

Mango Vs. Joginder Kaur and anr.

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Court : Punjab and Haryana

Decided On : Oct-03-1972

Reported in : AIR1973P& H292

Judge : Gurdev Singh, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14

Appeal No. : Second Appeal No. 1526 of 1967

Appellant : Mango

Respondent : Joginder Kaur and anr.

Judgement :

1. The parties to this appeal are the real sisters being the daughters of Kundan Singh of village Burj Hari who left behind 152 Kanals 11 Marlas of agricultural land situated in that village. It was taken hold of by his widow Smt. Dharam Kaur because of a will executed in her favour by Kundan Singh on 22nd May, 1954. Later on Smt. Dharam Kaur bequeathed the entire property to the appellant Smt. Mango (the third daughter) to the exclusion of her other two daughters Smt. Joginder Kaur and Smt. Sammu by means of the will Exhibit D.I dated 25th May, 1964. After her death which took place on 5th December, 1964 the two daughters Smt. Joginder Kaur and Smt. Sammu brought the suit claiming the possession of their 2/3rd share out of 152 Karnals 11 Marlas of land situated in Burj Hari that had been left behind by their mother. The plaintiff-respondents claimed that under the

will dated 22nd May, 1954 Smt. Dharam Kaur got only a limited estate for her lifetime and being not the full owner thereof had no right to execute any will in favour of Smt. Mango and thus they were entitled to inherit the estate of their mother in equal shares along with Smt. Mango. Contesting this suit Smt. Mango asserted that by means of the will executed by Kundan Singh in favour of Smt. Dharam Kaur she (Dharam Kaur) had become the absolute owner of the property of her husband and was thus competent to bequeath it to the defendant-appellant to the exclusion of her other daughters.

2. Execution of both the wills has been held to be proved and this fact is no longer in dispute. The trial Court found that the will made in favour of Smt. Dharam Kaur conferred on her not the life estate but full interest in the property bequeathed to her. Accordingly, he dismissed the plaintiffs' suit. In appeal the learned District Judge however, took a different view of the matter and came to the conclusion that under the will of Kundan Singh Smt. Dharam Kaur obtained only a life estate and, accordingly, she was not competent to bequeath the property that she had received from her husband by making a will in favour of Smt. Mango one of her three daughters. Accordingly, the plaintiffs' claim for joint possession of 2/3rd Share of the property left by their mother was decreed leaving the parties to bear their own costs. It is against this decree that Smt. Mango has come up in second appeal.

3. As has been noticed earlier, the execution of both the wills Exhibits PW 2/B and D. 1 has been held to be proved by both the Courts below. The controversy before me has been confined only to the interpretation of the will Exhibit PW 2/B.

4. before adverting to this question, it is necessary to clarify the legal position with regard to the limited estate held by a female on the promulgation of [Hindu Succession Act, 1956](#). Section 14 of this Act provides:

'14(1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:--In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift will or other instrument or the decree, order or award prescribe a restricted estate in such property.'

5. It is evident that the general rule laid down in sub-section (1) of this section does not apply to his case and is clearly fails in the exception stated in sub-section (2) as the property had been acquired by Smt. Dharam Kaur under a will. It thus follows that if on execution of the will Exhibit P. W. 2/B made by her husband in her favour, she is found to have obtained only a limited estate, on promulgation of the Hindu Succession Act she cannot claim that she had become full owner of the property possessed by her.

6. The operative part of the will Exhibit PW 2/B when translated reads thus:--

'By making this will in favour of my wife Smt. Dharam Kaur I hereby give it in writing that after my death my wife Smt. Dharam Kaur will be the owner (malik) of my entire land and house that has been allotted to me at Burj Hari. During her lifetime my wife will enjoy all the benefits of his landed property and the house. If allotment of any part of this property is cancelled and in lieu thereof land or house is allotted elsewhere my wife Smt. Dharam Kaur will also become the owner (Malik) thereof. In case Smt. Dharam Kaur predeceases me, then my three daughters, who are married, will get the entire land and house property in equal shares after the death of both of us and become its owners.'

7. In returning the finding that this will conferred only a limited estate on Smt. Dharam Kaur for her lifetime, the learned District Judge has observed as follows:

'At one place, it is recorded in the will (Exhibit PW2/A) that Smt. Dharam Kaur would be owner of the land after the death of Kundan Singh and she would enjoy the benefits from it during her lifetime. At another place it is stated in the said will that after the death of Smt. Dharam Kaur and Kundan Singh their three daughters viz. Sammo, Mango, and Joginder would inherit and would be owner of the land in equal shares. The said contents of the will, when read with its other portion leave no room for doubt that the intention of Kundan Singh was to give life estate only in the land to Smt. Dharam Kaur by making the will and he intended that his three daughters who are parties to the suit would succeed to the land after her death..... The circumstances that Kundan Singh stated in the will that Smt. Dharam Kaur would enjoy the benefits from the land during her lifetime after his death and that his aforesaid daughters would inherit the land after his death and the death of Smt. Dharam Kaur, read consistent with my conclusion that he intended to give only life estate to Smt. Dharam Kaur and wanted to defer succession of his daughters to the land till her death. Had he intended to give absolute ownership of the land to Smt. Dharam Kaur, there was no necessity for him to make mention about his daughters in the will much less to state therein that Smt. Dharam Kaur would enjoy the benefit during her lifetime and that the three daughters who are now parties to the suit, would take the land in equal shares after her death. The will, in the light of the intention of Kundan Singh gathered by me, would sound natural because he did not deny succession to his daughters but had simply deferred their succession to it by granting life estate to his widow so as to enable her to enjoy benefits from whole of the land during her lifetime.'

