

Mohar Singh and ors. Vs. Het Singh

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Court : Allahabad

Decided On : Feb-07-1910

Reported in : 5Ind.Cas.584a

Judge : Richards and ;Tudball, JJ.

Appellant : Mohar Singh and ors.

Respondent : Het Singh

Judgement :

1. The facts out of which this appeal arises are very simple. One Umrao Singh made a Will to the following effect: 'I have attained the age of 60 years, but I am childless. I am in a sound state of body and mind. The temple which I am building is only half built. It is my intention to instal an idol of Sri Radha Kishanji in it. I have despaired of my life and hence I will, that the zemindary property in patti Kamal, holding No. 5, Mauza Kukurgawan, pergana Sadabad, be devoted to the completion of the temple and to rag bhog and other expenses. Musammat Sobha Kunwar and Gian Kunwar, my wives, and Mohar Singh and Girwar Singh whom I have brought up from infancy shall be the Superintendents. And the remainder of my property which is in Mouza Kukurgawan, Garhi Avram, pargana Sadabad, district Muthra, and Chandpur hamlet of Gopi, pargana Akrabad, district Aligarh, shall after the death of the Musammats be applied in defraying the rag bhog and other expenses of Sri Thakurji Maharaj; Mohar Singh and Girwar Singh shall be the Superintendents of this temple and they shall be at liberty either to do the

management themselves, or get it done by others. The entire property shall stand in the name of Sri Thakur Radha Kishanji Maharaj, and the Superintendents shall have no power to sell or mortgage it. Mohar Singh shall realize the outstanding debts due to me, and there from pay my creditors. The balance he shall spend on the temple. If the above mentioned persons do anything against the temple, one, two or all of them shall be removed from their office. Bohra Sri Ram, resident of Jaunpur, Thakur Anand Singh, resident of Bhakulara, and Lala Radha Rawan, resident of Kasba Adm, shall have power either unanimously or by majority of votes, to replace the said Superintendents by others. As regards my three houses, the one in which the Musammats live shall continue to be occupied by them till their death, when it shall devolve upon Mohar Singh and Girwar Singh. The second house whose entrance is towards the west shall be occupied by Mohar Singh &c;'. The appellants applied for probate of this Will. This application was opposed by the widows of the testator as also by, Het Singh, respondent, who is a half-brother of Umrao. Probate, however, was granted.

2. Besides, in the present case there has been a finding in favour of the Will. The only question which now arises is whether or not the bequest of the testator of his property to the trustee for the purpose of completing the building of the temple and the subsequent installation and maintenance of the idol, is valid. The only argument against its validity is based on the ground that at the time of the Will and the testator's death the idol was not in existence, and that, therefore, the gift to a non-existent person was void under the Hindu Law. The doctrine that such a gift was void, for sometime found favour in the Calcutta High Court, extending as it did the decision of their Lordships of the Privy Council in *Ganendra Mohan Tagore v. Jotentro Mohan Tagore* 11. A. 387 : 22 W.R. 377 : 14 B.L.R. 60, to gifts to unconsecrated idols. The question recently came before the Calcutta High, Court in the case of *Bhupati Nath Smrititirtha v. Ram Lal Moitra* 14 C.W.N. 18 : 3 Ind. Cas. 642 : 10 C.L.J. 355. In principle the Will in that case is identical with the Will its the present case. The question as to the validity of the gift was referred to a Full Bench consisting of Jenkins, C.J., and Stevens, Mookerji, Coxe and Chatterji, JJ, The Court were unanimous in holding that the principle laid down in *Ganendra Mohan, Tagore v. Jotendro Mohan Tagore* 11. A. 387 : 22 W.R. 377 : 14 B.L.R. 60 did riot apply to gifts like the present and that the bequest was a valid gift.

3. We agree with the decision of the Calcutta, Full Bench and we think it unnecessary, having regard to the lengthy judgment delivered by the Calcutta Judges, to merely repeat their reasons.

4. The result is, that we allow the appeal, set aside the decree of the Court below, and dismiss the plaintiff's claim. We direct each party to abide his own costs in all Courts.

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