

(1897) 02 CAL CK 0025

In the Calcutta High Court

Case No : Appeal from Original Decree No. III of 1895

Bhobotarini Debi and Kailas Chandra Shaha

APPELLANT

Vs

Peari Lal Sanyal, Durga Nath Chakravarty and Rajani Nath
Chakravarty

RESPONDENT

Date of Decision : 09-02-1897

Acts Referred:

Citation : (1897) 02 CAL CK 0025

Judgement

Banerjee, J.—This was a suit for the construction of the Will of one Chandra Nath Maitra, for a declaration that since the death of Piari Sundari, his elder widow, a 12 annas share of the estate left by him has vested by inheritance in the Plaintiff, his sister's son, for a further declaration that Defendant No. 1, Bhobotarini, the younger widow of the testator, has forfeited all her rights in the estate of her husband, that the putni granted by her in favour of Defendant No. 2, Kailas Chandra Shaha, is inoperative as against the Plaintiff, and that Defendant No. 1 is in any case incompetent to manage the estate; and for the recovery of possession of certain properties and for confirmation of Plaintiff's possession in certain others. The main allegations of fact upon which the suit was based are, that, on the death of Chandra Nath Maitra, his widow Piari Sundari and Madhusudan Chakravarty took out probate of his Will and managed his estate; that on the death of Madhusudan Chakravarty and Piari Sundari, the Defendant No. 1 obtained letters of administration in respect of the estate of the testator; that the Defendant No. 1 by reason of her disagreement with her co-widow and the executor to the Will left the family dwelling-house of her husband, and she has been leading an unchaste life and her right to the estate of her husband has consequently become extinguished under the terms of the Will; that of the 12 annas share of the testator's estate, which was bequeathed to his two widows, the 6 annas share obtained by Piari Sundari devolved on the Plaintiff by inheritance on her death, and the 6 annas obtained by the Defendant No. 1 has also devolved on him as the next heir of the testator, by reason of the extinguishment of her right; and that the putni of this last-mentioned share

granted by Defendant No. 1 to Defendant No. 2 is invalid. Durga Nath Chakravarty and Rajani Nath Chakravarty, sons of the testator's father's sister's son, who have obtained a 4 annas share of the estate under the Will, have been made Defendants 3 and 4. The suit was contested by Defendants 1 and 2, who filed separate written statements, and the substance of their defence was that the 12 annas share of the estate bequeathed to the two widows had become vested in the Defendant No. 1; that the Plaintiffs allegation that the Defendant No. 1 had forfeited her right by reason of her disagreement with her co-widow and the executor, her change of residence and her unchastity, was unfounded and untrue; that the putni granted to Defendant No. 2 was valid and binding, as being an alienation for legal necessity; and that the Plaintiff was not the legitimate son of the testator's sister, and consequently not the next reversionary heir.

2. Upon these pleadings, several issues were raised; the Court below having found them all in favour of the Plaintiff, has given him a decree as prayed.

3. Against that decree, Defendants 1 and 2 have preferred this appeal, and it is contended on their behalf--

4. First, that the Court below is wrong in holding that the widows of the testator took a limited estate, whereas it ought to have held that they took an absolute estate under the Will;

5. Secondly, that the Court below should have held that the widows took the bequest as joint-tenants, and that on Piari Sundari's death, the whole estate bequeathed devolved on Defendant No. 1 by survivorship;

6. Thirdly, that even if they took the bequest as tenants in-common, the Court below should have held that the share obtained by Piari Sundari passed on her death to the heirs to her stridhana, and not to the Plaintiff;

7. Fourthly, that the Court below is wrong in holding that Defendant No. 1 had forfeited her interest in her husband's property, whereas it ought to have held that the clause in the Will relating to forfeiture was void for vagueness, and that the evidence adduced in the case was insufficient to prove the unchastity of Defendant No. 1 and the other contingencies, upon the happening of which forfeiture was to follow; and Fifthly, that the Court below should have held that the gift over under which the Plaintiff claims was invalid.

8. On the first point it is contended for the Appellants that under sec. 82 of the Indian Succession Act, which the Hindu Wills Act makes applicable to the Will in this case, the two widows of the testator must be held to have acquired the same interest in the 12 annas share of the estate bequeathed to them that he had, that is an absolute interest; and it is further argued that quite irrespectively of that section, they took an absolute interest under the terms of the Will.

