failed to provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the Municipality. If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on August 8, 1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on September 9, 1955, or at any time thereafter.

In the view which we hold, it is not necessary to consider whether, in the event of an inconsistency between s. 30, sub-s. (2), of the Regulation and the Rules framed by the Chief Commissioner in exercise of the power conferred under s. 43 of the Regulation, the section would prevail or the Rules. Suffice it to say that the electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner on August 8, 1955, was not in conformity with the provisions of s. 30, sub-s. (2), and the relevant provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.

Under the circumstances we see no substance in the appeal and dismiss the same. There will be, however, no order as to costs of the appeal in so far as the respondent has not appeared and contested the appeal before us.

Appeal dismissed.

RAJES KANTA ROY

v.

SANTI DEBI

(JAGANNADHADAS, B. P. SINHA and JAFER IMAM, JJ.)

Trust deed—Construction—Vested interest or contingent interest —Transfer of Property Act, 1882 (IV of 1882), ss. 19, 21—Attachable interest—Execution of decree—Compromise decree providing for a personal remedy and a charge—Whether personal remedy could be pursued in the first instance.

1956

Rajes Kanta Roy
v.
Santi Debi

A settlor executed a deed of trust in respect of all his properties whereby he made arrangements for the discharge of his debts and for the devolution of the property on his sons. The provisions of the deed showed that (1) specified lots of property were allotted to each of his two sons, (2) the present income was to be applied for the discharge of the debts after payment of specified sums of money therefrom by way of monthly payments to the settlor and his sons and (3) in the event of any of the sons dying before the termination of the trust, his interest in the monthly payments aforesaid was to devolve on his heirs. It was also provided that a house, L, included in the lots allotted to the elder son (appellant) was to be subject to the right of residence of the second son, and his heirs until a suitable house was purchased by the appellant or his heirs and made over to him. Finally it was provided that on the liquidation of the debts and after the death of the settlor the trust was to come to an end and the respective lots of property including the surplus income thereof were to devolve on the appellant and his brother or their heirs. Some time after the execution of the deed the settlor died. It was contended for the appellant that under the terms of the deed of trust his interest in the properties allotted to him was only contingent on the payment of the debts of the settlor and the discharge of the obligation to provide alternative accommodation to his brother and consequently his interest could not be attached in execution of a decree.

Held, that the appellant had a vested interest but the enjoyment of the properties was restricted so long as the debts were not discharged, and as regards the house, L, enjoyment was further restricted to the extent that it was subject to the right of residence of his brother and his heirs until the obligation to provide alternative accommodation was discharged by the appellant or his heirs.

Where a compromise decree provides both for a personal remedy and a charge, the question whether the decree-holder can pursue the personal remedy while reserving the remedy under the charge depends on the intention to be gathered from the terms of the decree.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 35 of 1955.

Appeal by special leave from the judgment and decree dated March 10, 1952, of the Calcutta High Court in appeal from the Original Order No. 100 of 1950 arising out of the decree dated July 18, 1950, of the Court of Subordinate Judge, Alipore, 2nd Court, in Miscellaneous Case No. 76 of 1949.

C. K. Daphtary, Solicitor-General for India, N. C. Chatterji and *Sukumar Ghose*, for the appellant.

Atul Chandra Gupta, S. C. Jana, N. C. Sen, Arun Kumar Dutta and *R. R. Biswas,* for respondent No. 1.

1956. November 19. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an appeal by special leave against the judgment and decree of the High Court of Calcutta and arises out of an application filed by the appellant under s. 47 of the Code of Civil Procedure in the course of execution proceedings in the Second Court of the Subordinate Judge at Alipore, District 24-Parganas. The facts leading thereto are as follows.

One Ramani Kanta Roy was possessed of considerable properties. He had three sons, Rajes Kanta Roy, Rabindra Kanta Roy and Ramendra Kanta Roy. Rabindra died childless in the year 1938 leaving a widow, Santi Debi. In 1934 Ramani created an endowment in respect of some of his properties in favour of his family deity and appointed his three sons as *shebaits.* After the death of Rabindra his widow Santi Debi, instituted a suit against the other members of the family in 1941 for a declaration that she, as the heir of her deceased husband, was entitled to function as a *shebait* in the place of her husband. The suit terminated in a compromise recognising the right of Santi Debi as *co-shebait.* Shortly thereafter, however, i.e., in the year 1944, Ramani and his two sons, Rajes and Ramendra, filed a suit against Santi Debi, for a declaration that the above mentioned compromise decree was null and void. One of the grounds on which the suit was based was that the marriage of Santi Debi with Rabindra was a nullity inasmuch as the said marriage was one between persons within prohibited degrees. During the pendency of that suit Ramani, the father, executed a registered trust deed in respect of his entire properties on July 26, 1945. The terms of that trust-deed will be referred to presently. The eldest of the sons, Rajes, was appointed thereunder as the sole trustee to hold the properties under trust subject to certain powers and obligations. After the execution of this trust deed the father died. The exact date of his death does not

