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Court : Allahabad

Decided On : Mar-11-1941

Reported in : AIR1941All235

Appellant : Mohammad Yusuf and ors.

Respondent : Azim-uddIn and ors.

Judgement :

Dar, J.

1. On 20th November 1934, Mohammad Husain a wealthy trader of Basra in Ballia district, died leaving a valuable estate, partly real and partly personal, and a widow Kulsum Bibi and three sons, Azim-uddin, Sharfuddin and Amjad Ali and one daughter Aisha by different wives. He also left unto him surviving two persons named Mohammad Yusuf and Abdul Hamid who were interested in his affairs. Mohammad Yusuf had been the mukhtar-i-am of Mohammad Husain for a long number of years and Abdul Hamid's son, Abdul Hasan, and his daughter Fakhrulnisa were married to Mohammad Husain's daughter Aisha and to Mohammad Husain's son, Sharfuddin respectively. On 4th November 1932, Mohammad Husain is alleged to have executed a deed of wakf by which he settled portion of his estate and by which he appointed himself and Mohammad Yusuf as, joint mutwallis to administer the settlement and after the death of Mohammad Husain, Mohammad Yusuf was to administer the settlement solely.

On the death of Mohammad Husain, disputes arose amongst his heirs as to the quantum and the division of the estate for the purposes of succession and inheritance and as a result three actions were raised in the Court of the Additional Civil Judge of Ballia two of which related to that portion of the estate which had not been settled by him and one of which related to that portion of the estate which was the subject-matter of the waqf. The three suits were tried together and disposed of by one judgment and they were made the subject of five appeals to this Court. The two suits which related to the estate outside the waqf gave rise to four appeals to this Court which have been already disposed of by us by a separate judgment and the suit which related to the waqf property (suit No. 9 of 1936) and which is the subject-matter of this appeal is now before us for consideration.

2. In this suit the eldest son of Mohammad Husain, namely Azimuddin, is the plaintiff and Mohammad Yusuf, the mukhtar-i-am of Mohammad Husain and the mutwalli of the alleged waqf is defendant I, but the widow of Mohammad Husain as also the daughter of Mohammad Husain and his two other sons were also made defendants. The plaintiff's case, shortly stated, is that the alleged deed of waqf of 4th November 1932, was secured by Mohammad Yusuf as a result of fraud and undue influence practised upon Mohammad Husain and it was not properly and duly executed by Mohammad Husain and further that if it may be assumed to have been executed by Mohammad Husain the deed is void in law. The suit was mainly contested by Mohammad Yusuf who maintained its validity, but among the heirs of Mohammad Husain, apart from Azimuddin, the widow Kulsum Bibi and the son Amjad Ali supported the plaintiff's case for avoiding the waqf. The other son of Mohammad Husain Sharfuddin and his daughter Aisha supported the waqf. The sole question which arose in the case was the factum and validity of the waqf. If the waqf were to be found invalid, the plaintiff was entitled to a one-fourth share in the property which he claimed and as to this there was no dispute.

3. The trial Court has found that the waqf was duly executed by Mohammad Husain but it was void in law. The objections to the validity of the waqf in the view of the trial Court are (1) that no provision has been made in the deed for the appointment of mutwallis for all times on failure of the scheme of mutwalliship

which is laid down in the deed, (2) that no provision has been made in the deed for disposal of funds which are allotted to certain beneficiaries on extinction of the line of those beneficiaries and (3) that the ultimate trust which is provided in the deed for pious, religious or charitable objects is void for uncertainty. Accordingly the trial Court has granted the plaintiff a decree for partition of the estate (the subject-matter of the waqf) which he claimed for. Against the said judgment and decree Mohammad Yusuf, Sharfuddin and Mt. Aisha have made this appeal to this Court and substantially the same questions which were canvassed in the Court below arise for our consideration in the appeal.

