

Narasingh Charan Mohapatra Vs. Radhakanta Mohapatra

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SooperKanoon Citation : sooperkanoon.com/524248

Court : Orissa

Decided On : May-11-1949

Reported in : AIR1951Ori132

Judge : Ray, C.J. and ;Panigrahi, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 126

Appeal No. : A.F.O.D. No. 16 of 1946 and Misc. Appeal No. 76 of 1948

Appellant : Narasingh Charan Mohapatra

Respondent : Radhakanta Mohapatra

Advocate for Def. : P. Mahanti, ;D.S. Das, ;B.N. Das and ;N.K. Das, Advs. in No. 16 of 1946 and ;S.K. De, Adv. in No. 76 of 1948

Advocate for Pet/Ap. : S.K. De, ;M.S. Rao and ;H. Mohapatra, Advs. in No. 16 of 1946 and ;M.S. Rao, ;H. Mohapatra and ;A.N. Purhit, Advs. in No. 76 of 1948

Judgement :

Panigrahi, J.

1. These two appeals arise out of proceedings in a suit filed in the Court of the Subordinate Judge. Cuttack, by one Radhakanta Mohapatra, son of the appellant, Choudhury Narasingh Charan Mohapatra, for a partition of the joint family

properties belonging to himself and his father. The suit was registered as O. S. No. 9 of 1945 and was ultimately compromised on 18-1-1946 by a deed of compromise the parties agreeing to have the partition of their properties in equal shares through the mediation of Bhadrals and undertaking to file allotment lists in Court within one month from the date of compromise. The allotment, however, did not materialise for some reason or other and the plaintiff thereupon filed a petition praying for the appointment of a commissioner. The learned Subordinate Judge, by his order dated 23-4-46, overruled the objection raised on behalf of the defendant-appellant that the compromise decree was in the nature of a final decree and directed the preparation of a preliminary decree. It is against this order of the Subordinate Judge that the No. 116 of 1946 has been preferred.

2. On 21-5-1946 the defendant addressed a letter to the Vice-Chancellor of the Utkal University proposing to 'place his share of whole estate' at the disposal of the University for the purpose of establishing a Sanskrit College at Jaipur where Ayurved, Jyotish, Karma Kanda, Vyakarna and Sahitya, and such other similar subjects as the University may think fit may be taught. The defendant also undertook to give Rs. 20,000/- for the putting up of buildings and for acquiring lands for the purpose. In his letter dated 21-5-1946 (Ex. 2) he wanted the approval of the Syndicate for giving effect to his proposal and desired that he may be informed immediately and the work may be undertaken without delay'. The Syndicate, by its resolution dated 22-5-46 (Ex. 7) resolved to accept 'the generous offer' made by Rai Bahadur Narsingh Charan Mohapatra for the establishment of a Sanskrit College at Jaipur in accordance with his wishes and recommend to the Senate to approve the specific purpose for which the offer was made. The Syndicate also appointed a committee to settle the details of the gift and to have a proper transfer deed executed. On 2-7-46 the defendant wrote a letter (Ex. 3-A) to Mr. C. M. Acharya requesting him to have a draft deed of gift prepared. Mr. Acharya appears to have prepared a draft which was submitted to the committee appointed by the Syndicate and the Registrar of the Utkal University by his letter dated 16-7-1946 (Ex. 8-A) requested the defendant to attend the meeting of the Committee that was summoned to discuss the terms of the draft gift deed. As the defendant could not be present on 26-7-46 which was the date fixed for the meeting, the meeting was adjourned to 14-8-46, to enable Choudhury Nursing

Charan to put forward a new proposal suggesting the creation of a trust of his properties for the benefit of the University instead of conveying them by a deed of gift. The reason for the suggested new proposal is given in his letter dated 20-8-46 (Ex-4) wherein he says:

'I now find that there are certain difficulties by a deed of gift. In a deed of gift I have to deliver present possession to the University but in a partition suit between me and my son, though the preliminary decree has been passed on 18-1-46, the final decree has not been passed as yet, as you know the Law's delay; and I do not like to involve the University into a litigation.....So I propose as follows, to the acceptance of the University authorities.....'

