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November, 22.

RAMKISHORE LAL

v.

KAMAL NARAIN

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Construction of Documents—Partition award—"Milkiyat" rights given to one co-sharer for purpose of spending income on temple—Later recitals showing dedication to temple—If absolute dedication in favour of temple—Dedication, if can be made by partition award.

A registered partition award made by Panchas between all the co-sharers provided:

> "Mouza Telibandha—together with all rights and interests of proprietorship has been given to Ramsaranlal.... for the undermentioned purposes. From the profits and income Ramsaranlal shall incur expenses.....Shri Ramchandra Swami Math Shri Dudhadherji, according as the same expenses have been continuing to be met up to this day....If this work fails to be done....any co-sharer who may benefit....shall take this Mouza Telibandha together with all rights and interests into his possession and carry on the work of the temple....None of the co-sharers and Ramsaranlal have any rights over it. Ramsaranlal or any other co-sharers have neither got, nor shall have, any right to transfer..Mouza Telibandha..., because Mouza Telibandha has been reserved for ever for the aforesaid purpose and it shall continue to be so only"

Some of the co-sharers filed a suit to set aside the award. The parties referred the matter to one Mr. Bagchi and in view of his award a compromise petition was filed and the suit was dismissed. The appellants contended that the partition award made an absolute dedication of the Mouza in favour of the temple. The respondent contended that the award gave the Mouza in full proprietorship to Ramsaranlal with only a charge on it to meet the expenses of the temple, that the partition award could not validly create a dedication and that the partition award was modified by the Bagchi award.

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Held, that the partition award created an absolute dedication of Mouza Telibandha in favour of the temple. Though the use of the words "Malik" and "Milkiyat" indicated the conferment of an absolute estate, it was not invariably so and it was necessary to examine the context in each case. Where the intention is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraints on alienation has to be repelled on the ground of repugnancy; but where the restrictions are the primary things intended and they are consistent with the whole tenor of document, it is a material circumstance for displacing the presumption of absolute ownership implied in the use of the word "Malik". The use of the words "*Kul haq haquq samet Milkiyat*" in the opening clause of the award raised a presumption that absolute interest was given thereby to Ramsaranlal, but the later recitals rebutted this presumption. Considering all the different provisions, it was clear that the intention was not to make Ramsaranlal absolute owner but to give him possession and management of the Mouza for the benefit of the temple.

Sahebzada Mohd. Kamgar Shah v. *Jagdish Chandra Rao Dhabal Deo*, [1960] 3 S.C.R. 604, *Lalit Mohan Singh Roy* v. *Chukkuna Lal Roy*, [1897] L.R. 24 I.A. 76; *Mst. Surajmani* v. *Rabi Nath Ojha*, (1907) L.R. 35 I. A. 17; *Sarjoo Bala Devi* v. *Jyotirmoyee Debi*, (1931) L. R. 58 I. A. 270, *Mohamed Shamsool* v. *Shewukram*, (1874) L. R. 2 I A. 7 and *Rai Bajrang Bahadur Singh* v. *Thakurain Bakhtrai Kuer*, [1953] 3 S.C.R. 232, referred to.

The partition award validly dedicated the Mouza in favour of the temple. The act of the Panchas in making the award was really the act of the owners of the property who had full right to make the dedication. Once an obsolute dedication had been made by the partition award the former owners had no legal authority to go behind the dedication and accordingly the Bagchi award could not affect the dedication.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 523 of 1960.

Appeal from the judgment and order dated December 5, 1957 of the former Madhya Pradesh High Court at Nagpur in First Appeal No. 112 of 1952.

C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar, B. R. G. K. Achar and *K. L. Hathi*, for the Appellants.

