

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Benode Behari Bose and others, v. Srimati Nistarini Dassi and others, from the High Court of Judicature at Fort William in Bengal; delivered the 7th July 1905.

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

But few of the 1805 pages which form the Record in this case relate to the few and narrow questions submitted in argument to this Board.

The first Respondent, a Purdanashin lady, brings a suit in the High Court of Calcutta for administration of the estate of her husband, Mohendra Nath Bose, who died in 1874. By his will she was entitled, *inter alia*, to the interest of part of his estate. After his death, however, she was induced to execute certain instruments by which she surrendered her rights under the will. In her administration suit, she anticipated and met any defence founded on those instruments, by alleging them to have been obtained by fraud and by asking that they should be declared void. Those issues of fraud have been tried and decided in her favour; and the learned Counsel for the Appellants intimated to their Lordships that they could not impugn the soundness of this conclusion on the facts. The Appellants therefore limited their argument to three points: viz. (1) they dispute the jurisdiction of the High Court of Calcutta; (2) on the terms of the will,

they deny that there can be enquiry into certain pooja expenses; and (3) they assert the invalidity of a gift over contained in the will and the consequent invalidity of the gift to the widow of the interest of that part of the estate.

Such being the subject-matter of the Appeal, it is obvious that any statement of the very numerous facts of the case would be irrelevant to the questions now to be determined. It is only necessary to mention such facts as bear on those points.

The will of the lady's husband is, in scheme, simple enough. The testator gives two-thirds of his estate to his two brothers. The remaining one-third is to be "looked after" by his executors. They are to pay out of it a great many minor bequests, and of these the only two now in controversy are the following: (1) "And for the poojas, &c., that shall be performed by my brothers in our own house you shall give my share of the expenses." (2) The ultimate disposal of this residuary third is as follows:—

"After paying all these legacies and monthly allowances and my debts and other expenses whatever sum shall remain to the credit of my estate shall be used in the purchase of Company's papers and you shall pay the interest thereof to my wife the said Nistarini Dassi for her life for her to perform pious acts therewith. And after her death you are to make over all that property of mine and Company's paper, &c., which you shall have in your possession to them who shall be my heirs and they shall be in enjoyment and possession after paying the monthly allowances, &c."

The Respondent Srimati Nistarini Dassi, the widow, now lives in the suburbs of Calcutta, and the family residence is in Calcutta, where the testator resided. Her suit was brought on 25th April 1898 in the High Court of Calcutta, in its Ordinary Original Civil Jurisdiction, against Nundo Lal Bose and Pashupati Nath Bose, who were the executors of the will of Mohendra Nath Bose, and also against

Kadumbini Dassi, who was the surviving trustee under one of the deeds sought to be set aside. As already indicated, the primary prayer was for administration, but the Court was also asked to have it declared that a trust deed, an award, a decree of the Subordinate Judge of Alipur filing the award and giving judgment in accordance therewith, and certain leases should be declared not binding on her. The whole of these documents were impugned on the ground of fraud, the decree being merely a step ministerially effectuating the antecedent fraud. In defence the jurisdiction of the High Court of Calcutta was challenged, and various other grounds of defence were put forward. The following issues were settled :—

- “ 1st. Has this Court jurisdiction in this suit to set aside the
 “ decree of the Subordinate Judge of the 24 Purgannahs?
 “ 2nd. Is the decree binding on the Plaintiff?
 “ 3rd. Has the Court jurisdiction under the Charter to set
 “ aside the leases of the Gaya property?
 “ 4th. Has the Court jurisdiction to set aside and cancel the
 “ leases dated the 1st day of March 1891 so far as they purport
 “ in any way to deal with the residuary estate of Mohendra
 “ Nath Bose?
 “ 5th. Is the Plaintiff entitled in the absence of all parties
 “ and persons beneficially interested in the Deed of Trust of
 “ the 24th May 1877 to obtain a declaration that that deed
 “ is fraudulent and void so far as it affects her interests and to
 “ have the Deed set aside as against her?
 “ 6th. Can the Plaintiff maintain this suit without having
 “ obtained leave under Section 44 Rule A of the Civil
 “ Procedure Code?
 “ 7th. Is this suit defective by reason of misjoinder of causes
 “ of action?
 “ 8th. Is the Deed of Trust of the 24th May 1877 fraudulent
 “ and void as against the Plaintiff?
 “ 9th. Are the award, decree, and leases respectively
 “ fraudulent and void as against the Plaintiff?
 “ 10th. To what extent are the Defendants Nundo Lal
 “ Bose and Pashupati Nath Bose accountable to the Plaintiff in
 “ this suit and is the Plaintiff entitled to have the accounts
 “ taken as against them on the footing of wilful default?
 “ 11th. Is the relief claimed or any portion thereof barred
 “ by limitation?
 “ 12th. What is the true construction of the will of the
 “ testator Mohendra Nath Bose—(a) As regards his moveable