Briefly stated the proposal made is that (1) He will create a trust and execute and register a deed of trust in respect of his immovable properties in favour of the University,; as the 'cestui que trust', shall be the soleowner and take possession of the properties. (2) During his lifetime the defendant shall pay Rs. 5000/- annually to the University from out of the lands conveyed to the University, the first instalment being payable after the Sunia day of 1947. (3) The defendant shall pay a sum of Rs. 25,000/- to the University in cash, Rs. 10000/- being payable on 23-8-46 and the remaining Rs. 15000/- in two instalments by the end of December 1946.

3. Finally, the letter says:

'As soon as the University accepts the above proposal in its meeting of the Syndicate, I will execute and register a deed of trust and make it over to you'.

4. The proceedings of the Committee of the Syndicate which met to consider the above proposals are exhibited as Ex. P and show that the discussion took place in the presence of the defendant, Narasingh Charan Mohapatra and Rai Sahib Bemdev Misra, who was taking great interest in the matter on behalf of the defendant. The Committese accepted the various suggestions made in the new proposal and resolved to recommend the same to the Syndicate provided the defendant deposited Rs. 10,000/- by 23-8-1946. In pursuance of this resolution the defendant paid a sum of Rs. 10,000 on 23-8-1946 and a draft trust deed prepared

by the defendant's lawyer was placed before the Syndicate and the terms were settled by its resolution No. 164 of 12-9-1946, exhibited as Ex. Q. The deed of trust was thereafter actually executed by the defendant and registered on 14-10-1946. Thereafter there was an exchange of letters between the defendant and the University on account of the defendant's failure to pay the balance of Rs. 15000/- out of the promised donation of Rs. 25,000/- and on account of his failure to hand over the deed of trust after its registration. After much unnecessary correspondence the defendant wrote a letter to the Registrar of the Utkal University on 8-1-47 (Ex. 3-H) proposing some changes in the objects of the trust and suggesting that the gift of his landed properties and cash might be better utilised if an institution for imparting technical and vocational training were started. He also suggested that in lieu of the landed property which he had settled with the University he would contribute such amount in cash as may be reasonably required for starting the aforesaid technical institution. By a subsequent letter dated 10-2-1947 (Ex. 1-F) addressed to the Vice Chancellor he expressed the same desire to divert the purpose of the trust to the establishment of a technical and vocational training school while protesting that he is 'not at all unwilling to establish an Ayurvedic College at Jaipur as contemplated by me'. Finally he sent a registered letter, dated 6-5-47 (Ex. 1) to the Vice-Chancellor intimating to him that he revoked the proposal for the establishment of the proposed College and calling upon the University to refund the sum of Rs. 10,000/- deposited by him on 23-8-46 'for utilizing the same for other educational purposes'. A few months later, by another registered letter Ex. J dated 5-9-47 the defendant made a new proposal to the effect that in lieu of immovable property he would pay Rs. 50,000 to establish an Ayurvedic College in 1948. The Syndicate by its proceedings dated 1-10-47 decided to take up the matter to Court and to enforce the terms of the trust deed that had already been executed by the defendant. On 15-10-1947 the University put in a petition under Order 22, 10, Civil C. to be substituted in place of the defendant in O. S. No. 9/1945 and this petition having been dismissed by the Additional Subordinate Judge, by his order dated 31-8-48, Mis. A. No. 76 of 1948 has been filed by the Utkal University challenging the correctness of the order of the Subordinate Judge. The University had also filed a similar petition in F. A. No. 16 of 1946 much to the same effect. These two appeals were heard together and

lengthy arguments were addressed to us by Mr. S. K. De appearing for the defendantappellant, Narasingh Charan and Mr. M. S. Rao appearing for the Utkal University. At the conclusion of the arguments we intimated to the parties that the petition of the Utkal University would be allowed and that the appellant should be described as defendant 2, Narsirtgh Charan, Trustee for the Utkal University and that the University should be added as defendant 3 in the suit. We now proceed to give the reasons for our decision.

