
(1930) 11 BOM CK 0015
In the Bombay High Court
Case No : O.C.J. Suit No. 1844 of 1927

Chinubhai Bhikhabhai

APPELLANT

Vs

Bai Manekbai

RESPONDENT

Date of Decision : 19-11-1930

Acts Referred:

Succession Act, 1925 — Section 89

Citation : (1932) 34 BOMLR 609

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—By a consent order dated March 7, 1930, this suit has been ordered to be placed on board for the trial of a preliminary issue, viz., whether the bequest of Rs. 20,001 for constructing a public building for Hindus on the testator's land at Pethapur contained in the will of the testator Mansukhlal Lallubhai dated January 16, 1922, is void,

2. The clause of the will, relating to this bequest, is as follows:-

Rs. 20,001 (rupees twenty thousand and one) a building for Hindus exclusively for general purposes to be erected on land which is bought at Pethapur.

3. This bequest is disputed by defendant No. 1 who is the widow of the testator and the residuary legatee under the will. The Advocate General, on behalf of the alleged charity, has contended that the bequest is valid inasmuch as it discloses a charitable intention on the part of the testator. The amount is to be utilised by the executors for a building which is to be for the Hindu public. According to the Advocate General's contention, the purpose of the charity is sufficiently well-defined by these words. He urges that the clause should be construed as meaning that the building is to be for the benefit of the Hindu public. He relies on the rulings in *Goodman v. Mayor of Saltash* (1882) 7 App. Cas. 633, *In re Christchurch in closure Act* (1888) 38 Ch. D. 520. *In re Foveaux: Cross v. London Antivivisection Society* (1895) 2 Ch. 501. *Mann, In re: Hardy v. Attorney General*

(1903) 1 Ch. 232. and Monk, In re: Giffen v. Wedd (1927) 2 Ch. 197, that a trust for the benefit of the inhabitants of a particular place is charitable and that a trust for the benefit of a particular class of inhabitants of a particular place is likewise charitable. In Mitford v. Reynolds (1842) 1 Ph. 185, it was held that a bequest for the benefit of the native inhabitants of a town in India was charitable.

4. u/s 89 of the Indian Succession Act a bequest which is not expressive of any definite intention would be void for uncertainty. That section is applicable to Hindus. The question I have to determine is whether the testator has expressed a definite intention in favour of charity by this bequest. The words "general purposes", used in the bequest, appear to me to be wide enough to include charitable as well as philanthropic objects. Tudor on Charities (5th Edition) thus summarises the law at p. 64 :-

In order to be charitable a trust must not only be declared in favour of objects of a charitable nature, but it must be so expressed that in its application it is confined to such objects. This is well expressed by Sir W. Grant, M.R., in Morice v. The Bishop of Durham (1804) 9 V. J. 399. The question is not whether he (the trustee) may apply it (the trust property) upon purposes strictly charitable, but whether he is bound so to apply it; To paraphrase the words of Sir W. Grant quoted above, the question which should be asked in all cases where there is an apparent vagueness as to the objects of a gift, and it is sought to uphold it as a gift to charity, is this : is it clear that the only possible objects of the gift are charitable objects in the technical sense of the word? If the answer is in the affirmative, the Court will uphold the gift, if in the negative, the gift is void for uncertainty.

5. In Trikumdas Damodhar v. Haridas (1804) 9 V. J. 399 : 9 Bom. L.R. 560, where the testatrix made a bequest of the residue of, her estate for the purposes of popular usefulness, our Appeal Court held the gift of the residue to be bad for uncertainty.

6. Applying the test laid down by the authorities I have come to the conclusion that the bequest contained in this clause of the will should be held to be void for uncertainty I answer the issue in the affirmative and order that costs of all parties of this issue do come out of the estate, those of the Advocate General and defendant No. 4 as between attorney and client.