

*Privy Council Appeals Nos. 103 and 104 of 1933*

*Allahabad Appeals Nos. 33 and 37 of 1931*

The Kayastha Pathshala, Allahabad	-	-	-	<i>Appellants</i>
<i>v.</i>				
Musammat Bhagwati Devi and others	-	-	-	<i>Respondents</i>
Musammat Bhagwati Devi	-	-	-	<i>Appellant</i>
<i>v.</i>				
The Kayastha Pathshala, Allahabad and others	-	-	-	<i>Respondents</i>
<i>(Consolidated Appeals)</i>				

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 20TH NOVEMBER, 1936

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*Present at the Hearing:*

LORD ALNESS.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

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The question in the present case is whether a deed of trust executed by one Mahadeo Prasad as settlor on the 9th April, 1914, is or is not wholly invalid for the reasons alleged in paragraph 5 of the plaint as follows:—

“ 5. That the alleged deed of trust is wholly null and void, and did not in fact or in law create any valid trust and is not binding on the natural heirs of the said Chaudhri Mahadeo Prasad for the following, among other, reasons:—

“(a) The said deed was a mere paper transaction. It was never enforced nor acted upon during the life-time of the said Chaudhri Mahadeo Prasad who continued to be the owner of the properties and to enjoy the profits thereof as owner as heretofore.

“(b) The alleged trust was not really created for any lawful purpose. The real purpose for creating the alleged trust was to prevent the devolution of the property on the death of the said Chaudhri Mahadeo Prasad according to law. The real purpose was to preserve and keep the property intact and undivided and to increase it in bulk and value *ad infinitum* and to accumulate a part of its profits indefinitely; to regulate the succession thereto by the descendants of Chaudhri Mahadeo Prasad and his other relations and their children, generation after generation, in the male line, under an ostensible scheme of regulating their enjoyment of a substantial part of the income and profits of the property through the intervention of an illegal trust in a manner totally unknown and repugnant to Hindu Law. All the said purposes are wholly unlawful.

“(c) The alleged trust in so far as it purported ostensibly to be a trust for charitable purposes was void inasmuch as it was not irrevocable.

“(d) The various provisions for ostensible charitable purposes were a mere device to lend a colour of reality and validity to the document. The said charitable dispositions were illusory and dependant upon remote contingencies and were not likely to come into operation at all. In any case the lawful purpose (if any) was inextricably mixed with the dominant and unlawful purpose and inasmuch as the lawful and the unlawful purposes cannot be separated from each other the whole trust is void.

“(e) The alleged trust is further void for remoteness and vagueness and is opposed to public policy and is contrary to fundamental principles of Hindu Law.”

The suit was brought on the 25th May, 1928, by the settlor's daughter and her two sons in their respective characters of heiress and presumptive reversioners to the estate of the settlor under the Hindu law. They impleaded the present appellants the Kayastha Pathshala Allahabad and a number of persons who appear upon the terms of the deed to be entitled to beneficial interests of one kind or another. The settlor was by caste a Kayastha and the Kayastha Pathshala Allahabad is a society registered under the Societies Registration Act (XXI of 1860) with objects which include the management of a school of that name, the maintenance of a library and assistance to students of the Kayastha community. Upon the settlor's death (5th December, 1924), this society, in accordance with the terms of the deed, succeeded him as trustee and in due course and without objection obtained mutation to the immoveable properties comprised in the deed. It is plain enough that until shortly before the present suit the society's possession of the trust property as trustee and its assumption and discharge of the duties of trustee was with the consent of the settlor's daughter her husband and major son.

The relief claimed by the plaintiff is (1) a declaration that the deed of trust is wholly void, (2) that the settlor's daughter (plaintiff No. 1) be awarded possession of the properties comprised therein, (3) mesne profits and (4) costs.

The case made is not that the plaintiffs desire the administration of the trust property in accordance with the deed, or that, the trusts of the deed having been fully carried into execution as regards some or all of the properties, the plaintiffs are entitled to benefit under a resulting trust, or are otherwise entitled to have possession of such properties. The plaintiffs' case is that the deed of trust was altogether void *ab initio* and that the possession of the Kayastha Pathshala has been wrongful throughout.