4. The deed of waqf dated 4th November 1932 was originally drawn up in the Urdu language and we have got the original document before us, but an official translation of the document is also printed at p. 119 of the printed record in first appeal No. 373 of 1937. In this deed the estate, the subject-matter of the waqf, was valued by Mohammad Husain at Rs. 12,000 and its income was assessed to be Rupees 850. The deed provides that Mohammad Husain and Mohammad Yusuf will be the first two joint mutwallia to administer the waqf and after the death of Mohammad Husain, Mohammad Yusuf will continue as the sole surviving mutwalli. After the death of Mohammad Yusuf the office of mutwalli will devolve upon Sharfuddin, the second son of Mohammad Husain, and after him upon Amjad Ali, the third son of Mohammad Husain and after the death of the latter on the eldest son of Sharfuddin and after him on the eldest son of Amjad Ali and so on in alternation till the line of Sharfuddin and Amjad Ali becomes extinct in which case it will go in the surviving line so long as one line remains, but there is no provision as to how the mutwalliship will continue after the extinction of both the lines of Sharfuddin and Amjad Ali. After laying down the scheme of succession of mutwallis the deed provides as follows:

1. After deducting the Government revenue, the entire annual income from the entire zamindari properties made a 'wakf' of is Rs. 850.
2. Out of the entire annual income aforesaid the would-be two 'mutwallis' shall annually give Rs. 150 to Sharfuddin aforesaid, or to his male descendants, Rs. 150 to Sheikh Amjad Ali aforesaid, my minor son, under the guardianship of Mt.

Kulsum Bibi, his mother, or in future to his male descendants, Rs. 60 to Sheikh Azimuddin, my son aforesaid, as long as he is alive, and if, in future, by grace of God, a legitimate son is born to him, the payment of Rs. 60 aforesaid shall always be continued to be made to the male descendants of Shaikh Azimuddin aforesaid, Rs. 60 towards charity, Rs. 120 on account of salary to every 'mutwalli' for the time being, Rs. 150 for expenses relating to collections and other necessary items as well as expenses for settlement (of land) and making arrangements and improvements, etc., relating to the said property made a 'waqf' of and Rs. 100 to Mt. Aisha Bibi, my daughter or in future to her male and female issues, in case she has no male or female issue to Mt. Aisha Bibi aforesaid and after her death the payment of Rs. 100 aforesaid shall become extinct and the said amount shall be distributed amongst my issues and Rupees 60 to Mt. Kulsum Bibi, my wife, according to the share under Muhammadan law. In case of extinction of male descendants of Sharfuddin aforesaid, the succession of 'mutwalliship' shall permanently pass to the male descendants of Amjad Ali aforesaid as mentioned above. If to the contrary the male descendants of Amjad Ali become extinct in presence of the descendants of Sharfuddin, then the succession of 'mutwalliship' shall permanently pass on to the male descendants of Sharfuddin aforesaid. If, may God forbid, there be extinction of my descendants, at any time, the amounts allotted above to my heirs, shall be utilised for some charitable purposes according to the scheme to be prepared by Court and the Court shall, in that case, have power to utilise (the money) only for such charitable purposes as would be correct and valid according to the Muhammadan religion as a whole....

5. It will be noticed that under this deed a sum of Rs. 60 was given to Azimuddin and his male descendants and a sum of Rs. 150 each to Amjad Ali and Sharfuddin and their male descendants, but no provision was made that in case of the extinction of the male descendants of any one of these three persons how the fund, which was allotted for that purpose, was to be disposed of. It may further be noticed that Rs. 60 were given for charity from the very outset and the Urdu word used in the original document for charity is khairat. On the failure of the settlor's descendants, a provision was made in the deed for the income to be spent for charitable purposes, but here again it may be noticed that the Urdu expression in the original document for failure of descendants is nasle khandan munqata ho jaoe

and the Urdu expression for charitable purposes used in the original document is 'kare khair.' It will thus be seen that the ultimate trust in favour of charitable purposes was to come into play upon the total extinction of all the descendants of the settlor, both in male and female line, and not merely on the extinction of male descendants and further the ultimate trust was not in favour of charitable purposes as the English translation puts it but in favour of kare khair whatever that expression may mean as we shall have to consider later on.

