

Sajanbai Vs. Surajmal

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Court : Madhya Pradesh

Decided On : Oct-10-1984

Reported in : 1985MPLJ277

Judge : G.G. Sohani, J.

Acts : [Succession Act, 1925](#) - Sections 105 and 119

Appeal No. : Second Appeal No. 80 of 1974

Appellant : Sajanbai

Respondent : Surajmal

Advocate for Def. : S.D. Sanghi and ;Purshottam Shastri, Advs.

Advocate for Pet/Ap. : R.G. Waghmare and ;R.R. Waghmare, Advs.

Disposition : Appeal allowed

Judgement :

1. This is plaintiffs second appeal arising out of a suit for declaration of her title to the suit house and for its possession along with mesne profits.

2. The material facts giving rise to this appeal, briefly, are as follows : --

Panchulal, father of the plaintiff, was possessed of considerable movable and immovable property and carried on business at Mahidpur, district Ujjain, He had only one issue, his daughter Sajanbai, the plaintiff. As he had no son, he had brought up the defendant, who was distantly related to him. On 25-6-1949, Panchulal executed a will, which was duly registered. By that will, he bequeathed some of his houses to the plaintiff and some, to the defendant. As regards the residential house situated at Nagori Bazar, Mahidpur, hereinafter referred to as 'the suit house', he bequeathed it to his wife Panchibai for life and after her death, to the defendant, provided he maintained and looked after Panchibai, who was mentally deranged. It was stated in the will that in the event of failure on the part of the defendant to maintain and look after Panchibai, the suit house would devolve on the plaintiff and her husband if they happened to maintain and look after Panchibai. It was further stated in the will that in case both the plaintiff and the defendant failed to look after Panchibai, then the trustees appointed by the will would look after Panchibai and manage the suit house. The trustees were also required to manage the other property of the testator as directed in the will. Panchibai, wife of the testator, died in the year 1950, during the lifetime of the testator. After the death of the testator, on 7-8-1951, the defendant, who was residing with the testator, took possession of the suit house claiming it under the will. The plaintiff, therefore, filed the present suit for declaration of her title to the suit house and for its possession.

3. The plaintiff's case, in brief, was that the bequest of the suit house made by her father in favour of the defendant was conditional, the condition being that the defendant was to maintain and look after the plaintiff's mother, to whom the suit house was bequeathed for life. It was averred that as the mother of the plaintiff had died during the lifetime of the testator, the bequest of the suit house in favour of the defendant failed and the plaintiff became entitled to the suit house as she was the only surviving heir of the deceased testator. The claim of the plaintiff was resisted by the defendant on a number of grounds but the main ground, which was pressed at the time of hearing of this appeal, was that under the will, the defendant had become entitled to the suit house as the same was bequeathed to him by the deceased testator.

4. The trial Court held that the bequest in favour of the defendant, as provided by Clause 4 of the will, was conditional in as much as the defendant was to get the suit house only in the event of his having maintained and looked after the wife of the testator, that the object of the bequest having failed as the wife of the testator died in the lifetime of the testator, the suit house did not devolve on the defendant, and the plaintiff, being the sole surviving heir of the deceased testator, became entitled to the suit house. In this view of the matter, the trial Court decreed the plaintiffs suit. On appeal, the lower appellate Court upheld the claim of the defendant to the suit house not under Clause 4 of the will but under Clause 8 of the will, which according to the lower appellate Court, embraced all immovable property of the testator, which was bequeathed to the defendant. The lower appellate Court further held that the plaintiff had not objected to the possession of the suit house by the defendant after the death of Panchulal and she had thus acknowledged the defendant to be the owner of the suit house. In this view of the matter, the lower appellate Court set aside the judgment and decree passed by the trial Court and dismissed the plaintiffs suit. Aggrieved by the judgment and decree passed by the lower appellate Court, the plaintiff has preferred this appeal.

5. Shri Waghmare, the learned counsel for the plaintiff-appellant, contended that the lower appellate Court erred in holding that the plaintiff had acquiesced in the claim of the defendant to the suit house. It was further contended that the lower appellate Court erred in construing the will by holding that under Clause 8 of the will, all the immovable property of the testator fell to the share of the defendant. It was urged that Clause 8 of the will, which was relied upon by the lower appellate Court, if properly construed, referred to the movable property only. The learned counsel, therefore, contended that the lower appellate Court had erred in holding that the defendant had become entitled to the suit house under the will.

6. In reply, Shri Sanghi, learned counsel for the defendant-respondent, contended that Clause 8 of the will was a residuary clause and by virtue of that clause, the suit house fell to the share of the defendant. It was further, vehemently contended that even under Clause 4 of the will, which dealt with the suit house, the right to the suit house vested in the defendant on the death of the testator and the bequest of the suit house in favour of the defendant did not fail because of non-fulfilment of

the condition to maintain and look after the testator's wife provided by that clause as it was not a condition precedent.

