Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lalit Mohun Singh Roy v. *Chukkun Lal Roy and others, and on the Consolidated Appeals of Bepin Mohun Singh Roy* v. *Chukkun Lal Roy and others, and Priambada Roy and others* v. *Chukkun Lal Roy and others, from the High Court of Judicature at Fort William in Bengal; delivered 20th March* 1897.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

The question on these appeals is the construction of the will of a Hindu gentleman named Saroda Pershad Roy who died on the 18th March 1868 at the age of thirty-three years. The testator was a man of considerable wealth and as appears from his will was of a benevolent and generous disposition and was also anxious for the maintenance and honour of his family. He left no issue but left one widow who died in February 1888 about a year before the institution of the present suit. The District Judge held that the testator's nephew the Appellant Lalit Mohun Roy took an heritable and alienable interest in the testator's estate subject to a charitable gift which will be mentioned presently but reserved the question whether any defeasance of Lalit Mohun's estate was intended as the events

95657. 150.—3/97

requiring a decision of that question might never arise. The decree of the District Judge was reversed by the High Court. The Chief Justice Sir W. C. Petheram and Mr. Justice Chunder Madhub Ghose held that the Appellant Lalit Mohun Roy has only a life interest in the testator's estate—that the gift over to take effect in the event of the failure of male issue of the Appellant in the male line is bad in law and invalid—and that subject to the Appellant's life interest and subject to the bequests legacies and charges made in favour of religious and charitable institutions the Plaintiffs in the action as heirs-at-law are entitled to succeed to the estate left by the testator. The present appeal is from this decision of the High Court.

There are two cardinal principles in the construction of wills deeds and other documents which their Lordships think are applicable to the decision of this case. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is, to use Lord Denman's language, that technical words or words of known legal import must have their legal effect even though the testator uses inconsistent words unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense (*Doe* v. *Gallini* 5 B. & Ad. 621).

The will in the present case commences with a preamble containing the following words relied on by the Respondent Chukkun Lal Roy as showing an intention to make his estate inalienable:—

"It is very necessary that there should be "some special ordination to secure temporal "and spiritual welfare; and that suitable means "providing that the work so ordained to be done "should, after my death, be carried on without "interruption and that the members of my

" family should have no trouble, and that, " hereafter my *sthalabhishikta* (persons installed " in my place) should not, by destroying the " property, &c. at pleasure, extinguish the name " of my family and become troublers, &c."

By paragraph 1 the testator provided for the maintenance out of the income of certain specified putni talooks of religious foundations established by his grandfather and mother a dispensary established by himself and the permanent support of fifty helpless people in a house he intended to build for the purpose and he directed that the profits of all these talooks should continue in perpetuity to be expended in the manner prescribed—that the talooks should be inalienable—and that the profits of the properties should not be expended or used for any save the purposes aforesaid. In case of deficiency of the income of the talooks the amount needed was to be defrayed in perpetuity out of the interest of Rs. 240,000 Company's paper belonging to the testator.

By paragraph 2 he provided for his own right of control in respect of all the talooks and that after his death that right should remain with the person appointed to his place.

After reciting in paragraph 3 that he possessed a large property in addition to that which he had appropriated to religious and charitable purposes the testator in paragraph 4 disposed of his estate in the following words:—

" 4. If, by the will of God, one or more sons are born to " me, then after my death my son or sons shall be the owner " (or owners) of my estate, and the charge of managing the " *deb-shebas* and dispensary, and the care of the helpless " people to be fed daily, and all other business shall rest with " them. What shall remain over from the profits of the estate " after the monthly allowances, &c., according to the provisions " of the Will have been given, shall continue to be spent, as " may be necessary, subject to their wishes and those of their " successors. If no son is born, but one or more daughters " are born, then those daughters shall with sons, grandsons