The learned trial Judge (Additional Subordinate Judge of Benares) on the 15th October, 1929, dismissed the suit with costs, but a Division Bench of the High Court at Allahabad on the 27th July, 1931, set aside his decree and gave to the first plaintiff (Mahadeo Prasad's daughter Musammat Bhagwati Debi) a decree in ejectment with a

direction that the Kayastha Pathshala should account for the profits of the property in a manner and upon principles which need not here be detailed.

Mahadeo Prasad, an orthodox Hindu, had no male issue. His properties were extensive. On the 17th November, 1898, he made a will whereby, in the event of his leaving no male issue, he vested in the Kayastha Pathshala the whole of his property (with certain exceptions) subject to a series of trusts bearing considerable resemblance to trusts afterwards declared by the trust deed now before the Board. His only daughter having been married in 1900, he executed a codicil to his will on 4th November, 1903, making provision for certain relations but not otherwise fundamentally altering the scheme of the will. The deed of trust executed by him on 9th April, 1914, began by referring to his Hindu beliefs, his desire to maintain the temples built by himself and his ancestors, his desire for improved education among Kayasthas, his intention to provide for his heirs, relations and old family servants, and his wish that two houses belonging to him—one in Allahabad and one in Nanpur—should be preserved :—

"For all these objects I made directions under a will and a codicil. But as I have been suffering from albuminuria for the last 14 years, and my right eye has become defective since 1909, it is now my intention that I should after making arrangements for myself also, create a trust about all these matters during my life-time, so that I might be somewhat relieved during my life-time, be able to spend most of my time in the worship of God and be also satisfied that proper arrangements about all the matters would be made. Therefore, I, while in a sound state of body and mind and in the enjoyment of all my senses, proclaim and declare a trust in respect of my entire immovable property worth about 17 lacs of rupees, mentioned in list (a) at the foot of this document, with the exception of house No. 764, situate in mohalla Yahaiapur, known as Kothi Satti Chaura, and mauza Kayam Khadau, Tauzi No. 6926 included in No. 4 pargana 63, district Darbhanga, and give in writing that the entire immovable property, aforesaid, which is at this time in my possession, shall be considered to be included in the trust for the *undermentioned objects*, on the conditions specified below, which trust shall inure for ever."

Clause 2 of the deed details the objects of the trust by short descriptions lettered (a) to (s) of which the first nine are as follows :—

- "(a) Worship in the residential house in the city of Allahabad.
- "(b) Repairs and expenses of the temple of Sheo at Nanpur.
- "(c) Repairs and expenses of the temple of Sheo at Benares.
- "(d) Repairs and expenses of the temple of Sheo at Qasba Kara, in the district of Allahabad.
- "(e) Expenses of the fair of Sri Kalyani Debi, held in the city of Allahabad.
- "(f) The funeral, 'shrad' and Gaya expenses of mine (sic) and those of my wife.
- "(g) Payment of the donation to the Allahabad Kayastha Pathshala or (expenses of) establishing a college in the name of me, the executant, for higher education.
- "(h) Payment of donation to the Hindu University.
- "(i) Scholarship and aid to indigent students of my caste."



The remaining objects are ordinary forms of private benevolence towards relations and friends—e.g., allowances, houses, dowries; to which are added payment of the settlor's debts and improvement of the value of the trust property.

Elaborate provisions are laid down for the management of the trust, 15 per cent. of the entire income being reserved for management expenses. In the Allahabad house a right of residence is given to his widow, daughter, eldest grandson and his male descendants according to the rule of primogeniture (clause 9). The income of the village Gaura is appropriated to the expenses of the temple at Benares (clause 12). Three-fourths of the net profits of certain shares in villages in the district of Allahabad is given to two named relatives in equal shares with a provision that the right is to go to their male descendants generation after generation, and on failure of male descendants to certain females. Three-fourths of the profits of other villages is given to the settlor's nephews and is to go to their male descendants and in default to certain females (clause 15).