7. In view of the contentions raised on behalf of the parties, two questions, arise for consideration : (1) Whether the bequest of the suit house in favour of the defendant by Clause 4 of the will was a bequest subject to the fulfilment of a condition precedent that the defendant should have maintained and looked after the testator's wife, to whom the suit house was bequeathed for life and if so, whether the bequest failed as the performance of the condition precedent became impossible on account of the death of the testator's wife during the lifetime of the testator; and (2) Whether Clause 8 of the will, on its proper construction, can be held to be a residuary clause bequeathing immovable property including the suit house to the defendant.

8. Before I proceed to appreciate the contentions advanced on behalf of the parties, it has to be noted that the validity of the will executed by deceased Panchulal is not in dispute. It is also not disputed that if the defendant's claim to the suit house under the will fails, then the plaintiff would become entitled to the suit house being the sole surviving heir of deceased Panchulal. The contention urged on behalf of the defendant in the Courts below that the plaintiff had acquiesced in the title of the defendant to the suit house and hence was estopped from assailing the title of the defendant, was not pressed before me. The controversy in this appeal, therefore, centres round the construction of the will Ex. P. 1 executed by deceased Panchulai For a proper appreciation of that controversy, it would be useful to set out material portions of that will, which are as follows :

^laor 200' febr vlkM fofn 'kfuokj dksfy[k nsus okys ikpwyky ok tOgjpUn vkSloky cksgjk mez lky ' /kUnk osikjlk- dLcs efgniqj ftyk mTtSu e/; Hkkjr fy[k nsrk gw ds esjs [kqn dh ekydh dhnqdku dLcs efgniqj esa dqojth ikpwyky uke ls gS vkSj mldk ekfyd esa vdsyk gwavkSj nqdku ds ysus nsus ds flok; esjh vpy lEifRr esjh Lolaikfnr esjs rkcs oekydh esa esjs ikl gS vkSj ml lc lEifRr dk eSa vkthou ekfyd gw- vkSj jgqxA esjsvkSykn fl QZ

,d yMdh lKs- ltuckbZ ifr gLrheyth ixkfj;ktkojkokyk tks vHkh bUnkSj jgrs gS vkSj esjh ifRu ikaphckbZ gS blds flok; esjkLoxks=h HkbbZ can dsljhey ok xqykcpa cksqjs dk yM+dk lwjey dks eSaus vius iklj[kdj i<+k;k fy[kk;k o j[kk gSA esjh o`)koLFkk gksdj chekj jgrk gwa vkSj esjhiRuh dk fpk Hkez gS vkSj ikxy lh jgrh gS vkSj fdl oDr esjh vk;q'; iqjhgks tkos bldk Hkjkslk ugha blfy;s eSaus vius lsok pkdj vkSj okjlk laca/k gDdcxSjk ds fo'k; esa vkxs esjs i'pkr esjh tk;nkn ds fo'k; esa dksbZ >xM+kc[kSM+k ;k okn mifLFkr u gks blfy;s esjh e`R;q ds i'pkr esjh bLVsV dh O;oLFkkfuEufyf[kr jhfr ls gks blds fy;s ;g e`R;q i= esa dj nsrk gwaA vkSj esjh thforvoLFkk esa dqy py vpy lEifk dh ekfydh vkSj O;oLFkk dk dqy dke esjh ethZ lseqtc vkSj esjh ns[k js[k esa d:axk vkSj ;g ys[k esjs i'pkr cjkj ikyk tkos vkSjblh eqtc O;oLFkk dj nh tkosA blds fy;s fuEu egkuqHkko VLVh jgsaxsA vkt lsis'krj ds dqy ys[k tks Hkh gks j g SA

lwjey ds'kjhey cksqjk gLrheythizsepUnth ixkfj;k ek.kdykyth ghjkykyth dksBkj lxxjeyth ok cksxeythcqjM eksrhykyth ok jksMeyth Ntykuh jkeyky ok jksMeyth Ntykuh jkeyky ok jksMeyth Ntykuh bu VLVh;ksa dk dksje pkj VLVh;ksa dk gksxkvkSj VLVh 2 cSBd esa u vkos rks ;k ckdh VLVh;ksa dh mifLFkr dh vleFkZrk dsdkj.k VLVh tks ekStqnk jgsaxs] fjDr LFkku ij nqljs VLVh dk;e dj ysosA esjhvpy lEifk esa dkA