M. C. Setalvad, Attorney General for India, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the Respondents.

1962. November, 22. The Judgment of the Court was delivered by

DAS GUPTA, J.—There exists at Raipur in Madhya Pradesh an old Math by the name of Dudhadhari Math within which is a temple where the idols of Shri Ramchandra, Sita, Laxman, Bharat, Satrughan and Hanumanji have been worshipped for very many years. For the expenses of the worship of the deities and for the upkeep of the temple, one village by the name of Hirmi was dedicated by Dinanath Sao, a wealthy inhabitant of the locality. The main controversy in the present litigation is whether another village of the name of Telibandha which also belonged to Dinanath was dedicated absolutely to the temple either by Dinanath Sao himself or later on by his descendants.

The two appellants, both descendants of Dinanath Sao brought the present suit under s. 92 of the Code of Civil Procedure, 1908, for removal of the respondent Kamal Narayan, another descendant of Dinanath Sao, from the office of trustee of the God Shri Ramchandraji Swamy for the village of Telibandha and for accounts. The appellant's case in the plaint was that Telibandha was dedicated to the temple of Shri Ramchandraji as early as 1857 by Dinanath Sao himself and later on in the year 1896 when a partition took place between his descendants who were up till that time living jointly, all the co-shares not only re-affirmed the dedication made by Dinanath Sao of this village of Telibandha but themselves dedicated the village Telibandha to the deities in this temple by accepting the award made by the Panchas..

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Dinanath died in 1862, leaving his two sons Sobharam and Keshoram. Sobha Ram had three sons, Sarjoo Prasad, Gokul Prasad and Jamna Prasad; Keshoram had also three sons, Ramdin, Gajanand and Nand Kishore. At the time of the partition in 1896 Sarjoo Prasad was dead and the parties to the partition were Sarjoo Prasad's four sons, Ram Saran Lal, Ramhirde, Ram Krishna and Ramanuj, representing Sarjoo Prasad's branch and the other five grandsons of Dinanath. The first appellant Ram Kishore is the son of Nand Kishore Sao, while the second appellant, Ramanuj is Sarojoo Prasad's son. The respondent is the son of Ram Saran Lal.

By the award of 1896, it is the plaintiffs' case, Ram Saran Lal was not given any proprietary interest in the village Telibandha but was merely made the Manager on behalf of the deities for this property. On Ram Saran Lal's death in 1930, Kamal Narayan, his son became the trustee. According to the plaintiffs the temple was a public temple and the trust a public trust. The plaintiffs allege that Kamal Narayan committed several breaches of trust by the sale of certain lands of Mouza Telibandha for the sum of Rs. 1,06,774/1/- and in other ways. The plaintiffs first approached the Court of the Additional District Judge, Raipur with a petition under s. 3 of the Chartiable and Religious Trusts Act for directions on Kamal Narayan as provided in that section. Directions were accordingly issued by the Additional District Judge; but with this the respondent did not comply. It was then that the present suit was brought by the plaintiffs without the previous consent of the Advocate-General as is permitted by s. 6 of the Charitable and Religious Trusts Act. The plaintiffs have prayed for a declaration that Telibandha village was held by the defendant in the trust for Shri Ramchandra of the Dudhadhari Math and that he had committed breaches of such trust; for his

removal from the position of a trustee and for appointment of the first plaintiff in his place; for an order on him to render accounts since 1936 and to deposit Rs. 1,06,774/1/- which he got as sale proceeds.

The defendant denied that Telibandha was ever dedicated. As regards the Award of 1896 his plea was that it did not express accurately the decision of the Arbitrators and that, in any case, it was superseded by the Award of Mr. Bagchi on May 14, 1898, which was accepted by all the co-sharers as the actual settlement of their own and on the basis of which a suit brought to challenge the validity of the earlier award was dismissed as compromised. The defendant's case is that there was no trust, either express or constructive, created at any time by any one in respect of Telibandha village ; that neither he nor his father was trustee in respect of this village and there was no breach of trust by him. To explain his possession of the village the defendant referred to a partition in 1901 between Sarjoo Prashad's four sons, on the one hand and Jamuna Prasad, on the other, at which, it was said, that Telibandha fell to the share of Sarjoo Prasad's four sons. Thereafter in 1913, there was a further partition between Sarjoo Prasad's four sons and the defendant at which Telibandha was allotted to defendant's father Ramsaranlal alone.