" and so on in succession, receiving the ownership of my estate " and the management of all the work, (viz.), of the *deb-shebas* " and the dispensary, and the oversight of the helpless people " to be daily fed, &c., conduct all the work. If no children " are born to me, that is to say, son or son's son or son's son's " son, or daughter or daughter's son, or if, at the time of my " death, they are not alive, then the eldest son born of the " womb of my third sister Srimati Khiroda, my nephew " Sriman Lalit Mohun Roy Babaji, whom, since his birth, I " have continued to love as a son, and who, remaining near " me, is pleasing me by good conduct and the learning of good " principles, whom I have been going on supporting—this " nephew Sriman Lalit Mohun Roy Babaji becoming, on my " death, my *sthalabhishikta*, and becoming owner (malik) of " all my estate and properties, &c., shall, remaining my " *sthalabhishikta*, obtaining the management of the *Iswar-* " *shebas* and the dispensary and the oversight of the people to " be daily fed, &c., all affairs as above described, residing in " my nij dwelling-house in Suria Chakdighi, the place " of my ancestral abode, keeping the estate intact (*lit.*, in " place), enjoy, with son, grandson and so on in succession, the " proceeds of my estate. This nephew is under age. If my " death should occur whilst he is in a state of nonage, then " my wife Srimati Rajeswari Debi and my father's sister's son " Sriman Jogendra Nath Roy of Munirambati becoming the " minor's guardians and executors, shall, as long as he has " not attained majority, discharge all the duties set down in " my Will. The minor, on reaching majority, shall exercise " ownership (*malikatwa*) over all the properties. If he should " die sonless, then his wife shall receive a monthly allowance " of one hundred rupees as long as she lives. If he should " die leaving female offspring, then that daughter or those " daughters shall receive expenses and marriage expenses " from my estate. In the absence of the said nephew's son, " grandson, great-grandson and so on, then, of the sons born " of the wombs of my sisters Biroda and Khiroda, he who " remains the eldest after the exclusion of him who may be " devoid of understanding or afflicted with any *potit rog* (any " of those diseases which disqualify a man for the exercise of " religious and social right) shall receive the charge of " managing my estate and properties, &c., and he, with son, " grandson and so on in succession, receiving the ownership " of my estate and the management of the *deb-shebas* and the " dispensary, and the oversight of the people to be daily fed, " &c., all affairs, shall protect the estate and enjoy the " proceeds. And he shall take the interest on the Company's " papers, and have them renewed, &c., when necessary."

In paragraphs 5 to 7 are contained provisions of a heritable annuity to the Appellant if the testator's sons or daughter get the estate and

provisions by way of maintenance and grant of allowances to the testator's sisters and another nephew. The only thing noticeable is that the same words are used as occur in the gift over in paragraph 4 "in the absence of son "grandson great grandson and so on." In paragraph 5 they may mean death without leaving male issue or issue and in paragraph 7 they must from the context have that meaning.

Paragraph 9 it was conceded does not create a trust of the income of the estate but merely imports a pious expression of desire or hope.

Paragraph 13 contains a gift of the testator's estates to Government for charitable purposes in an event expressed in these words: "If here- "after on the death of the several persons who "I have determined in this will shall be my "*sthalabhishikta* no one whoever it be (entitled) "to become my *sthalabhishikta* should remain "alive."

The testator made a codicil to his will dated on the day of his death. It contains a recital of the will which in some respects varies from the actual language of the will but it does not appear to their Lordships that any light or assistance can be obtained from it on the construction of the will itself even if it be permissible to refer to it for that purpose.

It was not disputed on the part of the heirs-at-law that the son of the testator if there had been one or his daughter if there had been one would have taken an absolute heritable and alienable estate nor that those to whom the estate is given after the gift to the Appellant and his issue would take a life estate. Nor was it disputed that the words of gift to the Appellant were such as to confer on him also an heritable and alienable estate. The words "become owner "(malik) of all my estates and properties" would, unless the context indicated a different meaning

be sufficient for that purpose even without the words "enjoy with son grandson and so on in "succession" which latter words are frequently used in Hindu wills and have acquired the force of technical words conveying a heritable and alienable estate. The Respondents however contended that the *primâ facie* legal meaning of the words used was controlled and qualified by the context of the will and they put their argument in two ways. First it was said that there was a general intention expressed in the will to give only a succession of life estates to the Appellant and his male issue without power of alienation and that such general expression of intention was confirmed by the words "keeping "the estate intact" and the clause following the gift to the Appellant. Secondly it was contended that the will contained such a sufficiently expressed intention to exclude females from the succession as would cut down the words of inheritance to heirs male and give the Appellant only an estate to him and his heirs male which would be void beyond the life estate according to the well-settled principle of Hindu law.

Their Lordships do not find any express prohibition in this will against alienation of the estates the beneficial enjoyment of which is given to the devisees as there is of the estates appropriated to religious and charitable purposes. If there were such a clause added to a gift of a heritable estate it would be repugnant and void. This is not like the case of *Sookhmoy Chunder Dass* v. *Srimati Monohurri Dasi* L.R. 12 Ind. Ap. 103 in which it was held independently of the provision against alienation that there was no intention to pass the estate. The gift over to the Government in Clause 13 of the will on which some reliance was placed by the Respondents may be construed either as taking effect on failure of the

persons named as institutes or taking by purchase in which case it might be valid but the event has not occurred or it may be construed as providing for a general failure of heirs in which case it would of course be void. It is possible that a testator may have imperfectly understood the words he has used or may have misconceived the effect of conferring a heritable estate but this would not justify the Court in giving an interpretation to the language other than the ordinary legal meaning.

