(1922) 10 BOM CK 0012

Bombay High Court

Case No: None

Sri Gadicherala Venkatanarasimha Rao Garu		APPELLANT
	Vs	
Nyapathy Subba Rao Pantulu Garu and Others		RESPONDENT

Date of Decision: Oct. 5, 1922

Acts Referred:

- Trusts Act, 1882 - Section 6

Citation: (1923) ILR (Bom) 300

Hon'ble Judges: Spencer, J; Devadoss, J

Bench: Division Bench

Judgement

Spencer, J.

This suit was instituted by three plaintiffs styling themselves members and trustees of the Godavari Hindu Samaj, with the sanction of the Advocate-General u/s 92 of the Civil Procedure Code, for the purpose of getting a scheme framed by the Court for carrying out the trust contained in Clauses 11 and 12 of the will of the late Rajah Gadicherla Seethayya of Rajahmundry who executed it on April; 4th and died on April 10th, 1909. By the same will the, testator gave authority to his widow to adopt a son which she did on June 4th, 1911, by adopting the present appellant.

2. Clauses 11 and 12 of the will run as follows:

A sum of Rs. 400 should be spent every year out of my estate, either for the spread (abhivrithi) of the Sanskrit language or for the spread of the Hindu religion, or for both. The said sum must be a charge on my estate. The executors must make the arrangements necessary therefore to have the same conducted as the then existing trustees of the Rajahmundry Hindu Samaj may deem fit.

12. Further it is my desire that the Vedas relating to my Sakha (branch) should be encouraged. And for that purpose, it is my desire that, chiefly a general Sanskrit or

Vedic or Oriental Library should be established at Rajahmundry, in my name. The executors must make the arrangements necessary therefor.

3. The will names three executors, one of whom is the first plaintiff. They all declined office and the appellant who came of age on November 1st, 1917, has taken over the estate from the hands of his adoptive mother.

4. The first objection argued at the hearing of the appeal related to the maintainability of the suit. It was urged that the defendant, not being a trustee either by appointment or de son tort, could not be sued u/s 92 merely because he was in possession of the estate, that for every suit under that section there must necessarily be a trustee (see observations in Ashraf Ali v. Mohammad Nurojjoma 23 C.W.N. 115 but here there was none, and that the proper course for the plaintiffs to adopt was to bring a suit for administration in order to get the terms of the will carried out. I do not consider that any of these are fatal objections to the present suit. If a trust has been " created for public purposes of a charitable or religious nature "a suit will lie for settling a scheme" where the direction of the Court is deemed necessary for the administration of such trust" (vide Nell Rama Jogiah v. Venkatacharulu ILR (1903) Mad. 450 and the person who is the heir at law and in possession of the property which is impressed with the character of trust property has an interest and is a proper party to such a suit.

5. Mr. Ganapati Ayyar then cited Annavarapu Maucharamma v. Venkatadri (1922) 31 M.L.T. 63 and Official Assignee v. Abdul Hussein (1915) 28 I.C. 116 in support of his argument that the present suit was premature as there was no definite fund for the trustee to administer and that the trust was thus incomplete. But the circumstances of those cases appear to be distinguishable. In the latter there was no fund ear-marked to be impressed with the trust, and in the former there was no appropriation of assets and the trust fund was yet to be ascertained. Here the will definitely assigns a sum of Rs. 400 to trust purposes to be spent every year out of the testator''s estate and makes it a charge on the estate. Whatever may be thought of Clause 12, there is a definite fund set apart for the purposes mentioned in Clause 11. As noticed by the learned Sub-ordinate Judge, when there is a will in existence Section 6 of the Indian Trusts Act makes it unnecessary that there should be a transfer of the trust property to the trustees. The suit is in my opinion maintainable.

6. I pass now to a consideration of the more serious question whether the trust is void owing to uncertainty as to its objects:

7. If it is possible to ascertain with any degree of certainty the intentions of the testator, the Court will give effect to them. If, however, the trust fails on account of uncertainty of the objects, the trustee cannot repudiate it but holds it for the benefit of the testator''s heir as a resulting trust---vide Briggs v. Penny (1851) 3 Mac. & G. 546. If the testator''s meaning is so extremely vague that the execution- of his purposes practically amounts to some one else making a will for him, then the Court

will not lend its assistance or recognize the trust as one capable of execution. See Blair v. Duncan [1902] A.C. 37 and Grimond v. Grimond (1905) A.C. 124. This is the principle followed by Seshagiri Ayyar, J., in Muthukrishna Naicken Vs. Ramachandra Naicken and Others, , though the learned Judge does not refer to those English cases. He says at page 497.

the primary rule is to ascertain whether the object aimed at by the testator could be carried out without, making a new will for him.

8. The objects of the trust as disclosed by Clause 11 of the will, namely, the spread of the Sanskrit language or the spread of the Hindu religion appear to be partly for the benefit of one branch of human knowledge, viz., the Sanskrit language and partly religious. In this country religious objects are not necessarily charitable objects, and learning is not quite synonymous with education. But it is unnecessary to embark on a disquisition upon the question whether a religious purpose is also a charitable purpose, which formed the main consideration in Baler v. Sutton (1836) 1 Keen 224 in Townsend v. Carus (1844) 3 Hare 257 and In re White, White v. White [1893] 2 Oh. 41 as Section 92, Civil Procedure Code, speaks of

any express or constructive trust created for public purposes of a charitable or religious nature.

9. It does not signify whether it is of a charitable nature or of a religious nature provided that it is one of these two and also that it is a public purpose.

10. In order to understand the real intentions of the testator I am willing to read Clause 12 of his will along with Clause 11 and not to treat Clause 12 by itself as creating a precatory trust.

11. I think we should also take notice of the reference in Clause 11 to the Rajahmundry Hindu Samaj as an aid to discovering what the testator meant. It was also material to take into consideration, as the learned Subordinate Judge has done in paragraph 10 of his judgment, the evidence of P. W. 1 that the testator was a member of the Rajahmundry Hindu Samaj almost from its inception and was keenly interested in the working of this society. In Be Louisa Kenny, Clode v. Andrews (1907) 97 l.T. 180 use was made of the knowledge that a certain Dr. Maclean was engaged for many years in the work of Christian Missions to interpret a reference to missionary objects connected with his name in a will, and in The Attorney-General v. Stepney [1804) 10 Ves. 22 the known objects of the Welch Circulating Charity Schools were referred to in order to understand the meaning of a will which had as its object the improvement of Christian knowledge coupled with a mention of those schools. But I am unable to agree with the Subordinate Judge that the objects of the Hindu Samai set out in Clause 2 of their rules exhibited as Exhibit C are almost exactly the same as the purposes indicated by the testator in his will. The teaching of Sanskrit is not one of the professed objects of the association. A library is mentioned as one of the means of carrying out its objects but it is not clear what kind of library is