9. On the other hand, the learned vakils for the Respondents contended that having regard to the last proviso to section 3 of the Hindu Wills Act, and to the

provisions of the Hindu law as laid down in the Dayabhaga, Chapter IV, section I, ? 23, which governs this case, section 82 of the Succession Act cannot have any application here; that even if it was applicable still the Will should not be construed as giving the widows any absolute interest, and several cases have been cited in support of the argument on each side.

10. The clause in the Will bequeathing a 12 annas share to the two widows runs thus:--" My first and second wives shall together be entitled to 12 (twelve) annas of all the properties left by me and Durga Nath Chakravarty and Rajani Nath Chakravarty, sons of my father's sister's son Radha Nath Chakravarty, deceased, who have been living in commensality from the time of my predecessor, shall be entitled to a 4 (four) annas share in equal shares according to the following rules." And there is nothing in the Will either in what follows or in what precedes, expressly stating that the widows are to take an absolute estate.

11. If this stood alone, and section 82 of the Indian Succession Act was not applicable to the case, then as the bequest (which in this respect follows the same rule as a gift) was one of immovable property by the husband to his wives, they would take a limited estate under the Dayabhaga. They would take the property without having any power to alienate it; and property over which they have not the power of alienation, cannot constitute their stridhana or absolute property (see Dayabhaga, Chapter IV, Sections 1, 18, 19 and 23), and must on their death pass to the heirs of their husband (see Colebrooke's Digest. Bk. V, 515, Commentary). On the other hand, if section 82 of the Indian Succession Act applies to this case, then, unless the Will shows that a restricted interest was intended to be created, they must be held to have acquired an absolute estate. Now the only ground upon which it can possibly be said that sec. 82 does not apply here is that the last paragraph of sec. 3 of the Hindu Wills Act makes it inapplicable. But does it really make the section inapplicable to the present case? It does not, like the corresponding provision of the Transfer of Property Act in sec. 2, enact that nothing contained in the Act, shall affect any rule of Hindu law," but it merely says that nothing contained in the Act "shall authorize a Hindu to create in property any interest which he could not have created before." But a Hindu husband was never incompetent to create in favour of his wife an absolute interest in Immovable property bequeathed by him to her, though it was necessary in order to create such interest to use express language to that effect. The application of sec. 82 to a case like the present cannot therefore be said to be barred by sec. 3 of the Hindu Wills Act. Nor do the cases of Cally Nath Naugh v. Chunder Nath Naugh I.L.R.8. Cal. 378 and Alanga Monjori v. Sonamani I.L.R.8 Cal. 637 cited for the Respondents bear upon the present question, the sections of the Indian Succession Act, of which the application to Hindus was held in those cases to be restricted by sec. 3 of the Hindu Wills Act, having really the effect of authorising the creation of an interest in property which a Hindu could not create before, namely, an interest in favour of an unborn person. We feel bound to add, however, that though we are unable to construe sec. 3 of the Hindu Wills Act as making section 82 of the Succession Act inapplicable to a case like the present,

yet we think it very doubtful whether the attention of the Legislature was directed to the point that the application of sec. 82 to Hindu Wills might have the effect of partially abrogating the rule of Hindu law, that a gift by the husband of an immovable property to the wife without express words creating an absolute estate conveys only a limited interest.

12. Sec. 82 of the Indian Succession Act being, in our opinion, applicable to this Will, it becomes unnecessary to examine at length the cases cited on either side upon the first point, as they were decided without reference to the provisions of that section. We only wish to observe with regard to those cases that an important distinction, which is sometimes lost sight of, may reconcile the apparent conflict in some of them. The rule of Hindu law referred to above is based upon a text attributed to Naroda cited in the Dayabhaga, Chapter IV, Section I, 23, and is limited to the case of gift of immovable property to the wife; and it is to this particular case that the decision in *Koonj Behari Dhur v. Prem Chand Dutt* I.L.R.S Cal. 684 relates; while in *Mussammut Kollany Koer v. Luchmi Prosad* 24 W.R.395, the question for decision was whether a gift to the daughter conveyed an absolute estate, and what the learned Judges held was that there was nothing in the Hindu law to show that a gift to a female means a limited gift.

