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Therefore the appeal must be allowed and the decree of the trial Court restored with proportionate costs on the defendants Nos. 2 and 3 throughout, except that only Rs. 400 are allowed as mesne profits.

HEATON, J. :—I agree.

Decree reversed.

J. G. B.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

RUKMINIBAI BHRATAR KRISHNARAO GOPAL TAMBVEKAR (ORIGINAL DEFENDANT No. 10), APPELLANT v. LAXMIBAI WIDOW OF NARAYAN GOPINATH TAMBVEKAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 TO 9), RESPONDENTS.^o

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Hindu law—Agrahar gift—Private religious gift to Brahmins—Condition necessitating residence treated as recommendatory and not enforceable at law—Alienation by a donee not residing in the village—Validity of the alienation—Transfer of Property Act (IV of 1882), sections 10, 11.

An Agrahar gift of certain lands and a house was made to a donee and his descendants entitling him to enjoy the lands, reside in the house, and perform the six-fold religious duties. It was further enjoined that the donee should not abandon his house and go to another place and enjoy his Vritti given to him in connection with the Agrahar from that place. If the donee acted in contravention of the above provision, his conduct should be considered an act of irreligiosity; and the gift should be revoked and granted to another fit person. The donee complied with the above conditions for some years; but eventually went to another village to live and sold the lands and the house. In a suit by the alienee to recover arrears of rent for the lands, a question having arisen whether the alienation was valid :—

Held, that the Agrahar gift was a private gift to the donee and an absolute gift according to law; that the further provision as regards residence in the same village was only a recommendation and an appeal to the religious conscience of the donee and his descendants; and that as a condition it was not valid and enforceable in law.

Held, accordingly, that the alienation was valid.

Anantha Tirtha Chariar v. Nagamuthu Ambalagaren⁽¹⁾.

^oAppeal No. 18 of 1917 from order.

⁽¹⁾ (1881) 4 Mad. 200.

THIS was an appeal from an order passed by G. K. Kale, Assistant Judge at Satara, reversing the decree passed by, and remanding the suit to, M. A. Bhawe, Joint Subordinate Judge at Karad.

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Suit to recover a sum of money as arrears of rent and to obtain a perpetual injunction.

The facts were that in about the year 1772 A. D., one Gopalji made an Agrahar gift of the Malkhed village to Gopal Tambvekar on the occasion of a solar eclipse.

In 1799, the sons of the original donee executed a deed of gift (Exhibit 61), whereby they gave lands admeasuring 229½ bighas and houses in the village as Agrahar gifts to fifty-four Brahmin priests named in the deed. The deed in question laid down as one of the conditions of the gift that the respective Brahmin priests were to live in their respective houses and enjoy the land assigned to each and lead a holy life by observing the six daily ritual observances of a Brahmin such as bathing, *sandhya* &c., and live in the Agrahar village. In case anybody wished to leave the village he must substitute some worthy Brahmin priest, respectable, learned and a man of family, in his place, giving over the house and lands in his possession for enjoyment and passing a document to him to that effect.

The line of one of those donees became extinct in course of time. The representatives of the Tambvekar family granted the lands and the house of the extinct line to Narayan Ambekar in 1879, and passed a formal writing in his favour on the 13th October 1880. After Narayan's death, the lands and the house were enjoyed by his son Ramkrishna Ambekar.

In 1904, Ramkrishna left the village of Malkhed in search of a living and settled at Karad.

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On the 18th September 1911, Ramkrishna sold the lands and house to Gopalrao (plaintiff), a member of the Tambvekar family, for Rs. 400.

The lands had been let out to defendants Nos. 1 to 9 on an annual rental of Rs. 11-4-2. After the sale of 1911, the defendants used to pay the rent of the lands to Rukminibai (defendant No. 10) who was also a member of the Tambvekar family.

In 1912, the plaintiff filed the present suit to recover arrears of rent (Rs. 45-0-8) for four years pending the suit; and to obtain a perpetual injunction restraining defendant No. 10 from receiving the rent and defendants Nos. 1 to 9 from paying it to any one except the plaintiff.

The Subordinate Judge held on a construction of the deed of gift (Exhibit 61) that Ramkrishna was not competent to sell the property to the plaintiff, inasmuch as by abandoning his residence in Malkhed Ramkrishna had no transferable subsisting interest in the property when he executed the sale deed of 1911. He, therefore, dismissed the suit.