intended. On this point the will, which speaks of a general Sanskrit, vedic or oriental library is more specific. Again the association aims at the diffusion of the principles of Hinduism, the study of Hindu civilization and the advancement of the Hindu community. The testator desired to see the spread of the Hindu religion with special attention to the Vedas relating to his branch (sakha), he being a Yagnavalkya Brahman. If the testator had absolute confidence in the Managing Committee of the Hindu Samaj, he might have made an outright bequest in their favour and left the spending of the money entirely in their hands without directing his executors to make arrangements to have the trust conducted according to the discretion of the trustees of the Hindu Samaj. In Grimond v. Grimond (1905) A.C. 608 Lord Moncreiff, whose judgment was adopted by the House of Lords, observes that the trustee''s own religious views do not affect the question when the trustees have been left with unlimited discretion as to what religious institutions are to be selected for being benefited. So here, if one of the objects of the trust is the spread of Hinduism generally, then in my opinion the object is too wide and indefinite to be carried into effect. The scheme framed in the lower Court provides for the submission to the Court by the trustees of a programme for the utilization of the annual grant of Rs. 400 and for the Court sanctioning the same with such modifications as may be found necessary. How is any Christian, Hindu or Muhammadan Judge to decide whether the proposal so submitted will advance the Hindu religion in the manner contemplated by the testator? If, on the other hand, we hold that the scheme should be directed to the best means for inculcating the peculiar sectarian doctrines of the testator''s own branch of the Hindu faith, then it may reasonably be doubted whether, this purpose is such a public one as Section 92 of the Code was intended to cover. The learned Subordinate Judge, who was in favour of upholding the trust as a good one, has been driven after considering Clause 12 to the conclusion in paragraph 19 of his judgment that the object is not clear enough and he has been obliged to treat this Clause as merely recommendatory. To my mind the trust is even more vague and indefinite, if Clause 12 is omitted from consideration. The words "for the spread of the Hindu religion" are no more definite than the words "for missionary purposes" which were held in Scott v. Brownrigg (1881) 9 Ir. 246 to be too vague and uncertain to create an executable trust, or than the words "most conducive to the good of religion in this diocese "in Dunne v. Blyrne [1912] A.C. 407. It is not enough that in those cases there could be no doubt that the settler was thinking of the Christain religion when he spoke of missionary or religious purposes, or that in the present case the Hindu religion is designated by name. God is worshipped in many forms by Hindus. A general endowment for the worship of God without specifying the deity for whose benefit the endowment is to take effect is void for uncertainty. (Vide Chandi Charan Mitra v. Haribola Das I.L.R.(1919) Calc. 951.

12. On the other hand, I am inclined to regard the promotion of the knowledge of the Sanskrit language as a valid charitable bequest. In Whicker v. Hume (1858) 7 H.L. 124 a fund given to be applied by trustees according to their discretion "for the

advancement and propagation of education and learning all over the word" was held to be not too vague; and in Attorney-General v. Flood (1816) Ha Appx. 21 a gift for promoting education in the Irish language was upheld. See also Halsbury''s Laws of England, volume 4, Article 174. Here the word "spread" denotes that the testator was thinking of education. The Sanskrit language could only be spread by teaching persons hitherto ignorant of it. It would not be spread by rewarding those who are already learned.

13. If the object is definite enough, the Court will find suitable modes for carrying out the wishes of the testator. See Gordhan Das v. Chunni Lal ILR (1908) All. 111. Of course it is necessary that if a Sanskrit library is to be founded, it should be one open to the public (unlike the Hindu Samaj''s library which is limited to Hindus who pay a certain subscription and are grouped in two classes); if Sanskrit schools are to be formed, they must be schools which can be freely attended by the public. Otherwise this will not be a trust for public purposes falling u/s 92, Civil Procedure Code.

14. The trust for the spread of Hinduism being too vague, and that for the spread of the Sanskrit language being valid, we must next take note of the fact that the trustees of the Hindu Samaj have been given an absolute discretion to spend the whole sum of Rs. 400 on one or the other object, or on both. In such a case where one object is void for uncertainty the whole gift is void, since owing to the use of the disjunctive "or" there is no indication as to what proportion is to be devoted to the charitable purpose of advancing education---vide In re Macduff, Macduff v. Macduff [1898] 2Ch. 411 Blair v. Duncan [1902] A.C. 37 Houston v. Burns [1918] A.C. 337 and Theobald''s Law of Wills, 7th Edition, page 369. So in the present case the testator, having left the application of the fund entirely to the discretion of the trustees of the Rajahmundry Hindu Saraaj, it would be open to that body to apply the whole amount to the vague purpose of spreading the Hindu religion, leaving nothing for the encouragement of Sanskrit learning.

15. But on the principle of the above English cases the whole bequest thus is bad and unexecutable. The trustees under the will in such a case cannot exercise their discretion and allot the whole to charity. In re Jarman''s Estate, Leavers v. Claryton (1878) 8 Oh. D. 684.

16. I am therefore of opinion on the second and the third issues that no enforceable trust is created in Clause 11 or 12 of the will, and I would allow the appeal and dismiss the plaintiffs'' suit with costs throughout.

17. A third point which is the subject of the fifth issue has been raised, namely, whether the adopted son who takes by survivorship can repudiate dispositions of a portion of the ancestral property made by his adoptive father without its being proved that his natural father was aware of the contents of the will at the time of the adoption. Mr. Ganapathi Ayyar quotes Balkrishna Motiram v. Sri Uttar Narayan Dev

I.L.R.(1919) 43 Bom. 542 in support of his arguments that he can. In the present case the testator was childless when he made his will and was free to make an absolute gift. Following Ganapati Ayyar v. Savithri Ammal ILR (1898) Mad. 10 I feel clear that the adopted son cannot, while approbating the provisions of the will under which his adoption was made, reprobate other provisions of the same will. It is unnecessary in view of my finding on issues 2 and 3 to pursue this point further. It has also become unnecessary to discuss the objections and the cross-objections to the scheme framed by the Court. The decree of the lower Court is set aside and the suit is dismissed with costs. The memorandum of objections is dismissed.

Devadoss, J.

18. I have had the advantage of perusing the judgment of my learned brother and I agree with his conclusions on the points argued before us. Inasmuch as this appeal was argued at great length very ably on both sides and as the points involved are of considerable importance, I wish to add in my own words the reasons for agreeing with my learned brother.

19. The plaintiffs are the members and trustees of the Godavari Hindu Samajam commonly known as the Hindu Samajam located at Rajahmundry; and they have brought this suit for the settlement of a scheme for carrying out the intentions and directions contained in Clauses (11) and (12) of the will of Sri Gadicherla Chinna Sitayya Garu who died on the 15th April 1909, possessed of zamindari villages and other properties yielding an annual income of Rs. 4,000. The defendant is the adopted son of the said Sitayya Garu. The Additional Subordinate Judge of Rajahmundry has granted a decree in plaintiffs'' favour and the defendant has preferred this appeal.

20. The main contentions raised on behalf of the appellant are (1) the suit is not maintainable u/s 92 of the CPC inasmuch as there is no trustee in charge of the alleged trust estate; (2) the terms of the will are so vague that the bequest must fail on account of uncertainty; and (3) the defendant being the adopted son of the testator is entitled to repudiate the bequest made by the will as he succeeded to the whole of the testator''s property by right of survivorship.

21. The first contention, that there is no trustee in charge of the trust estate and therefore a suit u/s 92 is incompetent, is an untenable one. Section 92 was enacted for the purpose of safeguarding public trusts of a charitable or religious nature. The section says:

In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature or where the direction of the Court is deemed necessary for the administration of any such trust, two or more persons having an interest in the trust can sue.

22. after fulfilling certain formalities.

23. It is quite plain that the section is applicable to cases where the direction of a Court is deemed necessary for the administration of any trust, and it is nowhere said that the suit could only be against trustees de facto or de jure. When the Court is put in possession of facts from which it can infer that there is a public trust of a charitable or religious nature and that for its proper administration the direction of the Court is necessary, the Court has jurisdiction to frame a scheme for'' the proper administration of the trust. The appellant relies on a number of cases in which it was held that Section 92 did not apply to suits against trespassers. A trespasser claims adversely to the trust and in order to evict him or to claim damages from him no scheme is necessary and the intervention of the Court u/s 92 is uncalled for. It is the duty in such cases of a trustee or trustees to seek the proper remedy against the trespasser or against the person holding the property adversely to the trust.

