Privy Council Appeal No. 93 *of* 1929.
Allahabad Appeal No. 20 *of* 1927.

Gulzari Lal - - - - - - - - - - - *Appellant*

v.

The Collector of Etah - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH MARCH, 1931.

Present at the Hearing :—

LORD BLANESBURGH.
LORD ATKIN.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 17th December, 1926, varying preliminary and final decrees of the Court of the District Judge of Aligarh.

These three decrees were passed in a suit for the administration of what was alleged, and what each Court has found to be, a trust for public purposes of a charitable nature. The appellant and his co-defendant, Kesri Chand, were the surviving trustees of the trust, and in the suit a claim was made against the appellant for Rs. 1,33,000 of its funds, said to have been misappropriated by him. The plaintiff also sought to have the appellant removed from his position as trustee and to have a scheme promulgated for the future administration of the trust. The preliminary decree of the District Court directed the appellant to be so removed. It ordered him to account for the trust property which had come into his hands. It propounded a scheme for the future administration of the trust and ordered the appellant to pay the respondent's entire costs of suit. The District Court, after accounts had been taken, found Rs. 63,573-15-4 to be due from the appellant; and it so decreed.

By the decree of the High Court of the 17th December, 1926, the decrees of the District Court were affirmed so far as the removal of the appellant from his trust and the promulgation of a scheme were concerned. But the sum of Rs. 63,573-15-4 which had been found to be due from him on his accounts was reduced to Rs. 17,766, and the greater part of the costs of the respondent, the plaintiff in the suit, was, in relief of the appellant, charged upon the trust property.

The appellant complains of this decree, relatively trifling although his liability thereunder is, when contrasted with the claim originally made upon him. He says he is free from all liability and he asks that the suit as against him should be dismissed.

The property in question formed part of the estate of one Panni Lal, a self-made man, who died in 1879. In 1877 he had by deed of gift made over the whole of his means to his wife, Musammat Chunni Kuer. On his death two years later there were four claimants to his estate : Musammat Chunni Kuer, now his widow, his deceased brother's son Ganga Prasad, his nephew Dwarka Prasad, and the appellant Gulzari Lal, then a minor of nine years of age who, through his guardian, claimed to be an adopted son of a deceased son of Panni Lal.

After much dispute these rival claims were finally adjusted by what was in effect a deed of family arrangement. By this deed of 25th July, 1881, through one of its provisions, the trust now in question was founded. Purporting to be a settlement of the property by the widow, the deed provided that she was to retain possession of the whole for her life. Upon her death there was to be a division into four parts : one for Ganga Prasad ; one for Dwarka Prasad ; one for the appellant ; while one-fourth, being the trust property now in question, was to be used as an endowment, and Ganga Prasad and Dwarka Prasad and the appellant, through his guardian if he was still a minor, were to manage it. The defined purpose of the endowment was the distribution of *sadabart* in the name of Panni Lal at the *Kothi* in Marehra and the shop in Agra and Farrukhabad and the *Dharamshala* at Farrukhabad. The express provisions of the deed no less than the recitals and other indications found in it leave their Lordships in no doubt that its whole object in relation to this endowed property was that the income should be spent and devoted to religious and charitable purposes.

But Musammat Chunni Kuer very soon repented of the settlement and she brought a suit to have it set aside. Suits for the same purposes were brought by Ganga Prasad and Dwarka Prasad. The appellant alone, through his guardian, adhered to the arrangement. The suits were all tried together, and after years of litigation they ended in a decree of the High Court of Allahabad in 1891, by which it was held that the deed of 1881, being in the nature of a family settlement, was binding on all parties. The endowment was thus established and upheld. So

far, however, as the trust was concerned, Musammat Chunni Kuer did not yet submit. Being entitled under the deed to possession of the property, she, during the remainder of her life proceeded to dispose of the 11 villages of which the endowment was composed. In respect of two of them she made default in the payment of Government revenue. These were sold up and irretrievably lost to the trust. Other villages she mortgaged or gifted away to her relations. Others again she sold. Two she leased for a long term. The result was that when in 1899 she died the endowed properties had passed out of her possession, and it is fair to the appellant to say that but for his action, then taken, the whole of the endowment would have been finally lost to the trust.

He, however, upon the widow's death, took it upon himself to recover the trust properties from the various transferees. To that end he started litigation, largely financed by himself. This lasted from 1902 until 1905, and it terminated successfully in favour of the trust. By a decree of the High Court of the 21st May, 1905, joint possession of the recovered properties was decreed in favour of the appellant and Dwarka Prasad, his co-trustee, and they were directed to take over possession as trustees and to keep a correct and clear account of their receipts and disbursements. Then followed further litigation for mesne profits, which lasted until 1912. The appellant, however, apparently by arrangement with Dwarka Prasad, has since 1905 been in effective possession of six out of the nine villages which remain to the trust, the other three villages up to the time of his death being in the possession of Dwarka Prasad and since his death in that of Kari Chand, the appellant's co-defendant. It is in respect of his six villages that the appellant has been charged in this suit.