The remainder of the profits of the trust property, after providing certain annual sums for pujas and repairs and Rs.20,000 for the funeral and shradh of the settlor and his wife, is to be divided into two equal parts. The first half of such profits is to provide a perpetual allowance going first to the wife, then to the daughter, then to the grandsons, then to the male issue of the grandsons generation after generation according to a complicated scheme. The second half of such profits, after carrying one-twentieth thereof to reserve, is to be applied to the upkeep of the Nanpur house, certain travelling expenses, the payment of two sums of Rs.10,000 to nephews, establishing new markets in connection with the trust properties, support and assistance to members of the settlor's family and near relations, support and education of certain named persons, the marriage expenses of the three daughters of a friend, and the payment of a lac of rupees to the Kayastha Pathshala Allahabad. When a lac of rupees has been accumulated to ensure payment of land revenue and as a provision in case of famine and other emergency, then two other objects are brought within the trusts which apply to "the second half of the profits"—viz. (1) the giving of Rs.25,000 to the Hindu University at Benares upon certain conditions and (2) scholarships and help for indigent Kayastha students.

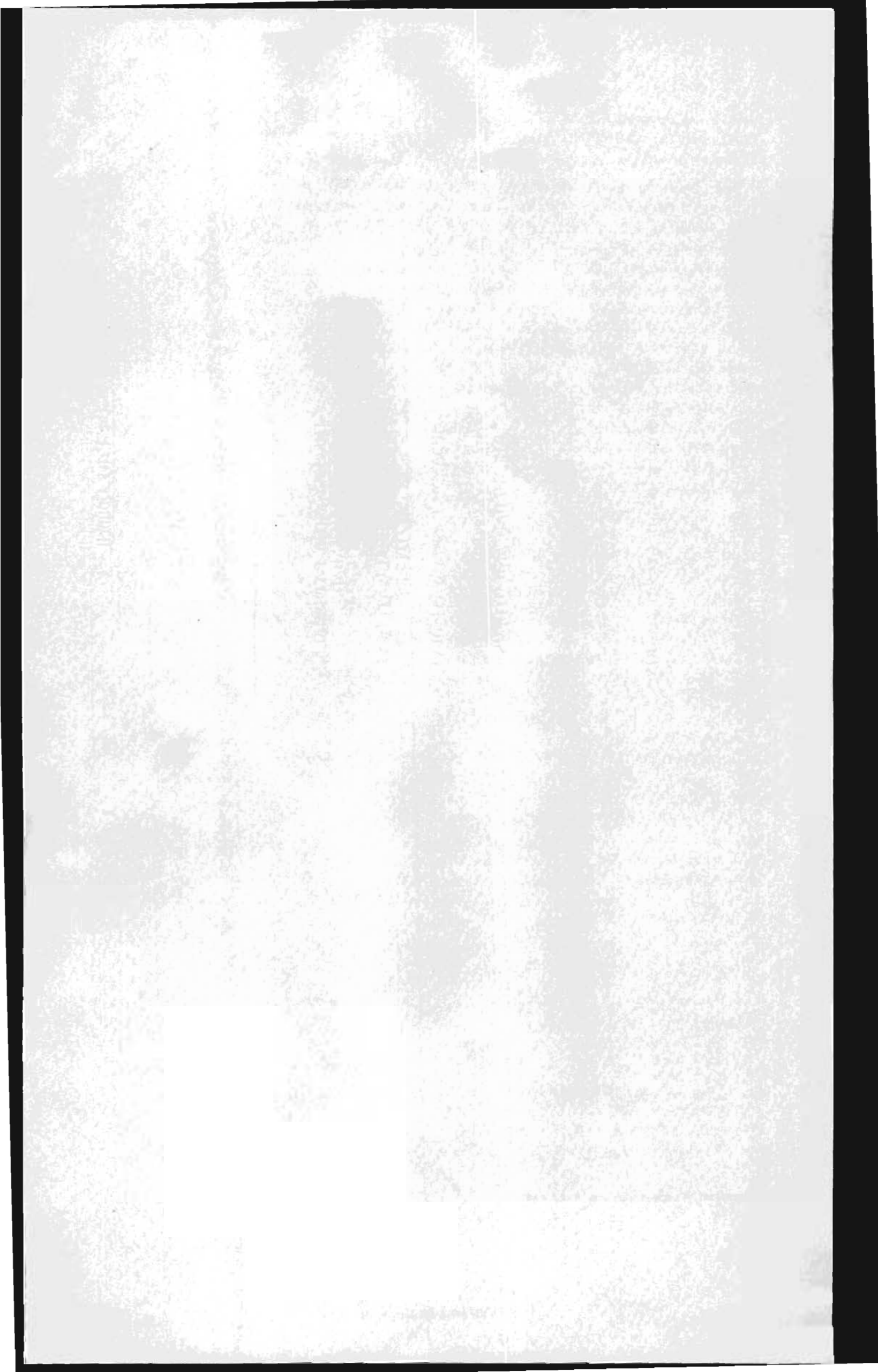
Upon the face of this summary description of the trusts of the deed it is evident that serious questions may arise under sections 14, 16 and 17 of the Transfer of Property Act in connection with several of the dispositions in favour of relatives and friends. The consequences which would flow from this or that disposition being held to be invalid call for careful consideration, both as a matter of construction of the deed, and also in view of the question whether the will of the settlor was revoked by the deed, in whole or in part, absolutely or conditionally. If the present suit had been a

