

Privy Council Appeal No. 135 of 1924.

Bengal Appeal No. 45 of 1923.

Pursuttamdas Agarwalla, since deceased (now represented by
Jewandas Agarwalla) - - - - - *Appellant*

v.

Gobind Prosad Agarwalla and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 12TH MARCH, 1926.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD PARMOOR.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR.]

This appeal raises a question as to the construction of the will of Babulal Agarwalla, who died in the year 1873. The will is in the English language and states (among other things) the testator's intention to erect a *mundir* and suitable buildings for the residence of members of his family and for the reception of poor and homeless persons at Sri Brindaban. Then by a clause, which has been referred to as clause 17, he directs that out of the income of his estate " a sum of Rs. 650 (subject to the increase hereinafter mentioned) be remitted monthly and every month by my executors or trustees to the managers for the time being of the *mundir* of Brindaban to be erected as aforesaid, out of which sum Rs. 100 shall be paid to " certain persons in succession ; and then the clause continues, " and the residue or surplus shall be

appropriated towards the expenses of performing pujas at or otherwise maintaining the said mundir and of the daily feeding of the poor there." The beneficiaries of the monthly sum of Rs. 100 named in this clause are all dead, and it is common ground that the trusts declared of that monthly sum for the benefit of other persons not there named is inoperative, those persons not having been born in the testator's lifetime. Then by clause 23 of the will the testator says this :—

" I further direct that after paying the monthly sums and the monthly expenses hereinbefore directed to be paid or incurred and also after providing for the payment of taxes, Government revenue and assessments and repairs of my immoveable property, the surplus of the rents, income and profits of my property and estate shall be monthly and every month remitted to Brindaban and applied in manner respecting the said monthly sum of Rs. 650, or so much thereof as is not required for the support of my family there, towards the performance of pujas and other religious ceremonies, and for the daily feeding of the poor at my mundir there."

Upon those clauses three points arise. The first question is whether, the trusts of the sum of Rs. 100 per month having failed, that sum falls into the residue of the Rs. 650 a month and is applicable according to the trusts of clause 17. It is not necessary to decide that question, as it has been assumed throughout, and their Lordships will assume in favour of the appellant, that the Rs. 100 a month does not fall into that particular residue of which the trusts are declared by clause 17.

The second question is whether, assuming that to be so, the Rs. 100 a month falls into the general residue which is disposed of by clause 23. In their Lordships' opinion it does. Clause 23 is a general residuary clause, sweeping up all that is not disposed of by the previous clauses; and, accordingly, by virtue of the ordinary rule, the monthly sum of Rs. 100, assuming it not to be disposed of by clause 17, falls into the residue of which trusts are declared by clause 23.

Then a third question is raised : Clause 23 directs the surplus to be " applied in manner respecting the said monthly sum of Rs. 650, or so much thereof as is not required for the support of my family there towards the performance of pujas and other religious ceremonies, and for the daily feeding of the poor at my mundir there." It is suggested on behalf of the appellant, and the learned Judge who first dealt with the matter was disposed to hold, that the effect of that trust was that a proportion of the residue, bearing the same proportion to the whole as the Rs. 100 bore to the total sum of Rs. 650, became applicable for the support of the testator's family, described in clause 17, and that particular trust having failed, is undisposed of and passes to the testator's heirs. In their Lordships' opinion that is not the true effect of the clause. The clause in substance directs that the residue shall be applied for the religious and charitable purposes referred to in clause 17, being the purposes applicable under that clause applied to the residue of the Rs. 650 per month after deducting the Rs. 100

per month, and this view is supported by the words "subject to the increase hereinafter mentioned," contained in clause 17. The result is that, in their Lordships' opinion, there is no sum not disposed of by the will, and, accordingly, that the judgment of the High Court at Calcutta is right and should be affirmed. Their Lordships will therefore humbly advise His Majesty that the appeal fails and should be dismissed with costs.

In the Privy Council.

PURSUTTAMDAS AGARWALLA, SINCE DE-
CEASED (NOW REPRESENTED BY JEWANDAS
AGARWALLA)

vs.

GOBIND PROSAD AGARWALLA AND OTHERS.

DELIVERED BY THE LORD CHANCELLOR.