

(1922) 04 BOM CK 0001
In the Bombay High Court

Bai Dhondubai and Another

APPELLANT

Vs

Laxmanrao Trimbakrao Javadekar and Another

RESPONDENT

Date of Decision : 12-04-1922

Acts Referred:

Citation : 68 Ind. Cas. 504

Hon'ble Judges : Norman Macleod, C.J;Shah, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the First Class Subordinate Judge of Ahmedabad. The facts of the case are fully set out in the judgment. The only question that has been argued in this appeal is whether the plaintiff has proved his title to the suit house. The plaintiff claimed under the Will of his brother Janardan, who died on the 6th January 1913. Janardan had been adopted in 1892 by his mother's father, Vish(sic) October 1(sic) Vishnupant made a Will and under that Will he gave a life interest in the suit house to his wife, Rakhmabai, and the remainder over to his adopted son, Janardan. Vishnupant died in 1901 and in 1908 certain disputes that had arisen between Janardan and Rakhmabai were settled by the execution of a deed of release and agreement, whereby Janardan's interest in the suit house after the death of Rakhmabai was recognised.

2. The only question, therefore, is whether the gift of the suit house by the Will of Vishnupant was a valid gift, and that depends on the question whether the testator merely described Janardan as his adopted son or intended that the validity of the gift should be conditional on the validity of the adoption. As was pointed out in *Abhiram Goswami v. Shyama Charan Nandi* 4 I. C. 449 : 36 I. A. 148 11 Bom. L. R1234 : 10 C. L. J. 284 : 6 A. L. J. 857 : 19 M. L. J. 530 : 36 C. 1003 : 14 C. W. N. 1. the language of one ius(sic).rument does not afford much assistance in the construction of another; and the case of (sic)hanindra Deb Raikat v. Rajeswar Das 12 I. A. 72 : 11 C. 463 : 4 P. C. J. 610 : 9 I J. 277 : 5 I D. 1068. which is relied upon by the appellants, cannot afford any assistance to tie

Court in construing the present Will, as the words in the Angi karpatra in that case were entirely different. If we were to consider the facts in other cases, the document in *Lalta Prasad v. Salig Ram* 1 IC 555 : 31 A. 5 : (1908) A. W. N. 249 : 5 A. h. J. 626. was almost in the exact terms of the present Will. The testator in that case gave all his property to his wife for her life and then declared that after her death Lalta Prasad, his adopted son, should be owner of the property. The learned Judges said:

There is absolutely nothing in the Will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift, and, in the absence of anything of the kind, it appears to us that, interpreting the language of the gift in its ordinary meaning, we must treat it as a gift to Lalta Prasad as a *persona designata*, and that, therefore, the gift is valid.

3. As was stated in *Fanindra Deb Raikat v. Rajeswer Das* 12 I. A. 72 : 11 C. 463 : 4 P. C. J. 610 : 9 I. J. 277 : 5 I D 1068 . (page 89) "the distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances." It seems to us that the Court should not strain to adopt a construction, which would defeat the intention of the testator, unless it was absolutely certain from the words of the Will that the testator intended to make the gift to Janardan conditional on the adoption being valid. There is no indication that Vishnupant had any such intention. We can only presume that he had adopted his daughter's son out of motives of affection and for perpetuating his name without considering too deeply the rules of Hindu Law which invalidated such an adoption. No doubt, he hoped his family would recognise the adoption and not dispute it. But having made the adoption so far back as 1892, when he came to make his Will, it is clear that he wanted to make this gift to Janardan, and he merely described him as adopted son in the ordinary course without intending that the gift should be conditional on the adoption of Janardan being valid according to the rules of Hindu Law. He also in the Will directed that Janardan should take one-third share in the Iram property. We are not concerned with that, gift but it may be pointed out that the words of that gift were somewhat different and would tend more to the construction which the appellants wish the Court to put upon the words of the gift of the house. If that difference of language has any value, it is more against the appellants, for it shows that whatever the intention of the testator might have been with regard to the share in the Iram property, at any rate with regard to the house, he intended to give it to Janardan, whatever disputes might arise in the future with regard to his adoption. It is not necessary, therefore, to say anything with regard to the effect of the compromise or arrangement which was arrived at in 1908.

4. For his own safety Mr. Coyajee asks us to express the opinion that the eighth issue in the suit, whether the defendants Nos. 2 to 4's plea as to the invalidity of Janardan's adoption is barred by limitation has not been considered, and we do

so.

5. The appeal will be dismissed with costs, i. e, with costs as against respondent No. 1 : the other respondents to bear their own costs.