13. But though sec. 82 of the Indian Succession Act applies to this case, we think it appears from the Will amply within the meaning of that section, that only a restricted interest was intended to be created in favour of the widows. In construing a document like this, which is the Will of a Hindu, "it is not improper," observe their Lordships of the Privy Council in *Mahomed Sumsool Hooda v. Shewukram* L.R.2 IndAp7; 14 B.L.R.226 "to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate." And these notions and wishes are amply and emphatically indicated in the Will before us. For, though the bequest of the two widows of the testator and that in favour of his father's sister's grandsons are contained in one and the same clause of the Will (namely, the second), the estate granted to the former is made defeasible upon the happening of certain events specified in clause 4, which, according to Hindu notions, imply dereliction of duty on the part of a widow. Again, in the 9th clause, the testator says, "DO person of the family of the fathers of my two wives shall be able to exercise any control over the money and property left by me." This would be wholly inconsistent with an intention to give the wives an absolute estate, as in that case, their estate must, in the absence of lineal descendants, of whom there were none pass to their brothers and parents (see *Dayabhaga*, Ch. IV, sec. III, 29). Moreover, if the widows were intended to take an absolute estate, the testator's sister's son, who was the next reversionary heir, and who, as the 5th clause of the Will shows, was an object of affection to him, would get nothing. Such an intention would therefore be

extremely unlikely, especially when we find that the testator left a four annas share of the estate to the sons of his father's sister's son. We are, therefore, of opinion that the widows took only life estates under the Will. We may observe that the view we take is quite in accordance with the cases of *Punchoomoni Dasseev. Troylucko Mohiney Dasse* ILR 10 Cal.342, and *Hirabai v. Luckshmibai* I.L.R.11 B. 573.

14. In support of the second contention, it is argued for the Appellants that where a bequest is made in favour of two persons without any specification of their shares, they take as joint-tenants with the right of survivorship, and not as tenants-in-common; and sec. 93 of the Indian Succession Act and the judgment of Couch, C.J., in *Mahomed Shumsool Hooda v. Shewukram* L.R.2 I. A. 7(11) are relied upon. It is further urged that, while in the bequest in favour of the two grandsons of the testator's father's sister it is expressly said that they are to take the four annas given to them in equal shares, the bequest of the 12 annas to the widows in the same clause (the second) makes no mention of the shares in which they are to take, and that this indicates an intention that they are to take as joint tenants. With reference to the first branch of this argument, though the view contended for is in accordance with the rule of English law (see *Jarman on Wills*, 5th Ed., p. 1115), yet there is not much in reason to commend it for acceptance. Where any property is bequeathed to two or more persons without any specification of shares, the natural presumption is that they are intended to take in equal shares; and when the estate bequeathed is one of inheritance it is far more reasonable to suppose that each legatee and his heirs are the objects of the testator's bounty than that he intends, that the legatees should take by survivorship, and the heirs of the last surviving legatee should take the whole. We may observe that even in English law the leaning has been in favour of tenancy-in-common and "the Court." as Lord Thurlow remarked in *Jolliffe v. East 3 Brown's Chancery cases* 25 "decrees a tenancy-in-common as much as it can." Sec. 93 of the Succession Act, which only relates to the case of one of two joint legatees dying before the testator, does not touch the present question. Nor does the judgment of Sir Richard Couch in *Mahomed Shamshool Hooda v. Shewukram* L.R.2 IndAp 7(11) in which the Privy Council did not think it necessary to decide the point, lay down the broad rule that the Appellants contend for, the learned Chief Justice distinctly observing as a reason for construing the bequest as creating a joint tenancy, that "it is only by this construction that the estate can be kept in the testator's family, an intention to keep the estate in the testator's family being indicated by the language of the Will and by surrounding circumstances. On the other hand, the Privy Council in *Rewan Prasad v. Radha Beebee* 4 Moore I.A.137 held that joint legatees in such a case would take as tenants-in-common. The second branch of the argument is, however, in our opinion sound; and we think we must construe the second clause of the Will as giving to the widows, as joint-tenants, a life interest in a 12 annas share of the estate, with the right of survivorship. If the Intention had been that the widows should take the 12 annas as tenants-in common, their shares would have been

specified in the same way as those of the testator's father's sister's grandsons in the same clause. But after all, in the view we have taken of the bequest in favour of the widows upon the first contention of the Appellants, namely, that it creates only a life estate, the question whether they took as joint-tenants or as tenants-in common is not of much practical importance. For even if they took life estates as tenants-in-common upon the death of either, the property bequeathed to her for life must pass to the surviving widow as the next heir of the testator, who would acquire a widow's estate in the same as upon an intestacy, unless such estate is defeated by some other provisions of the Will.

15. In the view we have taken of the bequest in favour of the widows, namely, that they took as joint-tenants, a life-estate in the property bequeathed with the right of survivorship, the third contention of the Appellant does not arise.

