

PRIVY COUNCIL

Har Narayan and another

Vs.

Surja Kunwari and another

P.C.A. No.25 of 1919

(Lords Buckmaster, CJ, Dunedin Shaw, Sir John Edge and Mr. Ameer Ali. JJ)

1.3.1921

JUDGMENT

Lord Shaw J.

1. This is an appeal against a decree of the High Court of Judicature for the North-Western Provinces at Allahabad, dated the 4th of January, 1917, which reversed a decree of the Additional District Judge of Gorakhpur, dated the 11th of February, 1915.
2. As their Lordships have come to be of opinion that the judgment of the High Court is correct, they also agree that it is unnecessary to deal with another question opened on this appeal, namely, whether the plaintiffs have a title to sue as interested persons within the meaning of section 14 of the Religious Endowments Act, 1863.
3. The question on the merits concerns the construction of the will of Babu Sukh Mangal Singh, who died on the 2nd of August, 1912, leaving two widows, who were chief defendants in the action and of whom the second respondent is the sole survivor.
4. The will is dated the 29th of October, 1903. The point in issue is not unfamiliar. It is whether the property conveyed by the will was an absolute gift to a certain idol, namely Sri Thakurji, or whether the property is truly destined to the testators' own heirs under the will, subject to a charge of maintaining Sri Thakurji and meeting all the suitable expenses of the Thakurdwara the cost of its repairs and the pay of the servants connected with it, as these are set out in the will itself.
5. In such cases no fixed and absolute rule can be set up, derived alone from the use of particular terms in one portion of the will. The question, whether the idol itself shall be considered the true beneficiary, subject to a charge in favor of the heirs or specified

relatives of the testator for their upkeep, or that, on the other hand, these heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which, can only be settled by a conspectus of the entire provisions of the will.

6. This may be briefly given. As it happens there is no grant in express words to Sri Thakurji, but the moveable and immoveable property of the testator "shall be considered to be the property of Sri Thakurji." The question, however, may be considered in the same light as if words of express grant had occurred. The testator makes provision that the waif is such that "whatever money and grain produced by the sir land will remain after meeting (the requirements of) *raj* and *bhog* of Thakurji shall be used and appropriated by my successors generation after generation."

7. The question as to whether "successors" means "heirs" and "heirs" means "successors" throughout this will might raise in differing circumstances differing considerations, but these do not arise in the present case, there being in the person of the surviving widow a true contradictor to the rights of the idol, which rights must be conserved and the extent of which is now to be determined.

8. A further sentence occurs in clause 6 of the will:-

"But whatever profit will remain after meeting the expenses of the Thakurdwara, the costs of its repairs, the pay of the servants connected with it, and the costs of repairs of other buildings, out of the said profits, shall be spent in the estate."

9. Clause 7 of the will deals with the powers of the heirs, and includes the hypothecation or mortgage of the shares of two villages. It then proceeds, however to provide that, in the event of a famine occurring or the villages falling into arrears and the heirs beginning "to die of starvation," then these starving heirs may support themselves by an hypothecation of two houses named. It is further provided that no successor should have power to make any gift or any kind of transfer in favor of any relative, and that no improper loans should be taken ("as might imperil the Thakurji's property").

10. With regard to Sri Thakurji itself, the restrictions are very clear, namely, "nothing more nor less than what is done at present should be done" in connection with a long description of various duties of attendance and worship. And it is provided that they (the Managers) "shall perform the service of Sri Thakurji and the other idols mentioned above in the same way as it is performed in my time."

11. These clauses occur in section 5 of the will. By section 8 the matter is made still clearer by the clause:-

"They should continue the management just as it is at present and get rajbhog, utsava, etc., of Thakurji carried on; and our successors should be maintained as they are maintained at present."

12. It is plain accordingly that this was in no sense what might be termed an expanding trust, but one in which the maintenance and expenses in the life-time, of the testator were considered as a substantial standard of maintenance and expenses in all time coming. The importance of this consideration is that it was not seriously questioned that the value of the property left by the testator amounted to Rs. 50,000, with an income of Rs. 7,000 per annum, whereas the total expense of the worship, maintenance, etc., of the establishment of the idol would amount to a much smaller sum, which one of the parties puts at Rs. 500 per annum.