5. Mr. De's contention in First Appeal is that the Order No. 56, dated 23-4-46 of the learned Subordinate Judge and his subsequent order, dated 30-4-46, signing the decree, amount to the passing of a final decree and he submits that the Court had no jurisdiction to pass a fresh decree after the recording of the compromise on 18-1-46 which terminated in a decree which was itself final in all respects. It was however conceded by him that the compromise decree passed on 18-1-46 contemplated further proceedings to be taken by the Court after the filing of allotment lists prepared by Bhadralks. There was also something more to be done by the Court, namely, the actual allotment of the properties according to the lists prepared by the Bhadralks, drawing up of the final decree and putting each of the parties in possession of his share. It cannot, therefore, be contended that the decree passed on 18-1-46 was anything other than a preliminary decree and that further proceedings had to be taken by the Court in order to give effect to the intention of the parties. In fact, Mr. De abandoned this contention and conceded that First Appeal may be treated as a civil revision. The Subordinate Judge's order in appointing a commissioner is not open to challenge on any other ground.

6. The main controversy between the parties, however, centers round the competency of the Utkal University to be brought on the record in pursuance of the terms of the trust deed and the liability of the appellant, Narasingh Charan, to be described as a trustee in view of his express revocation of the trust deed. The points urged by Mr. De may be briefly summarised as follows: (1) There is no valid trust created as the defendant has not accepted the position of a trustee. (2) The University is incompetent to accept a religious trust, as the teaching of Karma Kanda contemplated by the settlor is a religious purpose and the endowment amounts to a religious endowment. (3) The contemplated trust has not been

accepted by the Senate and the promised donation has not been fully paid. (4) There is no devolution of interest 'in prasenti' and so the settlor could revoke the trust which in fact he has done. (5) Since the University is not a party to the deed there is no valid creation of the trust. (6) The property which is the subject-matter of the trust is not ascertainable and an undivided interest cannot be the subject-matter of a gift. The trust is, therefore, invalid for uncertainty. It is well settled that where the settlor constitutes himself the trustee the question of acceptance of the position of a trustee does not arise. A trust may be constituted without communication to a trustee and a trust is not affected by the fact that the trustee is unable or unwilling to act. A trust does not fail for want of a trustee, and if a trustee refuses to accept before the trust takes effect, the person in possession becomes a constructive trustee. Even a disclaimer by a trustee does not avoid a trust. If the settlor has done everything that is required to be done under the law the trust takes effect at once, the test of completeness being whether anything, fact, remains to be done on the part of the donor. A trust in the accepted sense of the word is the creation of an obligation by the owner to the intent that he may hold the property for the benefit of some other person or object. As soon as the trust is declared according to the requirements of the law, the legal ownership passes to the trustee and he is bound to apply the income arising out of the property to the use and benefit of 'cestui que trust'. As a general rule, it may be laid down that in order to make a voluntary declaration of trust binding upon the author of the trust he must have completely parted with all his interest in the property to the trustee or declared himself to be a trustee of the property for the benefit of the 'cestui que trust'-See 'Agnew's Trusts, p. 53'. It follows from the above that if the defendant was legally constituted a trustee by his being designated as such by the instrument of the trust, and if he did, in fact, act in the execution of the trust, there was no further need for anything more to be done by him. The evidence shows that the defendant paid Rs. 10,000/- in execution of the trust he created and that in his subsequent letters (Ex. 3-H and -J) he only suggests an alteration in the scheme for carrying out the trust and does not allege that there was no trust already. Mr. De's contention that the appellant did not accept the position of a trustee is, therefore, legally untenable and is unsound in fact.

