Mohan Lal Vs. Gopal Lal

Mohan Lal Vs. Gopal Lal

SooperKanoon Citation : sooperkanoon.com/457580

Court : Allahabad

Decided On : Jan-19-1940

Reported in : AIR1940All347

Appellant : Mohan Lal

Respondent : Gopal Lal

Judgement :

Bennet, J.

1. This second appeal is filed by the plaintiff, Mohan Lal, whose suit for possession as a reversioner was decreed by the trial Court but was dismissed by the lower Appellate Court. The appellant plaintiff set up the following pedigree:

2. (for pedigree see p. 348)

3. The plaintiff and his cousin, Bans Gopal who was alive at the time of the plaint were the two nearest reversioners of the deceased, Babu Ram, son of Debi Din. This man is not to be confused with another Babu Ram appearing in the same pedigree. As Bans Gopal did not join in the suit, the plaintiff claimed one-half share of the property. Against the claim of the plaintiff the defendant Gopal Lal set up a registered will executed on 1st December 1902 by Babu Ram. The trial Court held that defendant had no interest under that will and the lower Appellate Court has held to the contrary. The will sets out as follows:

I, therefore, in order to keep my name as also that of my forefathers alive make the following will while in a sound state of body and mind and in full possession of my senses without the coercion and compulsion of anyone else, in respect of the property of the value of Rs. 3000 in favour of my daughter, Mt. Janki and my daughter's son Sitaram. The conditions of the will are as follows: 1. I shall be the owner of the entire property and shall enjoy all the rights and power relating thereto throughout my life. 2. On my death my daughter, Mt. Janki and my daughter's son, Sitaram shall be the owners of my entire property according to the Shastras. 3. Out of both the legatees my daughter, Mt. Janki shall have life interest but she shall be the first owner throughout her lifetime and after her death my daughter's son, Sitaram shall be the absolute owner of the entire property. 4. Sri Thakurji Mahraj is installed in a kothri on the upper storey and the worship of the said Thakurji is performed daily and annually for generations. I therefore make a will to this effect also that the legatees,

BISHUN DATT (deceased.)_____|_____| |Girdhari Lal (dead) Raghunath (dead)| |Gur Dayal (dead) Chunni Lal (dead)| |Debi Din (dead) || |_____ || | |Mahadeo (dead) Babu Ram (dead) || | _____|_____Mt. Champa, Mt. Janki daughter (dead) | |daughter (dead) =Ram Lal (dead) Babu Ram (dead) Bachu Ram| | (dead)Bans Gopal |1. Sitaram (dead) | |2. Mt. Tribeni (dead) Bhagwan das |=Tulshi Ram (dead) |3. Mt. Sursati _____|___= Sheoprasad Gopal | | |Lal (defendant) Manohar (dead) Muna (dead) Mohan Lal4. Mt. Jamuna (dead) | plaintiff5. Mt. Ganga (dead) | Shya m Sander (dead) |_____|_____ Ram Bhola| |Narain Girdhartheir heirs and representatives shall perform the worship of Sri Thakurji Maharaj in the same way and according to the same system as is done in my lifetime. Should the legatees or their heirs and representatives show negligence in the worship or spending money on that account or per chance stop the worship, the panches of all the members of my brotherhood at Allahabad shall be authorized to see that this worship continues.

* * * *7. The legatees or their heirs and representatives shall not have the right of transfer of the property at any time under any circumstance. 8. After the death of

Champa Bibi, I, the executant, if I remain alive, shall be the owner of her property and after my death, Sitaram and Mt. Janki or their heirs and representatives shall be the owner. 9. If Mt. Champa Bibi leads a moral life she shall remain the owner of the property throughout her life and if she goes astray and leads an immoral life the legatees and their heirs and representatives shall have power to take possession of the property.