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

appear on the record. Some time thereafter the suit was compromised on December 3, 1946. The material terms of this compromise will be set out presently. By the said compromise Santi Debi gave up her rights under the previous compromise decree of 1941 and agreed to receive for her natural life a monthly allowance of Rs. 475 payable from the month of November, 1946. It was one of the terms of the compromise that on default of payment Santi Debi will be entitled to realise the same by means of execution of the decree. It appears that the monthly allowance as aforesaid was regularly paid up to the end of February, 1948, and that thereafter payment was dafaulted. Consequently Santi Debi filed an application for execution on July 8, 1949, to realise the arrears of her monthly allowance from March, 1948, to July, 1949, amounting to Rs. 8,075 against both the brothers, Rajes and Ramendra. Execution was asked for by way of attachment and sale of immovable properties, *viz.*, premises No. 44/2, Lansdowne Road, Ballygunge P.S., 24-Parganas. Rajes filed an objection to the execution under s. 47 of the Code of Civil Procedure on various grounds. Ramendra has not filed, or joined in, any such application and has apparently not contested the execution. The present contest in both the courts below and here is only between Rajes and Santi Debi. An order was passed by the Subordinate Judge over-ruling the objections raised by Rajes. An appeal was taken therefrom to the High Court at Calcutta which was dismissed by its judgment under appeal. Hence the present appeal in which Rajes is the appellant, while Santi Debi is the first respondent and Ramendra is the second respondent.

The two main objections to the execution proceedings which have been urged before us are that—(1) Under the compromise decree which is now sought to be put in execution, charge was created over certain properties for the due payment of the monthly allowance and hence as a matter of construction of the decree, the personal remedy can be pursued only after the remedy by way of charge is exhausted.

(2) Under the terms of the deed of trust Rajes has no attachable interest in the properties sought to be proceeded against.

The first of the above contentions is raised with reference to the terms of the compromise decree dated December 3, 1946, and is set out in para. 14 of the petition under s. 47 of the Code of Civil Procedure as follows :

"That under the compromise decree in question the decree-holder has relinquished all her right, title and interest in respect of all the properties left by Ramani Kanta Roy deceased and she having agreed to realise her dues, if any, out of a particular property is not entitled to proceed against the properties sought to be attached simultaneously, keeping the said security alive."

The material portion of the compromise decree dated December 3, 1946, is as follows :

"(a) That the compromise decree in Suit No. 92 of 1941 of the Hon'ble High Court of Calcutta, Original Side, is declared to be inoperative and set aside and the defendant No. 1 would be debarred from claiming right or relief in the said decree.

(b) That the plaintiffs abovenamed agree to pay to defendant No. 1 for her natural life a monthly allowance of Rs. 475 and the said allowance is to be paid on and from the month of November, 1946.

(c) That the said monthly allowance of Rs. 475 is to be paid on or before the 10th day of each succeeding month and in case of failure to pay the said monthly allowance of four consecutive months, the defendant No. 1 will be entitled to realise the amount in default by means of execution of the decree to be passed in terms of this petition of compromise.

(d) That the properties mentioned in the schedule below are hereby charged for the due payment of the said monthly allowance and the defendant No. 1 will be at liberty to realise the amount in default against the properties charged by execution of this decree.

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

(e) That the defendant No. 1 will, at her option, be further entitled to realise the amount in default by appointment of Receiver for execution of this decree over the charged properties.

* * * * *

(j) That each of the terms stated above is a consideration for the other terms.

* * * *"

The charge above-mentioned is over property called Bharatkhali property consisting of a number of items in Rangpur Collectorate now in East Pakistan.

Before considering the objection raised under point No. 1, it is right to mention that a minor objection has been taken that, as a fact, there is no executable decree which can form the subject-matter of execution. It is pointed out that cl. (c) of the compromise petition is to the effect that "defendant No. 1 (the present respondent No. 1) will be entitled to realise the amount in default by means of execution of the decree to be passed in terms of this petition of compromise" but that there is no formal decree carrying this out and directing that the plaintiffs therein, Rajes and Ramendra, do pay to the first defendant therein, Santi Debi, the sum of Rs. 475 per month. What appears to have happened is as follows. The petition for compromise was filed on December 3, 1946, with the prayer that the "terms of this petition of compromise be recorded and that the title suit mentioned above as between the plaintiffs and defendant No. 1 be disposed of in terms of this petition of compromise and the compromise be made a part of the decree in the same". Thereupon on the same date the following formal order was passed.