On a consideration of the evidence the Trial Court held that there had been a valid dedication in respect of the village Telibandha for the Temple of Shri Ramchandra Swamy. It was not satisfied that the dedication had been made by Dinanath himself but held that there was such a dedication sometime before 1896 and that that dedication was confirmed by all the co-sharers at the time of the partition of 1896. As regards the Bagchi Award, the learned Judge was of opinion that it did purport to revoke

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the dedication and to allot the village to the members of one branch of the family with only a moral obligation to look after the temple but this later Award had all along remained a dead letter and did not affect the Panch Faisla Award of 1896. The Trial Court held that a valid trust had been created in favour of the temple and it was a public religious trust, as Shri Ramchandra temple, for which the trust was created, was a public institution. The Court found that the defendant was the trustee of this public trust, and had committed breaches of trust by transferring trust properties and appropriating its proceeds and finally by his express repudiation of this trust and was therefore liable to be removed. Accordingly, it passed a decree declaring that defendant No. 1 had committed breaches of trust as a trustee of the village Telibandha for the temple of Shri Ramchandra Swamy and removing the defendant from the office of the trustee. By the decree the Court also directed the defendant to deposit a sum of Rs.1,06,774/1/-in Court. The first plaintiff Ram Kishore Lal was appointed the trustee in place of the defendant. It was also ordered that a oommissioner would be appointed later on to enquire into the alienations made by the defendant and to take accounts of the trust from the year 1936.

On appeal by the defendant, the High Court of Judicature at Nagpur has set aside the Judgment and decree of the Trial Court and ordered the dismissal of the suit. The High Court was of opinion that the dedication of the village Telibandha had not been proved. The High Court agreed with the Trial Court that dedication by Dinanath Sao himself, by a Patha in 1857 as alleged in the plaint had not been established ; but disagreeing with the Trial Court, it held that there was no absolute dedication of the village for the purpose of the temple by the Panch Faisla Award of 1896 and no trust was created thereby. On a construction of this document the

learned Judges of the High Court held that it did not show more than a partial dedication of the village as distinguished from an absolute dedication. Accordingly, the High Court allowed the appeal and ordered the suit to be dismissed without going into the other questions as regards the character of the temple or whether the defendant had committed breaches of trust.

Against this decision of the High Court the present appeal was filed by the plaintiffs on a certificate granted by the High Court under Art. 133 (1) (b) of the Constitution.

The main controversy before us is whether by the Punch Faisla Award of 1896 an absolute dedication of the village Telibandha was made in favour of Shri Ramchandra Swamy temple or whether the village was given in full proprietorship to Ramsaran Lal with only a charge on it to meet the expenses of the temple. The relevant portion of the Award is in its second paragrah. The Award is in Hindi and the second paragraph has been translated thus :—

> "2. Mouza Telibandha alias Karawatoti, sixteen annas, Asli Men Dakhli (i. e. village proper with the out-skirts under control), in tahsil Raipur together with all rights and interests of proprietorship has been given to Ramsaranlal with the consent of and at the instance of all the co-sharers for the under-mentioned purposes. From the profits and income of mouza Telibandha, Ramsaran Lal shall incur the expenses of Samaiyas (probably occasions), celebrations, Bho-Rag, Bal-Bhog of daily routine and white-washing and plastering, etc., and other work of Shri Ramchandra Swami Math Shri Dudhadharji, according as the same expenses have been continuing to be met up to this day from the time of Dinanath Sao, Sobharam Sao and Sarjoo Prasad Sao. If this work

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that is being done from long before, fails to be done, then out of all these six co-shares, any co-sharer, who may be fit to do that work and carry it on, shall take this Mouza Telibandha together with all rights and interests into his possession and carry on the work of the temple just as it has continued to be done from ever. None of the co-shares and Ramsaranlal have any right over it. Ramsaranlal or any other co-sharers have neither got, nor will they have, any right to transfer, either in whole or in part, Mouza Telibandha, proper, together with Dakhli, together with all the rights and privileges, by sale or mortgage or gift or will or in any other manner whatsoever, because mouza Felibandha has been reserved from ever for the aforesaid purpose and it shall continue to be so only."