16. We come now to the consideration of the fourth contention of the Appellants which involves two questions, namely, what is the meaning and effect of the 4th clause of the Will, which provides that the widows shall forfeit their right upon the happening of certain events? and how far have those events happened? The 4th clause of the Will, of which the translation, as given in the Paper-book is slightly inaccurate, runs thus.--" If there be any dispute or disagreement between my two wives, or if there being any disagreement between either or both of them, and the executor abovenamed she or they live in my family dwelling-house, or according to the rules of Hindu religion in some holy place maintaining a good character, then each of them shall receive a monthly allowance of Rs. 10 for maintenance; but if otherwise, she shall be entirely deprived of her right." The construction of this clause is not altogether free from difficulty. We think it means this, that if the two widows quarrel with each other or if either or both of them quarrel with the executor, and live either in the testator's family dwelling-house or in some holy place observing the rules of Hindu religion, and leading a chaste life, then each of them shall receive, as maintenance, Rs. 10 a month; but if they act otherwise, that is, if they neither live in the testator's family dwelling-house, nor in a holy place according to the rules of Hindu religion, leading a chaste life, they shall be entirely deprived of their rights so that according to this clause of the Will either widow forfeits her right if she quarrels with her co-widow or with the executor, and does not reside in the testator's family dwelling-house, nor in a holy place, according to the rules of Hindu religion leading a chaste life.

17. If, therefore, it is proved that the testator's younger widow, the Defendant No. I quarrelled with the elder widow Piari Sundari and with the executor, and has been residing neither in the testator's family dwelling-house, nor in any holy place but in her father's house, then, in our opinion, forfeiture has been incurred quite apart from the question whether she has been leading an unchaste life, which the Court below has answered in the affirmative. The learned vakil for the Appellants contends upon the authority of *Fillingham v. Bromley* 1 Turner and Russell, 530 and the judgment of Lord Cranworth in *Clavering v. Ellison* 7 H.L.C.

(726) 707, that the clause in the Will requiring residence at certain place is void for uncertainty and unreasonableness, that there cannot, therefore, be any forfeiture for breach of such a condition, and that the finding of the Court below upon the question of unchastity is not warranted by the evidence. We are of opinion that there is nothing uncertain or unreasonable in the condition to make it void. For reasons, best known to him, the testator, as the 9th clause of the Will clearly shows, had either no liking for or no confidence in the paternal relations of his wives, and so he naturally insisted upon his widows residing in his family dwelling-house, or should mutual disagreement or dis-agreements with the executor make that inconvenient, then in some holy place according to the rules of Hindu religion and considering the habits and mode of life of Hindu widows, none of the difficulties adverted to in the cases cited can arise with reference to the condition in the Will now under consideration. On the other hand, a condition requiring residence in a certain house to entitle the legatee to the estate bequeathed was considered valid by the Judicial Committee of the Privy Council in *Tagore v. Tagore* L.R 1 I A 397; 14 B L R 60 and the Bombay High Court in *Mulji Bhai Shanker v. Bai Ujam* I L R 13 Bom. 218 and *Girianna v. Honama* I L R. 15 Bom. 236 held that a condition in the husband's Will requiring residence in a certain place to entitle the widow to maintenance was valid in law and though the learned Judges in both these cases held that breach of the condition for just cause would not defeat the widow's right, no question of just cause can arise here, seeing that the Will itself provides that when residence in the family dwelling-house may become inconvenient, the widow may live in any holy place; nor is there any suggestion that there was any just cause for not complying with this alternative condition. The condition being, in our opinion, valid and binding, let us next see whether it has been broken. The answer to this question need not detain us long. The Defendant No. 1, Bhobotarini, admits in her deposition that after Piari Sundari, her co-widow, had obtained probate, she instituted proceedings for revocation of the probate and lost the case; and that she instituted another case for nikas, or accounts against Piari Sundari. She also admits that she had misunderstanding with Modhu Sudan Chakravarti, the executor named in the Will and though Bhobotarini and some of her witnesses such as her brother Chunder Nath Chuckerbutty and her naib Grirish Chunder Shikdar say that she lives sometimes at her husband's house at Kalagachi and sometimes at her father's at Bachra, we agree with the Court below in thinking that their evidence is unreliable and insufficient to rebut the evidence of the witnesses examined for the Plaintiff, two of whom, Modhu Sudan Maitra and Prasanna Kumar Nundy, who are men of some position and respectability, and appear from the tenor of their deposition to be perfectly fair and straightforward witnesses, we see no reason whatever to disbelieve. These two witnesses prove that for the last six or seven years Bhobotarini has been living at her father's bouse at Bachra, and though they say that she may have occasionally gone to her husband's family dwelling-house, that cannot amount to her residing there. Bhobotarini's admission that she had quarrels with Piari Sundari, with Modhu Sudan Chakravarti, with the Plaintiff and his mother, and in fact with almost