24. In Gholam Motvlah v. All Hafiz (1918) 47 I.C. 111 the suit was against the purchaser of the trust property. The Court held that, the defendant being an alience of the trust property, Section 92 had no application.

25. In 17 Ind. Cas. 586 , the suit was by a trustee against a trespasser. The suit was decided under the CPC of 1877 in July 1880. It was held that Section 539 had no application to the case.

26. In Budree Das Mukim v. Chooni Lal Johurry ILR (1906) Calc. 789 Woodroffe, J., held that suits brought not to establish a public right but to remedy a particular infringement of an individual right were not within the section and that, as against strangers, such as aliences from the trustee and mere trespassers holding adversely to the trust, that section did not apply.

27. In Bapuji Jagannath v. Govindlal Kasandas ILR (1916) 40 Bom.439 it was held that Section 92 had no application where remedy asked for was not for the infringement of a public right but for a private right. In that case one executor sued another executor for accounts and for an injunction against further management. The Court held that the suit was not bad for want of sanction u/s 92, Civil Procedure Code.

28. In Subbayya v. Krishna I.L.R.(1891) 14 Mad. 186 the Full Bench held that a trustee could be removed though Section 539 did not expressly give the power to the Court.

29. In Ashraf Ali v. Mohammad Nurojjoma 23 C.W.N. 115 the Court held that to a suit against the lessee in which the trustee was a party, Section 92 had no application as no scheme was asked for, the suit being for a declaration that the lease was invalid and that possession should be handed over to the plaintiffs.

30. Strong reliance was placed by the appellant on a decision of the Madras High Court reported in Annavarapu Maucharamma v. Venkeatadri (1922) 31 M.L.T. 63. There the late Chief Justice and Kumaraswami Sastei, J., held that a suit u/s 92, Civil Procedure Code, for enforcing the terms of a will which contained provisions for the administration of public trusts was not maintainable. On a careful reading of the

judgment I think the decision does not support the appellant''s contention. All that was decided in that case was that it was not competent for persons to invoke the provisions of Section 92 for the purpose of administering the estate of a deceased person with a view to compel the executors to give effect to charitable bequests. What was found on the evidence in that case was that there was no fund from which the charity could be maintained. The learned Judges held that, in the absence of a specific finding that a trust had been created, a suit of that nature would not lie. But the facts of this case are different, Here the amount to be spent on the charity is charged on the whole estate. The estate is worth Us. 4,000 a year and the amount of the charitable bequest is only Rs. 400 a year. Funds for the trust have been provided by pointing out the source of the funds and by making the whole of the property bear the charge for the trust. "Where it is quite clear that a trust has been properly constituted by will, it is not necessary that there should first be an administration suit before the trust could be the subject of a suit u/s 92. In the mufassal, administration suits are almost unknown, and, if it is considered that an administration suit is an essential preliminary to a suit u/s 92, the question would arise as to who should bring the administration suit. The heirs of the testator may be quite unwilling to bring the administration suit and anybody who would ordinarily be entitled to bring an administration suit might be found unwilling to do so. I do not think that the case supports any wide proposition as is contended for by the appellant. Where it is doubtful whether there would be funds for the purpose of satisfying the bequest for charity, there it might be necessary to have an administration suit in order to fix the amount that might be available for charitable purposes after meeting the legitimate demands of creditors and specific legatees.

31. The contention that there must be trustees in charge of the funds in order to entitle persons to sue u/s 92 is an obvious fallacy. One can conceive of cases where all the trustees die or refuse to act. It is in such cases the interference of the Court would be deemed most necessary and beneficial and it is to prevent charities lapsing for want of proper management that Section 92, Civil Procedure Code, was enacted on the lines of Lord Romilly''s Act.

32. In Neti Rama Jogiah v. Venkatachandu ILR (1903) Mad. 450 the suit was brought u/s 539 of CPC for a declaration that the defendants were not Dharma-karthas of certain temples and to have trustees appointed for the due administration of those temples. The learned Judges observe at page 452 as follows:

The substantial question therefore for determination in the case is whether the defendants are the lawful trustees of the temple as claimed by them. If they are so, there is an end of the suit, but, if they are not, then there is a vacancy in the office of one or both of the trusteeships, and the plaintiffs, as persons interested in the institution, pray for an order of Court directing the appointment of new trustees for the due administration of trusts of the temple. In our opinion such a snit is comprised in the words of the section, namely, '' Whenever the direction of the

Court is deemed necessary for the administration of such trust and the snit therefore falls u/s 539 (a) of the Civil Procedure Code. In support of this view we may refer to the opinion of the Judicial Committee of the Privy Council in Bishen Chand Basawut V. Syed Nadir Hossein (1887) 15 I.A., 1 in which Sir Barnks Peacock in delivering the judgment of the Committee stated, "If there had been any objection that he (i.e., the plaintiff) was illegally substituted as trustee, an application might have been made by any person interested in the performance of the trusts to have him removed and a new trustee appointed by the Court under the Code of 1877." As pointed reference is made to the Code of 1877 in which for the first time Section 589 was introduced, there having been no section corresponding to it in the Code of 1859, it is quite clear that the provision referred to by the Privy Council in Section 539.

33. In cases where there are no trustees, or where all the trustees choose to claim adversely to the trust, the interference of the Court is necessary for the protection of the trust.

34. In Raghubar Dial v. Kesho Ramanuj Das ILR (1889) All. 18 the four defendants between them by an endowment created a trust in respect of the temple of Janaki Ballabhji and of the idol contained therein, which endowment consisted of five biswas of land, the income of which was to be devoted to the expenses of the temple. The plaint alleged that, since November 1894, the donors changed their minds and had stopped the payment for expenses.

35. Straight, J., observes at page 22:

Now it is not necessary if I read that section aright, that there should have been any breach of trust; but it is sufficient if there be a public religious trust, and the direction of the Court is considered necessary for the administration of such trust. This view has been adopted by the learned Judges of the Calcutta High Court in Latifunnisa Bibi v. Nazirun Bibi I.L.R.(1885) Calc. 33. Therefore this may be fairly regarded as a suit, to put it in its narrowest form, in which the plaintiff asks to have the trust administered by the Court. That being so, it seems to me that the sanction of the Collector or such officer as the Local Government might appoint was necessary, for the purpose of empowering the plaintiff to bring such a suit.

36. That the defendant need not be a trustee, nor need he admit the existence of a trust in order to enable the plaintiffs to sue u/s 92 is made clear by the judgment of the Calcutta High Court in Budh Singh Dudhuria v. Niradbaran Roy (1905) 2 C.L.J. 481 Mukerjee, J., observes at page 437:

The case is no authority for the proposition that the Court is ousted of the jurisdiction it possesses u/s 539, Civil Procedure Code, by the bare denial on the part of the defendant of the existence of the trust alleged by the plaintiffs. If the view urged by the appellants were well-founded, every case of public charity might be excluded from the jurisdiction of the Court by reason of the most groundless

allegation on the part of the defendant that there is no public trust. But, it is an elementary principle that when the jurisdiction of a Court to take cognizance of a suit instituted before it, is disputed, the Court must adjudicate upon that question * * * I must hold accordingly that if in a suit instituted u/s 539, Civil Procedure Code, the defendant disputes the jurisdiction of the Court to make any decree under that section on the ground that the trust alleged by the plaintiffs does not exist, the Court is not ousted of its jurisdiction but must determine the question upon the evidence.