7. The next contention is that the teaching of Karma Kanda being one of the objects of the trust, the whole endowment fails as the University is incapable of accepting or administering a religious endowment. This argument involves two assumptions neither of which is correct. The teaching of Karma Kanda is a charitable purpose and it is intended to impart education and advance knowledge. It is not for the performance of any particular ritual that the gift is made. Knowledge of Karma Kanda is altogether different from the performance of certain ceremonies or rituals, and I have no doubt in my mind that the study of Karma Kanda is as much a charitable purpose as the study of physical sciences. A gift to a general public use which extends to the poor as well as to the rich is a charitable gift. Even a gift for a religious purpose has been held to be a good charitable gift, if it involves religious 'instruction or edification of the public. In 'Dunne v. Byrne'-(1912) Ac. 407: (81 LJPC). Lord Machaughten delivering the judgment of the Judicial Committee stated that charity in its legal sense Comprises, among other trusts, trusts for the advancement of religion. But the trusts must be such as tend either directly or indirectly towards benefiting the public. It was next urged that the trust was not completed as the proposal of the donor did not receive the sanction of the Senate and the payment of the sum of Rs. 15,000/- (the balance out of the Rs. 25000/- promised by the appellant) contemplated in the deed of trust was not carried out. The settlor did not stipulate that the trust should fail in case of non-acceptance by the Senate when he made his proposal. In his first letter to the University he solicited the approval of the Syndicate and expressly stated in his letter (Ex. 2) that in case the Syndicate approves he may be informed immediately and the work may be undertaken without delay. In his letter Ex. 4 suggesting the creation of a trust he reiterated his earlier proposal and said

'As soon as the University accepts the above proposal in its meeting of the Syndicate I will execute and register a deed of trust and make it over to you'.

It is therefore idle to contend that the acceptance of the proposal by the Senate was a condition precedent to the commencement of the trust. Nor is it necessary under the Utkal University Act that the University should accept the endowment through the Senate. Section 9, Subs (6), Utkal University Act lays down that

'The Syndicate shall on behalf of and subject to the control of the Senate manage the funds, concerns, property and affairs of the University'

and Schedule sub (5) lays down

'Subject to the provisions of this Act and the Statutes, the Senate shall be the supreme Governing Body of the University, shall have power to review the actions of the Syndicate and of the Academic Council and shall exercise control over the Syndicate in its management of the funds, concerns, property and affairs of the University'.

The Senate is empowered to make statutes and in exercise of this power has framed Chapter IX of the Statutes defining the powers of the Syndicate. 2(2) sub-clause (g) expressly provides that the Syndicate shall have power

'to accept endowments, bequests, donations and transfer of any moveable property to the University on its behalf, subject to a report being made at the next meeting of the Senate'.

It is therefore the Syndicate that is the proper authority to accept the endowment and the Syndicate did, in fact, accept the appellant's proposal at its meeting as evidenced by Ex. 7 and Q. The action of the Syndicate was later reported to the Senate which, by its meeting held on 25-10-48, approved of the action of the Syndicate.

8. I am also not convinced that the payment of Rs. 15,000 was a condition precedent to the creation of the trust, the non-performance of which would invalidate the gift. Paragraph 2 of the trust deed recites that the settlor has already paid to the Utkal University Rs. 10,000/- and shall pay Rs. 15,000/- by 31-12-1946. The non-payment of Rs. 15,000/- would make the appellant and his estate liable for its payment and would not affect the creation of the trust. A trust is none the less a trust merely because one of its conditions is not executed. Mr. De's contention therefore fails.

9. It was next pointed out that there was no devolution of interest 'in praesenti' and that, therefore, it was open to the settlor to revoke, Reliance was placed in para

10 and 14 of the trust-deed in support of this contention. Para 10 says that after payment of the sum of Rs. 5000/- annually out of the income of the immovable properties which constitute the subject-matter of the trust, the balance of the income shall be retained by the settlor or shall be paid to him during his life time for his maintenance. Mr. De argues from this that as a substantial portion of the income is retained by the donor and as the donor is referred to as the 'Settlor' instead of as 'Trustee' there is no vesting of interest in the University by the execution of the trust deed. A person may both be a trustee and a 'cestui que trust' or one of the trustees and one of the 'cestui que trusts'. Under the terms of the deed both the University and the appellant are constituted trustees, the defendant being the trustee in charge of the management of the immovable properties and the University being the trustee for carrying out the object of the trust. The defendant is also the 'cestui que trust' in respect of the balance of the income arising out of the properties after payment of Rs. 5000/- annually during his lifetime. The use of the expression 'settlor' is not only appropriate but any other expression would be inconsistent with the creation of the trust. Mr. De argues that if the defendant became a trustee under the deed, the use of the word 'settlor' would negative any such intention. But if the word 'trustee' were used in place of the word 'settlor' the balance of the income would go to the trustee, whoever he might be, and would not be available to the donor for his his lifetime, as it was the donor's express intention that he should enjoy only for his lifetime the balance of the income. Para 14 says that the settlor and the University agree to carry out the terms and conditions set forth above. That the University did agree to accept the proposal and establish a College, as desired by the donor, is proved by the proceedings of the Syndicate and para 14 merely recites what had already been done towards the carrying out of the trust. I am, therefore, unable to appreciate the contention of Mr. De that the University should have been one of the executants of the trust deed.