8. On giving my earnest consideration to the matter and having gone through the will more than once with the assistance of the learned counsel for the parties. I do not find it possible to agree with the interpretation of the learned District Judge. In holding that Smt. Dharam Kaur had obtained only a limited estate, he has laid emphasis on the following sentence occurring in it:

'During her lifetime my wife will enjoy all the benefits of this landed property and the house.'

This sentence has to be read in the context in which it occurs. From the operative part of the will that has been reproduced earlier, it will be seen that in the sentence that immediately precedes it. Kundan Singh has specifically stated that he is bequeathing his land and house property to his wife and after his death she would be the owner.(Malik). Again, in the sentence that follows, he reiterated that she will be owner not only of the property that may be allotted in lieu of it elsewhere. In between these two sentences when it is said that his wife will enjoy all the benefits of the landed property and the house during her lifetime in my opinion, Kundan Singh merely wanted to convey that nobody else would be entitled to share the income or enjoyment of the property. This sentence far from detracting from the full ownership that had been conferred upon her in the earlier part of will was intended to make it clear that she would be the sole owner and that she would enjoy the same without any interference. It is true that under this will Kundan Singh had said that after the death of his wife Smt. Dharam Kaur, their three daughters will get the property in equal shares, but this is then made clear that this bequest will take effect only if Smt. Dharam Kaur predeceased the testator. It is usual clause incorporated in a will. In view of the uncertainty of human life a person executing a will does make such a provision in case of the person to whom he bequeaths his property predeceases him. This is to avoid the botheration of executing another will and also to guard against the situation that may arise if the testator and the person to whom the bequest is made die simultaneously. This provision in the will in no way indicate that the testator wanted that this wife should preserve the property for their three daughters. In dealing with this matter, it must be remembered that in the beginning of the operative part of the will the testator had stated in unambiguous terms that Smt. Dharam Kaur would be the owner (Malik) of the property bequeathed to her. Even if we concede for a moment as the learned Judge has held, that the subsequent sentence in that will, stating that she would enjoy all the benefits during her lifetime. Implies that what was intended to be conveyed to Dharam Kaur was a limited estate, that part of the will cannot override the earlier portion by which absolute ownership had been conferred on Smt. Dharam Kaur. Reference in this connection may be made to Mulla's Hindu Law, Eleventh Edition Para 392, where the legal position has been summed up in these words:

'Where by the terms of a deed or will an absolute estate of inheritance is created in favour of a person, any subsequent clause purporting to restrict that interest is invalid and the donee will take an absolute estate as if the document contained no such clause.'

9. This is in consonance with the dictum of their Lordships of the Judicial Committee in *Subramaniaswami Temple v. Ramaswamia*, AIR 1950 PC 32, wherein construing a similar provision it was held that a bequest made in favour of the son was unconditional and conferred on him absolute estate, and the subsequent provision did not limit the character of the estate that was given by the earlier bequest or make it conditional and liable to be divested at his death.

10. In *Ram Bharosev v. Lachmandas*, AIR 1954 All 715 it was held that the use of the word 'malik' conferred full proprietary rights and the intention of the testator that after the death of the person in whose favour the bequest is made the property would go to his daughters did not affect the position, because where dispositive words are clear and they indicate the creation of an absolute estate in the first devisee, all subsequent devisees must fail whatever the intention of the testator may have been.

11. In *Ram Gopal v. Nand Lal*, (AIR 1951 SC 139) it has been ruled that there is no warrant for the proposition that when a grant of an immovable property is made to Hindu female, she does not get absolute or alienable interest in such property unless such power is expressly conferred on her and the position is that to convey an absolute estate to a Hindu female no express power of alienation need be given but it is enough if words that are used are of such amplitude as would convey full rights of ownership. In that case, it was recognised that the word 'Malik' is of very common use in many parts of India and when used in a will or other document is apt to describe an owner possessed of full proprietary rights, including a full right of alienation unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were intended to be conferred. Reference in this connection was made to *Sasiman v. Shib Narain*. AIR 1922 PC 63.

12. For all these reasons, I find that the interpretation placed by the learned District Judge on the will Exhibit P.W. 2/B cannot be sustained and it must be held that Smt. Dharam Kaur had obtained the property in dispute from her husband as full owner and, consequently, the will made by her in favour of the appellant Smt. Mango to the exclusion of her other daughters is perfectly valid. As a result of the above finding the plaintiff-respondents are not entitled to any relief. I accordingly, accept the appeal and setting aside the judgment and decree of the learned District Judge, dismiss their suit. In the peculiar circumstances of the case the parties are left to bear their own costs.

13. Appeal allowed.

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