

**(1881) 08 CAL CK 0004**  
**In the Calcutta High Court**

Anund Moye Dabi

APPELLANT

Vs

Grish Chunder Myti and Another

RESPONDENT

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**Date of Decision :** 10-08-1881

**Acts Referred:**

Limitation Act, 1963 — Section 10

**Citation :** (1881) ILR (Cal) 772

**Hon'ble Judges :** Wilson, J;Peinsep, J;Cunningham, J

**Bench :** Full Bench

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## **Judgement**

Wilson and Cunningham, JJ.—This is a suit by a purchaser at an execution-sale of the right, title, and interest of one Goluck Chunder Myti under the will of one Shib Pershad Giri.

2. [775] The only question before us is one of limitation. If the suit is properly a mere suit for a debt, and if, as was argued before us, the will amounted at most to an acknowledgment of the debt so as to give a new period of three years within which to sue, then, it is conceded, the suit is barred.

3. If, on the other hand, the will validly charged the debt on Immovable property, or created a valid trust for its payment, then, it is conceded, the suit is in time. (His Lordship then read the will as above set out and continued).

4. It has been decided in England that a charge of debts generally in a will upon the testator's personal estate, or any portion of it, creates no trust so as to exclude the Statute of Limitations: *Scott v. Jones* (4 C. & F. 382).

5. The reason is, "because it does not at all vary the legal liabilities of the parties, or make any difference with respect to the effect and operation of the Statute itself. The executors take the estate subject to the claim of the creditors; they are in point of law the trustees for the creditors; the trust is a legal trust, and there is nothing whatever added to their legal liabilities from the mere circumstance of the testator himself declaring in express terms that the estate shall be subject to the payment of his debts."

6. In this country there is no distinction between one kind of property and another in respect of its liability for debts. Probably, therefore, upon the principle just referred to (which is not based upon any peculiarity in the English law of trusts), a charge of debts generally by a testator on his property or any part of it would not affect limitation.

7. But the case is, I think, materially different when particular property is given upon trust to pay a particular debt or particular debts. In such a case the trustee has a new duty, not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply particular property to secure a particular debt, and such trusts of personality have been upheld in English Courts.

8. In *Willia v. Naylor* (3 Y. & O. Ex. 208), a testator gave one-fifth of his residuary personal estate upon trust to pay certain specified [776] debts, all of which were barred by limitation at the date of the testator's death. The case came first before Lord Lyndhurst, C. B., and afterwards before Alderson, B., and it was held, that the effect of the will was to revive the barred debts (the effect of the English Statute having been to bar the remedy, not to extinguish the rights); that the trust was a valid trust; and that the creditors claiming under it were entitled as creditors, not as legatees.

9. This case, it is true, was decided before *Scott v. Jones* (4 C. & F. 382); but the decision was approved and followed in an exactly similar case by *Shadwell, V. C.*, five years after *Scott v. Jones* (4 C. & F. 382) had been decided- *Philips v. Philips* (3 Hare 281).

10. I think the same rule is applicable in this country, and that a gift of property by will upon trust to pay a particular debt or particular debts creates a good trust.

11. In the present case the testator gives the property in question to the defendant, and expressly directs him to discharge certain duties, one of which is to pay the debt of Goluck Chunder out of the property. It is true that he confides the active administration in the first instance (probably during the defendant's minority, to the defendant's father; but that does not relieve the defendant from discharging the duties imposed, so far as they are undischarged; and then he says expressly, "I have given to you the whole of the above mentioned properties under the condition stated in this will."

12. This seems to me clearly a gift only on condition of discharging the trust, and I, therefore, think there is a trust within the meaning of Section 10 of the Limitation Act, and that the suit is not barred.

Prinsep, J.

13. On reconsideration of this case, and after hearing further argument, I agree in this judgment. The contrary view I formerly entertained was in consequence of understanding the case of *Scott v. Jones* (4 C. & F. 382) differently from the explanation now given. The case will be remanded to the lower Court for trial. Costs to follow the result.