

(1907) 03 BOM CK 0024
In the Bombay High Court

Trikumdas Damodhar and Others

APPELLANT

Vs

Haridas Morarji and Others

RESPONDENT

Date of Decision : 05-03-1907

Acts Referred:

Citation : (1907) ILR (Bom) 583

Hon'ble Judges : Beaman, J

Bench : Single Bench

Judgement

Lawrence Jenkins, C.J.—This appeal arises out of a suit brought for the administration of the estate of Bai Nana, deceased, and, in the memorandum, the appeal is expressed to be from a Judge's order dated the 1st September 1906. This order was made on the hearing of certain preliminary issues framed for the purpose of determining the question of construction arising under the will of Nana.

2. We have for the present purposes assumed that an appeal would lie, but I desire not to be taken as deciding that in the affirmative. There are, however, other grounds on which, I think, we must determine this case adversely to the appellants.

3. The result of the hearing on the preliminary issues was that the learned Judge held the gift contained in the fifth clause of the will was invalid. That clause runs in these terms translated:- As to whatever Immovable (and) moveable (property) and property in cash belonging to me may be in excess or may remain over as surplus after a disposition shall have been made in accordance with what is stated in the clauses above written, my above mentioned six executors are to make use of the same in such manner as they may unanimously think proper for purposes of popular usefulness or for purposes of "charity".

4. Mr. Justice Chandavarkar was of opinion that the property therein given would be applicable by the executors as they thought proper not only for "purposes of charity" but also for "purposes of popular usefulness." Taking that view, he

considered that the gift was bad for uncertainty. He accordingly passed, an order to that effect and directed that the present appellants should bear their own costs. The only grievance of the present appellants is that this order as to costs was made, and they seek to establish their right to appeal on the ground that the plaintiffs had no right to sue because the plaintiffs admittedly claimed as persons entitled by reason of the gift in the fifth clause of the will being invalid.

5. The first point, therefore, to determine is whether this gift is bad.

6. I entirely agree with Mr. Justice Chandavarkar "that purposes of popular usefulness" are distinct from "purposes of charity," and that the word "or" which intervenes between the two is disjunctive.

7. Mr. Branson has pointed out passages in the will where the word "or" has not been used in a disjunctive sense, and on this he bases an argument in favour of its use in this phrase in an expository sense, but the answer to this is that it may be that it is so used where it connects synonymous terms, but here it is in my opinion clear that "purposes of popular usefulness" is different from "purposes of charity," and that the "or" is disjunctive. Then, Mr. Branson has argued that, even if that be so, still the gift is good, because, he says, the gift for "purposes of usefulness" would not be bad for uncertainty. It seems to me that the answer to that is to be found in the English decisions, some of which are practically on all fours with the present case. Thus, it has been determined that a gift for such charitable or public purposes as trustees should think proper is bad. That appears to me to be undistinguishable from the present case. It was there held that a gift for public purposes was too uncertain; for the same reason the gift for "purposes of popular usefulness" is bad. That "we are entitled to be guided on this subject by the English rulings is apparent from the, decision in *Runchordas v. Parvatibai* (1899) 23 Bom. 725

8. The conclusion therefore, to which I come is that the learned Judge was perfectly right in his opinion that the gift in Clause 5 was bad for uncertainty.

9. We must accordingly confirm the decree, and the appellants must bear the costs of this appeal.

10. Respondents 4 and 5 will get the difference between party and party and attorney and client costs out of the estate, but in no case shall costs of more than one counsel be allowed.