Privy Council Appeal No. 40 of 1927.

Guran Ditta and another - - - - - - - *Appellants*

v.

T. Ram Ditta - - - - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE NORTH-WEST FRONTIER PROVINCE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24th APRIL, 1928.

Present at the Hearing:

LORD PARMOOR.
LORD CARSON.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD PARMOOR.]

This is an appeal, by special leave, from a decree of the Court of the Judicial Commissioner of the North-West Frontier Province, affirming a decree of the Divisional Judge at Peshawar.

The respondent is the eldest son of Teku Ram, who died on the 20th May, 1920. The appellant, Guran Ditta, is a son, and the appellant, Mussammat Gujri, is the widow of the said Teku Ram. Teku Ram, on the 17th May, 1919, opened a deposit account for Rs. 1,00,000 with the Peshawar Branch of the Alliance Bank of Simla, in the name of himself and his wife, "payable to either or survivor." The receipt of the Bank was dated the 24th May, in the following terms: "Received from L. Teku Ram, house proprietor, and his wife, Bibi Gujri, payable to either or survivor, Rupees one lak only, as a deposit, bearing interest at 5½ per cent. per annum, requiring twelve months' notice of withdrawal and subject to the general rules of the Bank with respect to such deposit." A notice of withdrawal was given when the account was opened as follows: "Notice given this 17th day of May 1919. as on the 24th April, 1919."

After the death of Teku Ram, the deposit was renewed for a further period of one year in the name of Mussammat Gujri alone. On the 14th May, 1921, Mussammat Gujri wrote requesting the Bank to pay to Guran Ditta, the bearer of the letter, " my deposit of Rs. 1,00,000 (Rupees one lak), together with the arrears of the interest on it due to me." In accordance with these instructions, the principal and interest of the deposit were paid to Guran Ditta.

On the 20th August, 1921, the respondent instituted his suit in the Court of the District Judge of Peshawar against the appellants and a younger brother, who is not a party to this appeal. Several questions arose for decision in the Courts below. A preliminary issue, " Does the suit lie in its present form ? " was decided in both Courts in favour of the respondent, and will be referred to later. Issues were framed by the Divisional Judge of Peshawar, and re-stated by the Divisional Judge, as follows :—

(1) Was the deposit the sole property of Mussammat Gujri by gift, will or otherwise ?

(2) Did Teku Ram leave any subsisting will ?

(3) If so, was such will valid so far as it dealt with joint-family property ?

(4) To what relief is plaintiff entitled and against whom ?

After full enquiry, and much conflicting evidence, both Courts have found, as a question of fact, that Teku Ram did not leave any subsisting will. There was no attempt in the argument before their Lordships to reverse this concurrent finding of the two Courts below on a question of fact. This issue having been decided in the negative, the third issue became no longer material.

The main issue decided in the Courts below, and which was relied on in the application for special leave to appeal, was whether the sum deposited became the sole property of Mussammat Gujri by gift. On the application for special leave to this Board, it was urged that the question whether a fixed deposit in a Bank in the name of two persons payable to either or survivor was in fact payable to the survivor, or belonged to the estate of the person who originally supplied the money, was a substantial question of law, and of great importance to Banks in India, and to persons in whose names such deposits had been made. It appears from the record that this was the only question raised when special leave to appeal was granted.

The money deposited in the Bank was at the time of deposit the property of Teku Ram. The Courts below decided that this money belonged to the estate of Teku Ram, as the person who originally supplied the money. The money in dispute being upwards of Rs. 10,000, the appellants applied to the Judicial Commissioner for leave to appeal on the ground that there was a substantial question of law involved, bringing the application within the terms of Section 110 of the Code of Civil Procedure, 1908 :

" where the decree or final order, appealed from, affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law."

In the case of *Raghunath Prasad Singh* v. *Deputy Commissioner of Partabgarh* (44 I.A. 126), it was held that a substantial question of law, within the last clause of Section 110 of the Code of Civil Procedure, does not mean a substantial question of general importance, but a substantial question of law as between the parties in the case involved. The leave to appeal was refused, but, as stated above, special leave to appeal was granted on the petition to the Board.