37. The same principle was laid down in Jafar Khan v. Daud. Shah (1905) 2 C.L.J. 481. Batchelor, J., who delivered the judgment of the Court observes at page 53:

We think that a difficulty is caused by the use of the words any alleged breach of any trust'' occurring in Section 539, for we do not read those words as equivalent to any alleged breach of any admitted trust. The construction which we put upon the section in this respect has, so far as we are aware, been consistently followed in this Court and the case of Chintaman Bajaji Dev v. Dhondo Ganesh Dev I.L.R.(1891) 15 Bom. 612 is an illustration of that. Reference being made to page 616 of the report, it will be seen that the defendants there pleaded that the Savasthan was not a public, religious or charitable institution and that they were not the trustees but the owners of the property in that suit.

38. It is quite apparent from these decisions that the jurisdiction of the Court is not ousted by the defendant pleading that he is not a trustee or that there is no trust for which a scheme could be framed. In this case the defendant claims to repudiate the provisions of the will as the adopted son of the testator. His interests are no doubt adverse to that of the plaintiffs, who want to maintain that there is a trust. But in the case of a suit u/s 92, it is not necessary that there should be any active contest as to any breach of trust by a trustee. If the circumstances are such that the intervention of the Court is deemed necessary for the purpose of framing a scheme for any trust which is proved to exist, the Court has jurisdiction to frame a scheme. No doubt the defendant in this suit could not be made to pay amounts due or to surrender the property, if any, belonging to the trust, he being a stranger to the trust. On the framing of a scheme and on the appointment of trustees, he should be proceeded against by the trustees for such reliefs as they may deem fit. In that sense, no doubt, the suit against the defendant is unsustainable, but the suit is perfectly competent for the purpose of enabling the Court to frame a scheme in respect of the charitable bequest contained in the will, provided the bequest fulfils other conditions.

39. The second point is one of more difficulty. The contention that the bequest is void for uncertainty should be considered in the light of the provisions of the will relating to the bequest. Paragraph 11 of the will runs thus:

A sum of Rs. 400 should be spent every year out of my estate, either for the spread of the Sanskrit language or for the spread of the Hindu religion or for both. The said

sum must be a charge on my estate. The executors must make the arrangements necessary therefore to have the same conducted as the then existing trustees of the Rajahmundry Hindu Samajam might deem fit.

40. The next Clause runs thus:

Further, it is my desire that the Vedas relating to my sakha should be encouraged; and for that purpose, it is my desire chiefly a general Sanskrit or Vedic or Oriental library should be established at Rajahmundry in my name. The executors must make the arrangements necessary therefor.

41. Clause 12 does not present much difficulty. It is what I may call a precatory trust. There is no definite-ness about the trust. The amount to be spent for establishing the Sanskrit or Vedic or Oriental library is not mentioned and the direction to found a general Sanskrit or Vedic or Oriental library is very vague. What sort of Sanskrit books should be in the library or what sort of Vedic books should be collected or what sort of Oriental library it should be, there is no indication in the will. I do not think it is necessary to consider this matter further. I hold that, in the first place, it is precatory and, in the second place, that it is so vague that it cannot be given effect to. Clause 11 contains a bequest of a sum of Rs. 400 to be spent annually for the spread of the Sanskrit language or the spread of Hindu religion or for both, and the executors should make the . arrangements necessary therefore and should conduct as the then existing trustees of the Rajahmundry Hindu Samajam might deem fit. Here again the testator''s directions are so vague that it will not be possible for any Court of law to decide what is necessary for the spread of Sanskrit language or for the spread of Hindu religion, and the executors are asked to make "such arrangements as the trustees of the Rajahmundry Hindu Samajam might deem fit." The trustees of the Samajam may change and the objects of the Samajam are as vague and as comprehensive as they can be. The objects of the Samajam are the diffusion of the principles of Hinduism, the study of Hindu civilization and, in general, the advancement of the Hindu community. Some of the objects of the association could not be considered charitable or religious u/s 92. The bequest may be a good one if it is to the samajam; but, where a trust is indicated and the Court is asked to frame a scheme u/s 92, the provisions of that section should be complied with before the Court can be induced to act. In the first place, the trust should be for a public purpose, and, in the second place, it should be of a charitable or religious nature. There are many public purposes which are neither charitable nor religious. There are many purposes which are charitable or religious, but not of a public nature. The discretion is given to the executors to make arrangements for the spread of the Sanskrit language. The expression "spread of the Sanskrit language" is not capable of any clear definition. It may be spread in the sense of intensive culture or of culture benefiting a large number of people. The expression "for the spread of Hindu religion" is also vague. It is very difficult for people belonging to various sects to agree as to what the Hindu religion is. Without in any way being disrespectful to

the Hindu religion or in any way disparaging the religion, the words "Hindu religion" do not connote anything specific. It may be the Vedantic religion or the religion of a particular sect, and it is not within the province of a Civil Court to say what the Hindu religion is and what should be done to spread it. The trustees of the Rajahmundry Hindu Samajam may all cease to promote the particular form of Hindu religion which for a time the same trustees were prepared to promote, and the Court will then be called upon to frame another scheme by which the trustees of this particular estate may be left to manage things without reference to the trustees of the Rajahmundry Hindu Samajam. These are some of the difficulties which will face any Court which is called upon to frame a scheme for the purpose of carrying out the intentions of the testator. It is a well established principle of law that, where the intention of the testator is so vague, the Court cannot give effect to it. The Court can only interpret the will of a testator, but it cannot be called upon to make a will for the testator. It is sometimes thought that a charitable bequest should not be allowed to lapse, and therefore, some sort of scheme should be framed in respect of it. But with all respect to that view, I think the Court is bound to follow certain principles which have guided the Courts of Chancery for a very long time. The idea of making charitable bequests by will is new to this country, and it would not be right to throw aside altogether the principles which have guided the Courts of Chancery in England in interpreting wills containing bequests for charitable and religious purposes.

42. I shall proceed to examine the English cases that have been cited to us, but before entering upon the mazes of the decisions of the Chancery Courts, it is but right that one should remember that the law of trusts in England is subject to certain peculiar restrictions. In the first place the laws of mortmain prevent bequests of lands being made to associations and corporations, and, in the second place, realty cannot be disposed of in perpetuity by will and only personalty can be disposed of for a charitable or religious purpose, and even in the case of personalty there is a difference between impure and pure personalty. It was by 51 and 52 Vic, Chap. 42 the law relating to mortmain and the dispositions of land for charitable purposes was consolidated. By 43 Bliz., Chap., 4, charitable bequests were validated. It has been the attempt of Chancery lawyers to bring bequests within the purview of 43 Elizabeth, and that is the reason why we find, that in the earlier cases the Court of Chancery gave a wide interpretation to the word "charity."