The alternative branch of the argument is more plausible and appears to be that which mainly found favour with the learned Judges in the High Court. It was said that the provision for the Appellant's widow in case he died sonless and the provision for his daughters was inconsistent with a gift to him and his heirs in legal succession because in that event according to the law of the mitakshara the widow and daughters would succeed as the Appellant's heirs. But the provisions for the widow and daughters of the Appellant must be read with the clause which immediately follows and would more accurately precede them. It was decided in *Sreemutty Soorjeemony Dossee* v. *Denobundoo Mullick and others* (9 Moo. Ind. Ap. 123) that a Hindoo testator may give property by way of executory bequest (to borrow a term from the law of England) upon an event which is to happen if at all immediately on the close of a life in being and (it has since been explained) in favour of a person born in the testator's lifetime.

Their Lordships do not propose to express any opinion on the construction or validity of the gift over in paragraph 4 of the will before them. They do not find it necessary to do so. The event (whatever it may be) may never occur and if it does the question will probably arise between parties other than the present litigants.

If the event referred to in the clause is the death of the Appellant without leaving male issue it makes a consistent and intelligible series of limitations. It would be a gift in fee (to use an English term) to the Appellant defeasible in case of his death without leaving male issue with a provision in that event for his widow and daughters who would be disappointed by the operation of the gift over. It was pressed upon their Lordships that the event referred to is an indefinite failure of issue male. The clause in that event would of course be void, but for the purpose of construction and ascertaining the testator's meaning the effect of it on the other provisions of the will must be considered. In the opinion of their Lordships the words of the clause do not indicate any intention to give a succession of life interests to the Appellant and his issue male or to vary the terms of the gift to Lalit Mohun Roy: and if it could have effect given to it, the provisions for the wife and daughters would still not be unmeaning. Their Lordships cannot find any sufficient reason for importing into the gift to the Appellant an implied prohibition against females succeeding as heirs so as to limit the nature or extent of the estate taken by the Appellant or confine it by construction to heirs male although his estate may be defeasible if the gift over is valid and the event on which it is to take effect should occur.

Their Lordships therefore think that the decree of the High Court should be reversed and the decree of the District Judge be restored in substance. They think however to avoid any misapprehension hereafter the word "absolute" should be omitted and the following words should be added viz. "But this Court does not "think fit to make any declaration at present as "to the construction or validity of the clause of

" defeasance or gift over annexed to the estate " of the Defendant No. 1 contained in the " testator's will."

With regard to costs, the Respondent Chukkun Lal Roy and his deceased brother Shoshi Bhusan Roy whom he now represents (Plaintiffs in the action) were ordered to pay the costs of all the Appellants by the decree of the District Judge. That decree was reversed in the High Court and the costs of the Appellants there in the Lower Court and the High Court were given out of the estate. Their Lordships were asked to give the costs of the Respondents of this appeal out of the estate but that would be making the Appellants pay the costs of their successful appeal. Their Lordships are not disposed to vary the directions as to costs in the District Court. The Respondent Chakkun Lal claims not under but against the will and their Lordships think that the Appellants in the High Court ought to pay the costs of that appeal which in their opinion ought to have been dismissed and that Chukkun Lal Roy should pay the costs of Lalit Mohun Roy of his present appeal.

In addition however to the principal appeal two other appeals against the decree of the High Court have been presented by persons who may become entitled under the gift over. So far as the Respondent Chukkun Lal Roy is concerned their case is a common one with that of the first Appellant. If Lalit takes an heritable estate the heirs-at-law have no direct interest in the construction or validity of the gift over as they are equally excluded whether Lalit's estate is defeasible or indefeasible. The two sets of Appellants declined to argue any question between themselves or to ask for any declaration as to the construction or validity of the gift over. As however the presentation of those appeals

was justified by the form of the decree of the High Court although in the result they have proved to be unnecessary their Lordships think they cannot order the Appellants to pay any costs to the Respondents.

Their Lordships therefore will humbly advise Her Majesty that the decree of the High Court be reversed and instead thereof the decree of the District Court be varied by the omission of the word "absolute" and by the addition of the words mentioned above, and as varied the decree of the District Court be affirmed and the Plaintiffs in the action be ordered to pay the costs of the appeal to the High Court. The Respondent Chukkun Lal Roy will also pay to the Appellant Lalit Mohun Singh Roy the costs of his present appeal and there will be no order as to the costs of the two consolidated appeals, or the costs of Bepin Mohun Roy, Priambada and the son of Priambada as Respondents in the principal appeal. The Secretary of State for India in Council was made a party to the suit and a Respondent to this appeal but he has not put in any case and does not appear. Their Lordships therefore will not make any order as to his costs (if any) of this appeal.