

Smt. Chamno Devi Vs. Shankar

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Court : Allahabad

Decided On : Sep-22-1998

Reported in : 1999(1)AWC208

Judge : A.K. Banerji, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XLI, Rule 31; [Hindu Succession Act, 1956](#) - Sections 14 and 14(1) and (2)

Appeal No. : Second Appeal No. 3612 of 1982

Appellant : Smt. Chamno Devi

Respondent : Shankar

Advocate for Def. : Vineet Saran and ;A.B. Saran, Advs.

Advocate for Pet/Ap. : N.C. Rajvanshi, Adv.

Judgement :

A.K. Banerji, J.

1. This second appeal by the plaintiff-appellant is directed against the Judgment and decree passed by the lower appellate court allowing the defendant's appeal and dismissing the plaintiffs suit for declaration and cancellation of the sale deed dated 26.3.1976.

2. The relevant facts in brief are that one Raje, father of the plaintiff had executed a registered Will dated 16.6.1975 in respect of his properties. It was stated therein that as long as the testator was alive, he would continue to remain owner of his properties. After his death, his wife Smt. Ram Kali shall become the owner (Malik) of the said properties and after the death of Smt. Ram Kali, his only daughter Smt. Chamno Devi would become the owner with proprietary rights. The case of the plaintiff was that her mother Smt. Ram Kali had been given only a life estate in the properties left by her father Raje and the ultimate owner of the properties was the plaintiff. However, the mother of the plaintiff, namely. Smt. Ram Kali had executed a sale deed dated 25.3.1976 in respect of the suit property in favour of her brother Shankar. The said sale deed was void ab initio as Smt. Ram Kali had only a life estate and had no right to transfer the said properties in favour of the defendant Shankar. Hence, a declaration was sought that the plaintiff was the owner of the property in suit.

3. The suit was contested by the defendant Shankar, inter alia, on the ground that by virtue of the Will, dated 16.6.1975 executed by Raje. Smt. Ram Kali was the absolute owner of the Suit property and, consequently, had every right to transfer the same. The plaintiff as the second beneficiary under the Will did not Inherit any interest in the said properties, consequently, the sale deed was valid and the plaintiff has no right, title or interest in the property in Suit.

4. The trial court framed the relevant issues and held that Smt. Ram Kali had only a life interest in the Suit property, consequently, the transfer deed in favour of the defendant was ineffective, null and void and the plaintiff as the daughter of the testator and the ultimate beneficiary was the owner of the property. Consequently, the plaintiffs suit for declaration that she was the owner of the Suit property was decreed and the sale deed dated 25.3.1976 in favour of the defendant Shankar was adjudged as null and void. It was also directed that the defendant shall hand-over possession to the plaintiff of the Suit property within a month.

5. The defendant-respondent filed an appeal before the lower appellate court which was heard by the IInd Additional District Judge, Ghaziabad. The said court on an interpretation of the Will dated 16.6.1975 reversed the finding of the trial

court and held that after the death of the testator, his widow Smt. Ram Kali became the absolute owner of the property under the terms of the Will and, consequently, had every right to transfer the Suit property infavour of the defendant. The sale-deed, therefore, is neither invalid nor void. Consequently, the plaintiff as the second beneficiary could not get any right, title or interest in the Suit property. Therefore, the appeal was allowed and the decree passed by trial court was set aside and the plaintiff's suit was dismissed. Aggrieved by the aforesaid Judgment and decree passed by the lower appellate court, the plaintiff has filed the present appeal in this Court.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the appellant has mainly contended that the finding recorded by the lower appellate court to the effect that the Will conferred full proprietary rights Including the right of alienation in favour of the defendant-respondent was based upon a misinterpretation of the Will in question, consequently, the said finding cannot be sustained. It was also urged that from the reading of the Will as a whole, it is evident that the intention of the testator was only to give a life Interest to his widow and the ultimate beneficiary would be the plaintiff who was the only issue of the testator. It was also contended that the judgment of the lower appellate court was one of reversal. Consequently, the said Court committed an illegality in not considering the evidence considered by the trial court while decreeing the plaintiffs suit. Consequently, also the decision given by the lower appellate court is liable to be set aside. On the other hand, the learned counsel for the defendant respondent has contended that the lower appellate court has rightly interpreted the contents of the Will in question and the said finding does not call for any Interference by this Court.

8. The main controversy in this case revolves around the interpretation of a registered Will dated 16.6.1975 executed by the testator Raje, to the effect that whether the intention was to give only a life estate to the widow or it was intended that the widow should have absolute proprietary rights over the property in Suit. The Will inquestion is on record as Ex. 1. It discloses that as long as the testator would be alive, he would be the owner in possession of the suit property. After his

death, his wife Smt. Ram Kali will become 'Malik' of his property and after the death of Smt. Ram Kali, his only daughter Smt. Chamno Devi shall become the 'Malik' of the same. The lower appellate court was of the view that there was absolutely nothing in the said document to suggest that the testator intended to pass mere life interest in the property to his wife or that he wanted his daughter to become the ultimate owner of the property. The word 'Malik' according to the court below was to be construed to have conferred rights of ownership or full proprietary rights including right of alienation and that just because the testator had only one female issue would not be any indication of his intention to deprive his wife of the full proprietary rights in the property. Similar questions pertaining to the interpretation of such terms in the Will had been raised before the Supreme Court in a number of decisions. The principle which has been evolved is that in construing such a document, the fundamental rule was to ascertain the intention from the words used ; the surrounding circumstances are to be considered ; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. In the case of Navneet Lal v. Gokul, 1976 SC 794, it was held by the Court that in construing the language of the Will the Court was entitled to put itself into the testator's arm-chair and was bound to bear in mind other matters also, rather than merely the words used. The Court has to consider the surrounding circumstances, the position of the testator, his family relationship, his probability that he would use words in a particular sense. All this was required as an aid to arrive at a right construction of the Will and to ascertain the meaning of its language used by the testator in that document. Further the true intention of the testator was 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. While construing a Will, the Court will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will. In the said case before the Supreme Court, the Will which was the subject-matter of interpretation also contained the word 'Malik' as used in the present case. In that case, the testator had stated in the Will that after the death of the testator, his wife was to be the 'Malik' of the testator's entire estate and she was to have all the proprietary powers and after her death, Gokul who was related to the testator and was held in

