

Narayani Dasi Vs. Administrator-general of Bengal and ors.

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Court : Kolkata

Decided On : Mar-16-1894

Reported in : (1894)ILR21Cal683

Judge : W. Comer Petheram, C.J., ;Prinsep and ;Trevelyan, JJ.

Appellant : Narayani Dasi

Respondent : Administrator-general of Bengal and ors.

Judgement :

Prinsep, J.

1. The plaintiff is one of the daughters of the testator Judunath Mitter, deceased, and at his death was about ten years of age and unmarried. The other daughter had been married to a man of means. There was also a minor son aged about four years. Probate of the will was obtained by the Administrator-General on 22nd February 1877, and he administered the estate until the son, Bhutnath Mitter, came of age.

2. The plaintiff now asks to have the will construed by the Court and the rights of all parties under it declared. She also asks for payment of all arrears of maintenance due to her out of the estate, and for security for prompt payment in the future, and that for this purpose the necessary enquiries may be made. Lastly, she asks that the estate may be administered under orders of this Court.

3. In respect of the plaintiff the will gives her an annuity of Rs. 5 per month for her natural life. About this there is no dispute, and it is also clear that the arrears due to the plaintiff on account of this annuity up to 20th November 1892 were paid before this suit was brought on 4th January following.

4. The only matters in dispute are whether the plaintiff is under the sixth paragraph of the will entitled to any further allowance as maintenance, and, if so, in what amount.

5. In the fourth paragraph of the will provision is made for the marriage of the plaintiff, which has taken place.

6. Paragraphs 5th and 6th contain the following directions : (see paragraphs 5 and 6, ante pp. 684, 685).

7. It is unnecessary to recite the conditions and limitations, because they do not affect the present case, except in so far as they show that on the death of the son Bhutnath without issue, and before attaining majority, the residuary estate was to be divided equally between the married and unmarried daughters, subject to the payment of the annuities mentioned in the previous part of the will.

8. The learned Judge in the Court of First Instance has found that the intention of the testator was to impose 'no obligation on the son Bhutnath Mitter to maintain the sister in any and every case,' but 'to provide for the contingency of the daughter not being maintained by her husband on account of the husband falling on evil days, or their not agreeing, or from other cause,' and that as she has 'married a gentleman of means and is being well maintained,' it is not necessary to determine what her general rights are, the circumstances entitling her to such a declaration not having arisen. The suit was accordingly dismissed with costs payable by the plaintiff.

9. In appeal it is contended that the plaintiff is entitled to a decree for the arrears due on her annuity under paragraph 2, clause- (d) of the will, and to further maintenance under paragraph 6; that the amount so payable should have been ascertained and fixed; that she was entitled to a construction of the will, and

consequently that the suit should not have been dismissed with costs, as the costs should in any case be borne by the estate. It is also contended that under the will the Administrator-General should not have made over the estate to Bhutnath Mitter except by a regularly executed conveyance, in which the trust of maintaining the plaintiff should have been recited and secured.

10. The question therefore really at issue is whether the plaintiff was entitled to any separate maintenance by a specific sum of money.

11. The testator was a Hindu gentleman, and the will was drawn up by a well-known Hindu attorney of this Court, so that, in endeavouring to ascertain the intention of the testator, we must assume that, unless anything be shown to the contrary from the express terms of the will, it was his object to provide for the family in accordance with the well-known principles of that law. The plaintiff, his youngest daughter, was approaching the marriageable age. Accordingly, as already stated, provision is made for that event. There is nothing to show that any arrangements had been made, or even that proposals had been made for a suitable husband. It is stated that, if the case had gone for trial, some evidence would have been forthcoming, but I observe that in her appeal the plaintiff has not asked for a remand for this purpose, but she has been contented to abide by the case as presented by the record. We must, therefore, take it that the testator was ignorant what were the means of the gentleman to whom his younger daughter was to be married. He provided for her during life by an annuity of Rs. 5 per month, and he further directed that during the minority of his son a certain sum (Rs. 225) should monthly be applied to the maintenance and education of his son and to the support of that daughter and such other persons as at the time of his will lived in his house and were supported at his expense, and he further directed that the surplus should be invested in Government securities for the benefit of his son.