The decision of the question before us depends on the proper contruction of this paragraph of the Panch Faisala.

It is necessary to mention that the words "together with all rights and interests of proprietorship" in the translation stand for "Kul haq haquq samet milkiyat ke" of the original; and the words "from the profits and income of Mouza Telibandha" in the translation stand for "Telibandha ke munafa wo amdani se" of the original.

The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into

consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See *Sahebzada Mohd. Kamgar Shah* v. *Jagdish Chandra Deo Dhabal Deo*). (1) It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e. g., where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.

Turning now to para. 2 of the Panch Faisala, we find that the opening clause while providing for giving the village Telibandha to Ramsaran Lal uses the words "Kul haq haquq samet milkiyat ke." It has been contended by the learned Attorney-General on behalf of the respondent that these words

(1) [1960] 3 S.C.R. 604, 611.

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show an intention to give an absolute interest of ownership in the property to Ramsaran Lal. Accordingly, argues the learned Attorney-General, the later provisions in the paragraph which seem to indicate that such absolute right was not given have to be ignored as an ineffective attempt to take away what has already been given. Neither the words " none of the co-sharers and Ramsaran Lal have any right over it" nor the prohibition against the alienations in the following clause, nor the words "Telibandha has been reserved for ever for the aforesaid purposes and it shall continue to be so only" can,it is argued, limit the amplitude of what is given to Ramsaran Lal by the opening clause.

The question therefore is : Does the use of the words "Kul haq haquk samet milkiyat ke" invariably show an intention to give full and absolute ownership ? We do not think so. The question as to the meaning to be attached to the word "Malik" (from which the word "Milkiyat" has been derived) and "Milkiyat" have often been considered by the courts. A consideration of the pronouncements of the Privy Council on this question leave no doubt that while ordinarily an intention to give an absolute and full ownership is expressed by the words "Malik" or "Milkiyat" by saying that somebody is to be the Malik or is to have the Milkiyat, this is not invariably so. In *Lalit Mohan Singh Roy* v. *Chukkun Lal Roy* (1) where the words of the gift to the appellant were "shall become owner (Malik) of all my estates and properties", it was held that they were sufficient to convey a heritable and alienable estate—unless the context indicated a different meaning. In *Surajmani* v. *Rabi Nath Ojha* (2) also the use of the word "Malik" was held to import full proprietary rights, unless there is something in the context to qualify it.

In *Saraju Bala Devi* v. *Jyotirmoyee Devi* (3) the Privy Council had to consider the nature of the

(1) (1897) L.R. 24 I. A. 76. (2) (1907) L. R. 35 I. A. 17.
(3) (1931) L.R. 58 I.A. 270.

interest that passed by two leases which constituted the lessee the Malik of the property in express terms. Their Lordships examined the terms of those leases to see whether there was something in the context to indicate that the words did not import full proprietary rights and held that the conditions taken singly or collectively did not cut down the absolute estate.