On appeal, the Assistant Judge construed the terms of Exhibit 61 in a different way. The learned Judge was of opinion that Ramkrishna had to leave the village temporarily in search of maintenance, on account of the hostile attitude of the Inamdars; that his absence from the village under those circumstances, was insufficient to prove a positive breach of the conditions of the gift; that he was competent to nominate his successor according to the terms of the gift; and that in making the transfer in plaintiff's favour Ramkrishna had substantially complied with the conditions imposed by the original donor. The decree passed by the Subordinate Judge was accordingly reversed and the suit remanded for trial to the first Court on merits.

Defendant No. 10 appealed to the High Court. The plaintiff having died during pendency of the appeal, was represented by his mother Laxmibai.

G. N. Thakor, for the appellant :—The appellate Court has made out an entirely new case not even borne out by the record. The plaintiff nowhere alleged that the conditions of the deed were satisfied. He denied that there were any conditions, suppressed documents and claimed purely as a purchaser out and out: no issue was framed by the trial Court and no evidence was led by the plaintiff to prove compliance with conditions. The finding of the appellate Court, therefore, cannot be accepted.

The gift is found by both the Courts as being in terms of the original Agraharam grant. That grant is in terms limited to certain purposes. It is a limited grant for maintenance. The object is to secure the welfare of the soul of the donor by residing in a holy place and by performing ceremonies so as to confer blessings on the donor.

What was to happen if the donee were to reside elsewhere is specifically prescribed. The remaining Brahmins are to select. At any rate the concurrence of all the rest has to be procured. It is not even pretended that this was done.

Grants for Agraharam are recognized grants: see Molesworth's Dictionary. The document itself quotes Sanskrit verses indicative of the grant being one in consonance with Hindu law. Both the Courts have rightly held that such grants are valid. The case of *Anantha Tirtha Chariar v. Nagamuthu Ambalagaren*⁽¹⁾ has been rightly distinguished. In that case the question as to the validity of grant prescribing residence in a particular place and subject to study of religious

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⁽¹⁾ (1881) 4 Mad. 200 at p. 203.

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books was not decided. It was expressly left open (p. 203). There was besides a gift in terms absolute conveying land to donee with a right to sell or give or alienate. The absolute grant was sought to be qualified by a collateral agreement restricting the right to sell or alienate. The only decision was that such a restriction on alienation in the case of a grant absolute in terms is void. That case cannot apply as here there are no words anywhere even remotely indicative of an absolute grant. The grant is a limited grant defeasible on certain conditions happening: see words like "For vahivat"; "for use", "enjoy.....and reside", "dwell.....and enjoy.....from that place."

The case directly in point is *Balaji J. Rahalkar v. Narayanbhat*⁽¹⁾.

The Transfer of Property Act does not apply. It is for the other side to cite authority showing that such a grant is void under Hindu law. This Court will give effect to a religious grant unless it is clearly shown to be invalid. The place may be converted into a colony of alienees if the conditions are ignored.

D. R. Patwardhan, for respondent No. 1:—The finding that the conditions are complied with is one of fact. It was open to the lower appellate Court to arrive at that finding. The finding is that the vendor left temporarily and that the vendor substantially complied with the conditions prescribed by the grant.

The grant is besides an absolute grant. The conditions are in the nature of a restriction on free enjoyment and on alienation and cannot be recognised. The Transfer of Property Act in no way lays down a new rule. The case of *Anantha Tirtha Chariar v. Nagamuthu Ambalagaren*⁽²⁾ was wrongly not followed by the lower Courts.

(1) (1866) 3 Bom. H.C. (A.C.J.) 63.

(2) (1881) 4 Mad. 200.

Nilkanth Atmaram, for respondents Nos. 2 and 3.

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J. R. Gharpure, for respondent No. 6:—The Hindu law makes it clear that what has once been given cannot be taken away : see *Yajnyavalkya*, Bk. II, verse 176 ; *Mitakshara Vyavahara Adhyaya* ; *Apararka Achra*, p. 370 ; and *Apararka Vyavahar*, pp. 782, 783.

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A promise must be completed : *Dana Mayukha*, Benares Edn., p. 27, lines 10, 11.

The effect of the conditions restraining alienation and prescribing residence is to take away from a grant already made which is a sin.

The meaning of *Agraharam* given in *Apte's Dictionary* and the quotations given therein support me.

The principle underlying cases like *Lalit Mohun Singh Roy v. Chukkun Lal Roy*⁽¹⁾ is the true-principle applicable to these cases.

