

(1904) 07 CAL CK 0021

Calcutta High Court

Case No: Appeal from Appellate Decree No. 2154 of 1901

Parmanand Karan

APPELLANT

Vs

Baptist Mission Society of
London

RESPONDENT

Date of Decision: July 1, 1904

Final Decision: Dismissed

Judgement

1. This is an appeal in an ejectment suit. The facts are shortly these : In November 1850, one Mrs. Sophy Wade made a gift of certain premises to the Baptist Mission Society of England for the purpose of establishing a hamlet of Native Christians of the Baptist community at Monghyr; and she appointed certain persons, they being then Missionaries at Monghyr, as Trustees for aiding and assisting in establishing the said hamlet. The document concluded thus:--"And lastly I, Sophy Wade, do hereby give, convey and make over to the said John Robert Dwyer, Herschiel Dear, John Lawrence and John Parsons, the said bungalow, out offices and all thereunto pertaining, upon the trusts aforesaid, and for myself, my heirs, executors and administrators promise and agree to renounce all claim upon and interest in the aforesaid bungalow and out offices for ever." The Baptist Mission Society then built several houses on the land by subscriptions raised from the members of the Baptist Christian community. In one of these houses, the Defendant has been residing since the year 1898, as found by the Court of first instance, on payment of a monthly rent of Rs. 2. Subsequently, in May 1899, a notice to quit was served upon him by the Trustees, This notice was repeated by another notice in the following month. The Defendant, however, did not comply with the requisitions of the said notices, and he set up an adverse title in himself. Hence this suit by the Trustees for his ejectment. The Defendant pleaded that the notice was bad and insufficient; that the house belonged to him, it having been built by his grandfather: and that the Plaintiffs, as Trustees, could not maintain the suit.

2. The Court of first instance decreed the claim; but the District Judge, on appeal, has reversed that decree, and hence this appeal by the Plaintiffs, the Trustees.

3. The learned District Judge has negatived the Defendant's plea as to the ownership of the house in question, and has held that it was not built by him or his grandfather, but by the Baptist Mission Society, and that he has been holding it on payment of a monthly rent. He was, however, of opinion that the suit must fail on two grounds, first, that the Trustees were not the absolute owners of the house, and they held it only for a particular purpose in trust; and, second, that though the Baptist Mission Society were the best judges to determine whether a particular member of the Christian community should be allowed to reside on the premises, yet they were bound to disclose the reasons for their considering the Defendant to be unfit, and that they could not capriciously evict him. In the view that we take of this case and which we shall presently express, it is not necessary to determine the question raised, namely, whether the Trustees are absolute owners of the premises under the deed executed by Mrs. Sophy Wade. It may, however, be useful to refer in this connection to the case of *Smith v. Anderson* L. R. 15 Ch. Div. 247 (1880). The particular passage which we have in view is to be found in p. 275. Speaking of a Trustee, Lord Justice James expressed himself as follows :--"A Trustee is a man who is the owner of the property and deals with it as principal, as owner and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee and who are his cestui que trust." Now, who are the cestui que trust under the deed of 1850, to which we have referred ? It has been contended by Dr. Rash Behari Ghose on behalf of the Respondent that the Baptist Native Christian community of Monghyr for whose benefit the gift was made is the cestui que trust, and that, as soon as the hamlet was established, the trust was discharged. We are, however, unable to affirm this contention as correct. The cestui qui trust in this case are the Baptist Mission Society, and the Trustees mentioned in the deed were appointed for the purpose of carrying out the object with which the trust was created ; and it could not rightly be said that the trust was discharged, and the functions of the Trustees came to an end when certain houses were built and certain members of the Native Christian community were settled as tenants. The trust was something like a perpetual trust; and it seems to us that, for the purpose of carrying out the object for which the gift was made to the Baptist Mission Society, there must be, at least, a power of management in the Trustees, and in the exercise of such powers of management, the Trustees would have the power to eject a tenant, unless it be that such tenant has a permanent right in himself. Now, it has been found that the Defendant has no such right. The Trustees being, upon the view expressed by the District Judge himself, the best judges to determine whether a particular tenant should be allowed to hold on, we do not think that they are bound to disclose the reasons why they consider a person to be unfit to occupy any particular house in the Mission compound, It seems to us that the District Judge has confounded the rights of the Native Christian community as a body with the right of an individual member thereof. That community may have certain rights to call upon the Trustees to explain or account for their action in any particular instance and the Baptist Mission Society of England may also have such rights ; but such right does

not exist in any particular member of the Christian community who holds any portion of the land or house In the compound of the Mission as a tenant, and who has no permanent right in himself. For these reasons, we think that the ground upon which the learned District Judge has proceeded in dismissing the suit of the Plaintiffs cannot be sustained. We accordingly reverse that decree and restore that of the Court of first instance with costs in all the Courts.