

Privy Council Appeal No. 86 of 1915.

Oudh Appeal No. 3 of 1914.

Jadu Nath Singh and Another - - *Appellants,*
v.
Thakur Sita Ramji and Another - - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 24TH APRIL, 1917.**

Present at the Hearing :

VISCOUNT HALDANE.
LORD ATKINSON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

Their Lordships think this is a very plain case, and they propose to intimate at once the advice which they will tender to the Sovereign.

The whole question arises on the construction of a deed of endowment executed by one Darshan Singh on the 20th July, 1898. There had been a joint family, and he and his brother, the heads of the joint family, had made a joint will and the brother had died before him. Darshan Singh was desirous by this date of making a disposition of the property, which was now his as head of the joint family, which should be devoted to religious purposes, and he executed this deed and afterwards registered it, by registering, showing that it represented an intention which he desired to treat as carried into execution. The deed begins by saying that he dedicates his whole property to and in favour of the temple of Sita Ramji; then he goes on

to say that during his lifetime, he himself will manage and administer the estate of the temple ; after that, he provides that his daughter-in-law is to act as manager and administrator, and, after her, his own daughters, Musammat Janki and Musammat Lilawati, and a daughter of his deceased brother shall jointly remain managers and administrators, and shall live in his house and properly manage the estate. The deed proceeds: "The dwelling-house will remain reserved for the abode and comfort of the *mutwalli* and manager belonging to the family, who should occupy the same." Then, after the payment of Government revenue and the expenses of collection, half the net income is to be applied towards the performance of religious ceremonies and charities, the offering of food to the deity, and the repairs of the temple. The remaining half is to go to the support of the managers of the temple belonging to the family, that is to say, of those who are members of the family. Then, after the daughter-in-law and the daughters, any issue born of those daughters would be the *mutwalli* and managers of the endowment and the temple. If the daughter of his deceased brother, who is still capable of bearing a male child, gives birth to a male child, he shall be the manager thereof like Darshan Singh himself, and, if not, the daughters of the daughters. Then, "Half the net income shall be expended in a proper manner in the upkeep of the temple, and an account of the same shall be kept by the manager, which the Government for the time being shall inspect and supervise." Then, "None of the managers or administrators shall have any power to alienate the house and the property endowed." Then, if none of the persons enumerated remain, the Government is to act as the manager and administrator of the temple and property endowed, and in that event the whole of the income of the property is to be expended for the purposes of the temple after the expenses of the management of the estate are paid, and the expenses of the temple shall be defrayed in the manner the Government for the time being may deem fit.

The question that arises is this : The heirs, the persons who would succeed, were it not for this deed, as being the nearest male relations of Darshan Singh, claim that this is not a real endowment of the property to the temple. If it had been a real endowment, they admit that, according to Hindu law, it was a valid disposition of Darshan Singh's property. But they say : "No, it is not a reality ; it is merely a mode, a specious device, of making a provision for the daughter-in-law and daughters which Darshan Singh could not otherwise have made," and they say it is bad as against them. The answer made is : "No, here is a deed which ought to be read just as it appears, and there is no reason why it should not be construed as meaning simply what the language says, a gift for the maintenance of the idol and the temple, under which the idol is to take the property, and, for the rest, the family are to be the administrators and managers, and to be remunerated with half

the income of the property. If the income of the property had been large, a question might have been raised, in the circumstances, as throwing some doubt upon the integrity of the settlor's intention, but, as the entire income is only 800 rupees, it is obvious that the payment to these ladies is of the most trifling kind, and certainly not an amount which one would expect in a case of this kind.

Now it is said that, according to previous decisions of this Board, there is authority for reading the terms of this deed in some very different way from what it would naturally be assumed to be if properly read. We have been referred to a decision of Sir George Turner in a case of *Sonatun Bysack v. Sreemutty Juggutsoondree Dossee* (8 Moore's Indian Appeals, p. 66) and to *Ashutosh Dutt v. Doorga Churn Chatterjee* (6 Indian Appeals, p. 182). On looking at those cases, the first was a case in which Sir George Turner held that, although nominally there was a gift at the beginning to the idol, that gift was so cut down by subsequent disposition as to leave it clear that the subsequent disposition ought to prevail rather than the earlier one, and that consequently there was no gift to the idol such as to make the property pass as an absolute and entire interest in its favour. The second case was also a decision of this Board, and came to very much the same thing. It was a question of the construction of a will, taken as a whole, and it was said there was not a complete gift to the idol; it was cut down by the subsequent disposition to the family. Here there is no such cutting down. There is, in the beginning, a clear expression of an intention to apply the whole estate for the benefit of the idol and the temple, and then the rest is only a gift to the idol *sub modo* by a direction that of the whole, which had already been given, part is to be applied for the upkeep of the idol itself and the repair of the temple, and the other is to go for the upkeep of the managers. There was no reason why the disponent should not nominate the members of his family as his managers, and he has done so. And there is nothing in that which militates against the propriety of his earmarking a certain part of the money to remunerate them as managers so long as they should so continue.

Their Lordships are of opinion that the judgment of the Court of the Judicial Commissioner, which proceeded substantially upon these grounds, is right, and they will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

JADU NATH SINGH AND ANOTHER

v.

THAKUR SITA RAMJI AND ANOTHER.

DELIVERED BY VISCOUNT HALDANE.