6. At the time of the making of this waqf Mohammad Husain was in failing health. He was over sixty years of age. Ten years before he had a paralytic seizure which was followed by another attack some years later and about the time when the waqf was made he used to complain of the weakness of brain and of his brain not being in a sound state. By this deed Mohammad Yusuf, the mukhtar-i-am was made a joint mutwalli with the settlor and the sole mut-walli after the settlor's death in preference to the sons of the settlor. Out of the alleged income of Rs. 850 of the waqf property Mohammad Yusuf was given an allowance of Rs. 120 for his salary and Rs. 150 for management expenses. The trial Judge has found and there is good evidence to support the finding that the actual income of the property was at least Rs. 1450 and not Rs. 850 as alleged in the deed and that the property was considerably worth more than Rs. 12,000 which was the value alleged in the deed. This difference between the real income of the property and its alleged income which came to about Rs. 650 was not disposed of in any way by the deed and it was therefore to remain at the disposal of the mutwalli. The deed, on the face of it, makes inadequate provision not only for Azimuddin with whom the settlor was not on good terms but also with regard to Azimuddin's descendants. There is also a good deal of evidence to show that Mohammad Yusuf exercised a great influence over Mohammad Husain and used to bring about quarrels between the father and the sons. On the basis of these facts it is contended that the deed of waqf was not a free and spontaneous act of Mohammad Husain and it was secured by fraud and undue influence by Mohammad Yusuf to gain unlawful advantage to himself. The trial Judge has expressed himself on this part of the case as follows:

From all the above facts it is clear that Mohammad Husain was a regular invalid on account of attacks of paralysis. This disease usually affects the brain and

Mohammad Yusuf probably found a very opportune moment for carrying out his scheme of self-aggrandisement. His relations with Azim-uddin were already estranged. There is a letter (Ex. A-61 of 5th December 1932) which was sent from Calcutta by Mohammad Mustafa. The word used in it is 'Satan' most probably meaning thereby Mohammad Yusuf who was the cause of all the troubles. Under the circumstances it is highly probable that Mohammad Husain who had not a sound brain and disposing mind succumbed to the influence of Mohammad Yusuf.

One further fact is worth being noticed. This Mohammad Yusuf appears to have got a special knack for securing 'wakf' deeds from people. One similar deed was written by Abdul Samad, father of Abdul Hamid, which was registered after his death by the same sub-registrar who registered the 'wakf' deed in question in this suit. Yusuf was its marginal witness. That 'wakf' deed too was set aside, though by mutual agreement of the interested parties.

7. At the same time the learned trial Judge has further found:

After having thoroughly considered the evidence of the parties I am of opinion that it is established that the 'wakf' deed was duly executed by Mohammad Husain at a time when he was in his senses.

8. The learned Judge has also decided issue 2 in this suit which related to the genuineness, of the wakf and its being given effect to and its being executed by Mohammad Husain at a time when he had sound disposing mind in favour of the defendants. The case is not free from suspicion, but on the whole we have come to the conclusion that the finding of the trial Court on the due execution of the wakf should not be disturbed. There remains now the question whether the wakf having been duly made by Mohammad Husain is valid in law, and the first question which arises for consideration is whether the ultimate trust which is in favour of kare khair is void for uncertainty. A trust in favour of charity exclusively never fails for want of certainty and never fails by reason of indefiniteness or uncertainty of objects. Ever since the cases in *Moggridge v. Thackwell* (1792) 1 Ves J 464, *Moggridge v. Thackwell* (1802) 7 Ves 36, *Moggridge v. Thackwell* (1807) 13 Ves 416 and *Mills v. Farmer* (1815) 19 Ves 483 were decided by Lord Eldon, the law has been well settled in England that a trust for charity generally or a trust for charitable

purposes to be determined by nominated trustees are perfectly good trusts. Equally well settled it is in England that where a trust is for charity or benevolence, or is a trust for charity or philanthropy or is a trust for charity or patriotism or is a trust for charitable or philanthropic or benevolent objects, such trusts are void for uncertainty. In all such Cases it has been held that the word 'or' is, used disjunctively and such trusts permit the trustees to spend the trust funds either on charitable objects or the other alternative object which may be benevolent, philanthropic and patriotic and a trust for benevolence, philanthropy and patriotism is not exclusively charitable and, is void for uncertainty. But trusts for charity and benevolence or charity and philanthropy or for charitable and philanthropic objects where the word 'and' is used conjunctively have been upheld.

