

(1936) 11 BOM CK 0006
In the Bombay High Court
Case No : Suit No. 1599 of 1936, O.S.

Bhagirathibai

APPELLANT

Vs

The Advocate General of Bombay

RESPONDENT

Date of Decision : 20-11-1936

Acts Referred:

Succession Act, 1925 — Section 142

Citation : (1937) 39 BOMLR 497

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This summons has been taken out by the plaintiffs to obtain directions from the Court for the administration of the estate of the late Ramchandra Lalji who died in 1925 and the construction of his will dated August 12, 1924. Question No. 1.

2. The first question is about the construction of Clauses 4 and 7 of the will, relevant portions whereof run as under :?

4. The average monthly rent of my said Shaikh Memon Street property is about Rs. 1,000.

7. I direct my executors and trustees to pay out of the said monthly rents of my said Shaikh Memon Street property a sum of Rs. 125 to each of my three daughters and Rs. 125 to my wife Bhagirathibai every month for their respective lifetime and Rs. 500 every month to my wife and on my wife's death to my daughter Soon-derbai for the family expenses for food, rent etc. of my wife and three daughters with their respective husbands or the survivors or survivor of them and if for any reason my three daughters and my wife live separately then the said amount is to be distributed equally amongst the four or the survivors or survivor of them.

3. On behalf of the plaintiffs it is urged that the legacies bequeathed by this clause in favour of the daughters and wife are demonstrative legacies. Under the

will the residue goes to charity, and therefore, the defendant, on the other hand, submits that on a proper construction of the above clauses there is a specific bequest. Section 142 of the Indian Succession Act defines "specific legacy" in the following terms :

Where the testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

4. Amongst the illustrations the following is relevant on this point :

(iv) A bequeaths to B

...an annuity of 500 rupees out of the rents of his zamindari of W. This is a specific bequest.

5. Section 150 of the said Act defines "demonstrative legacy" in these terms :

Where the testator bequeaths a certain sum of money, or a certain quantity of any other commodity and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation :?The distinction between a specific legacy and a demonstrative legacy consists in this, that?

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

The relevant illustration runs in these terms :

6. A bequeaths to B an annuity and directs it to be paid "out of rents arising from my taluk of Ramnagar.

7. This is a demonstrative legacy.

8. In Williams on Executors (12th edn.), Vol. II, at p. 755 it is observed as follows :

So a bequest of a rent out of a term of years is specific. Thus where the testator bequeathed 40Z. a year to A for life, out of his chattel estate at Kenn, and 101. a year to B for life, out of the same estate, which he gave to C, these several bequests were held specific. Long v. Short. (1717) 1 P. Wms. 403

But if the testator's meaning is to give the legatee an annuity at all events, though he directs it to be paid out of an estate or the rents of it, the legacy is not specific but demonstrative. Mann v. Copland (1817) 2 Madd. 223 Vickers v. Pound (1858) 6 H.L.C. 885.

9. The plaintiffs urge that according to the recognized canon of construction in

case of doubt a legacy should be construed as demonstrative rather than specific. They also rely on the decisions in *Bai Bhikaiji M. R. Mody Vs. Bai Dinbai*, and *Richardson v. Brown*. (1798) 4 Ves. 177

10. The true test to determine whether a particular bequest is specific or demonstrative, so far as India is concerned, is mentioned in the explanation to Section 150. For that the only guiding factor can be the exact words used in the will and no other. While the authorities quoted decide the meaning of particular words used in a particular will, I do not think they are useful in determining the exact construction of the words used in this will. In the will before the Court the testator started by saying that the average monthly rent of his property at Sheikh Memon Street was about Rs. 1,000 and in Clause 7 directed a division of that rent amongst the persons mentioned in Clause 7 of his will. The Court has, therefore, before it the mind of the testator working on the footing that he had this Sheikh Memon Street property. He knew what rents were realized there from and by Clause 7 he was dividing the rents of that property amongst the legatees mentioned in the clause. Reading that clause as a whole it seems to me that he was dealing with specific property belonging to him and the intention was not to give a bequest in any event and the rents of the property indicated as a primary fund from which the bequest was to be given. The illustration to Section 142, mentioned above, applies exactly to the facts here and supports the construction of the clause put by me. The decision in *Bai Bhicaji v. Bai Dinbai* recognises that in respect of rents of Immovable property the question whether it is a specific legacy may arise, and the English decisions cited therein do not go against such disposal to be considered as specific bequests. In my opinion, therefore, the bequests contained in Clause 7 of the will are specific bequests. The executors intimate that the rents have now come down to about Rs. 500. The result is that the bequests in favour of the parties mentioned therein shall abate to the extent of the abatement of the rent in fact, as compared to Rs. 1,000, which was the basis of the bequest. My answer to this question is, therefore, in the negative.

11. Costs of both parties, as between attorney and client, to come out of the estate.