43. I shall first deal with the cases relied upon for the respondent in support of the validity of the bequest.

44. The earliest case relied on is The Attorney-General v. Stepney (1804) 10 Ves. 22. There a bequest of the residue of personal estate for the use of the Welch Circulating Charity Schools, as long as they should continue, and the increase and improvement of Christian knowledge and promoting religion, and to purchase Bibles and other religious books, pamphlets, and tracts, as the trustees should think

fit, to go to the same uses with those already bought, and to be kept in a house, devised for that purpose, was held good. The Lord Chancellor (Eldon), in the course of his judgment, after referring to the case of Browne v. Yeall (1878) 7 Ves. 50 observes:

Lord Thurlow''s opinion was, that the testator, not having given this Court more of specific direction as to the nature of the books to be purchased and circulated, than that they were to be such as may have a tendency to promote the interests of virtue and religion, and the happiness of mankind, had not given direction enough: and therefore Lord Thurlow held the next of kin entitled. If this was that very case, I should certainly feel myself bound to follow that decision. But this, independent of the peculiarities "belonging to it, is very different; and if that will had specified Bibles and Testaments, the Court could not have refused to execute that purpose. If therefore there was nothing more iii this will, I should be bound to say, that, whether there is more or less objection to the words "other religious books and tracts," there is a denotation of a religions purpose, to which the fund may be applied, with an option, how it should "be applied; and I must execute one term of that option.

45. The next case is that of Mitford v. Reynolds (1842) 1 Ph. 185. In this case the testator''s will contained a bequest in the following terms:

I will, devise, give, and bequeath the remainder of my property to the Government of Bengal, for the express purpose of that Government applying the amount to charitable, beneficial, and public works at and in the city of Dacca in Bengal, the intent of such bequest and donation being that the amount shall be applied exclusively to the benefit of the native inhabitants in the manner they and the Government may regard to be most conducive to that end.

46. The Lord Chancellor (Lyndhurst) construed it as valid and observed,

According to the construction which I put upon the words of this bequest taken together, it is a bequest of money to be applied in the construction or establishment of some works for the general benefit of the native inhabitants of Dacca, for the poor as well as for the rich; and I think that comes within the principle of the cases I have stated and constitutes, under the statute of Elizabeth, a good charitable bequest.

47. In Whicker v. Hume (1353) 7 H.L. 124 a bequest to trustees of funds to be applied by them according to their discretion for the advance and propagation of education and learning all over the world was held to be a good charitable bequest and was not void for uncertainty. The discussion in that case turned mainly upon the meaning of the word " learning." If " learning " had stood alone, the Court would have held the bequest bad for uncertainty, but inasmuch as the word "education" was in front of the word " learning" the Court upheld the bequest. Lord Chelmsford, in delivering the judgment, stated as follows:

Now, the question is, in what sense did the testator use this expression? I apprehend that if there are two meanings of a word, one of which will effectuate and the other will defeat a testator''s object, the Court is bound to select that meaning of the word which will carry out the intention and objects of the testator; and I think that your lordships are not without aid in giving the particular limited interpretation (if I may use the expression) to the word "learning" which is required for the purpose of establishing the validity of this bequest, because when you find that the testator associates with that word "learning" the word "education" I think, that from the society itself in which you find the word, your lordships may gather the meaning which it is necessary to put upon it, and that he means the word "learning" in the sense of imparting knowledge by instruction or teaching. Well, if this construction be correct, then I apprehend there is no difficulty whatever, because it will range itself pretty much within the meaning of the word "education" although not precisely synonymous with it, and it is admitted in the argument that if the word "education" had stood alone, the bequest would have been valid.

48. Lord Wensleydale said:

Learning, in this case, I consider as equivalent to teaching; learning, as part of education. No portion of the charitable fund could be devoted by the trustees for the purpose of rewarding learned men unconnected with education.

49. Now applying this case to the case before us, can it be said that the trustees are bound to spend the money in educating people in the Sanskrit language? If they choose to give the whole of the amount to a person well versed in Sanskrit so that he may improve his knowledge of the language or as a reward for his past labours, can it be said that they aid a public charitable purpose? This makes it quite clear that the Request can be good only if education is the object.

50. The next case relied on by the respondent is a t case under the Income Tax Act. In Commissioners for Special Purposes of Income Tax v. Pemsel [1891] A. C 531the House of Lords had to consider whether certain allowances in respect of the Income Tax imposed by schedule A are to be granted by the Commissioners for Special Purposes of the Income Tax. The words ''charitable purpose,'' they held, as used in the Income Tax Act, were not restricted to the meaning of relief from poverty, but must be construed according to the legal and technical meaning given to these words by English Law. Lord Macnaghten, in the course of his judgment (at page 580), observed.

That, according to the Law of England, a technical meaning is attached to the word ''charity'' and to the word ''charitable'' in such expressions as ''charitable uses'' ''charitable trusts'' or ''charitable purposes'' cannot, I think, be denied. The Court of Chancery has always regarded with peculiar favour those trusts of a public nature which, according to the doctrine of the Court, derived from the piety of early times, are considered to be charitable. Charitable uses or trusts form a distinct head of

equity. Their distinctive position is made the more conspicuous by the circumstance that owing to their nature they are not obnoxious to the rule against perpetuities, while a gift in perpetuity not being a charity is void.

51. This case does not throw any light on the question what are charitable bequests and what are not.

52. In In re White; White v. White [1893] 2 ch. 41 the Court of Appeal held that a bequest to a religious institution or for a religious purpose is prima facie a bequest for a '' charitable'' purpose. '' The testator gave his property ''to the following religious societies to be divided in equal shares among them.

53. The testator did not give a list of the religious societies among whom he wished the property to be divided. Lord Lindley, in the course of his judgment, observes,

the gift is for religious purposes; and secondly, that being for religions purposes, it must be treated as a gift for ''charitable'' purposes, unless the contrary can be shown. If once this conclusion is arrived at, the rest is plain. A charitable bequest never fails for uncertainty: Mills v. Farmer (1815) 1 Mer. 55 settles that point. Lord Eldon was clearly of opinion that the nomination of particular objects is only the mode and not the substance of a gift to ''charity''.

54. In England charity must be of a public nature, but in India it is not so. There can be bequests for charity for private purposes and there can be a bequest for a religious purpose of a private nature. There can be a good bequest in favour of an idol or for the performance of shradh. As I have stated above, Section 92 is only concerned with trusts for public purposes of a charitable or religious nature and so the reasoning of the learned Lord Justice cannot apply in its entirety to bequests in Hindu Wills.

55. In Baker and Sutton (1836) 1 Keen 224; 48 E.R. 292 a bequest of the residue of personal estate for such religious and charitable institutions and purposes within the Kingdom of England as in the opinion of the testator''s trustees should be deemed fit and proper was held to be a good charitable bequest. In the case before us the question is not whether the bequest is a good bequest, but whether the Court should be called upon to administer the funds given for a particular purpose. If the bequest was to the Hindu Samajam at Rajamundry, it would be a good bequest. But the real difficulty is in finding out the intention of the testator and in controlling the discretion of the trustees who are to administer the trust. The case of Mills v. Farmer (1815) 1 Mer. 55 is relied upon as showing that a charitable bequest never, fails. Lord Eldon, in the course of his judgment, laid down the law thus:

I am fully satisfied as to all the principles which have been laid down in the course of this argument, and accede to them all. There is no question, that the Court has not the power to make a will for the testator, but only to carry into execution that which he has made himself: and this it can do only by giving to it such a construction as

former precedents have established to be the right construction in every particular instance. Neither is there any doubt that the same words in a will, when applied to the case of individuals, may require a very different rule of construction from that which would govern them if applied to the case of charity. If I give my property to such person as I shall hereafter name to be my executor, and afterwards appoint no executor; or, if having appointed an executor, he dies in my lifetime and I appoint no o*her to supply his place, in either of these cases, as to individuals, the testator must be held intestate, and his next of kin will take the estate. But to give effect to a bequest in favour of charity, the Court will, in both instances, supply the place of an executor and carry into effect that which, in the case of individuals, must have failed altogether. This distinction has proceeded partly, perhaps, on principles in the Roman Law which we do not at this time perfectly comprehend; and partly, no doubt, On the religious notions which formerly obtained in this country, according to which it fell to the Ordinary''s province to distribute, in case of intestacy. A third principle, which it is now too late to call in question, is, that in all cases in which the testator has expressed an intention to give to charitable purposes, if that intention is declared absolutely and nothing is left uncertain but the mode in which it is to be carried into effect, the intention will be carried into execution by this Court, which will then supply the mode which alone was left deficient.