"This suit coming on this day for final disposal * * it is ordered and decreed that the suit be and the same is hereby decreed on compromise as against defendant No. 1. That the *solenama do form part of this decree.*"

It is true that a formal direction in terms of the various clauses of the compromise petition directing the plaintiffs to pay the monthly allowance of Rs. 475

to the first defendant has not, in terms, been drawn up. But there can be no doubt that this was what was meant to be conveyed by the above mentioned formal order in so far as it is relevant for the present purposes. We understand that the actual decree in this case merely showing that "the *solenama* do form part of the decree" is according to the usual practice of courts in Bengal in all such cases and that it is generally understood to amount to such a direction though it is not so expressly set out. We do not consider it necessary to express opinion as to whether that is a correct practice. But we do not think that in this case the execution is to be defeated on this ground. There is no indication in the judgment either of the Subordinate Judge or of the High Court that any such point has been raised before them. We accordingly overrule this objection.

As regards the first of the main points raised with reference to the terms of the compromise decree, it is not disputed that cl. (c) does impose a personal obligation on the plaintiffs therein to pay to the first defendant therein a monthly allowance of Rs. 475 and that, therefore, the decree-holder is entitled to a personal remedy. What is urged, however, is that taking cls. (c) and (d) together, the clear intention is that when any default occurs, the decree-holder has to look for payment first to the properties charged and that, it is only in the event of not being able to obtain satisfaction out of it, that the personal obligation can be enforced. A number of cases of the Bombay High Court have been cited before us in support of this argument and it is urged that where a particular fund is indicated for the payment of a debt and is charged, the courts should not construe an extra clause for payment *simpliciter* as giving a concurrent remedy but that in such cases the charged fund is primarily to be looked to. It is also urged that in such cases it is inequitable to allow the personal remedy to be pursued in the first instance, or, at any rate, unless the decree-holder gives up the charge. Our attention is also drawn to the fact that the execution petition itself under the column "Mode

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

in which the assistance of the Court is required" specifically states as follows :

"Be it noted that at present the execution is not proceeded against certain immovable properties in Eastern Pakistan which are under charge for the present amount on account of arrear maintenance and also future maintenance due under the decree without prejudice to her rights under the said decree. Decree-holder reserves to herself all rights and reliefs as are not enforceable in Dominion of India in respect of the decree."

It is pointed out that the decree-holder in terms desires to pursue the personal remedy while reserving the remedy under the charge. In the present case we do not consider it necessary to deal with these Bombay decisions cited before us or with the above contention based thereon. For, it is not disputed that where a compromise decree provides both for a personal remedy and a charge, the whole question depends on the intention to be gathered from the various terms in the compromise decree. In our opinion, the construction of the two relevant clauses and the intention to be gathered therefrom in this case are quite clear. It is true that in one sense, cls. (c), (d) and (e) of the compromise indicate certain specified properties as being available to the decree-holder for realisation of any dues either by pursuing the charge or by getting a Receiver appointed in respect of the charged properties. But the wording of the three clauses shows clearly that she is not obliged to resort to these two remedies in the first instance. Clause (c) says that "the defendant No. 1 *will be entitled* to realise the amount in default by means of execution of decree." Clause (d) says that "the defendant No. 1 *will be at liberty* to realise the amount in default against the properties charged." Clause (e) says that "the defendant No. 1 will, *at her option,* be further entitled to realise the amount in default by appointment of Receiver for execution of this decree over the charged properties." It is quite clear that cl. (c) gives her an unqualified right to obtain payment of the monthly allowance from the plaintiffs. Clauses (d) and (e) give her a liberty or option to pursue

the remedies specified therein. There is nothing in these two clauses to limit, in any way, the unqualified right that she was given under cl. (c). Our attention is drawn to the statement in cl. (j) which says that "each of the terms stated is a consideration for the other terms." What exactly is meant thereby is somewhat obscure. But we are unable to see how that clause affects the intention which, in our view, has to be gathered by reading cls. (c), (d) and (e) together. We are, therefore, of the opinion that the contention raised to the effect that the personal remedy is not available in this case before exhausting the charged properties, is not sustainable.