Their Lordships have set forth these facts in some detail, because the main burden of the appellant's complaint before them was that while this suit should never have been launched at all against a trustee, without whose exertions, undertaken in the first instance at his own risk and expense, there would have been no trust property left to be administered by anyone, it had been prosecuted by the Collector of Etah with the extremest strictness, and in the result, so far as expense is concerned, at great loss to the trust. Upon this, their Lordships must observe that while the appellant's undoubted services to the trust at an earlier stage might well have justified him in asking that proceedings against him should be prosecuted with discretion rather than with zeal, these services cannot be allowed to justify subsequent conduct, on his part, amounting to misappropriation of trust funds and conversion of trust property to his own use. And on that matter their Lordships are confronted with concurrent findings of the Courts in India which, paraphrased from the judgment of the High Court, amount to this: that the appellant has been guilty of serious breaches of trust: that he has not spent in charity all the trust funds which

came to his hands and that some of those he has applied to his own use; that while he himself found the moneys necessary to prosecute the litigation already referred to, he has represented in his accounts that he had borrowed these moneys at high rates of interest from outside lenders, so that in the name of expenditure which he had never made he might retain for himself a rate of interest which could not be claimed by a trustee in respect of advances made by himself. Such conduct on the part of a trustee, brought home to the appellant by the concurrent findings of two Courts, cannot be overlooked or excused, however meritorious in earlier days his acts in relation to the trust may have been. It is, as of course, that a trustee who is responsible for such conduct shall be removed from his trust: the standard of rectitude and accuracy expected from every trustee of charitable funds is of the highest, and that standard must in all circumstances be maintained by the Courts if the safety of property held upon such trusts is not to be imperilled throughout the whole of British India.

Their Lordships accordingly come to the conclusion unhesitatingly that it is impossible to interfere with the decree now appealed from on any such ground as that which has so far been dealt with.

It was, however, contended on the appellant's behalf that the suit against him ought to have been dismissed for two other reasons. The first, that the trust in question was only superficially a trust created for public purposes of a charitable or religious nature. It was really a family arrangement, private in its character. This contention was rejected by both Courts in India, and the numerous authorities on the subject are conclusive against its correctness. In their Lordships' judgment the trust is indubitably a public trust for charitable purposes, and this objection on the part of the appellant, in reality an objection to the suit with the Collector as plaintiff, is untenable.

It was, however, secondly objected that, even so, the suit was bad, in that it ought to have been instituted not by the Collector but by the Legal Remembrancer who, under Section 93 of the Code of Civil Procedure, had been appointed to exercise within the limits of the United Provinces the powers conferred by Sections 91 and 92 on the Advocate-General, in respect of suits relating to trusts created for public purposes of a charitable or religious nature. It was objected by the appellant that the Legal Remembrancer was the only official who could in these circumstances maintain the suit.

It appears to their Lordships that this objection is answered by the terms of Section 93 itself, which are as follows:

> "The powers conferred by sections 91 and 92 on the Advocate-General may outside the Presidency towns be with the previous sanction of the Local Government exercised also by the Collector or by such officer as the Local Government may appoint in this behalf."

The effect of that section as it seems to the Board is that no suit like the present, being one outside the Presidency towns, may be brought without the previous sanction of the Local Government, whether by the Collector or by any officer whom that Government may appoint for the purpose : so that the fact that the Legal Remembrancer is in the United Provinces invested as a rule with the duties elsewhere discharged by the Advocate-General in this behalf is no reason why for the purposes of a particular suit the Local Government may not appoint the Collector or any other officer to prosecute it. The fact that there must be a previous sanction by the Local Government to every suit makes it impossible that two suits by separate officials will ever be concurrently instituted. Accordingly no inconvenience results from this construction of the section.

It follows that this objection to the competence of the suit also fails.

Little remains to be said. Objection was taken by the appellant that the deductions made in his favour by the High Court from the Rs. 66,573 charged against him in the Court of the District Judge were insufficient ; that the allowances made him were still inadequate ; and that on his accounts properly taken no balance whatever was due from him.

As to this, the respondent objected that the sum finally charged against the appellant by the High Court represented a concurrent finding of two Courts, with which the Board in accordance with its usual rule would not interfere. Their Lordships, however, reserving this objection to the respondent did, at the appellant's invitation, consider the disallowed items to which he took exception. In the result one only remained in doubt. It was the restriction of the allowance to the appellant in respect of his expenses to 10 per cent. upon the amounts actually collected by him. Learned Counsel pointed to the fact that as much as 90 per cent. of the amounts due to the trust had, in fact, been got in by the appellant, an exceptionally large proportion in such circumstances as existed, and that in respect of the collections made by his co-defendant from the three villages remaining in his hands the Collector had permitted to be charged as much as 40 per cent. in respect of collection expenses. He could not, however, show affirmatively that the allowance to the appellant in this respect was really inadequate, and its assessment is peculiarly a matter for the learned Judges of the High Court, with whose experienced judgment upon it their Lordships will not readily interfere.

In the result the objections taken by the appellant to the decree of the High Court fail in every particular.

Their Lordships will accordingly humbly advise His Majesty that this appeal from that decree be dismissed with costs.

In the Privy Council.

GULZARI LAL

v.

THE COLLECTOR OF ETAH.

DELIVERED BY LORD BLANESBURGH.

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