It is important to note that in all these cases their Lordships of the Privy Council did not proceed on the basis that the mere use of the word "Malik" so clearly and unambiguously passed the absolute interest that examination of the context was not necessary. On the contrary in each case they emphasised the need of examining the context to find out what was intended. This was quite in line with what had been decided in one of the earliest cases—(*Mohamed Shumsool* v. *Sheunukram*) (1) where the word "Malik" came up for consideration. In that case the question arose whether a testator in saying that "only Mst. Rani Dhan Kowar, the widow of my son is my heir and except Mst. Ranee Dhun Kowari aforesaid none other is; nor shall be my heir and Malik". The document gave an estate of inheritance to the Rani which she was able absolutely to alienate. The Privy Council thought it proper to take into consideration the ordinary notions and wishes of a Hindu with respect to devolution of property and proceeded to observe :

"Having reference to these considerations, together with the whole of the will, all the expressions of which must be taken together without any one being insisted upon to the exclusion of others, their Lordships are of opinion that the two courts in India, who both substantially agree upon this point, are right in construing the intention of the testator to have been that the widow of his son should not take an absolute estate which she should

(1) (1874) L R. 2 I.A. 7.

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have power to dispose of absolutely, but that she took an estate subject to her daughters succeeding her in that estate."

In *Rai Bajrang Bahadur Singh* v. *Thakurain Bakhtrai Kuer* (1) this Court had to consider a will which used the words "Malik Kamil" and "Naslan bad naslan" in reference to the interest given to the younger son Dhuj Singh. Mukherjea, J., speaking for the Court said:—

> "These words, it cannot be disputed, are descriptive of a heritable and alienable estate in the donee, and they connote full proprietary rights unless there is something in the context or in the surrounding circumstances which indicate that absolute rights were not intended to be conferred. In all such cases the true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory."

On a consideration of the context this Court came to the conclusion that Dhuj Singh had only a life interest in the properties and pointed out that "in cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word "malik". What was said in this case in connection with the construction of a will applies with equal force to the construction of every other document by which some property is disposed of.

(1) [1953] S.C.R. 232.

Remembering therefore that the use of words *"Kul haq haquq samet Milkiyat"* in the opening clause of this Panch Faisla raises a presumption that absolute interest was given thereby to Ramsaranlal, we have also to remember that this is merely a presumption which can well be displaced by what follows in the same document as regards this very property.

When all these different provisions are considered it appears to us to be clear beyond any shadow of doubt that the intention was not to make Ramsaranlal the absolute owner of the village but give him possession and management of the village for the benefit of Shri Ramchandra Swamy temple. Immediately after saying that the village is given to Ramsaranlal *"Kul haq haquq samet milkiyat"* the document says in the same breath that this is being done for the under-mentioned purposes. Then the purposes are mentioned in the next sentence as meeting the expenses of worship and maintenance of the temple of Shri Ramchandra Swamy. The provision is next made that if Ramsaranlal does not carry out this purpose then out of the co-sharers between whom the partition was being made, any co-sharer may carry it on and for this such co-sharer shall take the Mouza Telibandha into his possession. The document then proceeds to say that none of the co sharers and Ramsaranlal had any right over the village. Then follows the prohibition against alienation.

The learned Judges of the High Court have said that the use of the words "from the profits and income of mouza Telibandha Ramsaranlal shall incure the expenses....." indicate that only a portion of the income was intended to be used and that supports the presumption arising from the use of the word "Kul haq haquq samet milkiyat" that absolute interest was being given to Ramsaran Lal. This

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provision has to be considered, however, along with all other clauses and it would not, in our opinion, be right to take the indication of the words "from the profits and income" as out-weighing or neutralising the numerous other provisions which point to an intention that Ramsaran Lal would not have the absolute ownership of the village. As has been mentioned earlier, the words "from the profitsand income of mouza Telibandha" in the translation stand for "Telibandha ke munafa wo amdani se" of the original. It is not correct to say that these words as used in the original necessarily mean " from the profits and income of mouza Telibandha." The words may equally well be translated as "with the profits and income of mouza Telibandha." It is worth noticing that the plaintiff's witness Mathura Prasad stated in answer to a question from the Court : "At that time there was no question as to what should be done with the savings from the income of the village Telibandha, after meeting the requirements of the temple, because the income those days was not much while the expenses which used to be incurred on the temple were far in excess of the income from the vlilage." The correctness of this statement was not challenged in cross-examination. It appears clear to us that by the use of the words "at that time" the witness meant "the time of the partition in 1896." In using the words "Mouza Telibandha ke munafa wo amdani se" it is more than likely therefore that the Panchas wanted to say that the purposes mentioned will be carried out with the income and profits and did not expect any surplus to be left.

