation: "Now I do, for religious acts (*dharmakarmarthe*) with a desire for the spiritual benefit of the deceased forefathers, and to please Vishnu, make over, for religious purposes (*dharmoddeshhe*)" etc. The expressions "religious acts" and "religious purposes" do not accurately render the equivalent Bengali expressions which connote more.

The lady then directs that from the income of the immoveable property belonging to her, certain Thakoors are to be worshipped and maintained and that the income derived from her moveable properties is to be applied for the performance of the annual *Durgotsab*. This is followed by the following directions:—*Sixth clause*.—"Out of the income which shall remain after incurring all the aforesaid expenses a sum not exceeding one thousand rupees shall be applied to supporting the poor, the blind, and the destitute, and in imparting education, in *upanayan* (assumption of the sacred thread ceremony), in removing marriage difficulties (getting girls married), or in works of public good, that is, shall be paid at the discretion of the trustee towards dispensaries, hospitals, charitable societies, schools, or any students' education, feeding the poor etc., marriage *upanayan*, etc., excavation and consecration of tanks etc. in villages having dearth of water, construction and consecration etc. of *ghats* and *maths*, and the trustee shall, at his discretion, have power to render assistance beyond a thousand. The trustee for the time being shall have full power in the matter of deciding where or for whose education, or *upanayan*, or for whose daughters' marriage the

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same shall be applied. The poor, the blind, the destitute, the helpless, and students having no means, or persons having daughters to be married belonging to the lines of my sons and daughters are not outside the class of the poor, the blind, the destitute, the helpless students having no means, and persons having daughters to marry mentioned above.

“Seventh clause.—The trustee shall take from the executor of my will the amount which will be due according to the provisions of the will and the said money shall form a portion of the property mentioned in the fourth provision of this Deed of provisions.

Eighth clause.—If after all the above expenses there be any balance out of the income of the Government securities or of the property acquired in exchange therefor, the same shall be gradually laid by, because the prices of the articles etc. are gradually rising and will rise, therefore in the event of their being increased in expenditure, increase in the original fund will be necessary. Should ever any one in the lines of my sons being in straitened circumstances, or having daughter to marry or son to educate have no other means, which God forbid, the trustee for the time being shall, at his discretion, help him as much as may be possible, no one, however, shall have any claim or objection thereto.

Ninth clause.—If there be any balance after the aforesaid expenses the same shall be gradually laid by, and in the event of any body in my line being in straitened circumstances, which God forbid, the trustee for the time being shall at his discretion occasionally help him a little. No one shall have any claim or objection thereto. The same shall be like an absolute donation.”

In the original, there is a full-stop after the words “or in works of public good,” in the sixth clause.

and the next sentence begins with “*बन्ध*” (*for example* or “*that is,*” as in the Court translation), “hospitals, charitable dispensaries etc., etc.”

It has been held in a long series of cases that unless the subjects and objects of a trust of the character mentioned in clause six can be ascertained, the trust must be held to be bad.

In *Trikumdas Damodhar v. Haridas Morarji* (1) Chandavarkar J. held that there could be no doubt upon the authorities that a bequest “for purposes of popular usefulness or purposes of charity” was void for uncertainty. In *Grimond (or Macintyre) v. Grimond* (2), Lord Halsbury held that a bequest to such charitable or religious institutions, and societies as the trustees might select, was void for uncertainty. The directions are so vague that the Court is not called upon to make a new will for the testator.

In this case the words are similar. Purposes of popular usefulness, of charity, of religious acts are all mixed up and absolute discretion has been given to the trustee to apply any portion of the fund to any of them. I, therefore, hold that the whole of the trust in that clause, is inoperative. It would be impossible for any Court to correct or reform the maladministration of such a trust, or direct due administration thereof. In *Bai Chadunbai v. Dady Nusserwanji Dady* (3), Stirling J. following *Williams v. Kershaw* (4) held, where the gift was for benevolent, charitable and religious purposes, it meant benevolent, or charitable or religious purposes and, therefore, the bequest was void for uncertainty. Reference has also been made to *Surbomungola Dabee v. Mohendranath Nath* (5), in which White J. held that a trust for

(1) (1907) I. L. R. 31 Bom. 583.

(3) (1901) I. L. R. 26 Bom. 632.

(2) [1905] A. C. 124.

(4) (1835) 5 Cl. & F. 111.

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purposes of construction and erection of a pucca bathing ghat, at a suitable place on the river Hooghly surrounded by a chandney, and two temples of Siva, was void for uncertainty. This case shows to what extent our Courts have gone against bequests of a vague and uncertain character.

It was held in *Runchordas Vandravandas v. Parvatibai* (1), that a gift for *dharam* was too vague to be given effect to. It was said that the objects which can be considered to be meant by the word are too vague and uncertain for the administration of them to be under any control. Having regard to all these decisions and upon the construction of the document, I hold, as I have already said, that the trusts in clause six are inoperative.

The result, therefore, is that the properties dealt with in the trust deed, or such properties as now represent them, are merely charged with such necessary expenses as were incurred in the lifetime of the lady for the maintenance and worship of the Thakoors mentioned in the third clause, and the annual *Durgotshab* mentioned in the fourth clause.

To avoid an expensive reference the parties have agreed to a scheme of management in respect of these properties. Those terms will be put in signed by the adult parties.

So far as the infants are concerned, I hold that the termination of this suit in this manner is beneficial for them. There was prospect of long and bitter litigation involving expensive enquiries, and I consider it for their benefit that the suit, should have terminated in this way. I sanction the scheme as for their benefit.

Attorney for the plaintiff: *M. M. Chatterji*.

Attorney for the defendant, Pratap Chandra Ghose :
G. C. Dey.

Attorneys for the defendant, Ganendra Chandra
Ghose : *B. N. Basu & Co.*

Attorney for the defendants, Jayatsen Ghose and
Ranatsen Ghose : *M. M. Chatterji (junior).*

Attorney for the guardian *ad litem* of the defend-
ant, Kanchan Kumari Dasse : *B. B. Newgie.*

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CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Carnduff.

POCHAI METEH

v.

EMPEROR.*

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Sanction for prosecution—Appeal, right of—Grant or refusal of sanction by a lower authority—Application to superior authority whether a matter of appeal or revision—Limitation of the period of such application—Criminal Procedure Code (Act V of 1898), s. 195 (6)—Limitation Act (IX of 1908), Sch. I, Art. 154.

Sub-section (6) of s. 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority, but only invests the latter with powers by way of revision.

Hardeo Singh v. Hanuman Dat Narain (1), *Muthuswami Mudali v. Veeni Chetti* (2) discussed and distinguished.

Hari Mandal v. Keshab Chandra Manna (3), *Mehdi Hasan v. Tota Ram* (4) approved. *Ram Charan Talukdar v. Taripulla* (5) referred to.

Where the question arises with reference to Article 154 of the Limitation Act (IX of 1908), it has merely to be stated that there is a doubt as to

* Criminal Revision, No. 983 of 1912, against the order of M. Yusuf, Sessions Judge of Burdwan, dated June 4, 1912.

(1) (1903) I. L. R. 26 All. 244.

(3) (1912) 16 C. W. N. 903.

(2) (1907) I. L. R. 30 Mad. 382.

(4) (1892) I. L. R. 15 All. 61.

(5) (1912) I. L. R. 39 Calc. 774.