uksjk dLcksa efgniqj ukxsfj;k cktkjftlesa dU;k ikB'kkyk yxrh gS] if'pe eq[kh cM+s njokts dk xUFkk gqv k p'es ' dknks eatyh g SA iwoZ esa vke fudkl x.ks'kxyh esa cjlkrh ikuh ukjns ls gksdjljkdjh jkLrs ij fudyrk g SA

if'pe dh rjQ ukxksjh cktkj dh tuhy IM+dcjlkr dk ikuh vke IM+d ij fudyrk g SA

mkj dh rjQ fxj/kkjhyky ok fdluth lqrkjkd edku

nf{k.k dh rjQ ds'kjhey ukxqth ukbZ dkedku mijksDr edku esjh iq=h lKs- ltuckbZ ifr gLrhey dks nsrk gwaA

2 edku ukxksjh cktkj dk lqek;r dpsjh dsfiNs okyk if'pe eq[kh cU/k gqv k p'esa nks eatyhA

iwoZ esa fudkl ugha vkSj ihNs dtkSMheythHkaMkj dh edku

if'pe esa vke fudkl IM+d ij usoRFks dkikuh ckM+s esa fxjdj ukjnkus ds tfj;s vkxs tkrk gS o ljdkjh IM+d ij tkrk g SA

nf{k.k esa dtksMheyth HkaMkjH ds dikSMfnoky dk ckMk [kqyk] ;g edku lqjtey ok dsljhey dks nsrk gwaA

edku x.ks'kxyh dk iwokZfHkeq[kh p'es nks eatyk cU/kk gqvk g SA

iwoZ esa edku dk oke fudkl

if'pe ds rjQ ihNs dh xyhA esjs nwljsedku dks NksM+dj ckn esa txUukFk lqrkj dk edkuA bl edku ds fudkl njoktk ihNs dhrjQ dka

mkj dh rjQ esjh ekydh dk iDdk edku

nf{k.k ds rjQ jkek ok ijFkk yqgkj dkedku ;g edku esjh yM+dh ltuckbZ ifr gLrheyth dks nsrk gwaA

& edku jgus dh gosyh ukxksjh cktkj dhca/kh gqbZ p'es ' nks eatyh

iwoZ ds rjQ vke fudkl gksdj vkxs ljdkjhIM+d gksdj lkeus iDdk foYMhax esjh ekydh dk g SA bl dk ihNs dk usoRFks dk ikuhpkS[k.Mh esa fxjdj ukjns ds tfj;s] vkxs dh IM+dk esa feyrk g SA

if'pe esa fudkl u gksdj fiNs Hkokuh 'kadjok :ijketh czkEg.k dk edkuA

mkj ds rjQ y[kehpUnth jkBh dh nqdkuA

nf{k.k ds rjQ oDrkojey tsBey esg=h dkedkuA

;g edku esjh iRuh ikphckbZ dks nsrk gwaA ogftUnk jgs rc rd vkthou [kqn ekyhd jgsxh vkSj blds ikyu iks'k.k] [kkusihusdh O;oLFkk vkSj lsok pkdjH lqjtey us djuk ihNs] ikaphckbZ dh e`R;q ds ckn edkulqjtey us ysuk vkSj mldk mkj dk;Z lqjtey us djuk] ;fn lqjtey ikyu&iks;'k.kltuckbZ ;k gLrheyth djs vkSj mldh lsok pkdjH djs rks edku mUgksaus ysuk vxj ;s udjs rks VLVh us esjh iRuh dh lsok pkdjH o ikyu&iks;'k.k dh O;oLFkkdjuk o edku dh O;oLFkk djukA oSIs gh esjk mkj dk;Z Hkh lqjtey us djukA

' esjs i'pkr esjh vpy laekh lksuk tokgjkrpkanh dh jdes nqdku esa ?kj esa iguus esa rhtksjh ;k dgh j[kh gqbZ fxjoh dh vkbZ;k j[kh gqbZ esa ls o nqdku dh mxkbZ ysu&nsu; olwyh tks lqjey dks nsrk gwmlesa ls igys

v lksuk rksys 200 nks lkS esjh e`R;q dsi'pkr ltuckbZ dks nsuk ;k ml oDr ds ctkj Hkko ls nks lkS rksyk lksuk dh fderltuckbZ ;k muds ifr gLrheyth dks nsdj ikorh ysuka

c :i;s OOO@& ,d gtkj ukFkqth ok lh/kkthesjs lkys dks nsuka

d esjh ykxrh dh cgu ikaphckbZ csok Hkwjkeyuuq dh ckbZ dks :i;s 'OO@& ikap lkS nsuka vkSj ckdh udnh lksuk]pkanh jde vkHkw'k.k tokgjkr] cjrj xksnMs QuhZpj

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