suit for administration of the trusts of the deed and of the assets belonging to Mahadeo at the date of his death, detailed consideration of the problems presented by this settlement in the events that have happened might before now have elucidated the rights of the plaintiffs, whether as Mahadeo's representatives or otherwise. But their Lordships find it difficult to understand why the invalidity of certain of the gifts to relatives should be supposed to be fatal to other dispositions apparently separable, or why the charitable gifts should be thought bad because, though substantial, they do not involve a sufficiently large part of the settled property, or because the beneficial interest is not given to a specified individual or individuals. Nor does it now matter that the settlor reserved to himself a power, which he never exercised, to revoke the trusts. There is in this case no question of any attempt to defraud creditors, and, as the settlor himself acted for years as trustee in carrying out the terms of the deed, the contention that the deed was a mere "paper transaction" cannot be maintained. In so far as the settlor's bounty to his relatives has been misguided and is contrary to law it will fail of effect, and other dispositions will also fail if they are dependent thereon or inseparable therefrom. But the deed is not an unlawful agreement under sections 23 and 24 of the Contract Act, nor does anyone suppose that the deed was intended to create a debutter,—still less that this Hindu was establishing a Mahomedan wakf. No doubt the authorities are clear to the effect that a disposition of property cannot be supported as a dedication if it is not a real dedication. Thus in the case of a wakf, before the Mussulman Wakf Validating Act (VI of 1913) it was held that the test was not whether the gift to charity was substantial but whether the property was substantially dedicated to charity [*Balla Mal v. Ata Ullah Khan* (1927) 54 I.A. 372 at 380]. The principle to be applied to the case of a Hindu debutter may be seen from *Jadu Nath Singh v. Thakur Sita Ramji* (1917) 44 I.A. 187. But, though the settlor had certain religious objects, the case before the Board is in its general character a case of private bounty and educational trusts. The question which arises is not the question of dedication, but of the application to these particular trusts of sections 14, 16, 17 and 18 of the Transfer of Property Act, or more strictly, as the deed was executed before 1929, of these sections read subject to the saving (at that time made by section 2 of the Act) for the rules of Hindu law. Under these sections non-charitable dispositions bad for perpetuity will not be validated by the presence of charitable trusts.

As the case of *Sookhmoy v. Monohurri Dasi* (1883) 12 I.A. 103 has been referred to by the High Court and cited to the Board in argument by learned counsel for the respondents, it may be noted that the Hindu rule against perpetuity was in that case applied to the provisions of a Hindu's will with the result that no independent gift for charitable or religious purposes remained. Six-sixteenths of the income

was to be devoted to maintaining the family worship and the family for ever: this provision was held bad, no part of the corpus of the estate ever vesting in anyone beneficially.

To treat the deed of 9th April, 1914, as a nullity because of the "dominant" or "substantial" purpose of the deed as a whole is not in their Lordships' opinion a conclusion warranted in this case by any principle of law. It will be open to any person interested, including any of the plaintiffs, in appropriate proceedings to have the deed construed and its provisions so far as valid applied to the events which have happened, and all further questions settled whether arising under the deed, the will or on intestacy. But that the Kayastha Pathshala should be ejected from the trust properties in the suit now before the Board is in their Lordships' opinion without legal warrant, and their Lordships will humbly advise His Majesty that this appeal should be allowed and the decree of the trial Court dismissing the suit should be restored with costs throughout. The cross-appeal must be dismissed with costs.



In the Privy Council

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THE KAYASTHA PATHSHALA,  
ALLAHABAD

v.

MUSAMMAT BHAGWATI DEVI  
AND OTHERS

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DELIVERED BY SIR GEORGE RANKIN

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