In the argument before their Lordships, and in the Courts below, it was admitted that the money deposited belonged to Teku Ram, who had supplied it from his own resources, by a transfer from his current account at the Bank. It was argued on behalf of the appellants that, apart from outside evidence, there was a presumption that the sum deposited constituted an advancement, or resulting trust, in favour of Mussammat Gujri, the wife of Teku Ram. It was said that one of the provisions of the destroyed will of Teku Ram was evidence that it was the intention of Teku Ram to make an advancement in favour of his wife under the terms of the deposit note ; but in the opinion of their Lordships, no weight should be attached to this evidence. They agree in this respect with the views expressed in the judgments of the Divisional Judge at Peshawar and of the Judicial Commissioner of the North-West Frontier Province.

The question, therefore, to be decided is the construction of the terms of the deposit note.

The general principle of equity, applicable both in this country and in India, is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust, there is a resulting trust in favour of the grantor, unless it can be proved that an actual gift was intended. An exception has, however, been made in English law, and a gift to a wife is presumed, where money belonging to the husband is deposited at a Bank in the name of a wife, or, where a deposit is made, in the joint names of both husband and wife.

This exception has not been admitted in Indian law under the different conditions which attach to family life, and where the social relationships are of an essentially different character. The principle to be applied has been stated in *Kerwick* v. *Kerwick* (47 I.A. 275) :—

> " The general rule and principle of the Indian law as to the resulting trusts differs but little, if at all, from the general rule of English law upon the same subject, but in their Lordships' view it has been established by the decisions in the case of *Gopeekrist v. Gungapersard* (6 Moo. I.A. 53) and *Uzbur Ali v. Bebee Ultaf Fatima* (13 Moo. I.A. 232), that owing to the widespread and persistent practice which prevails amongst the natives of India, whether Mahomedan or Hindu, for owners of property to make grants and transfers of it benami for no obvious reason or apparent purpose, without the slightest intention of vesting in the donee any beneficial interest in the property granted or transferred, as well as the usages which these natives have adopted and which have been protected by Statute, no exception has ever been engrafted on the general law of India negativing the presumption

of the resulting trust in favour of the person, providing the purchase-money, such as has, by the Courts of Chancery in the exercise of their equitable jurisdiction, been engrafted on the corresponding law in England in those cases where a husband or father pays the money and the purchase is taken in the name of a wife or child. In such a case there is, under the general law in India, no presumption of an intended advancement as there is in England."

Applying the principle thus stated to the present case, their Lordships hold that there is no presumption, in the deposit note, of an intended advancement in favour of Mussammat Gujri, and that the sum of Rs. 1,00,000, and interest, were the property of Teku Ram, and remained at his disposal at the date of his death, as found in the decisions of the Courts below.

On this issue—the substantial question of law on which special leave to appeal was asked for, and granted—their Lordships will humbly advise His Majesty that the decision of the Courts below was right, and should be confirmed.

Their Lordships have considered the objections to the form of suit, and the difficulties which arise in a decree which necessitates the partial partition of the estate of Teku Ram. The ordinary rule undoubtedly is that there cannot be a partial partition, but it has been held in the Courts below that this rule is elastic, and has in several cases been departed from, if there is no inconvenience in a partial partition, apart from a final partition of the whole of the joint properties. The Courts further held that in this case no inconvenience would arise. Accordingly, it was ordered "that the plaintiff—the respondent—be, and the same is hereby given, a decree for Rs. 37,368 with costs accordingly against Guran Ditta and Mussammat Gujri, defendants, jointly and severally." It is stated in the judgment of the Additional Judicial Commissioner of the North-West Frontier Province that the question of the rights of the widow to maintenance from the rest of her husband's property would be decided separately, and their Lordships were informed that a suit for a final partition of the whole property of Teku Ram had been instituted and was in process of decision. Their Lordships do not think it necessary to decide any general question of procedure, but are of opinion that, in this case, justice could be done between the parties without entering upon any question of partial partition, and leaving open all further questions for determination in the final partition of the whole property. Their Lordships propose, therefore, to vary the decree by limiting it to a declaration, in answer in the first issue, that the deposit in suit was not the sole property of Mussammat Gujri, by gift, will or otherwise, and that the respondent is entitled, as against the appellants, to a declaration to this effect.

The appellants have failed in the main issue involved, and their Lordships will humbly advise His Majesty that, subject to alteration in the form of the decree, the judgments below should be confirmed and this appeal dismissed with costs.

In the Privy Council.

GURAN DITTA AND ANOTHER

v.

T. RAM DITTA.

DELIVERED BY LORD PARMOOR.

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