9. The principle underlying the English cases of Chancery seems to be that where a trust is exclusively for charity, it will be upheld and it will never fail because the objects are not specified. On the other hand, if the trust is for benevolent objects, philanthropic objects or patriotic objects such objects may be charitable and may also include objects non-charitable. Therefore when a trust is a mixed trust with charitable and non-charitable objects and it is permissible to the trustee to spend the whole money on non-charitable objects without being called upon to account for maladministration it is void for uncertainty. In cases where a trust is in the alternative form, for example, for charitable or benevolent objects, the option remains with the trustee to spend money on an alternative object which may be wholly non-charitable and therefore such trusts are regarded as void. But where the trust is for charitable and philanthropic objects it is possible to read 'and' conjunctively and here charity dominates and the philanthropic object has to be charitable and such a trust' comes within the principle where charity is the exclusive object of the trust. In Snell's Principles of Equity, Edn. 21st, at p. 102 the law is stated as follows:

(1) Where the objects of a private trust are indefinite, the trust fails; but a charitable trust will never fail for uncertainty, of objects. So long as the trust instrument shows a clear intention to devote the property to charity, it is immaterial that the particular mode in which the intention is to be carried into effect is left uncertain. A testator may simply direct the property to be applied for charitable

purposes or for such charitable purposes as his executors or trustees may select : Mills v. Farmer (1815) 19 Ves 483; Moggridge v. Thackwell (1802) 7 Ves 36; In re Willis; Shaw v. Willis (1921) 1 Ch. 44. But in all cases where the particular objects are left indefinite, the intention must be exclusively charitable, or the gift will fail. For instance if a testator directs the property to be used for such 'charitable or deserving' 'charitable or philanthropic,' 'charitable or benevolent, or 'charitable of patriotic' objects as his executor may select, the gift will wholly fail, for all deserving, philanthropic, benevolent or patriotic objects are not charitable, and it would therefore be open to the executor, without committing any breach of his duty, to apply the whole of the property to a non-charitable object. The trust cannot in such a case be said to be charitable, or, at any rate, not exclusively charitable : Morice v. Bishop of Durham (1805) 10 Ves 522, Hunter v. Attorney-General (1899) 1899 A.C. 309, In re Davidson; Minty v. Bourne (1909) 1 Ch. 567, In re Da Costa (1912) 1 Ch. 337, Att.-Gen. for New Zealand v. Brown ('17) 4 A.I.R. 1917 P.C. 133, Houston v. Burns (1918) 1918 A.C. 337, In re Chapman; Hales v. Attorney-General (1922) 2 Ch. 479, In re Davis; Thomas v. Davis (1923) 1 Ch. 225 and Attorney-General v. National Provincial Bank of England, Ltd (1924) 1924 A.C. 262. If, however, the executor is directed to apportion the property between undefined charitable and non-charitable objects, so that he could not, without breach of duty, appropriate all of it to the non-charitable objects, the trust will not wholly fail, for, in default of apportionment, by the executor, the Court would apportion the property equally between the two classes of objects, equality being equity, and the trust will only fail as regards the part apportioned to the undefined non-charitable objects : Salusbury v. Denton (1857) 3 K & J 529; In re Clarke (1923) 2 Ch. 407. Also objects described as 'charitable and deserving' or as 'charitable and benevolent' will occasionally be construed simply as charitable objects the added words being treated as merely restrictive of the class of charities to which the property can be devoted : In re Best; Jarvis v. Birmingham Corporation (1904) 2 Ch. 354 and In re Eades (1920) 2 Ch. 353.

10. In Tudor on Charities, Edn. 4, on pp. 97 to 100, the law is stated as follows:

Where a charitable intention is shown which is not confined to an object initially impracticable or illegal it is immaterial to the validity of the gift that the particular

objects are left indefinite or, if specified are impracticable or illegal. Where the substantial intention is charity, the law provides a mode for carrying that intention into effect, if no particular mode is prescribed by the donor; or if a particular mode is prescribed which cannot be accomplished, it substitutes another in its place.... In accordance with the above rule, gifts for charity are supported although no particular mode of carrying out the intention is prescribed, as gifts for charity generally or for general purposes of a character unquestionably charitable, as for the poor or for educational or religious purposes, or purposes synonymous therewith.... The case is the same where a testator gives property to such charitable uses as he shall name, and names none; for the mere omission to make the particular nomination is not sufficient to revoke the charitable intention originally expressed. So also where testator directed a fund to be applied to such, charitable uses as he had by writing under his hand formally directed, and no such writing was found. Similarly, where the names of the particular charities or some of them are left blank.