“property, has there been any disposition of it by the will?
 “(b) Are the Defendants, the Boses, as executors, entitled
 “under it to spend any money out of the estate of Mohendra
 “Nath Bose for the performance of religious services and
 “worship held anywhere except at No. 13, Mohendra Bose’s
 “Lane and the family dwelling-house at Baraset? (c) Is the
 “direction in the will to accumulate the surplus income of the
 “estate and invest it in Government paper and pay the
 “income of it to the Plaintiff valid in law; if not, is the
 “Plaintiff entitled to that surplus income absolutely?

“13th. Is the Plaintiff entitled to have the estate of her
 “husband administered by this Court, and if so, for what
 “period?

“14th. Whether the house and premises No. 13, Mohendra
 “Nath Bose’s Lane or a third share of it formed part of the
 “estate of Mohendra Nath Bose at the time of his death?

“15th. Whether or not the residuary estate of Mohendra
 “Nath Bose became vested in the Trustees under the Indenture
 “of the 24th May 1877 in the plaint mentioned upon the
 “trusts therein declared or remained unaffected by that deed?”

The ultimate result of the proceedings was that both Mr. Justice Stanley and, on appeal, the Appellate Bench sustained the jurisdiction, set aside the series of deeds and decrees impugned, and granted administration. On the specific points raised on the will the High Court held that the direction to accumulate the surplus income and invest it in Government securities is void, but that the widow is entitled to the estate of a Hindu widow in the residue of the trust estate. On the point as to the poojas it was held that the estate was liable for what should be ascertained on enquiry to be a fit and proper sum to be allowed to the executors for the expenses of the poojas, rites, and ceremonies performed by them year by year since the death of the testator, regard being had to the position of the family and the value and circumstances of the estate.

On the question of jurisdiction their Lordships consider the decision right. The primary object of the suit was the administration of the estate of a deceased person resident within the jurisdiction, the principal executor being also resident there

and the actual administration going on there. The High Court of Calcutta, in its ordinary jurisdiction, had right to order administration of this estate, and, as ancillary to such an order, to set aside deeds obtained by the fraud of the executor. Nor does the circumstance that a decree had been granted by the Court of the 24 Pergunnahs making a fraudulent award an order of court protect that decree from the jurisdiction of the Calcutta Court when redressing that fraud. In like manner, their Lordships consider the Calcutta Court entitled, for the due administration of the estate, to set aside leases of land outside the territorial limits of their jurisdiction, those leases having been made as an incident of the same fraud.

With regard to the poojas, their Lordships think that there is some force in the criticisms of the Appellant and that the order would be improved if the enquiry directed were thus expressed:—

“ Whether the sums appearing to have been
 “ expended by Defendants Rai Nundo Lal Bose
 “ and Rai Pashupati Nath Bose as such exe-
 “ cutors as aforesaid out of the said trust estate
 “ for the expenses of poojas rites and ceremonies
 “ performed by them year by year since the
 “ death of the testator were reasonable and proper
 “ to be allowed to the said executors having
 “ regard to the terms of the testator’s will and
 “ all the circumstances of the case, and if not
 “ what sums ought to be allowed them for the
 “ purposes aforesaid.”

With regard to the gift of the residue, the question does not appear to their Lordships to be one of any practical importance. If the word “ heirs ” is taken to mean the persons who will be the testator’s heirs at the widow’s death, the gift is no doubt void, as was held by Mr. Justice Stanley, and the result is an intestacy.

If, on the other hand, the word means the testator's right heir (as their Lordships think it may), that is the widow herself. In either case, therefore, the widow is entitled to the residue for a widow's estate. Being solely entitled to the fund directed to be accumulated, she can release the directions for accumulation, and enjoy the whole income. Their Lordships, therefore, do not see any necessity for varying the directions on this subject in the decree of Mr. Justice Stanley and affirmed by the High Court.

Their Lordships will, therefore, humbly advise His Majesty that, with the variation above expressed in the inquiry as to the amount expended on poojas, the Judgment of the High Court should be affirmed.

The result is in favour of the Respondents; and the variance made in the Judgment does not affect their substantial success. The Appellants will therefore pay the costs of the first Respondent who alone defended the Appeal.