10. The trust is created by the defendant in favour of the University and para 14 of the deed of trust merely recites that the University had already accepted the proposal to discharge the functions of a trustee. A trust may be constituted without communication thereof to the trustee or to the 'cestui que trust' and a trust is not affected by the fact that no trustee is named or by the fact that the trustee who is

named either refuses or is unable, through death or otherwise, to act. A trust of the property does not depend on the immediate existence of a legal estate in a trustee to support it. See Halsbury's Laws of England Vol. 33. p. 103. A trust is generally irrevocable unless a power of revocation is expressly reserved. If a man executes a voluntary conveyance and does not reserve a liberty to himself by a power of revocation the, Court will not loose the fetters he has put upon himself-See *Villers v. Beaumont*, (1682) 1 Vern 100. The presumption is that a charity is charitable and not fraudulent. Section 120, Transfer of Property Act lays down that a gift cannot be revoked except under circumstances in which, if it were a contract, it might be rescinded-such as fraud, undue influence, coercion, etc. It cannot be stated, in fact it is not even suggested, that the defendant was the victim of any fraud or undue influence or coercion such as would vitiate a contract. Nor would a mere mistake of law be sufficient to revoke a deed of gift, for Courts of Equity strongly incline against remedying mere mistakes of law. In '*Abhayachari v. Ramachandrayya*', 1 Mad HCR 393 the settlor brought a suit to cancel an instrument of gift executed by him in favour of the defendant, on the ground that the deed of gift was invalid under the Hindu the donee could perform his obsequies. The Law and that he had erred in supposing that Court held that even where the deed is voidable on the ground of fraud or mistake it is always a question for the discretion of the Court whether cancellation and delivery up of a deed are to be ordered. The case is simply one of the plaintiff's choosing to alter his mind, and the Court refuses to remedy a mere mistake of law. A similar case where all the authorities are discussed is reported in *Raja-Ram v. Khandu Balu*, (15 I C 529.) In *Pullayya v. Vedachala*, 1911-2 MWN 376: (11 I C 24) one L executed a registered trust deed intending title to pass thereby and it was held that the subsequent destruction and non-delivery of the deed to the trustees did not prevent the passing of the title to them. In another case reported in the same volume at p. 382 '*Mahadeva v. Sankara*', 1911-2 MWN 382 (12 IC 546) certain immoveable properties were settled on charitable trusts by a registered deed and the settlor appointed himself as Hukdar for life and provided that, after his death, his grandson should succeed him as Hukdar. It was held that the acquired under the deed a vested right to the trusteeship which took effect in possession at the death of the settlor and the settlor had no. power to revoke the appointment of the

grandson before his death. In 'Krishnaswamy v. Kothandarama Naiken, 27 M L J P. 582 (AIR. 12) 1915 Mad 380, the donor executed a deed of trust by which she settled certain properties on a temple. She constituted herself trustee during her lifetime and provided in the said deed for the carrying out, of the trust by certain individuals after her death. On the day previous to her death she executed a will by which she purported to revoke the trust and to make a new disposition of her properties. The dispositions themselves were in favour of the temple to which she had given the properties comprised in the trust deed. The trustees appointed under the earlier trust deed filed a suit for a declaration that the subsequent will was inoperative and had not the effect of revoking the trust. The document was. all along with the settlor as, under the terms of the trust, she was herself to be the trustee during her lifetime and the Court held that. the fact that the deed of trust was not handed,, over was no indication of the terms of the trust not having been given effect to. It was also held that, as there was a complete dedication of the property to the temple on the execution of the deed of trust, it was not open to the settlor to revoke the dedication by the will. which she executed immediately prior to her death.