11. In *Hunter v. Attorney-General* (1899) 1899 A.C. 309 at p. 323, Lord Davey in his speech has stated the law as follows:

What then, is the law applicable to the case? There are two classes of authorities. On the one hand, there is a long series of cases extending from *Morice v. Bishop of Durham* (1804) 9 Ves 399 decided by Sir William Grant and Lord Eldon, *In re Macduff*; *Macduff v. Macduff* (1896) 2 Ch. 451 decided by the Court of Appeal in 1896 and including two decisions of Lord Cottenham. In these cases it has been held that where charitable purposes are mixed up with other purposes of such, a shadowy and indefinite nature that the Court cannot execute them (such as charitable or benevolent or charitable or philanthropic or charitable or pious purposes), or where the description includes purposes which may or may not be charitable (such as 'undertakings of public utility'), and a discretion is Vested in the trustees, the whole gift fails for uncertainty. In *Vezey v. Jamson* (1822) 1 S & S 69 the trust was to dispose of the residue in such charitable or public purposes as the laws of the land would admit, or to any persons as the trustees in their discretion should think fit, or as they should think would have been agreeable to him, if living, and as the laws of the land did not prohibit. Sir John Leach said : 'The testator has

not fixed upon' any part of this property a trust for a charitable use; I cannot therefore devote any part of it to charity.... The necessary consequence is, that the purposes of the trust being so general and undefined that they cannot be executed by this Court, they must fail altogether, and the next of kin become entitled to the property.'

On the other hand, it has been decided in cases such as *Attorney-General v. Dooley* (1735) 4 Vin. Abr. 485 and *Salisbury v. Denton* (1857) 3 K & J 529 that where the trustees have a discretion to apportion between charitable objects and definite and ascertainable objects non-charitable the trust does not fail; but in default, of apportion by the trustees the Court will divide the fund between the objects charitable and non-charitable equally.

My Lords, I have come to the conclusion that the present case falls within the first class of cases. As Sir William Grant says, in *Morice v. Bishop of Durham* (1804) 9 Ves 399 : 'The question is not whether the trustee may not; apply it upon purposes strictly charitable, but whether he is bound so to apply it.' The answer to that question in the present case can only be that there is no such obligation. On the other hand, the other purposes to which conceivably the trustees may apply the whole fund in their discretion are not described with sufficient definiteness for the Court to attach any trust upon them.

A third class of cases was relied on by the Attorney-General, of which *Sinnett v. Herbert* (1872) 7 Ch. 232 and *In re Douglas; Obort v. Barlow* (1887) 35 Ch. D. 472 are examples in which there is a general overriding trust for charitable purposes, but some of the particular purposes to which the fund may be applied are not strictly charitable or one of two alternative modes of application is invalid in law. In such cases the trust is good and the Court will give effect to the general charitable trust, but the trustees are restricted from applying the fund to the purposes or in the manner which are objectionable. But, in my opinion, those cases have no application to that before your Lordships, because, as I have already said, I think that there is not here any general trust for charity binding the whole fund.

12. In India the Judicial Committee in *Runchordas v. Parvatibai* ('99) 23 Bom. 725 have held that a bequest for dharam is void for uncertainty. The Sanskrit word

'dharm' is capable of many interpretations and often has been used in the sense of charity, pure and simple, both by Hindu law-givers as well as popularly, but their Lordships took the interpretation of this word from Wilson's Dictionary who has defined it to be 'law, virtue, legal or moral duty.' Belying upon the well-known case in *Morice v. Bishop of Durham* (1805) 10 Ves 522 in which the bequest was 'for such objects of benevolence or liberality as the executor should most approve of' and in *In re Macduff; Macduff v. Macduff* (1896) 2 Ch. 451 at p. 463, in which the words of the bequest were 'purposes charitable or philanthropic' their Lordships held that a trust for dharam which means law, virtue, legal or moral duty is equivalent to a trust for such purposes as are mentioned in *Morice v. Bishop of Durham* (1805) 10 Ves 522 and *In re Macduff; Macduff v. Macduff* (1896) 2 Ch. 451 and was consequently void. On the meaning which was put upon the word 'dharam' by their Lordships as equivalent to charitable or benevolent purposes there can be no question as to the applicability of the English cases which were applied by their Lordships. But ever since the judgment was pronounced and although it has stood the ground up to this day it has exercised the mind of Indian lawyers and Indian Judges on the question whether the interpretation put by their Lordships on the word 'dharam' itself was not open to question. The judgment of their Lordships was pronounced in 1899. In *Parthasarathy Pillai v. Thiruvengada Pillai* ('03) 80 Mad. 840 Sir Subrahmanya Ayyar J. in his dissenting judgment has expressed the view that a bequest for dharam is a good bequest and he has explained with reference to Sanskrit texts and with reference to other considerations what should be the proper interpretation of the word 'dharam' when a trust is created for it. In *Advocate-General of Bombay v. Jimbabai* ('15) 2 A.I.R. 1915 Bom. 151 at pp. 288, 284, Beaman J. has expressed himself as follows on this matter:

It has often been held that gifts to 'dharam' are void for uncertainty. I have never been able to concur whole-heartedly in the niceties of legal distinction which have led to and been used in support of these decisions. In this country 'dharam' does mean roughly and almost invariably in the cases which have come up for legal decisions just 'charity' and nothing else. It is true that an Oriental's idea of charity might be a little wider and looser than that of Lord Eldon, particularly amongst the lower and more illiterate classes of Hindus and Mahomedans. But a liberal use of

the convenient doctrine cypres, which is surely elastic enough to reach almost anything, which Judges wish to reach, might have validated the technical defects and cured the infirmity. The ground of the rule in England appears to have been that as all charities were the special care, and under the direct control of the Court of equity, that Court must refuse to accept as 'charity' any gift which, by reason of the vagueness of the language in which it was expressed, left the Court in doubt as to how it was to be applied. I should hardly have thought that, outside the region of a rather hyper-refined legal pedantry, such considerations had any substance or real practical weight. But so the law undoubtedly stands, and where testators bequeath funds to 'dharam' the Courts decline to validate the gift as a gift to 'charity' in the English sense.

13. Unlike the word dharam the word khairat has not yet received a judicial interpretation from their Lordships of the Privy Council. There are no doubt some oases of Indian -Courts in which it has been held that the word khairat is not equivalent to the English word 'charity' and khairat in India includes many things which in England would be regarded as non-charitable : see *Mushtaq Husain v. Hakim Mohammad Hassan Khan* ('38) 20 A.I.R. 1933 Lab. 961 and *Punjab Sind Bank Ltd., Lahore v. Anjuman Himayat Islam* ('85) 22 A.I.R. 1935 Lab. 596 There is a case of Sind Court in *Mahomedally Ebrahimji v. Lakhmichand Issardas* ('29) 16 A.I.R. 1929 Sind 52 which was affirmed in appeal in *Mahomedally Ebrahimji v. Lakhmichand Issardas* ('31) 18 A.I.R. 1931 Sind 75 in which a bequest for khairati kam was held to be void for uncertainty. In this Sind case with reference to the Sindhi expression which was used in the document an interpretation was put that the khairati works might include works of non-charitable nature. We are aware that in England the word 'charity' in Chancery Courts has got a technical meaning. This matter has been discussed by us at length in a recent case decided by us in *Mirza Hidayat Beg v. Sath Behari Lal* Reported in : AIR1941 All225 . We know that in England all objects of public utility are not regarded as charitable, but we have no doubt that the word khairat as it is used in these provinces, does correspond with the technical meaning of the word 'charity' as it is understood in English law and as it was explained by Lord Macnaghten in *Commissioners of Income-tax v. Pemsel* (1891) 1891 A.C. 531 at p. 583. The basic idea of khairat as the term is understood in these provinces is a relief of the poor and the sick and we do not

think that under the cover of the word khairat it will be permissible to spend any trust fund by any [trustee for any purposes which could be regarded as non-charitable by Chancery lawyers in England.

