ALLAHABAD HIGH COURT

Harish Chandra

Vs

Hindu Dharma Sewak Mandal

(Harries,CJ. R Singh, J.)

22.11.1935

JUDGMENT

Harries,CJ.

1. This is a plaintiff's second appeal against a decree of the lower Appellate Court dismissing his claim. The plaintiff's claim was for possession of certain property together with mesne profits, and the Court of first instance whilst refusing to give him any mesne profits, decreed his claim for possession. On appeal, however, the learned District Judge of Saharanpur reversed the decision of the trial Court and dismissed the plaintiff's claim: hence the present appeal.

2. The claim was for the possession of a piece of land which had been purchased in the following circumstances: The plaintiff's father, Rai Saheb Sheo Nath, was a social reformer and a man of a religious turn of mind. It appears that he and Pandit Deo Ratan Sharma had become very friendly and had discussed a project of erecting in Dehra Dun a home for the training of Hindu religious reformers. In order to make the building of this home possible, the plaintiff's father agreed that he would purchase property upon which this home was to be built and in due course he did purchase some land from the Bhagwan Das Bank and instructed the Bank to make out the transfer in the name of Pandit Deo Ratan Sharma in his capacity as a Secretary of the Hindu Dharam Sewak Mandal.

3. It is unnecessary to discuss at length the precise circumstances in which this transaction took place, and it is sufficient shortly to refer to the findings of the lower Appellate Court. The lower Appellate Court held that this land was conveyed to Deo Ratan Sharma, as Secretary of the Hindu, Dharam Sewak Mandal, in pursuance of the plaintiff's father's object of providing an Ashram at Dehrra Dun to be known as the Hindu Dharam Sadan. It was in evidence that the plaintiff's father had prepared a draft in consultation with Pandit Deo Ratan Sharma setting out the objects of this A shram, though the latter denied that he was consulted in the drafting of such document. However, upon the evidence the learned District Judge did find that the land was conveyed to Pandit Deo Ratan Sharma, as Secretary of the Hindu Dharam Sewak Mandal, for the

purpose of being used as the site of an Ashram for the training of young Hindu religious reformers. It has been urged before us that there is no specific finding to that effect, but in our view upon a fair reading of the judgment it is clear that the learned District Judge did so hold. He sets out the facts as found by him and later refers to the trust which was created by the transfer of the property in the manner indicated above. The whole judgment proceeds upon the basis that the land was purchased by the plaintiff's father and transferred to the Hindu Dharam Sewak Mandal for the express purpose of providing a site for the Ashram, the foundation of which had been discussed between the parties. The intention with which this gift was made is a question of fact which cannot be challenged in this Court.

4. A number of points have been taken before us by Counsel for the appellant in this case, but it is only necessary shortly to refer to one of them, because in our judgment that contention is fatal to the case of the present respondents. It is contended by the appellant that this being a gift for a specific purpose and for a specific object, the gift has failed, because the performance of such a purpose or object has become impossible. It is an admitted fact that the Hindu Dharam Sewak Mandal did not erect an Ashram upon this properly and in fact did nothing with the land for a number of years. Further, it is admitted in the written statement of the Hindu Dharam Sewak Mandal that that body has now ceased to exist, and that being so it can never build an Ashram upon this land. For these reasons it has been contended by the appellant that the purpose for which this land was conveyed to the Hindu Dharam Sewak Mandal can never be performed, and that being so the land must revert to the donor or his successors-in-title.

5. The present respondents admit that whilst the Hindu Dharam Sewak Mandal was in existence, nothing was done with regard to this land. In para. 6 of the written statement of Pandit Deo Ratan Sharma the admission is in this form: "The proposal regarding Hindu Dharam Sadan never took any shape." However it is contended that though the Hindu Dharam Sewak Mandal has ceased to exist, it has been absorbed by the All-India Hindu Sabha now known as the Hindu Maha Sabha. It is pointed out that in the rules of the Hindu Dharam Sewak Mandal it is provided that in certain events, if it ceases to exist, its property should vest in the All India Hindu Sabha, and it is urged that in the events that have happened the All-India Hindu Sabha, now known as the Hindu Maha Sabha, is the owner of this property. That being so it is contended by the respondents that they are in a position to erect an Ashram upon this land and, therefore, that the trust can yet be performed. It is to be observed, however, that the land was given not to the All-India Hindu Sabha but to the Hindu Dharam Sewak Mandal, and there is nothing to show that the plaintiff's father knew of these rules which provided that in certain circumstances the All-India Hindu Sabha would succeed to any property held by the Hindu Dharam Sewak Mandal. Clearly the gift was to this latter body and that body has ceased to exist. It is true that an Ashram might yet be built upon this property, but it will never be the Ashram contemplated by the plaintiff's father. It is contended that we must assume that the plaintiff's father would, if alive, have been quite satisfied with an Ashram built by the All-India Hindu Sabha but we can maka no such assumption. He selected the Hindu Dharam Sewak Mandal as the body to erect this Ashram upon

the land which he conveyed to them, and we cannot assume that he had any purpose other than that the Hindu Dharam Sewak Mandal should build and manage the Ashram upon the site which he provided for them. Upon the findings of the lower Appellate Court it is clear that the land was given for a specific charitable purpose and we cannot infer from the circumstances anything more. It has been contended that the circumstances disclose a general charitable intention, but we cannot agree, with such a contention.