We have therefore no hesitation in holding on a construction of paragraph 2 of the Panch Faisala that by this Award Telibandha village was dedicated absolutely to the temple of Shri Ramchandra Swamy and Ramsaran Lal was given possession of it as the manager and trustee of the temple.

But, says the learned Attorney-General, a partition Award of this nature cannot under the Hindu Law create a valid dedication in favour of a deity. This plea was not taken by the defendant in his written statement nor does it appear to have been urged seriously before the courts below. Assuming it is open to the defendant to raise this point now, it has to be decided on the further assumption that the facts under which the provision of dedication was made in the award were correctly stated there. That is, these provisions were made "with the consent of and at the instance of all the co-sharers." The act of the Panchas was thus really the act of the owners of the property and as owners had full right to make a valid dedication to the deity the dedication as made in Para. 2 of the Panch Faisla must be held to be valid.

This brings us to the question if the dedication thus made has ceased to be valid by anything which happened afterwards. It appears that immediately after the award was made, it was presented before the Sub Registrar, Raipur, for registration. Within a few days, however, an application in connection with this matter appears to have been made before the Civil Judge, Raipur. In this Ramsaranlal stated his objection to the award on the ground that "the Panchas did not read out the award before him, that they had asked him to state in writing his objections which he did but they did not take any evidence." The Civil Judge rejected Ramsaran Lal's contention and returned the award to the Sub-Registrar with a direction to register it in due course and also directed the Panchas to file it in a Civil Court after it had been duly registered. It appears that after this the award was duly registered. In November of the same year however Ramsaranlal's three brothers brought a suit in the Court of the Civil Judge at Raipur in which they sought to have this registered award set aside. Ramsaranlal and

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other co-sharers were impleaded in the suit as defendants. After some evidence had been recorded the hearing was adjourned on the prayer of the parties who wanted to settle the dispute amicably. Mr. Bagchi who was the pleader of some of the plaintiffs was orally requested by the parties to decide whether the award of the panchas was proper or not and to make changes, if necessary, and on May 14, 1896 Mr. Bagchi made his award. On the same date an application for compromise was filed in Court. Accordingly, the Court dismissed the suit as compromised. It has been strenuously contended on behalf of the respondent that this award of Mr. Bagchi made on May 14, 1896 wholly supersedes the previous award and whether the village Telibandha forms the trust property of Shri Ramchandra Swamy or not has to be decided on a construction of this award. We see no force in this contention. It has to be noticed that the 1896 award was not set aside by the Court and the suit was dismissed. The mere fact that the suit is stated to be dismissed as compromised and the compromise appears to have been in accordance with Mr. Bagchi's award, does not in law amount to the setting aside of the prior award. We are inclined to agree with the contention of the learned Attorney-General that Mr. Bagchi's award gives the property to Ramsaran Lal absolutely with only a charge on the property for the expenses of the temple and did not make an absolute dedication of the village to the temple. We are of opinion however that Mr. Bagchi's award can have no legal effect in respect of the dedication already made. Once an absolute dedication of the property had been made in December 1896 in favour of Shri Ramchandra Swamy temple the former owners of the property had no legal authority to go behind that dedication.