Thakor, in reply :—*Lalit Mohun Singh Roy's case*⁽¹⁾ has no relevance whatever. There is no attempt to take away from an absolute grant. The grant is in the first instance a limited and qualified grant. The texts cited have no application.

SHAH, J. :—The plaintiff in this case sued the defendants to recover a certain sum said to have been wrongfully withheld by defendant No. 10 and for a perpetual injunction against the defendants, restraining defendant No. 10 from receiving the dues and defendants Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 from paying the dues to her in respect of the property in suit. The relief was claimed on the footing that the plaintiff was entitled to the Inam rights in the property in suit under a conveyance in his favour, dated the 18th of September 1911 by one, Ramkrishna, who traced his title to the said rights under a deed of gift in favour of his father dated the 13th of October 1880. This deed of gift was passed by the members of

(1) (1897) L.R. 24 I.A. 76.

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the Tambvekar family. The gift was described as a "religious Agrahar Inam." The land and the house described in the deed were given by way of gift to the donee in these terms: "So you, your sons and grandsons and succeeding generations should enjoy the said land and house and ground, etc., according to the deed of gift, dated the 5th of the Sudha half of Shravan in the Shake year 1801 and should live in peace at the holy place of Markandeya otherwise known as Mouje Malkhed." The earlier informal deed of the Shake year 1801 (A. D. 1879) is not forthcoming. It is found by both the lower Courts that the conditions of the gift were the same as the conditions laid down in the document of the year 1799 A. D. executed by the members of the Tambvekar family in favour of several Brahmins in respect of different lands described in detail in that document.

The trial Court found that according to the conditions of the gift the donee was bound to live in the village and that the donee got a "limited interest, limited to specific purpose and liable to be defeated on Ambekar (the donee) leaving the village of Malkhed and going to reside elsewhere." It was found as a fact that Ambekar had left the village at the time, when he conveyed the property in suit to the plaintiff, and that the plaintiff acquired no title as his vendor had no subsisting title at the time of the conveyance. The trial Court accordingly dismissed the plaintiff's suit.

The plaintiff appealed to the District Court; and the learned Assistant Judge, who heard the appeal, found that the donee was bound to fulfil the condition as to residence in the village, and that "Ambekar had to leave the village temporarily in search of maintenance on account of the hostile attitude of the Inamdars, that his absence from the village under those circumstances

is insufficient to prove a positive breach of the conditions of the gift, that he was competent to nominate his successor according to the terms of the gift and that in making the transfer in plaintiff's favour, he (Ambekar) has substantially complied with the conditions imposed by the original donor." On the basis of this finding the lower appellate Court reversed the decree of the trial Court and remanded the suit for a fresh decision.

The defendant No. 10 has appealed to this Court from the said order, and it is urged on her behalf in support of the appeal that the finding of the lower appellate Court that there was a substantial compliance with the condition attached to the gift as to residence in the said village should not be accepted by this Court on the ground, first, that the point was not made in the trial Court, and, secondly, that it is in effect based on no evidence but is largely conjectural. On the other hand on behalf of the plaintiff it is urged not only that this finding should be accepted as binding in this appeal, but that the finding of the lower Courts that the condition as to residence is good in law and enforceable is erroneous.

The finding of the lower appellate Court as to substantial compliance with the condition laid down in the deed of gift as to residence, assuming that such a condition is otherwise valid, seems to me to be open to the objections urged against the finding on behalf of the appellant; and if the decision of this appeal depended in any way on that finding, I could not have accepted it without a further inquiry.

The principal question of law, which has been argued and which requires a careful consideration, is the question whether the condition as to residence is valid. In order to appreciate the contentions on either side with reference to this condition it will be convenient

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to set forth the important passages from the deed of gift of the year 1799, because it is now common ground that the conditions of the gift in favour of Ambekar in 1880 were the same as the conditions laid down in the earlier deed of gift in favour of several Brahmins. It is recited in this deed that originally the village of Malkhed was given in gift to the Tambvekar family by Gopalji Bhonsle in the year 1772 on the occasion of a solar eclipse. In the year 1799 the members of the Tambvekar family made a gift to several Brahmins, and we find the following recitals in that deed :—

“ At that time our Vadil desired to build houses and give them to Brahmins in the name of God as Agrahar (gift). Therefore houses were built at that place and you all Brahmins were installed and gifts of land were given to you to help you in your maintenance. Since then some changes have occurred on account of the management. In consequence of the same this writing is given to you for vahivat.”