Now, coming to the second point, the contentions raised are that, on a true construction of the terms of the trust deed the interest of the judgment-debtor, Rajes, (1) in the properties covered by the trust deed, and (2) in particular, in property No. 44/2, Lansdowne Road sought to be attached, is only a contingent one and hence not attachable. That a mere contingent interest though transferable *inter vivos* is not attachable is well settled since the Privy Council decision in *Pestonjee Bhicajee* v. *P. H. Anderson*(1). The question as to whether the interest of the judgment-debtor, Rajes, in this case is vested or contingent, is one not altogether free from difficulty. But it is well to notice at the outset that this point has not been raised in the petition filed by the judgment-debtor, Rajes, under s. 47 of the Code of Civil Procedure. What is stated therein is merely the following:

"Under the said deed of trust, the judgment debtor has no interest in the property except that of a trustee and as such the decree holder cannot proceed for realisation of her alleged dues against the said property."

The objection in this form is obviously untenable and has not been urged in any of the courts below. Indeed, if under the trust deed the judgment-debtor has a beneficial interest, it is not disputed that such beneficial interest would be attachable provided it is a

(1) I.L.R. [1939] Bom. 36.

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

vested interest and not a contingent interest. The judgment of the executing court, however, shows that what was dealt with there is the contention that the interest under the trust deed was a mere expectancy as opposed to a vested interest. The Court held that the interest which the judgment-debtors had in the property by virtue of the deed of trust was *not* a mere expectancy. On appeal to the High Court, none of the grounds set out in the appeal memorandum thereto relates to this question. The High Court, however, dealt with the matter on the footing that the question is whether the interest of the judgment-debtor under the deed of trust is a vested as opposed to a contingent interest. It does not appear to us that that question in this form should have been allowed to be raised. Its determination may well depend upon the question whether as a fact the contingency suggested has disappeared by virtue of subsequent events. However, since the point has been allowed to be raised and the decision of the High Court is given on the footing of the matter being solely one of construction of the document, we proceed to consider it.

The main provision under which the two brothers, Rajes and Ramendra, get any interest under the trust deed is that contained in sub-cls. (a) and (b) of cl. 12, which are as follows :

"12. On the liquidation of all the debts of the settlor (including the debt, if any, that may be incurred by the trustee for payment of the settlor's debts) and after his death this trust shall come to an end and the properties described in Schedule 'A' shall devolve as follows :—

(a) The properties being Lot I, Lot II, Lot III, and Lot IV described in the said Schedule 'A' hereunder written including the surplus income thereof shall devolve on the said Rajes Kanta Roy absolutely or if he be then dead then the said properties shall devolve on his heirs then living absolutely but subject to the provisions contained in clause (c) hereof regarding premises No. 44/2, Lansdowne Road * * *

(b) The properties being Lot V described in the said Schedule 'A' hereunder written including the surplus income thereof shall be enjoyed by the said Ramendra Kanta Roy during his lifetime or if he be then dead then the said properties shall devolve on his son or sons if any absolutely but if there be no son living at that time and if there be a grand-son (son's son) or grand-sons then on such grand-son or grand-sons absolutely. * * *."

They show that Lots I to IV in Schedule A ultimately go to Rajes and Lot V alone goes to Ramendra. But the interest which either of these is to get in the properties allotted to each is expressed to be one which each will get after the trust comes to an end. Now, it is only after the happening of the two events, *viz.*, (1) the discharge of all the debts specified in the schedules (including the debts, if any, that may be incurred by the trustee for payment of the settlor's debts), and (2) the death of the settlor himself, that the trust comes to an end and it is on the trust coming to an end that the sons get the properties allotted to them. It was recognised in arguments before us that the death of the settlor is not by any means an uncertain event and that, therefore, this involves no element of contingency. But what was urged is that the discharge of the debts is an uncertain event in the sense that neither the factum nor the time of such discharge is one that can be predicated with any certainty and that since the interest which the two brothers take is to be only after such discharge their respective interests therein are contingent. It is pointed out that the settlor was very particular about the property not going into the hands of the two sons for their enjoyment as owners until after the debts are liquidated and that this is emphasised in various clauses of the trust deed. It is urged that this clearly shows the intention of the settlor to be that the discharge of the debts should be a condition precedent for the vesting in them of any interest in the properties. Thus cl. 3 of the trust deed imposes a specific obligation on the trustee that "he *shall* pay

1956

Rajes Kanta Roy v. *Santi Debi*

Jagannadhadas J.