The learned Attorney-General concedes this position. He argues, however, that if the award

that made the dedication has such legal infirmity as to make it invalid in law, the dedication also must be held to be invalid. But, has the award been shown to have any legal infirmity ? The answer to this question must be in the negative. The plaintiffs in the suit of 1897 did, it is true, allege certain infirmities. We need not discuss the question whether the temple was a necessary party to the suit. For, in fact, the Court did not consider whether such infirmity existed and as pointed out above, dismissed the suit. The reference to Mr. Bagchi was made by the parties to the suit orally requesting him as shown by the preamble to the award "to decide whether the Faisla Panchayati (i.e., award of panchas) was proper or not, adding that in case it was not proper, changes may be made in it whenever it may be necessary and improper". On a reasonable interpretation of these words it does not seem that Mr. Bagchi was asked to consider whether the original award suffered from any infirmity in law. Even more important than that is the fact that there is not a single word in Bagchi's award to indicate, even remotely, that in his opinion, the award suffered from any infirmity. On the contrary, Mr. Bagchi accepted the previous award and gave his own interpretation of it, saying that by the award after "including mouzas Borsi and Telibandha in the partition the Panchas caused the same to be given to Ramsaran Lal and his brothers." It is true that he added the words "I too by means of this award cause the same to be given to them", and then gave certain directions. Quite clearly, therefore, he proceeded on the basis that the award was a good and valid award. We are therefore clearly of opinion that the validity and force of the dedication made by the Panch Faisla has not in any way been affected by the Bagchi Award.

It is equally clear that the way Ramsaran Lal or after him Kamal Narayan dealt with this village

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Telibandha or its income can in no way affect the force or validity of the absolute nature of the dedication. The fact, therefore, that Ramsaran Lal used to credit the income from Telibandha to the Gharu Khata which was maintained for the general expenses of the family or that he made certain alienations of the property cannot change the absolute dedication into a partial dedication. It may well be that Ramsaran Lal was himself led by the terms of the Bagchi award into thinking that the property belonged to the family with only a charge on it for the temple. Whether or not this was so or his conduct was due to deliberate dereliction of duty is really irrelevant for our present purpose. As the High Court rightly pointed out the course of conduct of the parties is of no relevance for the construction of a document which is itself unambiguous. As in our opinion, the document (the Panch Faisla Award of 1896) clearly and unambiguously shows an absolute dedication of the village to Shri Ramchandra Swamy temple, we think it unnecessary to examine the oral or documentary evidence as to how the property or the income of Telibandha was dealt with.

Our conclusion therefore is that the High Court's decision that the plaintiff's case of absolute dedication of Telibandha in favour of Shri Ramchandra Swamy has not been established is not correct and the High Court's order based on that view that the plaintiff was not entitled to succeed, must be set aside. In view of its decision that absolute dedication had not been proved, the High Court did not consider it necessary to decide the several other issues which had been framed in the suit and without deciding which the suit cannot be properly disposed of.

Accordingly, we allow the appeal, holding that the village Telibandha has been absolutely dedicated

to Shri Ramchandra Swamy temple, set aside the judgment and decree of the High Court and send the case back to the High Court for disposal of the appeal, after deciding the other issues in the suit that require to be decided for its proper disposal. Costs will abide the result.

Appeal allowed.

FIRM A. T. B. MEHTAB MAJID AND CO.

v.

STATE OF MADRAS AND ANOTHER

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Sales Tax—Tanned hides and skin imported from outside and sold inside the State—Hides and skins tanned and sold inside the State—Sales Tax higher on the latter—If discriminatory—Old rule substituted by new rule—Old rule does not revive when new rules declared invalid—Constitution of India, Arts.301, 304—Madras General Sales Tax Act (IX of 193.), ss. 3,5, 19—Madras General Sales Tax Rules, r. 16.

This is a petition under Art. 32 of the Constitution, the petitioners are dealers in hides and skins in the State of Madras. The impugned sales tax assessment relates to turnover of sales of tanned hides and skins which had been obtained from outside the State of Madras. The main contention of the petitioners is that the tanned hides and skins imported from outside and sold inside the State are, under r. 16 of the Madras General Sales Tax Rules, subject to a higher rates of tax than the tax imposed on hides and skins tanned and sold within the State and this discriminatory taxation offended Art. 304 (a) of the Constitution.

The respondents contentions were (a) sales tax does not come within the purview of Art. 304 (a) as it is not a tax on the import of goods at the point of entry, (b) the impugned