(1869) 05 CAL CK 0033

Calcutta High Court

Case No: None

Brajanath Baisakh		APPELLANT
	Vs	
Matilal Baisakh and Another		RESPONDENT

Date of Decision: May 19, 1869

Judgement

Phear, J.

I think that the alienation made by the widow in 1844 was a valid dedication to the idol. If she had released the property to the next heirs of her deceased husband, they could have done what they liked with it, and whether for consideration or not, could, I apprehend, have disposed of it absolutely against all subsequent claims of the ultimate heirs; and if they had chosen on such a release to dedicate the property in the same way as the widow did, such a dedication would I think have been good. What they did do was equivalent to this, inasmuch as Joygopaul and Harroprasad were consenting parties to that deed. As to the deed of 1851, I think the case is different. Joygopaul was then the only heir alive, that is, had the widow died at that time, the whole of the property would have devolved upon him by inheritance. I am not satisfied that the endowment of that date was made with his consent, and what he did subsequently is too vague for me to allow any title to pass by it. It follows from this conclusion that the plaintiff is entitled to recover the property which is the subject of the deed of 1851, unless the alienation was such as to be justified by Hindu law. As to this, after consideration, I think I ought not to give effect to Mr. Graham''s argument that the widow had a right to give to religious purposes to the extent conveyed by the deed of 1851. The first dedication with the consent of the husband''s heirs did in truth exhaust all the purposes for which a power of this kind is given to a Hindu widow. It follows then that the plaintiff is entitled to recover from the trustees the property which is the subject of the deed of 1851, without any qualification as to his title. The property which forms the subject of the deed of 1844 is given for the support and maintenance of the idol Kadarnathji. By the deed of dedication the widow was made sabait for her life, and after her death the heir and representative of her deceased husband was to take the place of sabait. Now

generally I understand that under Hindu law it is the special office of the sabait to possess and manage the property of the idol, and to take care that it is applied to its proper and religious objects. There are cases, no doubt- Sibchunder Mullick v. Sreemutty Treepoorah Soondary Dossee Ful. Rep. 98- where another person, a stranger so to speak, may have the property, and hand it over from time to time to the sabait as he needs it for the purposes of the idol. But I think this is confined to oases where the property dedicated consists of a fund which is to come out of other and large property. Here, no doubt, the deceased lady did give the property to the trustees, and had this property formed a portion of a larger trust, I should have felt that this case came within the principle of the one in Fulton. But that is not so here. This property is entirely separated, and by the use of language which is singularly technical and accurate as regards the -employment of English legal phraseology, it is given to trustees upon trust after the death of the widow, to permit and suffer the next male heirs and representatives, &c., to receive the rents, issues and profits of all and singular the said trust estate. Now these words by them selves would, according to English authorities, give the legal estate not to the trustees hut to the cestuis que trust, viz., to the next male heirs and representatives. The whole gift to trustees is certainly preceded by the trust to protect and support contingent remainders, and it has been held in England that the existence of such a trust would prevent the words I have just used, following in a series of limitations, from conveying the legal estate. I do not propose now to decide whether the trust to support contingent remainders in a disposition of a Hindu gentleman''s property, could have any material effect in altering the interest which passed to the trustees. I think that, inasmuch as without the reference to contingent remainders, the trust to permit the next male heirs to receive the rents and so on, would by English law give the legal estate and right of possession to the persons named as cestuis que trust, certainly I ought not to allow this right of immediate possession to be interfered with by the first trust to support contingent remainders, whatever might be the effect of the latter in regard to the ultimate duties of the trustees. It appears to me then that the next male heir of Biswanath is entitled under this limitation to actual possession and to the rents, issues and profits of the property, which is the subject of the dedication in the deed of 1844, provided he devotes it according to the provisions of the deed to defraying the expenses of the saba of the idol. On the whole I must give a decree in favour of the plaintiff, declaring that the property, which is the subject of the deed of 1844, is validly dedicated to the idol Kadarnathji, and that the plaintiff is entitled to possession of that property for the purpose of performing the saba of the idol and expending the whole of the rents of that property in the performance of that worship. And further that the plaintiff is entitled to obtain possession of the property, which is the subject of the deed of 1851, without any qualification as to ownership. I need not say any thing as to the duties if any which remain to the trustees, or whether in the event of the plaintiff not doing his duty as sabait, it will fall to the defendants to carry out the ultimate trusts of the deed. The trustees were however quite right in bringing the matter into this Court,

and they must get their costs out of the trust estate, which is the subject of the deed of 1844. The plaintiff will also get a moiety of his costs so far as they can be apportioned out of the same property.