Then after describing the names of the donees and the extent of the land given to each one of them and after referring to certain letters which were originally received by the Tambvekars and given over to the donees, it provides as follows :—

“ In all-fourteen letters were obtained by the Vadil in his name. I have given to you, all the Brahmins, these and this deed of gift, passed by me and have established you : you and your descendants, i.e., sons and grandsons, &c., should enjoy the said lands and reside in the respective dwelling-houses and perform the six-fold religious duties, viz., performance of the Sandhya worship at twilights and in the afternoon and take care of the Agrahar and live in peace.”

* * * * * “ None of these persons (donees) should abandon his house and go to another place and enjoy his *vritti* given to him in connection with the Agrahar from that place. In case any one of them wished to leave the said village and live elsewhere, he should substitute in his place a Brahmin equally learned and who has a large family and who is approved by all and should hand over to him the house and the *vritti* and pass to him a writing in his name and approved by all. We have given to you these houses and *vrittis* of our free will and pleasure. You should therefore enjoy the same and remain in peace. If any one of you has to go out, (you can go) after having got nothing to do (with the Agrahar). If instead of acting in this manner any one through

obstinacy live at another place and desire to enjoy the income of the *vritti* in connection with the Agrahar relying upon his own strength or upon the strength of other persons, his conduct shall be considered an act of irreligiousness and the whole body of Brahmins residing at the Agrahar should appoint another Brahmin who is learned and is a man of large family and hand over to him the house and the *vritti* (of the man who may go) and pass to him a writing in the name of all the Brahmins and establish him. This Danpatra (i.e., deed of gift) is given having been approved by all. Nobody should cause any obstruction to this act of charity”.

And then follow a number of verses pointing out to the successors of the donors the merit of preserving the gift and of not disturbing it in any way. It is an earnest appeal to the descendants of the donors to see that their act of charity was upheld by their successors. It is needless to quote any of these verses cited in the document pointing out the merit of allowing the gift to continue.

It is urged on behalf of the appellant that the condition as to residence in the village attaching to the gift has been explicitly mentioned in the document, that the gift must be taken to be subject to that condition and that the donees and their successors are bound to fulfil it. Both the lower Courts so far have decided in favour of the appellant's contention. On a careful consideration of the arguments urged on both sides with reference to this point, which is important and difficult, and the terms of the document I have come to the conclusion that this *Agrahar* gift is a private gift to the donees and an absolute gift according to law, and that the further provision as regards the residence in the same village is only a recommendation and an appeal to the religious conscience of the donees and their descendants, and that as a condition it is not valid and enforceable in law. The words of the gift are: “you and your descendants, i. e., sons and grandsons, should enjoy the said land and reside in the respective dwelling houses,” the corresponding words in Marathi.

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being तुम्ही व तुमचे पुत्रपौत्रादि वंशपरंपरेने आपल्या घरी राहून सदरहू जमिनीचा उपभोग घेऊन. These words by themselves would indicate an absolute gift. It is doubtless described as an Agrahar gift. The dictionary meaning of the word "Agrahar" in Sanskrit is "a grant of land given by Kings (to Brahmins) for maintenance" and in Marathi "villages or lands assigned to Brahmins for their maintenance." The word indicates that it is a religious gift to a Brahmin for his maintenance. No idea of any limitation upon the absolute character of the gift is necessarily involved in the meaning of the word. In effect it is a private gift to a Brahmin and is entirely distinguishable from a religious endowment in favour of a deity of a public character. The words of the gift must, therefore, in my opinion, be allowed to have their natural scope and cannot be understood to have any limited meaning, simply because the gift is an Agrahar gift. The clauses in the deed relating to the necessity of the donees residing in the same village in my opinion amount to no more than an expression of a pious wish on the part of the donors to see that the donees fulfilled the purpose of the gift by staying in the village and by living the ceremonial life of a Brahmin. This is indicated by the provision in the document that if any one through obstinacy or through any other reason fails to live in the village, it shall be considered an act of irreligiousness, and the whole body of Brahmins residing in the village should appoint another Brahmin in his place. It is contended on behalf of the appellant that the provision in the document that the other Brahmins would have the right of appointing a substitute equally learned and of large family in case the condition as to residence is not fulfilled indicates a legal right vested in the other Brahmins living in the village and that as a condition it is valid and ought to be enforced. On the best consideration that I can give to the question

I have come to the conclusion that it is really an absolute gift and that the further provision in the document relating to the residence is in the nature of a recommendation to the donees. The consequences of non-observance of this direction are purely religious, and we are not concerned with the gravity of these consequences. That is a matter for the donees to consider.