the present existing just debts of the settlor." Clause 5 says that "during the lifetime of the settlor *and* so long as all the debts of the settlor be not paid off the trustee shall pay monthly and every month Rs. 1,000/- to the settlor, Rs. 300/- to Rajes and Rs. 200/- to Ramendra." In cl. 6 it is stated that "on the death of the settlor before the liquidation of his debts the trustee shall pay to Rajes Rs. 800/- and Rs. 700/- to Ramendra per month." By virtue of these two clauses a sum of only Rs. 1,500/- out of the income is set aside for the benefit of the members of the family and hence by implication the rest of the income is to be applied towards discharge of the debts. Clauses 8 and 9 provide for payments out of the income in the event of death either of Rajes or of Ramendra before the liquidation of debts. Clause 10 provides for residence of the family as long as debts are not fully paid off. Clause 11 authorises the trustee to sell, mortgage, or give a long lease of any of the properties for payment of the debts. Clauses 12(a) and (b) proceed on the assumption that the surplus income (after payments therefrom as provided) is to be accumulated so long as the trust continues, *i.e.*, debts are not discharged. Quite clearly, therefore, during the subsistence of the trust both the sons get only a portion of the income as specified above and do not get for themselves the full benefit out of the properties respectively allotted to them until the debts are completely discharged. There is no doubt that these terms show that the settlor attached great importance to the discharge of the debts becoming an accomplished fact before the two sons take the full benefit by way of devolution of the property and that in order to facilitate the same he restricted his own enjoyment and that of his two sons to an aggregate limited sum of Rs. 1,500/- per month out of the income (apart from a few other minor monthly payments). But can it be said that their interest in the property was made to depend on the event of the total discharge of the debts and that the discharge of the debts was contemplated as an uncertain event.

The determination of the question as to whether an interest created by such a deed is vested or contingent

has to be guided generally by the principles recognised under ss. 19 and 21 of the Transfer of Property Act, 1882, and ss. 119 and 120 of the Indian Succession Act, 1925. The learned Judges of the High Court relied on illustration (v) to s. 119 of the Indian Succession Act and the decision in *Ranganatha Mudaliar* v. *A. Mohana Krishna Mudaliar*(1). The learned Solicitor-General appearing for the appellant before us has urged that there is no such inflexible rule of law as is assumed by the High Court, *viz.*, that "in spite of a clause requiring payment of debts before the property reaches the hands of the donee, the gift is a vested one." He drew our attention to the fact that both s. 19 of the Transfer of Property Act and s. 119 of the Indian Succession Act clearly indicate that if "a contrary intention appears" from the document that will prevail. He has also drawn our attention to the case in *Bernard* v. *Mountague*(2) in which it was held, on a construction of the terms of the trust, that the payment of the debts was a condition precedent to the vesting of the interest devised therein. How, such a matter, as the one before us, is treated in English law when it arises, appears from the following passages in the recognised text-books. Williams on Executors and Administrators (13th Ed.), Vol. 2, at p. 658, states one of the two rules of construction to be that where the bequest is in terms immediate, and the payment alone postponed, the legacy is vested. He states a number of exceptions to that rule and says the rule itself is always subservient to the intentions of the testator, and that the exception may be found in operation in cases where the testator has shown a clear intention that the legacies shall not vest till his debts are satisfied. The learned Solicitor-General relies also on a similar passage from Jarman on Wills (8th Edn.), Vol. II, at p. 1390, which states as follows :

"So, where a testator clearly expressed his intention that the benefits given by his will should not vest till his debts were paid, * * * the intention was carried

(1) (1926) A.I.R. 1926 Madras 645.
(2) [1816] 1 Mer. 422 ; 35 E.R. 729.

1956

Rajes Ranta Roy
v.
Santi Debi

Jagannadhadas J.

into execution, and the vesting as well as payment was held to be postponed."

But it is to be noticed that at p. 1373 in Jarman on Wills (8th Edn.), Vol. II, it is also stated as follows:

"It was at one period doubted whether a devise to a person *after* payment of debts was not contingent until the debts were paid; but it is now well-established that such a devise confers an immediately vested interest, the words of apparent postponement being considered only as creating a charge."

Apart from any seemingly technical rules which may be gathered from English decisions and text-books on this subject, there can be no doubt that the question is really one of intention to be gathered from a comprehensive view of all the terms of a document. The learned Solicitor-General frankly admitted this, and also that a Court has to approach the task of construction in such cases with a bias in favour of a vested interest unless the intention to the contrary is definite and clear. It is, therefore, necessary to consider the entire scheme of the deed of trust in the present case, having regard to the terms therein, and to gather the intention therefrom.