great love and affection was to become testator's heir. Interpreting the Will in the light of the facts of the said case, the Supreme Court had held that the word 'Malik' used in the Will was qualified by the circumstance and other words in the Will and held that only a life estate passed though the word Malik was used therein. Similarly, in the case of Pyare Lal v. Rameshwar Das, AIR 1968 SC 1703, it was held that the Court must accept if possible such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator.

9. Applying the test laid down in the cases mentioned above and also in the cases noticed by the Supreme Court in the case of Navneet Lal (supra) to the Will in question in the present case, it will be noticed that though the word 'Malik' has been used in respect of the bequest made in favour of his wife but no further rights have been given to Smt. Ram Kali to make any transfer or alienation of the property. On the other hand, the fact that the testator mentioned that he has only one issue, a daughter, and after the death of his wife, the daughter will become 'Malik' with proprietary rights indicates that the testator wanted the property to come to the hands of his daughter after the death of his wife. The intention of the testator has to be gathered from all the relevant and material contents in the entire Will made in the situation in which the testator was placed in life in the background of his property, his Inclination, wishes, desires and attitudes which can be found from the recitals of the instrument itself, as laid down by the Supreme Court in the case of Navneet Lal (supra).

10. Learned counsel for the appellant has also placed reliance upon the decision of the Supreme Court in the case of S. Rajagopal Chettiar v. Hama Saveni Ammal and others, AIR 1092 SC 704. In the said case also, the construction of a Will containing somewhat similar recitals was in controversy. It was stated therein that as long as the testator was alive, all his properties in his possession both ancestral and self-acquired shall be enjoyed by him absolutely and after his death, his wife shall enjoy the same, like-wise till her life-time and after her death the same shall

be enjoyed absolutely by the testator's daughter and after her, it would go to her male children. It was held that the fact that the testator directed that after his daughter, the property shall go to her male children clearly showed an intention that the daughter will not have an absolute interest in the properties. In the present case at hand, the fact that the testator had mentioned that after the death of his wife Ram Kali, the property would go to his only daughter Smt. Chamno, would show that the intention of the testator was that the wife would not get an absolute interest but only a life estate in the property in Suit. This decision, therefore, supports the contention of the learned counsel for the appellant.

11. Learned counsel for the defendant-respondent has, however, contended that irrespective of the recital in the Will after the death of the testator, Ram Kali would become an absolute owner of the property by virtue of the provisions of Section 14(1) of the Hindu Succession Act, 1956. In support of his submission, the learned counsel has relied upon the decision of the Supreme Court in the case of *V. Tulasamma and others v. V. Seshareddi*, AIR 1977 SC 1944, as well as on a recent decision of the Supreme Court in the case of *Raghuvir Singh v. Gulab Singh*, JT 1998 (4) SC 579. In the former case of *Tulasamma*, the question for determination was where a property is given to a Hindu female in lieu of maintenance under an instrument which restricts the nature of interest given to her in the property whether sub-section (1) of Section 14 or subsection (2) of Section 14 of the Hindu Succession Act would apply. In that context, it was held that where such a property was possessed by the female Hindu at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Similarly, in the case of *Raghuvir Singh* (supra), where the testator had executed a Will on 26.3.1946 giving the entire property to his grand-son Raghuvir Singh protecting the right of the widow to enjoy the usufruct from the land during her life-time, the question was whether Section 14(1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956, would apply. In that context, it was held that in the said case Section 14(2) of the Act had no application and the widow was absolute owner even prior to the coming into force of the Succession Act of 1956 and even if she had limited interest had ripened into an absolute estate under Section 14(1) of the Act, Having perused the said decisions and the facts of the said cases, I am of the view that

the question involved in the present case was different. The defendant had not set-up any defence that the provisions of Section 14(1) of the Hindu Succession Act was applicable, in the present case neither there was any issue on that question. The said argument was being raised for the first time during the fag ends of the arguments at the final hearing stage of the second appeal. In the case of S. Rajagopal Chettiar (Supra), where a similar question regarding the applicability of Section 14 of the Hindu Succession Act was tried to be raised for the first time, the Supreme Court did not allow the same to be raised for the first time in argument. Besides in the said case, the question involved was right of maintenance of a Hindu widow and where the question of her right arose prior to the coming into force of the Succession Act. The second argument raised by the appellant is also not without force. The trial court had relied upon the evidence of the attesting witness of the Will who had stated that the testator had intended that after the death of his widow, the property would go to the daughter. The lower appellate court has not considered the said aspect at all while reversing the decree passed by the trial court. The decision of the lower appellate court, therefore, was not strictly in accordance with the provisions of order XLI, Rule 31, C.P.C.

12. In view of the discussions made above, this Court is of the view that the finding given by the lower appellate court cannot be legally sustained. Consequently, this appeal is allowed. The judgment and decree passed by the IIInd Additional District Judge, Ghaziabad dated 3.9.1982 is hereby set aside and the judgment and decree passed by the Vth Additional Munsif, Ghaziabad in Original Suit No. 342 of 1980 is confirmed. In the facts and the circumstances of the case, the parties shall bear their own costs of this second appeal.