

(1917) 01 AHC CK 0006
In the Allahabad High Court

Musammat Surja Kunwari and Another	APPELLANT
Vs	
Pande Har Narain Ram and Others	RESPONDENT

Date of Decision : 04-01-1917

Acts Referred:

Citation : AIR 1917 All 346 : 38 Ind. Cas. 166

Hon'ble Judges : Henry Richards, C.J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit which purports to have been brought under Act XX of 1863. The plaintiffs who are two members of the Hindu community, sought a declaration that certain property is endowed property and they prayed that the defendants might be dispossessed of the property and the plaintiffs or some other persons nominated by them might be appointed mutawalli or manager of the property and placed in charge of it. The plaint contains other prayers also, to which it is not necessary to refer. The property belonged to Sukhmangal Singh, the husband of the defendants who are appellants before us. On the 29th October 1903, he made a Will, and it is urged on behalf of the plaintiffs that under this Will he endowed the property in question to certain idols. The plaintiffs allege that the defendants have got their names recorded in the revenue papers as owners of the property, that they have made leases of the property and that they have misappropriated the income of the property and not devoted it to the purposes of the endowment. The Court below has decreed the claim.

2. The defendants have preferred this appeal mainly on two grounds, namely, that Act XX of 1863 had no application to the present case and the suit could not be maintained under that Act and secondly, that under the terms of the Will no endowment was created but a charge was placed on the property of the deceased for the purpose of meeting the expenses of the upkeep of a certain temple. In the view which we take on the second question raised by the appellants, we do not deem it necessary to decide whether the suit was maintainable under Act XX of 1863. We are of opinion that the contention that no

endowment was created by the Will of Sukhmangal Singh is well founded. The Will, no doubt, slates that a waqf was created but from the clauses contained in it, it is manifest that what was intended by Sukhmangal Singh was that the idols should be maintained out of the income. The value of the property is stated in the plaint to be Rs. 50,000. From the evidence of one of the witnesses for the plaintiffs themselves it appears that the profits arising from the property amount to about Rs. 7,000 annually. The expenses of the idols provided for in the Will, as specified in paragraph 9, amount to about Rs. 500 a year, more or less. So that it is clear that the amount of the expenses bears a very small proportion to the total income of the property. In the Will itself the testator provides "that whatever money and grain produced by the sir land still remained after meeting the requirements of raj-bhog of Thakurji shall be used and appropriated by his successors, generation after generation. It shall not be used and appropriated by any one else." It further provides that "whatever profits would remain after meeting the expenses of the thakurdivara the costs of its repairs, the pay of the servants connected with it and the costs of repairs of other buildings out of the said profits shall be spent on the estate of the testator." The Yernacular word used is riasat, that is, his family property. Further down (in Clause 7 of the Will he confers authority on his heirs to effect mortgages in certain events. Again in paragraph 9 it is provided that after the expenses of the raj-bhog and the repairs of the thakurdivara and of his houses etc. have been met, the saving shall be appropriated by his heirs for their own maintenance." The expenses connected with the marriages of female members and dowries to be given on the occasion of their marriages were also provided for out of the estate. All this is inconsistent with the dedication of the property to the idols. On the contrary the inference to be drawn from the Will read as a whole is that it created a charge on his property for the expenses of the idols. Subject to that charge the property was to go to his legal heirs who were fully entitled to appropriate all the income of the property. This case is very similar to that of *Sonatun Bysack v. Sreemutty Juggutsoondree* 8 M.I.A. 66 : 11 P.C.J. 37 : 1 P.C. J. 721 : 2 I.R. 607 : 19 E.R. 455, decided by their Lordships of the Privy Council. See also *Ashutosh Dutt v. Doorga Churn Chatterjee* 5 C. 438 : 5 C.L.R. 296 : 6 I.A. 182 : 4 Sar. P.C.J. 58 : 3 P.C.J. 694 : 3 Ind. Jur. 571 : 3 S.L.R. 32 : 2 Ind. Dec. 888. We are of opinion that the decision of the Court below is erroneous and the suit of the plaintiffs ought to have been dismissed. We accordingly allow the appeal, set aside the decree of the Court below and dismiss the suit with costs, in both Courts including in this Court fees on the higher scale.