11. Mr. De's justification for revoking the gift is based on what he considers to be the inactivity of the University in giving effect to the object of the trust and an apprehension that the University may not carry out the purpose of the trust at all. This apprehension, is hardly justified. The defendant promised, to pay Rs. 15,000/- before December 1946 so that the building of the College may be started. Actually, however, the document was not handed over for one reason or another, after its execution in October 1946. When the University demanded delivery of the payment of Rs. 15,000/- which was required for starting. construction of the building the defendant proposed a change in the objects of the trust. In the middle of the year 1947 he expressed his desire to revoke and in September of that year the Syndicate rejected the proposal of' the defendant in which he wanted to bring, about a change in the terms of the trust deed. In October 1947 the petition out of which this appeal arises was actually filed challenging, the action of the defendant in attempting to wriggle out of the terms of the trust deed. There was no validly constituted Senate during this period and when the newly-constituted Senate met the Syndicate reported its action for approval. It is thus clear that the delay in

giving effect to the object of the trust is attributable to the defendant alone, and even assuming that the University was guilty of laches I am unable to see how the trust, as such would be affected.

12. The fact that the particular application of a charitable gift is postponed does not render the gift void where the gift, as distinguished from its application, is immediate. The Charitable purpose is the donee, the establishpious purpose is to be effected. If the purpose itself were to fail, the Court may none the less apply the 'cypres' doctrine and give effect to the object of the trust. In 'Chamberment of the College is the mode in which the layne v. Brockett, (1872) 8 Ch. A 206 the settlor bequeathed her personal property to trustees upon trust to invest in consols and to make out of the dividends certain fixed annual payments, for charitable purposes. She further directed that when and so soon as the lands should at any time be given for the purposes as thereafter mentioned almhouses should be built and that the surplus remaining after building aim-houses should be appropriated to making allowances to the inmates. It was held that there was an immediate gift to charity ,the mode of execution being only dependent upon further events and an enquiry directed as in 'Sinnet v. Herbert, (1872) Ch A 232. Lord Selborne LC held:

'If the gift in trust for charity is itself conditional upon a future and uncertain event, it is subject in our judgment to the same rules and principles of any other estate dependent for its coming into existence upon a condition preceednt. If the condition is never fulfilled the estate never arises.'

On a construction of the deed it was held that

'there was nothing undisposed of and there was no resulting trust for the next of kind. The intention in favour of the charity is absolute. The gift and the constitution of the trust is immediate. The only thing which is postponed or made dependent for its execution upon future and uncertain events, is the particular form or mode of charity to which the testatrix wished her property to be applied'.

Similarly in Attorney General v. Craven '(1856) 21 Beav 392, it was held that when lands are given to charity on the happening of a particular event, there is a resulting trust in the meanwhile, but where real estate was vested in trust out of

the rents, to keep it ready for the reception of plague patients during their sickness, it was held that this was a present gift to charitable purposes and not merely a gift contingent upon the re-appearance of the plague; and secondly that there was no resulting trust in the meanwhile for the donor or his heirs though the plague had not re-appeared for more than 180 years.

13. In *Edwards v. Hall*, (1855) 43 E R 1158: (6 DCG MLG 74) it was held that a gift applicable to churches to be hereafter created is good. The word 'endow' means giving a benefit to some existing thing; it supposes something to exist either at the time when the gift is made or when the endowment is to take place

14. A gift is not bad because it may be applied not only to chapels that already exist but also to chapels that may come in existence afterwards. By the endowment of a school or chapel is only understood not the building or purchasing of a site for a school or chapel, but the providing of a fixed revenue for the support of those institutions. The word 'endow' was construed as not meaning to purchase or build.

