

(1878) 04 CAL CK 0009

Calcutta High Court

Case No: None

Dwarkanath Bysack
and Another

APPELLANT

Vs

Burroda Persaud
Bysack

RESPONDENT

Date of Decision: April 1, 1878

Citation: (1879) ILR (Cal) 443

Hon'ble Judges: Richard Garth, C.J; Markby, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

Only two questions are raised in this appeal: first, whether certain bequests made by the testator are valid; and secondly, whether, if they are invalid, a residuary bequest which follows them, is invalid also.

2. The clause of the will upon which the question arises, is as follows: "I do direct my trustee to spend suitable sums at the annual sradhs or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contribution and gifts to the Brahmins, Pundits holding tolls [(or native schools) for the diffusion of Sanscrit learning in the country] at the time of the Doorga Poojah. To spend suitable sums for the perusal of Mohabharat and Pooran, and for the prayer to God during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class and of the poor Brahmins and other respectable castes as my trustee will think fit to comply."

3. The learned Judge in the Court below considered that all these bequests were valid.

4. We have some doubt whether, if it were necessary to decide the question, we could agree with him as regards the bequests to Pundits holding tolls, and for the reading the Mohabharat and Pooran, and for prayer to God.

5. It is not, however, necessary for us to decide this point, because the learned Judge has hold that the concluding words of the clause, commencing thus, should there be any surplus after the expenditure, &c," must be construed as creating a general residuary bequest, which would absorb the whole of the property, even assuming that some of the preceding bequests were invalid.

6. In this view we quite agree; and as the appellants could only succeed in the event of their being a surplus undisposed of by the will, we think their suit must be dismissed with costs on scale No. 2, and that they must also pay the costs of the motion for the injunction.

7. Their learned Counsel attempted to argue that, in any view of this case, they were interested as heirs of the testator in the performance of the sradhs of the testator's ancestors; that they were in fact the only persons who could perform those sradhs, and that, therefore, they had upon this ground alone a right to the accounts against the defendant as trustee under the will, which it was one of the objects of this suit to obtain. But as the point was not raised in the Court below, nor mentioned in the plaint, we decline to allow it to be raised here.