12. The object of this, I take it, was to maintain the members of his family in his family dwelling-house after his death as during his life, and certainly not to give any members of that family a right to any separate allowance, if he or she chose to reside elsewhere. This sum was fixed and provision was also made for any

surplus that might accrue. But it is stated that under Hindu law a person entitled to maintenance is not bound to reside with the family, and is entitled to a separate allowance, if he or she may prefer to live elsewhere. However this may be, this does not appear to have been in the contemplation of the testator so far as this part of his will is concerned. The object was to preserve the family and household as they were at that time. But this part of the will relates only to the time of the minority of his son, the residuary legatee, who has now come of age, so that the following paragraph (6) has come into operation. That paragraph directs the executor and trustee appointed by the Administrator-General to make over and convey the estate to the son, subject nevertheless to the trust of maintaining the said daughter, the plaintiff, referred to in the preceding paragraph. The paragraph cannot in my opinion be read apart from paragraph 5. It appears to me that 'the trust of maintaining my said daughter' in paragraph 6 refer to the objection imposed by paragraph 5, and that the object of this provision is to ensure for her the same rights and privileges after the majority of the son as were provided for her during his minority. It was never in contemplation of the testator that the style of his family dwelling-house should be reduced, but that a home should always be open to his daughter whenever she might require it. To provide against want she had already been given an annuity of Rs. 5 per month. The trust created by paragraph 6 is in my opinion merely a revival of that created by paragraph 5 which expired on the son's attaining majority; on her marriage the plaintiff would in strict law be entitled to nothing out of her father's estate. She would practically cease to be a member of that family in regard to maintenance, and have such claims only on her husband. It is only when a daughter, such as the plaintiff, is reduced to poverty that she has a claim to be supported by her father's family.

13. The plaintiff admittedly is far from being in such a condition. Consequently it was not in contemplation of her father, a Hindu, that she should under any circumstances receive a separate allowance from his estate to the reduction of the means of his son, the residuary legatee. I understand the provision in paragraph 6 as conferring no separate rights on the daughter to be separately maintained, and there seems to be no indication why in such respects he should be inclined to treat her differently from her elder sister, who had married a husband in easy circumstances during the testator's lifetime. The annuity of Rs. 5 per month, and

the fact that on the death of the residuary legatee, the son, without issue, or during minority, the estate was to be equally divided between the two daughters, subject to the payment of the annuities (and here I may observe no mention is made of the trust of maintaining the younger daughter) sufficiently shows this.

14. For these reasons I am of opinion that the plaintiff is not entitled, under paragraph 6 of the will, to anything by way of a separate allowance for maintenance. I am however of opinion that she is entitled to a decree for the amount of her monthly annuity from the last day of payment, 20th November. It does not however appear that she has ever demanded this from the defendant, and therefore she is entitled only to that amount.

15. On consideration I think that the construction of this will is not so difficult as to have required the assistance of this Court, and therefore it is not a case where the estate should bear the costs.

16. The plaintiff is entitled to a decree for Rs. 5, the arrears of maintenance and to nothing else. In that respect the decree of the lower Court will be altered. Apart from that alteration the appeal is dismissed with costs on scale No. 2.

Trevelyan, J.

17. The real question in this case is as to the meaning of the words 'subject nevertheless to the trust of maintaining my said daughter.' These words, there is no doubt, create a trust, but the dispute is as to the nature of the trust which they create. The plaintiff contends that under these words she is entitled to receive from the estate, which was her father's, a sum of money sufficient for the purpose of providing her with food, lodging and raiment, irrespective of whether she has other means of providing herself with those necessities of life. On the other hand, the Administrator-General and her brother contend that she is only entitled to be so provided when she is otherwise unprovided for.

18. Reference was made by both sides to the terms of the 5th clause of the will. That clause provides for the period of the minority of Bhutnath Mitter, and only for that period. The words 'support of my said daughter' in the 5th clause are, I think,

equivalent to the words 'maintaining my said daughter' in the 6th. The extent of the maintenance and the conditions, if any, under which it should operate, were intended to be the same in both clauses.