15. The settled principle is that if the donor declares his intention in favour of a definite object which happens to fail from whatever cause, yet the general purpose being charity, such purpose will, notwithstanding the indefiniteness or failure of its immediate object, be carried into effect. For instances where the gift was held to be impracticable see '*Hayter v. Thego*' (1830) 5 RMS 113: (38 E-R 970) and '*Loscombe v. Solicitor General for New Zealand*, 1903 AC 173: (72 LJPC 37) the very same contention was put forward by the Solicitor-General as is now made by Mr. Deane, that upon failure of the object and purposes of the grant the property would revert to the donor and it was negatived by the Judicial Committee of the Privy Council. In this case certain Maori Chiefs, who were in possession of certain lands called 'Witeria', gave up possession for the use of the place as a college for the Bishop of the Church of England. The grant was made in 1859. No school or college had been erected till 1898 when the suit was filed by the trustees. The rents and profits of the land were being accumulated. The Solicitor General contended that the funds and lands had reverted to the Crown either absolutely or as trustee upon failure of the objects and purposes of the Crown grants and are not subject to administration by or under the direction of the Court 'cy-pres'. It was

held that an express gift of land and money for charitable purposes is not invalidated by the fact that the particular obligation directed cannot immediately take effect or will not of necessity take effect within any definite limit of time and may never take effect at all and that the doctrine of 'cypres' was applicable.

17. The last contention of Mr. De is that the subject-matter of the trust is not capable of being ascertained as it is an undivided interest in joint property and that the trust is accordingly void for uncertainty . If the property is capable of being reasonably ascertained or is sufficiently clearly designated a trust will be raised. The settlor in this case transferred absolutely the properties set forth in the schedule attached to the deed of trust and describes the properties as those in which he owns an eight-annas interest after the preliminary decree. He further says:

'After the final allotment of the properties which will come to the settlor's share shall form the subject-matter of the trust'.

It is, therefore, clear that the interest in the property conveyed is specifically designated and the half-share of the properties that will be allotted to the donor after the final decree, is equally capable of specific ascertainment.

18. All the contentions raised by the defendant are, therefore, overruled and as we have already intimated at the conclusion of the hearing, the defendant shall be added in the suit in his capacity of trustee as defendant 2 . The University is also a joint trustee under the terms of the deed and is entitled to be brought on the record. Even if the properties were to vest in the University, subsequent to the death of the settlor, the University has a present vested right and is entitled to be represented in the suit. Even otherwise, we would have held that having regard to the facts disclosed during arguments the University should properly be represented in the proceedings as a relator.

19. It is much to be regretted that unnecessary controversy should have arisen between the settlor and the University so soon after the execution of the trust deed. It is not for this Court to apportion the blame and determine as to who is responsible for this state of affairs. Much may be said on both sides. The

University was unnecessarily Insistent on the delivery up of the deed of trust which, under the terms of the trust, should be with trustee, viz: Narsingh Charan. The settlor, it appears to us, is also unnecessarily apprehensive that the University will not carry out the purpose of the trust. There was undoubtedly some delay in giving effect to the Resolution of the Syndicate owing to the non-existence of a legally constituted Senate. The University had to make certain arrangements for holding the elections for the first elected Senate and the delay is perfectly understandable. We can only hope that the cloud of distrust and suspicion which has been generated by circumstances for which neither party in particular is responsible, will soon be dispelled and the object of the trust carried into effect.

20. The petition filed by the University in No. 16 of 1946 and the Misc. No. 76 of 1948 are allowed. The First Appeal filed by the defendant, which is treated as Civil Revision, is dismissed, but in the circumstances there will be no order as to costs.

Ray, C.J.

21. I agree with the broad outlines of the reasons as formulated by my learned brother. As the order passed by us, is an interlocutory one as between the parties, I refrain from adding my own reasons 'in extenso' as they might embarrass one party or the other in the likely future litigation between them. I should, however, add that in the case of a trust which is the result of a series of negotiations between two parties, the question of intention and common understanding between them that might go to determine the nature and extent of the trust is not entirely foreign to the consideration of its validity and completeness.

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