13. One question accordingly which forces itself upon the attention is what under this will, according to the appellants' construction of it, would happen if, the scale of the idol's expenses being as stated, there should, as would inevitably occur, be an accumulation of surplus revenue. Upon this subject the will is not silent. For instance, the rights of the daughters include as follows:-

"The daughter who is now two years old and is unmarried and all other sons or daughters who may be born in future will be married into high caste Brahman families and their chhatti, barhi and marriage ceremonies will be performed, and dowries, etc., given according to the old custom, viz., in the same way in which these things were done during the time of my ancestors. The daughters will, till their marriage, be maintained by our successors in the same way in which girls have been brought up to this time."

It becomes fairly clear accordingly that up to this point a family settlement has been made, and the idea of the administration is much more consonant with the idea of a grant in favour of the ultimate destination being under the will to the family as such than to the idol and its managers as such. Two brothers-in-law are named in section 8 of the will as managers "to make collections, pay the Government revenue, etc., and make over the profits to my two wives."

14. Then by section 9 of the will:-

"In the event of my successors having no issue, my wives and those of my successors will remain in possession and when the wives also cease to exist, my

daughters will remain in possession and occupation during their life-time, and after performing the rajbhog, etc., shall use the savings for their own maintenance."

15. Selling or alienation of the property is forbidden, and finally there is this definite clause:-

"Be it known that all this waif property shall be considered to be the property of Takurji, Bheoji Ganeshi etc., installed in the temple at Ismailpur."

16. This, it will be observed, is a repetition of the expression occurring in clause 6 already quoted; but there is then added what appears to their Lordships to assist greatly in the construction of the deed :-

"Whatever may be saved after defraying the expenses of the temple, and the pay of the servants, shall be used by our legal heirs to meet their own expenses."

17. A further and more detailed analysis of this will need not be given. The passages already cited sufficiently raise the point at issue between the parties.

18. Their Lordships are of opinion that by this deed the provision for the worship, expenses and annual charges of the idol, Sri Thakurji, form a burden upon this estate, but that the property descends according to the destination in the will and subject to that burden. The judgment of the High Court appears to their Lordships to be correct upon a sound construction of the deed itself. But the decision now given appears to their Lordships to be in entire accordance with the judgment of Lord Justice Turner in *Sonatun Bysack v. Sreemutty Juggutsoondree Dossee*,¹ decided by this Board, followed by the judgment in the case of *Ashutosh Dutt v. Doorga Churn Chatterjee*,² pronounced by Sir Barnes Peacock. To use Lord Justice Turner's expression, which seems applicable to the present case, their Lordships are of opinion that "although the will purports to begin with an absolute gift in favor of the idol, it is plain that the testator contemplated that there was to be some distribution of the property according as events might turn out; and that he did not intend to give this property absolutely to the idol seems to their Lordships to be clear from the directions which are contained in" various clauses of the will.

19. The Board was referred to the judgment in *Jadu Nath Singh v. Thakur Sita Ramji*³ The case merely illustrates the in-expediency of laying down a fixed and general rule applicable to the construction of settlements varying in terms and applying to estates varying in situation. The terms of the will referred to by Lord Haldane in the last

mentioned case show that one half of the income was to be applied to the temple purposes and that the other half was to be enjoyed by the managers without power of alienation, and that the whole net income was to be applied to the expenses of the temple, the entire income being only Rs. 800 per annum. It is manifest that the decision has no application to a case like the present, the circumstances of which have just been described.

20. Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs.

Appeal dismissed.

Cases Referred.

1. (1859) 8 M.I.A. 66 : 2 Suther 37 : 1 Sar 721
2. (1889) 5 Cal. 438 : 6 I.A.182 : 5 C.L.R. 296 : 4 Sar. 58 (P.C.)
3. (1917) 39 All. 553 : 42 I.C.225 : 44 I.A.187 (P.C.).