56. In Cocks v. Manners (1), it was held by Sir John Wiokens, V.C., that the bequest to the Dominican convent at C was neither within the letter nor the spirit of 43 Eliz. C. 4. he observes,

A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word (charitable'' is used in its popular sense or in its legal sense. It is said, in some of the cases; that religions purposes are charitable but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public: an annuity to an individual, so long as he spent his time in retirement and constant devotion, would not be charitable, nor would a gift to ten persons, so long as they lived together in retirement and performed acts of devotion, be charitable. Therefore the gift to the Dominican convent is not, in my opinion, a gift on a charitable trust.

57. In this case it has been very vehemently urged that inasmuch as the trustees have the choice of spreading the Hindu religion, therefore the bequest is for a religious purpose and could not fail for uncertainty. Cocks v. Manners (1871) 12 Eq. 574 is an answer to that. As I said above the trustees may take into their heads to promote the Hindu religion or to contribute to the spread of the Hindu religion by giving the whole of the amount to one person or to a particular Mutt. A religious purpose, which in England should necessarily be a public purpose in order to validate a bequest, need not be so in India.

58. In Townsend v. Carus (1841) 3 Har 257 Wigeam, V.C., held that a gift to be applied to promote the spiritual welfare of God''s creatures was for religious, and therefore, charitable purposes.

59. It is contended that a general bequest for the spread of Sanskrit language is good on the authority of Attorney-General v. Mood (1816) Hayes Appx. 21. In that case a bequest was given to the Trinity College, Dublin, for the study of Irish language. There can be no objection at all to a bequest to the University or to a College, or even to the Rajahmundry Hindu Samajam, being held good if it is for the study of Sanskrit or any other language. Where the bequest is not to a society but to trustees who are asked to do certain things, and where the Court is not in a position to control the discretion of the trustees, there the Court has to see whether the intention of the testator is specific enough to control the discretion of the trustees. In In re Scow croft, Ormrod v. Wilkinson [1898] 2 Ch. 638 a bequest to the vicar of a parish for the time being of a building used as a village club and reading room "to be maintained for the furtherance of conservative principles and religious and mental improvement and to be kept free from intoxicants and dancing" was held good. In this case the intention is clear and the object is of a charitable and of a public nature.

60. In re Louise Kenny, Glode v. Andrews (1907) 97 L.T. 130 the testatrix directed her trustees to pay trust monies to M to be applied by him "for such missionary object or objects at home, abroad, or in the colonies as he shall in his absolute discretion select." M was known by the testatrix to have been engaged in assisting the Christian Mission in foreign countries and abroad. Washington, J., held the bequest to be good. He said:

It is suggested that the words of the gift are too vague, as the words '' Missionary objects'' are not necessarily confined to Christian Missions. But there is a widely spread use of the word ''Missionary'' as one engaged in the work of religious and particularly Christian Missions. I think that I am entitled to consider who Dr. Maclean was, and that lie was engaged for many years in the work of Christian Missions, and that he and his work were known to the testatrix. I think that the testatrix used the word ''Missionary'' in its ordinary and popular sense, and I hold that the gift was a valid charitable gift.

61. In the course of the arguments, the Irish case of Scott v. Brownrigg (1881) 9 Ir. 46 was quoted to show that the word missionary was not capable of any definite meaning. Warrington, J., as the report shows, declined to follow it.

62. In Morice v. The Bishop of Durham (1805) 10 Ves. 522 a bequest in trust for such objects of benevolence and liberality as the trustee in his own discretion shall most approve, was not held to be a charitable legacy. The Lord Chancellor (Eldon) in meeting the contention that it was a charitable bequest and that the trustee might devote every shilling to charitable use, observed as follows:

But the true question is whether, if upon the one hand he might have devoted the whole to purposes, in this sense charitable, he might not equally according to the intention have devoted the whole to purposes benevolent and liberal, and yet not within the meaning of charitable purposes, as this Court construes those words; and if, according to the intention it was competent to him to do so, I do not apprehend, that under any authority upon such words the Court, could have charged him with maladministration, if he had applied the whole to purposes, which according to the meaning of the testator are benevolent and liberal, though not acts of that species of benevolence and liberality, which this Court in the construction of a Will calls charitable acts..... But the question is, whether, according to the ordinary sense, not the sense of the passages and authors alluded to, treating upon the great and extensive sense of the word ''charity'' in the Christian religion, this testatrix meant by these words to confine the defendant to such acts of charity or charitable purposes as this Court would have enforced by decree, and reference to a Master. I do not think, that was the intention; and, if not, the intention is too indefinite to create a trust. But it was the intention to create a trust; and the object being too indefinite, has failed.

63. In the present case if the trustees choose to apply the whole of the amount to a religious purpose which is not of a public character, could the Court say that it is not within the discretion of the trustees to do so? If the trustees be held to have a discretion under the will to do so, then the Court would be powerless to control that discretion, and applying the principle of the case of Morice v. The Bishop of Durham (1805) 10 Ves. 522 I must hold that the discretion is too wide to be controlled by a Court and, therefore, the bequest is bad.

64. In re Macduff, Macduff v. Macduff [1896] 2 Ch. 451 a bequest of money for some one or more charitable purposes philanthropic or . . . was held not bad simply by reason of the existence of the blank, but must be treated as one for charitable or philanthropic purposes. Such a bequest is not a good charitable bequest as there are philanthropic purposes which are not charitable. Lord Lindley, after referring to Lord Eldon''s dictum in Morice v. The Bishop of Durham (1805) 10 Ves. 522:

Therefore when we are dealing with general words, we must consider whether there is such an indication of purpose or of trust that the Court if called upon to execute it can see what it has to do---can see the limits of its own powers. The words here are'' purposes charitable or philanthropic''." "Charitable,'' I suppose is there used in the popular sense. * * * Then what is the meaning of the word ''philanthropic?'' * * * The Attorney-General says, "''What philanthropic purpose is not charitable''? My answer is, you are dealing with two words of so vague a meaning that it is extremely difficult to say, but we can suggest purposes which might be philanthropic and not charitable---purposes indicating good will to rich men to the exclusion of poor men. Such purposes would be philanthropic in the ordinary acceptation of the word---that is to say, in the wide, loose sense of

indicating good will towards mankind or a great portion of them; but 1 do not think they would be charitable. I am quite aware that a trust may be charitable though Dot confined to the poor, but I doubt very much whether a trust would be declared to he charitable which excluded the poor.