everyone of her husband's relations, goes clearly to corroborate the evidence on the Plaintiff's side that she had left her husband's abode and has been residing at her father's house at Bachra. We therefore find on the evidence that the condition about residence has already been broken, and the forfeiture mentioned in the 4th clause of the Will incurred. In this view of the case it is not necessary to consider the question of unchastity. But as the finding of the Court below upon that question must seriously affect the Defendant No. 1 and as the evidence on the point has been fully discussed before us, and is in our opinion insufficient to warrant that finding, we deem it desirable to state our reasons for disagreeing with the Court below on this point.

18. We may observe that the evidence shows that there has been, for some years, a good deal of scandal in the village of Bachra concerning Defendant No. 1, arising out of her reckless want of modesty in general, and her unusual familiarity with Defendant No. 2, Koilash Chunder Shaha in particular. We should add that we consider the evidence adduced for the Defendants to show that Koilash Chunder Shaha never goes to see Bhobotarini at Bachra is unreliable, as it is opposed not only to the evidence of the witness Prosonno Kumar Nundy, whom we consider to be perfectly reliable, but also to the probabilities of the case, Koilash Chunder Shaha being the person who has taken a putni of the share of Bhobotarini, and who is looking after her affairs. But though that is so, the question still remains whether the evidence is sufficient to prove the charge of unchastity; and to that question the answer should, we think, be in the negative. The witnesses, chiefly relied upon by the Court below upon the point, are Madhub Chunder Chuckerbutty, his son Purnendu, his nephew Umesh, his priest Modhu Sudan Maitra, and the pleader Durga Kant Chuckerbutty. But Modhu Sudan Maitra, whom we consider a truthful witness, says :--" I have not myself seen anything against Bhobotarini's character, but I have heard." As for what Durga Kant Chuckerbutty says in his deposition in this case and his former deposition put in and admitted by him to be correct, it is by no means very clear evidence of unchastity the statements and conduct imputed to Bhobotarini being quite reconcilable with innocence, and being evidence only of want of modesty. The witnesses Madhub, his son and his nephew, no doubt, depose to facts which, if true, would be evidence of unchastity; but considering the ill-feeling existing between Bhobotarini and Madhub, as is admitted by Madhub himself, we think it would be unsafe to hold upon their evidence that the serious charge of unchastity brought against Bhobotarini has been established. The remaining witnesses on the point do not call for any special remark. We may observe that their statements, and in particular those of Modhu Sudan Singh, are of an improbable character, the last-named witness evidently attempting to prove too much. Upon the whole evidence then we find the charge of unchastity brought against Defendant No. 1 not established. Forfeiture under clause 4 of the Will is, however, as we have said above, incurred by her by reason of her having broken the condition relating to residence.

19. But though that is so, what she has forfeited- under the Will, she may claim

by inheritance as the next heir of the testator, unless there is any valid gift over. This brings us to the consideration of the question raised in the fifth and last contention of the Appellants, namely, whether the gift over under which the Plaintiff claims is valid. The clause in the Will relating to this gift over is the one at the end of the first paragraph, which, as translated in the Paper-book, runs thus:--"And anyone acting contrary thereto [that is to the terms of the Will] should be deprived of his interest, which shall, in due course, devolve on the other heirs." We should note here that the word in the original which is here translated as "his" is in the common gender and may mean either " his " or " her," and the word rendered as " heirs" is in the singular number in the original. It is contended by the Appellants that the clause relating to the gift over is void as infringing, if not in its application to the actual event in the present case, at any rate in the possible range of its application, the rule of Hindu law that the donee must be a sentient being, that is not an unborn person. There is no dispute that in the actual event that has happened, that is, on the date that the forfeiture under clause 4, as found above, was incurred, the Plaintiff, who is the sister's son of the testator, was the next heir after the widow, and that he was in existence at the date of the Will and of the testator's death, being in fact the person referred to, though not by name, in the 5th clause of the Will. But it is argued that it was possible that at the date the forfeiture was incurred, some one not in existence at the testator's death, but subsequently born, might have been the next reversionary heir, and if that was so, the gift over, it is said, is void. In support of this argument the case of Lord Dungannon v. Smith (13) is relied upon. In that case the testator bequeathed certain leasehold estates to trustees in trust to pay the rents and profits to his grandson during his life, and after his death, in trust to permit the person who, for the time being, should take by descent, as heir male of the body of his grandson, to take the rents and profits until the time that some one of such person should attain the age of twenty-one years, and then to convey the premises to that person with a further gift over if no such person should live to attain the age of twenty one, in favour of certain other descendants of the testator in succession. At the death of the grandson, his son, who was twenty-one years, entered into possession of the leasehold estates. But on a bill filed against him by the next-of-kin, it was held that the gift over under which he claimed was void for remoteness, because, 12 CI, and Fin. 546.