By the date the settlor executed the deed of trust he had his two sons, Rajes and Ramendra and the widowed daughter-in-law, Santi Debi, the validity of whose marriage he was disputing. One of the main purposes of the trust deed, as appears from its preamble is to give the property to his two surviving sons, Rajes and Ramendra, after excluding his widowed daughter-in-law, Santi Debi, against whom he had developed prejudice on account of hers being a *sagotra* marriage. An equally important purpose of the trust was the discharge of his debts. For that purpose he made the following arrangements. (1) The entire property was constituted a trust for the discharge of the detbs and thereby he divested himself entirely of any interest therein or management thereof; (2) The properties were to be in the management of his eldest son, Rajes, as the trustee thereof with powers of alienation for payment of debts; and (3) The use of the income for

the sustenance of himself and his sons was limited to specified amounts thereof, *viz.*, Rs. 1,500/ per mensem in order that the debts may be methodically and speedily discharged. There is no evidence before us as to what the total income of the property at the time was and whether there would have been any substantial surplus available from the income for the discharge of debts. But Sch. A of the trust deed shows that the properties were fairly considerable and schedule B shows that the debts at the time were to the tune of Rs. 2,62,169-8-0. Clause 17 of the trust deed values the properties at rupees five lacs for the purposes of stamp duty and it may reasonably be assumed that the value would have been substantially higher. There can be no reasonable doubt that the settlor did contemplate that, on a proper management of the property and with a scheme for the discharge of debts, there would emerge surplus income by the date of termination of trust. This appears from cl. 12(a) of the trust deed which specifically provides for the disposal of the surplus income of each lot which might accumulate during the continuance of the trust. It is, permissible, therefore, to think that the surpluses contemplated would not be unsubstantial. Under cl. 14 of the trust deed the settlor provides for the devolution of the trusteeship in case his son, Rajes, died before the liquidation of the debts and says that on the death of Rajes, Rajes's wife and Ramendra are to become joint trustees and that on the death of either of them the surviving trustee shall be the sole trustee. There is no provision for any further devolution of trusteeship in the contingency of such sole trustee also dying before the liquidation of the debts. The absence of any such provision may well be taken to indicate that, in the contemplation of the settlor, the debts would be discharged and the trust would come to an end, in any case, before the expiry of the three lives mentioned therein, *i.e.*, Rajes, his wife and Ramendra. While, therefore, the settlor does appear to have attached considerable importance to the liquidation of debts, there is nothing to show that he was apprehensive that the debts would remain undischarged out of his

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

properties and its income and that he contemplated the ultimate discharge of his debts to be such an uncertain event as to drive him to make the accrual of the interest to his sons under the deed to depend upon the event of the actual discharge of his debts. In this context there are also other provisions in the trust deed which are of great significance.

1. The two sons, Rajes and Ramendra, are not completely excluded from any benefit out of the settlor's estate until the debts are discharged and the trust comes to an end. It is provided that each of them has to be paid a specific amount per month out of the properties, *i.e.,* Rs. 300/- and Rs. 200/- during the settlor's lifetime and Rs. 800/- and Rs. 700/- after the settlor's death.

2. It is further provided that on the death of either of these two sons before the debts are discharged and the trust comes to an end, the above amounts are to go to their respective legal heirs (subject to some minor variations so far as it relates to Ramendra's heirs). The provision in this behalf, so far as Rajes (with whose interest alone we are now concerned) shows that on his death during the continuance of the trust the amount payable to him monthly was to be paid to his widow and on her death to his legal heirs.

3. The most significant provision in this context is that under cl. 12(a) which, while allotting lots I to IV to Rajes and lot V to Ramendra, specifically provides also that surplus income thereof, *i.e.,* such income as is referable to those lots, should devolve on the two sons in the same way. A reference to Sch. A shows that these lots are unequal and hence in the normal course, if there had been no such specific provision, the surplus income would have been equally divisible. The fact that the surplus incomes of the specified lots is also to devolve along with those specified lots themselves, is a clear indication that the corpus of these lots was earmarked for the two sons with the present income thereof but with a restriction on the enjoyment of the present income to specified sums, so as to facilitate orderly discharge of the debts.

Now, there can be no doubt about the rule that where the enjoyment of the property is postponed but the present income thereof is to be applied for the benefit of the donee the gift is vested and not contingent. (See Explanation to s. 19 of the Transfer of Property Act, Explanation to s. 119 of the Indian Succession Act. See also Williams on Executors and Administrators, 13th Ed., Vol. 2, 663, para. 1010, and Jarman on Wills, 8th Ed., Vol. II, p. 1397). This rule operates normally where the entire income is applied for the benefit of the donee. The distinguishing feature in this case is that it is not the entire income that is available to the donees for their actual use but only a portion thereof. But it is to be observed that according to the scheme of the trust deed, the reason for limiting the enjoyment of the income to a specified sum thereof, is obviously in order to facilitate and bring about the discharge of the debts. As already explained the underlying scheme of the trust deed is that the enjoyment is to be restricted until the debts are discharged. Whatever may be said of such a provision where a donee is not himself a person who is under any legal obligation *aliunde* to discharge such debts, the position in this case is different. The two sons are themselves persons who, if the settlor died intestate, would be under an obligation to discharge his debts out of the properties which devolve upon them. It is only the surplus which would be legally available for division between them. In such a case, the balance of the income is to be applied for the benefit of the donees of the debts is also an application of the income for the benefit of the donees. It follows that the entire income is to be applied for the benefit of the donees and only the surplus, if any, is available to the donees. Hence the provision in the trust deed that lots I to IV are to devolve on Rajes and lot V on Ramendra and that the surplus income of each of these lots after the discharge of the debts is also to devolve in the same way, clearly operates as nothing more than the present allotment of these properties themselves to the donees subject to the discharge of debts notionally in the same proportion. Thus, taking the substance of the entire