65. He refers to the judgment of Lord Macnaghten in Commissioners for Special Purposes of Income Tax v. Pemsel [1891] A.C. 531 and observes:

Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaghten did not mean, to say that every object of public general utility must necessarily be a charity. Some may be, and some may not be. In Kendall v. Granger (1842) 5 Beav. 300 where the language was for encouraging undertakings of general utility, Lord Langdale came to the conclusion that that was not a charity and I am not aware that his decision has ever been overruled or questioned. Now, what Lord Macnaghten said is obviously a paraphrase of the words of Sir Samuel Romilly which I have just read: ''Charity'' in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads, leaving out those somewhat significant words of Sir Samuel Romilly as to the fourth head, '' which is the most difficult'' which showed perfectly plainly that Sir Samuel Romilly saw, and I do not doubt that Lord Macnaghten saw also, that there might be some purposes of public general utility which might be charitable and some which might not. In deciding the case we must fall back upon the Statute of Elizabeth, not upon the strict or narrow words of it, but upon what has been called the spirit of it, or the intention of it. As Lord Eldon says, this Court has taken great liberties with charities, but the liberty is always restricted by falling back or professing to fall back upon the Statute of Elizabeth.

66. I may observe that the high water mark of liberal interpretation as regards the intention of a testator was reached when the House of Lords held that a bequest that a hospital be established at Dundee to accommodate 100 boys was a good bequest. In In re The Magistrate of Dundee v. Morris (1867) 3 Macq. 134 the Lord Chancellor observed at page 156,

It is said on the part of the respondents that the mere wish to establish an hospital for a number of boys is so indefinite and uncertain that it is impossible to carry it out without the danger of defeating instead of effectuating the testator''s intention. That it is at the best bat the indication of a mere floating desire, not of any former and settled determination. But the expression of a wish by a testator that his property should be applied to a particular object amounts to a bequest for that object: and the language of this Will appears to convey with sufficient certainty what the testator desired should be carried into effect. The words ''establish an hospital'' must, I think, be taken to express an intention that a building should be provided which seems to have been assumed as the meaning of the word ''establish'' in the case of the Attorney-General v. Williams (1794) 2 Cox Eq. Cas. 387.

67. He held,

that the testator having intimated his wish to devote his property to the establishing an hospital, every subsequent writing of the testator upon the same half sheet of paper, is to a certain extent a confirmation of the previous charitable bequest. It amounts to a declaration that the fund which he had appropriated to that purpose is to be subject to a reduction to the amount of the legacies, and the first of them, after those which relate to the hospital had an express reference to this appropriation of his property by its commencing with the words, ''I further wish.''

68. The later decisions of the Court of Chancery in England are for a narrower construction not only of the word " Charity" but also of the terms of the will regarding the intention of the testator. In Dunne v. Byrne [1912] A.C. 407 the Privy Council held that a residuary bequest to

the Roman Catholic Archbishop of Brisbane and his successors to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese

69. is not a good charitable bequest and is void. The words of the will are

I will and bequeath . . . that the residue of my estate should be handed to the Roman Catholic Archbishop of Brisbane and his successors to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese.

70. Lord Macnaghten, who delivered the judgment of their Lordships of the Privy Council, observes at page 411,

the language of the bequest (to use Lord Langdale''s words) would be ''open to such latitude of construction as to raise no trust which a Court of Equity could carry into execution.'' Buker v. Sutton (1836) 1 Keen 224 If the property, as Sir William Grant said in James v. Allen (1817) 3 Mer. 17 might consistently with the Will be applied to other than strictly charitable purposes, the trust is too indefinite for the Court to execute.

71. In this case the bequest was to the Archbishop of Brisbane and his successors to be used in a way most conducive to the good of the religion. It may be taken for granted that the Archbishop of Brisbane would not use the income of the property bequeathed to any other purpose than for the good of religion in his diocese. But inasmuch as a discretion was given him to use the amount wholly or in part for such a purpose, the bequest was held void, because the discretion of the Archbishop could not be controlled by the Court.

72. Can it be said in this case that if the trustees choose r, in conjunction with the trustees of the Hindu Hamajam at Rajahmundry to use the funds for a religious purpose which is not of a public character or a purpose which is not strictly religious

as the Courts understand, the Court could pull them up or charge them with maladministration? When such a thing cannot be done and when the trustees could always plead a discretion under the will to waive the control of the Court, the bequest cannot be held to be a valid bequest.

73. In Blair v. Duncan [1902] A.C. 37 where a testatrix by codicil in her own handwriting directed her trustee, in the events which happened, that one-half of the residue of her estate should be applied for "such charitable or public purposes as my trustee thinks proper," the House of Lords held that the direction was void for uncertainty. Lord Halsbury in the course of his judgment observes:

It appears to me that it would be equally the law of England as it would be the law of Scotland that the disposition here given to A.B. to determine what particular public purposes should be the object of the trust is too vague and uncertain for any Court either in England or Scotland to administer.

74. Lord Robertson says at page 49:

The Courts have, I think, as matter of historical fact, reflected more or less consciously or unconsciously, the bias which disposes everyone favourably towards charity: and this never appeared more plainly or was avowed more frankly, than in the decision of your Lordship''s House in the Morgan Case, Magistrates of Dundee v. Morris (1857) 3 Macq. 134 To this favour for charities I ascribe the decision in favour of the validity of a bequest for such charitable purposes as a trustee may select. Accordingly, when I am asked to apply, by analogy, to public purposes decisions about charitable purposes, I decline to do so. The proper inference from those cases is, not that the law that the testator must select a particular class or particular classes of objects before he can leave it to a trustee to select the object of the bequest, is relaxed, but merely that it is settled that charitable purposes form such a particular class.

75. As I have said above the House of Lords adopted a very liberal interpretation, as Lord Robertson says, in the case of the Magistrates of Dundee v. Morris (1857) 3.Maoq. 134 The most important case in my opinion which bears upon this question is the case of Grimond v. Grimond [1005] A.C. 124. There a testator directed his trustees to divide a portion of the residue of his estate to and among such "charitable or religious institutions and societies" as they might select. The House of Lords held that the bequest was void for uncertainty. The dissenting judgment of Lord Monureiff applies with great force to the conditions prevailing in India. Speaking of religious purposes he says (page 608):

It is said that the term ''religions purposes'' is more restricted and definite ''than public purposes'' This n ay be true, but it does not follow that the term ''religious purposes'' is sufficiently specific to be enforced. Indeed there may be as much doubt and dispute as to its interpretation and limits as in regard to ''public purposes.''

76. This view was upheld by the House of Lords. If there is so much difficulty in understanding the words "religious purposes" in a place like Scotland, where there are not many religions, in India, the difficulty will be all the greater, where it is not possible to postulate definitely what the Hindu religion is. No two persons will give the same answer to the question " What is Hindu Religion?"

77. The popular expression "Hindu religion" includes in its ambit the highest aspirations of the human soul and the noblest ethics as well as the lowest and debased forms of animal and demon worship.

78. Lord Halsbury says (at page 126):

In my opinion the testator here has not given a class from which he allowed his trustees to select individually but he has left his directions so vague that it is in effect giving some one else power to make a will for him instead of making a will for himself, which I conceive to be the objection always entertained where the directions are so extremely vague that you cannot say what it is that the testator meant. In this case the testator has not made any will himself; he has allowed some one else to make a will for him after his death, and that the law will not allow.

79. Lord James said,

I concur for the reasons which have been given by Lord Moncreiff in his judgment.

80. What the respondent wants us to do here is to make a will for the testator. He says if the objects are not plain the Court should frame a scheme and make the objects plain. That is not the function of the Court and as Lord Halsbury has laid down no Court can make a will for any testator.