This view is further strengthened, in my opinion, by the fact that there is an earnest appeal to the successors of the donors to see that the gift is not in any way disturbed. According to Hindu law a religious gift is not revocable. The last verse of Yajnavalkya with Vijnanesvara's commentary thereon in the chapter on "Resumption of Gifts" clearly emphasizes this point. (See Gharpure's Translation of the Mitakshara, Vyavahara Adhyaya, pp. 313-316). Though the appellant maintains that she does not wish to revoke the gift, her attitude does involve that result in a sense.

But taking it that she only means that the donee, who fails to fulfil the condition as to residence, loses his right to the property and that the right for the disposal of the property in favour of a fit substitute is vested under the deed among the other donees in the village fulfilling the condition as to residence, the condition as to residence seems to me to be not valid in law. It imposes not only upon the donees but upon their sons and grandsons and descendants in perpetuity the obligation not to leave the village without forfeiting the gift. Such a condition seems to me to involve a very serious restriction upon the enjoyment of the property, and should not be enforced, unless there is any special rule of Hindu law necessitating its enforcement. No such rule has been referred to in the argument before us, and I am not aware of any such rule. The enforcement of such a condition appears to

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me to be opposed to public policy; and it seems to me to be in consonance with the general spirit of Hindu law to hold that the gift is absolute and the words of restriction as to residence have no legal effect.

The provisions of the Transfer of Property Act have no direct application to this case. But it may not be inappropriate to refer to section 11 of that Act as indicating that such a serious restriction upon the ordinary enjoyment of the property given by way of gift cannot be treated as valid, apart from any special rule of Hindu law validating such a restriction.

The only reported case relating to an Agrahar gift cited before us is *Anantha Tirtha Chariar v. Nagamuthu Ambalagaren*⁽¹⁾. This was a case of an Agrahar gift and the condition considered by the Court in the case related to the restrictions against alienation. The judgment delivered by Mr. Justice Muttusami Ayyar shows that the condition imposing a restriction on alienation was held to be invalid, that the Agrahar gift was treated as a gift with a religious motive and that the grant was held not to stand on the same footing with a religious endowment. The point of importance is that the restriction as to alienation was held to be bad according to the ordinary rule of law even though the grant was an Agrahar grant. It is true, as pointed out by the learned pleader for the appellant, that in that case the condition laying down the restriction against alienation was not inserted in the deed of gift, but was to be found in a contemporaneous separate document, and that the decision in terms refers to that circumstance. I am, however, unable to accept this fact as affecting in any way the *ratio decidendi* of that case relating to the application of the rule for not enforcing restrictions against alienation to an Agrahar gift. In that case the learned Judges did not decide

(1) (1881) 4 Mad. 200.

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the question as to whether the grant was subject to residence in the Agrahar and to the study of religious books as it did not arise in that case. In the present case the question as to the validity of the condition relating to residence does arise; and it seems to me, having regard to the decision in that case, that that condition could not be treated on any footing other than that on which the condition relating to restrictions against alienation was treated. Though in terms the condition as to residence does not involve any restriction against alienation, it seems to me that it is a condition of the same nature and that indirectly it involves a restriction upon the power of alienation. On a construction of the document in question I have come to the conclusion that the condition as to residence is not enforceable and that view seems to me to derive support from the decision in *Anantha Tirtha Chariar's case*⁽¹⁾.

I am, therefore, of opinion that the order of the lower Court reversing the decree of the trial Court and remanding the suit is correct, though on different grounds.

In the view I take of the condition as to residence it is not necessary to examine the finding of the lower appellate Court as to whether the condition has been duly fulfilled by the donee in question.

I would affirm the order of the lower appellate Court and dismiss the appeal.

The appellant to pay the plaintiff-respondent's costs of this appeal. The other respondents will bear their own costs.

HAYWARD, J. :—I agree. The Agrahar grant by the original deed of 1799 included these terms :—

“ I have given to you, all the Brahmins, this deed of gift and have established you; you and your descendants, i.e., sons and grandsons, &c., should enjoy the said lands and reside in the respective dwelling-houses and perform

(1) (1881) 4 Mad. 200.