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

scheme of this division between the two sons the position that emerges is as follows. (1) Specified lots are ear-marked for each of the two sons. (2) The present income out of those lots is to be applied for the discharge of the debts after payment of specified sums therefrom by way of monthly payments to the two sons and presumably such application is to be notionally *pro rata.* (3) Any surpluses which remain from out of the income of each of the lots are to go to the very person to whom the corpus of the lot itself is to belong on the termination of the trust. (4) In the event of any of the two sons dying before the termination of the trust, his interest in the monthly paymetns out of the income is to devolve on his heirs. These arrangements taken together clearly indicate that what is postponed is not the very vesting of the property in the lots themselves but that the enjoyment of the income thereof is burdened with certain monthly payments and with the obligation to discharge debts therefrom notionally *pro rata,* all of which taken together constitute application of the income for his benefit.

It may be noticed at this stage that one of the features of a contingent interest is that if a person dies before the contingency disappears and before the vesting occurs, the heirs of such a person do not get the benefit of the gift. But the trust deed in question specifically provides in the case of Rajes—with whose interest alone we are concerned—that even in the event of his death it is his heirs (then surviving) that would take the interest. It has been urged that the provision in cl. 12(a) in favour of the heirs *then surviving* is in the nature of a direct gift in favour of the heir or heirs who may be alive at the date when the contingency disappears. But even so, this would make no practical difference. It is to be remembered that in this case the parties belong to the *Dayabhaga* school of Hindu Law —and this is admitted before us. It is also to be remembered that up to the third degree in the male line the principle of representation under the Hindu Law operates. The net result of the provision, therefore, is that whenever the alleged contingency of discharge of debts may disappear the person on whom the interest

would devolve would, in the normal course, be the very heir (the lineal descendant then surviving or the widow) of Rajes. The actual devolution of the interest, therefore, would not be affected by the alleged contingency. That being so, it is more reasonable to hold that the interest of Rajes under the deed is vested and not contingent.

This view is confirmed by the fact that under the compromise decree which is now sought to be executed both the judgment-debtors, Rajes and Ramendra, created a charge for the monthly payment to Santi Debi and agreed to such charge being *presently executable*. This shows clearly that they themselves understood the interest available to them under the trust as a vested interest.

In the course of the discussions before us a number of other possibilities which may arise with reference to the actual terms of the deed were closely examined with a view to test how far they fit in with one view or the other of the nature of interest in question. But even such an elaborate consideration of the possibilities did not throw any further light on the question at issue. We are, therefore, of the opinion that in so far as the interest of Rajes is concerned in lots I to IV under the trust deed, it is vested and not contingent.

The further question that arises is whether in view of the terms to be noticed, his interest in No. 44/2, Lansdowne Road, against which execution is sought is in any way different. The scope for any possible difference arises in view of the fact that the devolution of lots I to IV on Rajes or his heirs (then living) is specifically expressed to be "subject to the provisions contained in cl. (c) hereof regarding premises No. 44/2, Lansdowne Road." The relevant provisions relating to this property are as follows. Clause 10 provides that there settlor as well as Rajes and Ramendra with their respective families should be entitled to reside in the premises during the settlor's lifetime and so long as settlor's debts are not fully paid off. Clause 12(c) provides that after the death of the settlor and after all debts have been fully paid off and on the said Rajes or his legal heirs purchasing in the town of Calcutta or

1956

Rajes Kanta Roy
v.
Santi Debi

Jagannadhadas J.