20. though in the actual event, the property bequeathed might have vested within a life in being and twenty-one years afterwards, yet, at the date of the testator's death, it could not be said that in any possible event the property must vest, if at all, within the time allowed by law, that is, a life or lives in being and twenty-one years and nine or ten months afterwards; and the opinion expressed by two of the learned Judges that the gift over might be regarded as a series of separate gifts to the eldest son of the grandson, if he attained twenty-one years, if not then to the other male heirs of the body of the testator's grandson in succession was not accepted as correct, because there was no gift to

the eldest son except as one of a series of persons, and there was no authority for splitting the bequest in the manner suggested.

21. It is contended that this case is authority for the position, that in order to determine whether a gift over violates any rule of law, we must look, not to actual events at the date when the benefit of the gift is claimed, but to possible events at the date of the testator's death. We are unable to accept this broad contention as correct.

22. The decision in the case cited is based upon the ground, that it is a settled rule of English law affirmed by a long series of decisions, that a bequest is void for remoteness unless it necessarily vests, if at all, within a life or lives in being or twenty-one years and nine or ten months afterwards. Is there any similarly settled rule of law applicable to this case, that a bequest is void unless it necessarily is in favour of persons, all of whom are in existence at the date of the testator's death ? If there is, the gift over will fail, unless it is possible to construe it as a series of gifts over, one or more of which may be valid and the rest void. If not, there is no reason why the gift over should not be valid; so far as it enures to the benefit of the Plaintiff who unquestionably was in existence at the date of the testator's death. It was at one time thought that there was such a rule of law applicable to bequests by Hindus, and it was held in the cases of *Soudaminy Dasee v. Joges Chunder Dutt* I.L.R.2 Cal. 262 and *Kherode Money v. Durga Money* I.L.R.4 Cal. 455 following *Leake v. Robinson* 2 Merivale 363 that a bequest to a class, some of whom may come into existence after the testator's death, was wholly void. But it has now been authoritatively settled by the decision of the Privy Council in *Rat Bishen Chand v. Mussammut Asmaia Koer* I.L.R.6 All. 560; L.R.11 IndAp 164 that this view is incorrect, being supported neither by the Hindu law nor by any of the provisions of the Indian Succession Act, which have been made applicable to Hindus. In that case, their Lordships of the Judicial Committee held that a gift in favour of the donor's grandson *Satrujit*, and the brothers of *Satrujit* that may be subsequently born, was valid so far as *Satrujit*'s interest was concerned and following that case, this Court held in *Ram Lal Set v. Kanai Lal Set* I.L.R.12 Cal. 663 that a gift by a Hindu to his two living grandsons and to their brothers that may be born afterwards conveyed a valid title to the two living grandsons. If that is so, there is still greater reason why the Plaintiff, who was in existence at the date of the testator's death and was and is the next reversionary heir after his widows, should be held entitled to take under the gift over. He is not one of several joint donees, some of whom are incompetent to take, but is one of a series of persons of whom he who is the next reversioner at the date that the widow's interest ceases is intended to take; and he answered that description at the time when that interest ceased. It was clearly the intention of the testator that in the event which has happened, he should take the estate; and there is no reason why effect should not be given to that intention. The grounds urged before us, therefore, all fail, and the decree appealed from must be affirmed, except as regards costs. But seeing that the question about the construction of the Will is not altogether free from difficulty,

and seeing also that the charge of unchastity brought against Defendant No. 1 has not been established, we think the Defendants, though unsuccessful, should not be made liable for the costs of the Plaintiff. The result then is that the decree of the Court below will be affirmed except so far as it makes the Defendants liable for the costs of the Plaintiff, and the parties will bear their own costs in this Court and in the Court below.