19. Whatever 'subject to the trust' means, subject to the said trust, or subject to another trust, the words used are so similar as to be intended to convey a similar meaning.

20. There is no reason why there should be any difference between the two periods. The question still remains as to what the testator meant by 'support' or 'maintaining.'

21. Counsel for the appellant relied upon the circumstance that the 5th clause would extend to a period when the testator must have known that his daughter would be married, and of this there is no doubt. No Bengali Kayasth would contemplate his daughter being unmarried after she had attained the age of puberty. As this girl was twenty-four years old when her brother came of age, her father must have known that she would certainly be married before her brother attained his majority.

22. This circumstance makes no difference in the construction. If the defendant's contention be correct the father might have equally wished to provide for his daughter in the case of her becoming destitute during her brother's minority as after it. For eleven or twelve at least of the years covered by the 5th paragraph she would be married and subject to the same chances and conditions as during the subsequent period.

23. I think it is clear that the testator meant the same thing in the 5th and 6th paragraphs of the will. The question is what he meant.

24. As far as I can see, a Hindu testator, or settlor, in providing for the maintenance of a child or other person, would mean exactly the same as an English testator, or settlor, would by a similar provision. I can see no reason for any difference. If there be any, I should think it the more likely that the Hindu father would be the less inclined of the two to give his daughter an annual provision of

food and raiment irrespective of her necessities, and thus make her a burden upon his sons. When a Hindu girl marries, she completely ceases to have anything to do with her father and his family. She becomes one with her husband and belongs to his family. Counsel for the respondents has contended that under the Bengal school of Hindu law, a destitute daughter is entitled to maintenance. This right is denied by Counsel for the appellant.

25. If this right does not exist the case is brought the nearer to that of an English father and daughter. I think that a provision of this kind in the will of a Hindu means the same as, or at any rate not more than, a similar provision in the will of an English-man. We have been referred to several English authorities on that subject, and amongst them I can find no case wherein a provision for the maintenance of A being charged on a gift to B provision has been allowed irrespective of the wants of A. There is, however, some authority to the contrary. In Lewin on Trusts, 8th edition, p. 139, we find: 'It can hardly be maintained, on the one hand, that when a child has attained majority, and is fairly launched into the world, and is making a livelihood, the trust is to continue; and, on the other hand, if a child be willing to remain at home, and no reasonable objection can be made to it, the person bound by the trust cannot refuse maintenance on the mere ground that the child has attained twenty-one, that age being in England the age of majority.'

26. In Carr v. Living 28 Beav. 644 (647), the Master of the Rolls says: 'The view I take of these cases, although I do not know whether it has been decided, is this : Where property is given to a wife for the support of herself and children, it is paid to her for the benefit of herself and children, and the Court does not inquire how it is applied, unless the children are not supported at all. But where the children are otherwise provided for, and do not require support or maintenance, they are not entitled to complain that they do not receive a portion of the fund which is not required for their maintenance, education and support.' In Thorp v. Owen 2 Hare 607 (613), although the point did not arise, the observations of the Vice-Chancellor at p. 613 of the report point in the same direction. So do the observations of the Master of the Rolls in Scott v. Key 35 Beav. 291 (293) at p. 293 of the report. Broad v. Bevan 1 Russ. 511, which was relied upon by the appellant, has nothing

to do with the question. All that was asked for there by Counsel was a reference to the Master, who,' taking into account the circumstances of Ann, will determine what provision for her will answer the intention of the testator.' I would accordingly hold that the trust for maintenance in this case is only intended to apply in the event of the daughter being otherwise unprovided for.

27. The plaintiff does not make any such case here, so her claim to maintenance fails.

28. The plaintiff has also contended that she is entitled to require the Administrator-General to execute a conveyance to Bhutnath Mitter. Bhutnath might be entitled to require such a conveyance to be executed, but I cannot see how the plaintiff could require such conveyance, or would be in any way injured by the absence of such a conveyance. In the absence of authority I decline to hold that any such conveyance can be enforced by the plaintiff.

29. I agree with Mr. Justice Prinsep as to the form of the decree which we should make.

W. Comer Petheram, C.J.

30. For the reasons given by the other two learned Judges who heard this appeal I, agree in the conclusions at which they have arrived.

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