its suburbs a suitable house at a value not less than Rs. 40,000/- and making over the same to Ramendra absolutely, Rajes or his legal heirs shall be the absolute owner of the premises No. 44/2, Lansdowne Road, but that so long as such house be not purchased and made over to Ramendra, Rajes and Ramendra should both be entitled to reside in the said premises with their respective families. It is urged that, since it is thus specifically provided that until the discharge, by Rajes or his heirs, of the obligation to purchase another suitable house and to make over the same to Ramendra or his heirs, Rajes is not to be the absolute owner, this is a factor which imports a further element of contingency, in the interest given to Rajes under this deed of trust in so far as it relates to premises No. 44/2, Lansdowne Road. It is contended that in order to emphasise the additional contingency as regards this item, subjection to cl. (c) as regards these premises, has been specifically incorporated in cl. 12(a). Now, it is to be noticed that the preliminary portion of cl. 12 shows that on the liquidation of the debts and after the death of the settlor, the trust shall come to an end and the properties in Lots I to IV are to devolve on Rajes. Clause 12(c), therefore, would *prima facie* show that the contingency, if any, which arises by virtue of the obligation to provide alternative accommodation to Ramendra or his heirs is to arise only after the death of the settlor and the discharge of the debts, which taken together means the termination of the trust. So understood and assuming for the sake of argument that the obligation to provide alternative accommodation is by itself a contingency, this would bring about a contingent interest in premises No. 44/2, Lansdowne Road, in favour of Rajes, after the termination of the trust. It follows that this item of property would *not* be owned by anybody until that contingency disappears. This would result in this item of property remaining without any legal ownership for the intervening period which is opposed to law. The learned Solicitor-General, presumably recognising this difficulty, was obliged to urge that the contingency arising from the provision imposing obligation on Rajes and his

heirs to provide alternative accommodation to Ramendra should be read into the preliminary portion of cl. 12 in so far as premises No. 44/2, Lansdowne Road, is concerned. That is to say, according to him, the trust is to be construed as not coming to an end as regards this item of property alone until the obligation to provide alternative accommodation is discharged. This construction would be doing great violence to the language of cl. 12 which specifically shows in peremptory terms that the trust "shall come to an end on the liquidation of all the debts of the settlor and after his death." The construction contended for is not justified by the phrase "subject to the provisions contained in cl. (c) hereof regarding premises No. 44/2, Lansdowne Road" which occurs in cl. (a) thereof. The limitation by way of subjection has reference only to "devolution" of the properties in Lots I to IV "absolutely". Neither the use of word "devolution" nor of the word "absolutely" in cls. 12(a) and (c) can be understood, in the context, as having any bearing on the vesting of the interest as opposed to the interest being contingent, but only as indicating a full and unrestricted devolution of the property subject to no limitations as regards the enjoyment thereof, as opposed to a vesting and devolution subject to restricted enjoyment.

It appears to us reasonably clear that the intention of the settlor, taking cls. 12(a) and (c) together, is that as regards Lots I to IV, the beneficial interest of Rajes as regards all the properties comprised therein, including premises No. 44/2, Lansdowne Road, is vested in title but restricted in enjoyment so long as the settlor is alive and the debts are not discharged, and that as regards premises No. 44/2, Lansdowne Road, his enjoyment is further restricted inasmuch as it is subject to the right of residence of Ramendra and his heirs in the said premises until the obligation to provide alternative accommodation is discharged by Rajes or his heirs.

We are clearly of the opinion that the objection raised to the execution (1) on the ground that the properties charged are to be proceeded against, in the first

1956

Rajes Kanta Roy v. *Santi Debi*

Jagannadhadas J.

instance, and (2) on the ground that the interest which Rajes gets under the trust deed either as regards the general properties covered by the deed or as regards premises No. 44/2, Lansdowne Road, is contingent, are untenable. If, as a fact, either the debts remain undischarged or the alternative accommodation has not so far been provided, how the rights of persons affected thereby are to be safeguarded is not a matter that arises for consideration before us and we express no opinion thereupon.

This appeal is accordingly dismissed with costs.

Appeal dismissed.

1956

September 30.

NEW PRAKASH TRANSPORT CO. LTD.

v.

NEW SUWARNA TRANSPORT CO. LTD.

(S. R. DAS C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS JJ.)

Road Transport—Application for stage carriage permit—Police report—Procedure—Appellate Authority, if bound to adjourn proceeding suo motu*—Failure of natural justice—Motor Vehicles Act (IV of 1939), ss. 47, 48, 64, 68.*

Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act.

Case-law discussed.

The provisions of ss. 47, 48, 64 and the rules framed under s. 68 of the Motor Vehicles Act make it abundantly clear that a Regional Transport Authority and an Appellate Authority in hearing an appeal, function in a quasi-judicial capacity and not as courts of law and are not required to record oral or documentary evidence and, in deciding as between the rival claims of applicants for stage carriage permits, what they are required to do is to deal with such claims in a fair and just manner. The Act, however, amply provides for the safeguarding of their interests.

Veerappa Pillai v. *Raman & Raman Ltd.* [1952] S.C.R. 583, referred to.