14. Allied with a trust for khairat may be a trust for kare khair or umure khair or nek kam which expressions in one sense and more literally may be translated as good works and which expressions in another sense and in a narrower sense may be translated as charity and charitable works in the sense of khairat. In our opinion, it is a question of interpretation in each case in which sense the expression is used in a particular document. If the expression is used in the sense of good works there is no difficulty whatever. It will then be allied to a trust for benevolent purposes, philanthropic purposes in terms of English cases and to a trust for dharam in terms of Indian cases and is therefore void for uncertainty because good works may be non-charitable and the trustee may be able to divert the entire funds in non-charitable works without being called upon to account for maladministration. On the other hand, it is possible on the construction of a particular document to hold that kare khair is used in the narrower sense of a trust for charity and in those cases, in our opinion, the trust would be exclusively for charity and would not be void for uncertainty. There have been certain cases of Indian Courts in which a trust for kare khair has been held to be void for uncertainty : see *Radhey Shyam v. Radhey Lal* ('27) 14 A.I.R. 1927 Oudh. 213 and *Gauri Shankar V. Mohan Lal* . In this latter case the bequest was for nek kam. In *Mt. Ahmadi Begam v. Mt. Badrun-Nissa* the bequest was for umure khair; in *Mariambi v. Fatmabai* ('29) 16 A.I.R. 1929 Bom. 127 it was for dharam khairat wagaira joined together and there is a case in *Mukarram Ali Khan v. Anjuman-un-nissa Bibi* ('24) A.I.R. 1924 All. 223 in which a trust for umure khair allied with other works was held to be valid. We do not think that these cases lay down as a matter of law that in a, proper case on construction of a document umure khair and kare khair cannot be interpreted to mean charity in the narrower sense but if they do and if they contain anything which is inconsistent with what we have said above or with what we are going to say hereafter then with all respect we cannot agree.

15. What then is the law on the subject which is applicable to this case? In our opinion a trust for charity simpliciter so long as it is confined to charity exclusively

is a perfectly good trust and it is not necessary that the objects of trust or charity need be specified. This, in our opinion, is the English law and this is also the; Indian law : see *Gangabai v. Thavar Mulla* (1862) 1 Bom. H.C.R.O.C. 71 We further think that a trust for khairat, or a trust for khairati kam is a perfectly good trust and khairat and khairati kam should be taken as equivalent to charity and charitable objects, and in such a case specification of objects of charity is not necessary. The Mussalman Wakf Validating Act of 1913 in Section 3 enjoins as follows:

It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:

(a) for the maintenance and support wholly or partially of his family, children or descendants, and (b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

16. In our opinion, if a Mahomedan settlor creates a wakf in favour of the poor or a trust for religious, pious or charitable purposes of a permanent character recognized by Mussalman law without specifying the religious, pious or charitable objects or he makes a trust for religious, pious or charitable purposes of a permanent character recognized by Mussalman law either one or the other or all or in any combination such a trust would be perfectly valid and should not fail simply because the objects were not specified. If a trust is for *umure khair* or *kare khair*, it is a question of construction in what sense the expression is used and if it is used in the sense of benevolent purposes or good purposes the trust will be void for uncertainty, but if it is used in the narrower sense of *khairat* it will be a good trust. So far as the question of specification of objects required by the proviso to Section 3, Mussalman Wakf Validating Act of 1913 is concerned, judicial authority is somewhat conflicting. In *Ramzan v. Mt. Rahmani* ('32) 19 A.I.R. 1932

Oudh. 71 a Bench of the Oudh Chief Court took the view that a specification of objects was not necessary. In *Mt. Ahmadi Begam v. Mt. Badrun-Nissa* already referred to, the majority of the Pull Bench of the Oudh Chief Court took the view that specification was necessary. The Lahore High Court is also in favour of specification : *Punjab Sind Bank Ltd., Lahore v. Anjuman Himayat Islam* ('85) 22 A.I.R. 1935 Lab. 596. With all respect we cannot agree with the view which insists on the specification of objects having regard to what we have said above. It remains now to interpret the document which is now before us. The settlor in this document states that:

If, may God forbid, there be extinction of my descendants, at any time, the amounts allotted above to my heirs, shall be utilised for some charitable purposes according to the scheme to be prepared by Court and the Court shall, in that case, have power to utilise the money only for such kare khair as would be correct and valid according to entire Mohammadan religion.

17. Kare khair here means something like good work, benevolent work and on the face of it it may include work which may not be of a permanent character and which may not be religious, pious or charitable within the meaning of the proviso to Section 3, Mussalman Wakf Validating Act, 1913. If this is a correct interpretation of the word kare khair the trust clearly falls within the class of cases of which *Morice v. Bishop of Durham* (1805) 10 Ves 522 and *In re Macduff; Macduff v. Macduff* (1896) 2 Ch. 451 and the Privy Council case in *z Runchordas v. Parvatibai* ('99) 23 Bom. 725 are the leading examples and the trust should be void for uncertainty. Mr. Mushtaq Ahmad contends that having regard to other expressions used in the deed of waqf kare khair should be construed herein the narrower sense of charity and charitable purposes and he says that the official translator of the High Court has also translated the word in the narrower sense which suggests that like the translator the settlor also might be using the word in the narrower sense. At two places in this document the settlor has used expressions with reference to charity. From the very commencement of the waqf he has dedicated Rs. 60 for charity and this is to go on from beginning to end. The Urdu word used by him for this appropriation is khairat. In the reservation clause which we have quoted above he does not use the word khairat but uses the word