6. Where a land is given to a charitable body for a specific purpose and for a specific purpose only, then such gift becomes a nullity if the performance of that purpose is rendered impossible. In short, such a gift is a conditional one. It becomes a good charitable gift upon the condition being performed. If the performance of the condition is rendered impossible, the gift never really takes effect. That in our view is the effect of the English case of In re University of London Medical Science Institute Fund*, Fowler v. Attorney-General*[1] That case has been followed by the Oudh Chief Court in *Audesh Singh v. Commissioner of Lucknow*[2] In this latter case it was specifically held that where a donor had given a subscription for a specific charitable purpose, the performance of which had become impossible, he was entitled to a refund of his money. In that case the performance of the charitable purpose became impossible by reason of the passing of the University Act, and as the Court held there was only a specific charitable intent and no general charitable intention, the donor was entitled to a refund of his money when the specific purpose for which the money was given was rendered impossible. In our judgment the English case cited above, followed and approved of in the Oudh case, correctly sets out the law applicable to this case and is binding upon us.

7. In the present case this land was given not with a general charitable intention but for a specific charitable purpose, namely the erection of an Ashram by the Hindu Dharam Sewak Mandal. That object and purpose can never be carried out or fulfilled and that being so, the gift fails. The erection of this Ashram by the Hindu Dharam Sewak Mandal was a condition upon which the validity of this gift depended. It was a condition precedent and, as it can never be performed, the donees are not entitled to the property. Mr. Sapru, who has dealt very fully with this case, has cited to us a number of English auhorities, which he contended supported his view that this gift was not a gift for a specific purpose. It is to be observed that in the cases cited by him there had been an out and out gift to the charity concerned without any conditions being imposed. Mr. Sapru placed great reliance upon the case of In re *MonkGiffen v. Wedd*[3] but from a perusal of the facts in that case it is clear that the testator intended that the whole of the money bequeathed should be devoted to charitable purposes. It is true that he directed how the money should be spent, but it is clear that he had a general charitable intention. Lord Justice Sergant at p. 210 Page of (1927) 2 Ch.--[Ed.] observes:For the purpose of deciding the questions raised on this appeal the first and crucial point to be determined is whether the language of the testator's will, in relation to the dispositions made of his residue after the death of his wife, indicates a general charitable intention, coupled with specific directions as to the mode of carrying-out that intention, or merely indicates a specific and limited charitable intention, the partial failure of which

involves a partial failure of the gift.

8. In that particular case the three learned Lord Justices held that the words used in the will indicated a general charitable intention; but, if words or acts merely indicate a specific and limited charitable intention, the total failure of such intention must involve the total failure of the gift. In our view in In re Monk Giffen v. Wedd (1927) 2 Ch. 197 : 96 L J Ch. 296 : 137 L T 4 : 43 T L R 256(Suupra) is a very strong authority in favour of the appellant in this case. Mr. Sapru relied upon other English cases, namely, In re *Faraker v. Durell*[4] In re Welsh Hospital (Netley) Fund, *Thomas v. Attorney-General*[5] and Re *Priit, Morton v. National Church League*[6] but in all these cases it is clear from the words used that the donor or testator intended the money to go to charity absolutely, whilst in the case before us upon the findings of fact there was no such intention. The intention clearly was a limited charitable intention, that is, that the donees of the property should erect upon it an Ashram for the education of religious reformers. The charitable intent was specific and strictly limited and, as the performance of the condition has been rendered impossible, the gift has failed. As the gift has failed, the land reverted to the successor-in-title to the donor, namely his eldest son, and he is entitled to possession of the same. In our view this is not a case where mesne profits should be given and the appellant has very properly not asked us to make such an order. In the result, therefore, this appeal is allowed with costs and the decree of the learned Munsif restored. The plaintiff must also have his costs in both the lower Courts.

Cases Referred.

1(1909) 2 Ch. D 1 : 53 S J 302 : 25 T L R 353 : 100 L T 423
2A I R 1934 Oudh 329 : 150 Ind. Cas. 713 : 11 O W N 937 : 7 R O 33
3(1927) 2 Ch. 197 : 96 L J Ch. 296 : 137 L T 4 : 43 T L R 256
4(1912) 2 Ch. 488 : 81 L J Ch. 635 : 56 S J 668 : 107 L T 36
5(1921) 1 Ch. 655 : 93 L J Ch. 276, 65 S J 417 : 124 L T 787
6(1916) 113 L T 136 : 31 T L R 299 : 1915 W N 134 : 85 L J Ch. 166