

Gnanendra Nath Das and another - - - - - *Appellants*

*v.*

Surendra Nath Das and others - - - - - *Respondents*

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FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 26TH APRIL, 1920.

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*Present at the Hearing :*

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

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Their Lordships think it is unnecessary to hear the respondents upon this appeal.

The questions raised depend entirely upon the true construction of the will of one Srinath Das, who died on the 13th September, 1907. The appellants say that that will has been incorrectly construed by the High Court in three particulars. In the first place they assert that there is no valid dedication for religious purposes of two houses, 10, Srinath Das Lane and a house in Benares; secondly, that there is no proper dedication for religious purposes of the accumulations of income of properties that were validly dedicated; and, finally, that there is no disposition of the residuary estate, and that consequently it must pass as on an intestacy. These points are separate and can be separately considered.

The first depends upon the contention that, although it is admitted there is a good bequest of the income of the houses that are specified in the first clause of the testator's will for religious purposes, and included in those houses are 10, Srinath Das Lane, and a house at Benares, yet the conditions affecting the use of

the two specified houses take them outside the ambit of the charity. The trusts imposed upon these two houses are different. With regard to the Benares house it is provided that it shall be available for all members of the testator's family, both male and female, for temporary residence and use. If the phrase "members of my family" be treated in this will as meaning the members of the testator's family who were existing at the date of his death, it must be conceded that there is nothing that can be urged against the validity of the bequest. The word "family" is elastic and capable of different interpretations, but in the present will their Lordships see no reason why it should be extended to include people other than those existing when the testator died. So far, therefore, as the Benares house is concerned nothing further need be said. With regard to the house, 10, Srinath Das Lane, the true construction of the gift depends on a kindred, but a slightly different consideration. In that case it is provided that the Shebait for the time being shall be entitled to reside with his family in the said dwelling-house, but the dwelling-house itself is the place specially set apart for the family idols to which specific reference is made in the will, and in their Lordships' opinion the gift is only a perfectly reasonable arrangement to secure that the man in whose hands the supervision of the whole estate is vested should have associated with his duties the right to reside in this named dwelling-place. Upon the questions, therefore, that relate to 10, Srinath Das Lane and the Benares house their Lordships think that the appellants must fail. They cannot, however, part with this contention without expressing regret that a point of such importance, associated as it is and must be with Indian religious ceremonies and dedication for religious purposes well known and understood in India, does not appear to have been properly urged before the High Court, and certainly finds no part whatever in the judgments of the learned Judges.

The next question was undoubtedly argued in the High Court, and is very fully dealt with indeed in the judgments; its solution depends upon whether or no, when the will clearly stated that the revenues and rents of named properties are to be applied in a certain manner, with a direction for accumulation of surplus income, and then continues with a provision that "out of the income of such fund" the Shebait shall have power to celebrate religious ceremonies, the words "such fund" include the added accumulations or are only applicable to the original debutter fund. The former is in their Lordships' opinion the correct interpretation. "Such fund" means the whole property, so that the accumulations which are added become part of the corpus, and are equally with it subject to the charitable trust created by the will.

The remaining question is one of greater difficulty. The testator made specific gifts of portions of his real estate and then a complete residuary devise of the balance in favour of one of his sons; he also gives certain legacies and allowances to named legatees; he provides for the disposition of movable property, such as horses, carriages and furniture, and he then continues, in

clause 12, in these words : " Out of the Government promissory notes and cash left by me, the cost of taking out probate shall be paid " and a certain sum of rupees " shall be spent for the performance of my shrad and the following legacies shall be paid." After specifying such legacies, the clause continues in these words : " If anything remains after meeting the above-mentioned expenses and paying the legacies and debts (if any), the same shall be equally divided between my said two sons Surendra Nath Das and Ragendra Nath Das." It is important to observe that in this clause no provision whatever has been made for the payment of debts. The payment of debts referred to in the remaining words of the clause is the payment of the debts as they ought to be paid according to the proper law for the administration of estates. If the word " cash " be regarded as limited in such a way as to exclude from its meaning all the general residuary personal estate, then the gift in clause 12 is, in effect, a gift providing for certain demonstrative legacies out of a named fund. That would not impose upon the balance of the trust the payment of the debts in exoneration of other portions of the estate, and, indeed, if the legacies absorbed the fund there would be no available moneys out of that gift from which the debts could be paid. Finally, in clause 14, the testator provides in special terms for the payment of the costs of probate and his debts in this way, that if the cash and promissory notes are exhausted before his death, or if he leaves behind him debts which are in excess of the cash and promissory notes, the costs of taking out the probate, the expenses of the shrad and the legacies are to be paid in equal shares by his two sons who were named as the ultimate legatees of the residue of the cash and promissory notes and are to be a charge on the properties which have been specifically given to them. He limits a debt contracted for the acquisition of property in such a manner as to charge it only on that property, but if it is impossible to recover it, or if, by any other means, a debt remains unpaid he expressly provides that that debt is to be paid by the two sons Surendra Nath Das and Rajendra Nath Das personally. The argument that the appellants urge upon the Board is an argument which results in this, that, although the will has not made any provision under which the appellants could be entitled to any part of the residuary estate, and indeed one appellant has been excluded altogether from benefits under the will, yet none the less the debts which would be properly payable out of the fund which they claim are to be specially charged against Surendra Nath Das and Rajendra Nath Das, the two sons named, in exoneration of and for the benefit of the undisposed of personal estate. That is a construction which would require very strong words indeed for its support and their Lordships think that there is not sufficient to be found in this will to warrant them in its acceptance. Clause 12 may mean that the word " cash " is there intended to have a much wider meaning than, according to ordinary rules of construction, the word will bear ; an interpretation which is quite possible, since it must be remembered that

decisions which assign a particular meaning to any word in a will only assign that meaning in connection with the terms of the will, and that the meaning is always capable of modification and alteration if it be seen that the limited meaning was not intended. "Cash" may therefore, in clause 12, have a wider value than it ordinarily bears, or—and this their Lordships think is the true meaning of the clause—the final words "if anything remains," are, in truth, in the circumstances of this will, a valid and effectual residuary gift. "If anything remains after meeting the expenses and paying the legacies and debts (if any)" means that if any balance remains after the legacies and the debts have been paid out of the moneys and out of the properties, which, in due course of administration, are liable for their payment, that balance is to go to the two sons Surendra Nath Das and Rajendra Nath Das.

For these reasons their Lordships think that this appeal fails and must be dismissed with costs, and will humbly advise His Majesty accordingly.

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In the Privy Council.

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GNANENDRA NATH DAS AND ANOTHER

v.

SURENDRA NATH DAS AND OTHERS.

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DELIVERED BY LORD BUCKMASTER.