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the six-fold religious duties and should dwell in the village. None of these donees should abandon his house and go to another place and enjoy his *vritti* given to him in connection with the *Agrahar*. In case any one of them wishes to leave the said village and live elsewhere, he should substitute in his place a Brahmin equally learned and who has a large family and who is approved by all and should hand over to him the house and the *vritti*. We have given to you these houses and *vritti* of our free will and pleasure. You should therefore enjoy the same and remain in peace. If any one of you has to go out, you can go after having got nothing to do with the *Agrahar*. If, instead of acting in this manner, any one through obstinacy live at another place and desire to enjoy the income of the *vritti* in connection with the *Agrahar*, his conduct shall be considered an act of irreligiousness and the whole body of the Brahmins residing at the *Agrahar* should appoint another Brahmin and hand over to him the house and the *vritti*."

One Ambekar obtained, what has been taken to be regrant of these rights in 1888, and he enjoyed the proceeds of the property up to 1899. He left the village in 1904 and sold his rights in 1911. The plaintiff, who purchased them from him, brought this suit in 1912 to recover the property as private property. The defendant objected as the successor of the grantor that he was not entitled to do so as the grant had been forfeited by his vendor having left the village contrary to the terms of the grant. The question therefore to be decided was this: whether the condition as to residence in the village was a restriction on the grant which was valid in law.

There is unfortunately an absence of authority as to what an *Agrahar* grant exactly is. The question, therefore, before us is one of considerable difficulty. But it would appear that such a grant is a grant given for private religious purposes, and there would not appear to be authority for holding that a necessary part of such a grant was the grantee residing upon the property. This appears not inconsistent with the recited terms of this grant. It was an absolute grant to "you and your descendants, viz., sons and grandsons." It was no doubt thereafter stated that the grantee should not

abandon his house and that if he did, another should enjoy the *vritti*. But there was no express clause that in such a case the grant should be forfeited to the grantor. The penalty was on the contrary stated to be, what from a religious point of view would no doubt be a heavier penalty, the penalty of being branded as irreligious and of having another person appointed to his place by the other Brahmins. If this is the true interpretation of the grant as a private religious grant, then the condition as to residence would not be binding, but would have to be regarded as no more than a pious wish expressed by the grantor, similar to such wishes held not to be binding in wills. But it seems to me that even if the condition could be placed on a higher level than this, it would not be binding. It would offend against the general rule of law that where an interest is created absolutely in favour of any person, but the terms of the transfer direct that such interest should be enjoyed by him in a particular manner, that person shall be entitled to receive such interest as if there were no such direction. This general rule would apply in default of any special rule of Hindu law by reason of sections 2 and 11 of the Transfer of Property Act. The general rule was applied to the *Agrahar* grant in the case of *Anantha Tirtha Chariar v. Nagamithu Ambalagaren*⁽¹⁾ by the Madras High Court and no other case has been quoted before us nor has reference been made to any special rule of Hindu law. It has been said that grants for pious purposes might be accompanied by conditions such as that the donor should be maintained by the donee during his life-time, and that his exequial ceremonies should be performed after his death, that the donee should defray expenses of the worship of the idol, and that the property should pass to another in a particular event, yet provisions which are repugnant

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to the nature of a grant, such as restraint upon alienation or partition would be invalid, and where the gift is in itself good, conditions which are repugnant are ineffectual but the gift itself remains good. These, remarks are quoted from paragraph 375 of the 8th Edition of Mayne's Hindu Law. It is true that the general rule applied in the case of *Anantha Tirtha Chariar v. Nagamuthu Ambalagaren*⁽¹⁾ was that against a condition restraining alienation prescribed by section 10 and not that against the unrestrained enjoyment of property prescribed by section 11 of the Transfer of Property Act. But it seems to me that the reasoning which was applied to the one rule would equally apply to the other, and that if a restriction against alienation were invalid under section 10, equally so would a restriction against the full enjoyment of the property be invalid under section 11 of the Transfer of Property Act. That decision would also support the view that a grant of this particular nature should be regarded as one for private religious purposes and would not stand on the same footing as a public religious endowment. Considerations of a different nature would apply to the latter and it might in such a case be possible to enforce restrictive terms in a regular suit under section 92 of the Civil Procedure Code.

It seems to me therefore that the view taken of this matter was incorrect both in the original and appellate Courts. There seem to me also serious difficulties in the way of the view, that the condition as to residence had not been broken, taken by the lower appellate Court. But it is not necessary to discuss further this latter view as the remand order must, in my opinion, be upheld upon the particular view of the law relating to such grants for religious purposes taken by this Court.

Order affirmed.

R. R.

(1) (1881) 4 Mad. 200.