*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Runchordas Vandrawandas and others* v. *Parvatibai and others, Appeal and Cross Appeal consolidated, from the High Court of Judicature at Bombay; delivered* 11*th March* 1899.

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Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Kallianji Sewji, a Hindu who died on the 6th of January 1869 made his will on the previous day in the following terms.

After specifying his immoveable and moveable property and giving to his wife Nenwaoo a piece of land and a house and to his other wife Cooverbai a garden and a house the will says :—

"According to these particulars out of the above-mentioned "estates belonging to me the above-mentioned estates four "in number have been given to my wives for enjoying the "rent (thereof) and for making Dharam Dhan (charitable "or religious gifts &c.) (of the same) and whatever other "estates belonging to me remain and whatever profit apper- "taining to my share may remain after deducting the debts "&c. in my books belong wholly to me personally I have "during my lifetime appointed three persons trustees over the "same."

(Here follow the names of the trustees.)

"According to these particulars I have appointed trustees. "The said trustees are to act in such manner as they think "proper for preserving my name so that my money might "always be used for some good dharam (religious or charitable "purpose) after my death (and) by which good might be done "to me. No one shall have any right (or) claim whatsoever "thereto."

(Then there is a direction to make certain monthly payments out of the dharam fund to his brother, step-mother and step-brother.)

"Further it is as follows. As to the estates which have "been given by me to my wives they are to enjoy the rents of "the said estates during their natural lives and on the death "of my wives the said estates are to revert to my dharam "(religious or charitable fund) and whatever income may be "derivable from the said estates is to be expended for my "dharam (religious or charitable purposes)."

On the 2nd of March 1869 probate of the will was granted to the persons named in it as trustees. Cooverbai died in 1871 and Nenvaoo in 1888. On the 21st of December 1888 after her death Cursondas Govindjee who was the heir-at-law of Kallianji Sewji brought a suit in the High Court at Bombay against Vandrawandas Purshotumdas the sole surviving executor and trustee who having died is now represented by the Appellants Runchordas and others his executors and executrix and also against the Advocate-General of Bombay. Cursondas Govindjee having also died during this Appeal is now represented by the Respondents Pavatibhai and others his executrix and executors.

The Plaintiff in his plaint submitted that the bequests in the will for dharam were void and inoperative and the property which was the subject of them was undisposed of by the will and prayed that the estate might be administered under the direction of the Court and it might be declared that the bequests for dharam were void. This was disputed by the 1st Defendant, the Advocate-General submitting himself to the order of the Court. Issues were settled, one being whether the suit is barred by limitation and another whether the bequests to dharam are void. The other issues need not be noticed. The learned Judge of the High Court who tried the suit held "that the provisions constituting the "dharam and directing the executors to expend "the income of the estate for dharam were void "and that the suit was not barred by limitation." Vandrawandas Purshotumdas appealed and the Appeal Court held that the devise to dharam "is

" too general and too indefinite for the Court to " enforce and is therefore void." It is also held that the suit was not barred by limitation.

It is not necessary for their Lordships to refer particularly to the cases in the Indian Courts where it has been held that a devise or bequest for dharam is void for vagueness and uncertainty. They begin at an early period both in Bombay and Calcutta and according to the judgment of the Appeal Court are numerous. The reasons for the decisions of the English Courts upon devises or bequests of a similar nature are stated by Lord Eldon in his judgment in the leading case of *Morice* v. *Bishop of Durham* (9 Ves. 399, 10 Ves. 521). He says (10 Ves. 539) " As it is a maxim that the execution of a " trust shall be under the control of the Court " it must be of such a nature that it can be under " that control so that the administration of it " can be reviewed by the Court or if the trustee " dies the Court itself can execute the trust, a " trust therefore which in case of maladmini- " stration could be reformed and a due " administration directed and then unless the " subject and objects can be ascertained upon " principles familiar in other cases it must be " decided that the Court can neither reform mal- " administration nor direct a due administration." Lindley, L.J., refers to this judgment (*In re* Macduff, 2 Ch. Div. (1896) 463) and says " That " is the principle of that case and has been " enunciated or repeated from time to time." In the latter case the words of the bequest were " purposes charitable or philanthropic." In Wilson's Dictionary " dharam " is defined to be law, virtue, legal or moral duty, and the language of Lord Eldon applies as strongly if not more so to dharam as to the words used in the English cases. The objects which can be considered to be meant by that word are too vague and

uncertain for the administration of them to be under any control.

It is therefore necessary to decide the question of limitation. The Act which is applicable to this case is Act 15 of 1877. The plan of this Act following the plan of the repealed Act 9 of 1871 is to specify in the Second Schedule to it, the period of limitation for every description of suit. The division of them is so complete that the schedule contains 180 articles or divisions in three columns headed, Description of suit, Period of limitation, Time from which period begins to run. Article 141 is that which applies to the present suit. It is "like suit (for possession "of immoveable property) by a Hindú or "Muhammadan entitled to the possession of "immoveable property on the death of a Hindú "or Muhammadan female. When the female "dies." The period given is twelve years. Art. 144 which makes the time begin to run from when the possession of the Defendant becomes adverse to the Plaintiff is not applicable where the suit is otherwise specially provided for. The article which applies to the moveable property is 120 in which the time (six years) begins to run when the right to sue accrues. The suit therefore for both kinds of property is not barred by the Act.

The learned Counsel for the Appellants relied on Section 28 which provides that at the determination of the period limited for instituting a suit for the possession of property the right to the property shall be extinguished. The obvious answer to this argument is that in this case the period limited is not determined. It is not necessary to consider what might be the case if the widows or the survivor of them were suing, as the Plaintiff does not derive his right from or through them and the extinguishment of their right would not extinguish his.

It has been held by the Appeal Court as to the moveable property (if any) in the hands of the Defendant at the death of Nenavahoo and the rents and profits of the immoveable properties in the Defendant's hands at the same period that her claim was barred at her death and that there is no provision of the Limitation Act which gives the Plaintiff a fresh starting point from that period. Accordingly the Appeal Court has varied the decree of the First Court. Their Lordships do not agree to this view. The right of the Plaintiff to this property (if any) accrued at the death of Nenavahoo. The decree of the First Court dated 27th July 1896 should not have been varied as it has been. It is for an account of the moveable property left by Cooverbai and Nenavahoo at the time of their death distinguishing between such of it as was their stridhan and "as such" (Rec. p. 63, line 32) formed part of the estate of the testator. "As such" appears to be an error for "such as." With this alteration their Lordships think the decree will be right.

Their Lordships will therefore humbly advise Her Majesty to dismiss the principal Appeal (No. 44 of 1898), and in the Cross Appeal (No. 45) to set aside the order of the Appeal Court and affirm the order of the First Court with the alteration mentioned. The Appellants in the principal Appeal will pay the costs of both Appeals.