4. The case for the plaintiff-appellant is that Babu Ram died in 1906 and Sitaram died in 1909 and Mt. Janki died in 1922. Both Sitaram and Mt. Janki were alive at the death of the testator in 1906. But Sitaram died before the death of Mt. Janki and therefore Sitaram never took possession of the property. The argument for the appellant is that because Sitaram never took possession of the property therefore Sitaram's heirs acquire no interest in the property. That is, the appellant argues that no estate vested in Sitaram on the death of the testator and that an estate would only have vested in Sitaram on the death of Mt. Janki. No ruling has been shown for this proposition of law. There is a ruling of their Lordships of the Privy Council to the contrary, Bhagabati Barmanya v. Kali Charan Singh (1911) 38 Cal 468. The head note of that ruling states:

The will of a Hindu after giving life estate to his mother and wife proceeded as follows: On the each of my mother and wife, the sons of my sisters, Golap Sundari Barmanya and Annapurna Barmanya, that is to say their sons, who are now in existence as also those who may be born hereafter, shall in equal shares hold the said properties in possession and enjoyment by right of inheritance.

Held, (on the construction) that the testator's nephews were intended to take a vested and transmittable interest on the death of the testator, though their possession and enjoyment were postponed.

5. This appears to be a similar case as in the ruling there was a life estate given to the mother and wife and the provision that on the death of the mother and wife, two persons named should receive the properties. The Privy Council held that the persons named took a vested and transmittable interest on the death of the testator. As the interest which they took was transmittable, their heirs would take after the death of the holder of the life estate. The same principle was followed in

Bilaso v. Munni Lal (1911) 33 All 558. This was a ruling by a bench of this High Court. The case was similar. There was a will providing that the property should go to the wife of the testator and his daughter and his nephew who was alive. The nephew survived the testator but died during the life-time of the testator's wife. It was held that the nephew took a vested interest on the death of the testator and that his interest was transmittable to the sons. For the appellant certain rulings were cited in the Court below. One of these was Srinivasa v. Dandayudapani (1889) 12 Mad 411. In that case there was a bequest to a daughter with a direction that she was to transmit the corpus of the estate to her male descendants on her death. There were no male descendants left at the testator's death and so there was no one in whom the property could vest on the death of the testator. This ruling has no application to the present case because in the present case Sitaram was alive on the death of the testator.

6. In Periyanayaki Ammal v. Ratnavelu Mudaliar (1925) 12 AIR Mad 61, there was a will of 1911 which would come under Section 119, Succession Act as Section 57(a) applies to the Sections which are in Sch. 3 and Section 119 is in Sch. 3 and there is no modification in that schedule of that Section. Under the will of the testator certain properties were given to his three daughters. There was also a clause providing:

These (meaning the daughters) have no power to make sale, gift, mortgage, etc., of these two houses and grounds. After these, their issue shall use and enjoy them from son to grandson and so on in succession so long as the Sun and the Moon may last, with power of gift, mortgage, exchange and sale and they shall every year without default perform the aforesaid ceremonies, etc.

7. The decision of the Court was that this will was different from the will in Bhagabati Barmanya v. Kali Charan Singh (1911) 38 Cal 468, quoted above, and that for that reason there was no vesting on the death of the testator. This does not apply in the present case. Learned counsel for the appellant could not produce any ruling to support his contention. We are also of opinion that the intention of the will is that the estate which was given to Mt. Janki would only be an estate to hold for her lifetime and that vested interest in Sitaram existed during her life estate.

Para. 7 of the will prevented either legatee from making a transfer and therefore the life estate without right of transfer of Mt. Janki is quite consistent with an estate of ownership of Sitaram at the same time and Sitaram merely had his right of possession postponed until the death of Mt. Janki. The provisions in para. 3 are merely intended as supplementary to para. 2 which clearly states that both Janki and Sitaram are to be owners. The ownership of Sitaram therefore began from the death of the testator. For these reasons we dismiss this second appeal with costs.