81. In Kendall v. Granger (1842) 5 Beav. 300 a bequest of personalty to trustees'' to be applied for the relief of domestic distress, assisting indigent but deserving individuals, or encouraging undertakings of general utility was held void as a charitable bequest. Lord Longdale laid down the law thus:

Now a charitable purpose may very well, I conceive, be a purpose of general utility 5 but the question which seems to me to arise in this case, as in the case of a gift to benevolent purposes, is, are all purposes of general utility necessarily such purposes as this Court deems to be charitable? I own that in my opinion according to the decisions which have taken place in this Court, they are not. The words ''general utility'' are so large, that they comprehend purposes which are not charitable, and comprising purposes which are not charitable, the trustees have an option to apply them to purposes which are not charitable, and consequently to divert the trust fund from those purposes which this Court; is in the habit of considering charitable

82. I will now consider briefly the Indian cases on the point. In Chandi Charan Mitra v. Haribola Das ILR (1919) Calc. 951 it was held that under the Hindu system of law a

general endowment for the expenses of worship of God without giving the name of the deity for whose benefit the endowment is to take effect was void for uncertainty. This case follows the case in Phundan Lal v. Arya Prithi Nidhi Sahha ILR (1911) All. 793 where it was held that a dedication not to any particular deity which was subsequently to be installed in a temple but to Thakurji in a Thakurdwara without mentioning the particular Thakurji to whom the property was dedicated was void for uncertainty Richards and Bannerjee, JJ., held that

it was not a dedication to any particular deity which was subsequently to be installed in a temple. It was a "dedication to the Thakurji in his Thakurdwara without mentioning the Thakurji to whom the property was dedicated. As we have already said there was no Thakurji and no Thakurdwara, therefore the dedication was bad on the ground of uncertainty.

83. In Parbati Bibee v. Ram Barun Upadhya ILR (1901) Calc.895 the residuary Clause of the will of a Hindu governed by the Mitakshara school of Hindu Law was as follows:

As to the rest and residue of my estate I give and devise the same to my executor in trust to spend and give away the whole thereof in charity in such manner and to such religious and charitable purposes as he may in his discretion think proper.

84. The bequest of the residuary estate was held to be a valid and charitable bequest. Henderson, J., observes at page 899,

In my opinion, however, the direction to spend and give away the whole of the residue in charity governs the words that immediately follow and, therefore, the purposes for which the fund is to be spent must be charitable though they may at the same time be religious. Upon this construction the executor will not be justified in applying the subject of the trust to objects which are not charitable. In that view, I declare the bequest of the residuary estate of the testator to be a valid charitable bequest.

85. If the objects of the charity are not definite but if the purpose is definite the Court will uphold the bequest. In Gordhan Das v. Chunni Lal I.L.R.(1908) All. 111 it was held that a settlement of the income of seven villages to the extent of Rs. 500 a month to be applied to charitable purposes at a dharmasala which he had founded was held to be a good bequest. The learned Judges observe at page 114:

The dedication in the case before us is for charitable purposes and for charitable purposes alone. A trust for such purposes, that is, for charity, generally, will always be carried out notwithstanding that the objects of the charity are not specifically defined. The Court can, if necessary, in such a case, nettle a scheme for its proper administration.

86. In the present case also, if the whole amount is to be spent for only a charitable purpose, it will be competent for the Court to indicate the objects of the charity.

87. In the light of these decisions I must hold that the bequest contained in Clause 11 of the will is void for uncertainty.

88. The next point urged is that the defendant is not bound to give effect to the terms of the will as he, by right of survivorship, is entitled to the whole of the property. It is urged that unless at the time of the adoption it was made a condition that the bequest should not be disturbed by the adopted son and unless the natural father had agreed to such a condition, the adopted son could repudiate the terms of the will making a bequest in favour of charity. Before I consider the law on the point, it is necessary to notice a few facts. The testator died in 1909. The adoption was not made till 1911. The widow was in possession of the property and carried out the terms of the will. The testator was a well-known man in the place. The widow made the adoption by virtue of the power given in Clause 6 of the will. The will is a registered will. It cannot be contended that the natural father was unaware of the terms of the will and did not tacitly acquiesce in the terms of the will. The appellant urges that the plaintiffs should have specifically pleaded that there was such a consent on the part of the natural father. I do not think that in the circumstances it was, incumbent on the plaintiffs to plead that. The Court is entitled to draw an inference of tacit consent from the evidence in the case. It is unnecessary to discuss this point at length on account of my decision on point 2.

89. The appellant relies upon Balkrishna Motiram v. Sri Uttar Narayan Dev ILR (1919) 43 Bom. 542 Bhyri Appamma v. Bhyri Chinnammi (1920) 12 L.W. 17 and Lakshmi y. Subramanya ILR (1889) Mad. 490. In Balkrishna Motiram v. Sri Uttar Narayan Dev ILR (1919) 43 Bom. 542 a Hindu who was in possession of ancestral property executed when he took the defendant in adoption a Vyavastapatra with the consent of the natural father of the defendant whereby he directed payment of an annual sum for the purpose of lighting lamps in a specified temple. The Court held that the grant in favour of the temple was invalid as not having been recognized by-custom to be appropriate at the time of adoption or binding upon the adopted son in modification of the strict rules of Hindu Law. The learned Judges observe at page 549:

It would appear to have been established by these decisions that agreements for reasonable provision for widows ought to be upheld as valid according to general custom modifying the strict terms of Hindu Law. But no authorities have been quoted before us in favour of any other persons in such connexion or in support of a general extension of the modification so as to include as here claimed, reservations in favour of charities and religious endowments. The burden of establishing any such extension would lie upon the person seeking to prove such modifications of the strict rules of the Hindu Law. That burden has bore not boon discharged.

90. A Hindu can settle a portion of his ancestral property upon anybody he likes and then take a boy in adoption. The adopted boy could not under such circumstances impeach an alienation made before the date of his adoption. The Court would view

with suspicion only such, arrangements as are unreasonable and subversive of the interests of the adopted son.

91. The 12 Law Weekly case decided that in the absence of any agreement with the natural father at the time of adoption, if there is a bequest in favour of the widow in the will of the testator the adopted son could repudiate the bequest. A widow can at the time when she makes the adoption with the consent of sapindas stipulate for the maintenance of herself in cases of disputes arising between her and her adopted son and such an arrangement is reasonable. The Courts would uphold such an arrangement, but where a widow makes an adoption by virtue of the power given under the will of her husband then, unless the natural father was aware of the provisions of the will, it might be contended that if the father was aware of the provisions he would not have given his boy in adoption and therefore the adopted son is not bound. In Ganapati Ayyan v. Savithri Ammal ILR (1898) Mad. 10 Subrahmanya. Ayyar, J., observes as follows:

If, from the hypothetical case, we turn to the actual facts of the case before us, there is no doubt that the title of the adopted son could not affect the right of the charity for the latter right had vested long before the adopted son''s right arose. The second defendant''s rights must therefore be held to be subject to that created in favour of the charity by the oral devise, and it is hardly necessary to point out that Exhibit A. docs not evidence an alienation by the widows, but is a mere formal declaration executed by the persons appointed by the testator to bring into existence such written evidence of his disposition and who held possession of the property devised till they transferred the same to the duly constituted manager of the charity only as the trustees for the charity. Compare Basher Purushotam SerasvalibaiI.L.R. 17 Bom. 485.

92. In the present case the widow acted in conformity with the will and it cannot on the evidence before us be said that the natural father was unaware of the terms of the will. The adopted son cannot approbate arid reprobate the will, at the same time. He owes his existence to the will and in the circumstances of the case the onus lies heavily upon him to show that his father was unaware of the provisions in the will and he has not discharged the burden. I find this point against the appellant. The question of arrears need not be considered as I hold that the defendant cannot be directed in this suit even if it were held that the suit is maintainable, to pay up any amount due to the trust.

The appeal therefore should be allowed.