kare khair, and it seems to us that the proper construction of the document is that he was using the word kare khair in a larger sense so that money may be devoted not only to objects of khairat (charity) but for objects which might or might not be charitable and the settlor deliberately used a wider language to give a greater discretion to the Court and to the mutwalli to administer the trust. In this view of the matter, the condition laid down in the proviso to Section 3, Mussalman Wakf Validating Act, has not been duly complied with and the waqf fails for uncertainty.

18. Two other objections were entertained by the trial Court as to the validity of the trust. One was that there was no provision for the appointment of future mutwallis after the scheme of mutwalliship provided in the deed came to an end on the extinction of the lines of Sharfuddin and Amjad Ali. Relying upon certain observations in *Mt. Latifunnissa v. Najmuddin Shah* : AIR1935 All856 and *Mohammad Ismail Ariff v. Ahmad Moolah Dawood* ('16) 3 A.I.R. 1916 P.C. 132 at pp. 133 to 135 the learned Judge has held that the absence of a provision for the appointment of future mutwallis is a fatal defect in the waqf. The cases relied upon by the learned Judge do not support any such proposition. *Mt. Latifunnissa v. Najmuddin Shah* : AIR1935 All856 turned upon its own facts and the question there was whether the deed in suit was a waqf at all or not and in deciding that question the Court had to consider the various provisions of the deed and in order to make out that there was no valid dedication it was observed that a provision was not made for the appointment of mutwallis as was usually done in the ease of waqf. That case is no authority for the proposition that a Mahomedan wakf is bound to lay down a permanent scheme of mutwalliship which is bound to last till eternity and that if he provides only for a scheme of mutwalliship which is good enough to last for a long time but which may not last in perpetuity the waqf becomes void. We do not think that this is the correct view of the law.

19. The second attack on the deed was that there was no provision for the application of the fund which was reserved for Sharfuddin and Amjad Ali and their male descendants on the extinction of the male descendants of the one while the line of the other continued. On account of the absence of such a provision it was contended that the fund reserved for a particular line which would become extinct would accumulate and could not be disposed of for charity under the reservation

clause till the entire family became extinct and this might involve accumulation for a long number of years, possibly for a long number of generations, and such a trust which implied such accumulations was not sanctioned either by Anglo-Indian law or by Mahomedan law. Reliance was placed on a passage in *Irfan Ali v. Official Receiver* : AIR1930 All887 in support of this contention which is in the following words:

It is not necessary to emphasize that, as the result of the provision of para. 7 of the waqf deed there would be an accumulation from the property in the case of an extinction of the line of Mubarak Ali. The dedicator did not at all consider what was going to happen if his descendants died out, in course of time. As the stipends ceased to be paid the trustees would have in their hands the total income of the two-thirds of the property, and the only thing which they could do would be to purchase further property with the income. The result would be an accumulation of property without any definite object which is countenanced neither by the Mahomedan law nor by the Anglo-Indian law, namely Section 18, T.P. Act In our opinion, the waqf which Mubarak Ali purported to create was not valid under the law and the decision of the Court below must be affirmed.

20. These observations occur in connexion with the facts of that case where there was in the document a clear direction of an accumulation. In the instrument before us there is no clear direction of accumulation at all. The question of accumulation, if it arises at all, arises by implication in the sense that after the extinction of the line the fund allotted to it would remain undisposed of. It is permissible to argue that the intention of the settlor was that on the extinction of the line the fund reserved for the line would lapse to charity and would not accumulate or would be taken by the remaining line. After all the settlor in clear words has not expressed the direction to accumulate just as he has not in clear words expressed as to what would happen to the fund on the extinction of the line. The matter is not free from doubt. The trial Court has taken the view that the fund, if undisposed of, could not be utilized in charity or appropriated by the remaining line and was to accumulate. We have already held that the trust is void for uncertainty, and it is not necessary to express a final decision upon this topic and we propose to leave the finding of the trial Court on this part of the case also undisturbed. In the result the judgment

and the decree of the trial Court are hereby affirmed and the appeal is dismissed with costs.

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