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**(1979) 05 DEL CK 0032**

**In the Delhi High Court**

**Case No :** O.S. Suit No. 100 of 1973

Chaman Lal Kapur and Others — APPELLANT

Vs

Kundan Lal Kapur — RESPONDENT

**Date of Decision :** 23-05-1979

**Acts Referred:**

**Citation :** AIR 1979 Delhi 240

**Hon'ble Judges :** D.K. Kapur, J

**Bench :** Single Bench

**Advocate :** M.L. Rawal, for the Appellant; Y.K. Sabharwal and Mukul Rohtagi, for the Respondent

## Judgement

1. The present suit involves a question regarding the nature of the estate held by Shrimati Sham Piari who died in Delhi on 23rd February, 1969, The facts of the case are not much in dispute. The said Shrimati Sham Piari was the widow of Seth Boota Mal Kapur; Seth Boota Mal had two wives from each of whom he had a son (We are not concerned with the daughters). The son from the first wife as well as the first wife have died before the partition of the country. There were three grandsons through the elder son who are the plaintiffs in the present suit. The son from the second wife is the defendant. The question before the Court is whether the property left by Shrimati Sham Piari in Delhi was held by her under a life estate and whether the property is to be divided amongst the plaintiffs who get a half share and the defendant who gets the other half share, or whether, the property is to go to the defendant alone. The answer to this question depends on what was the nature of the estate held by the late Shrimati Sham Piari. If it was her absolute property then her natural son Shri Kundan Lal defendant is to get it, but if she has a life estate, then the property has to go according to the terms of a Will left by the late Seth Boota Mal Kapur who had given her the life estate and then directed how the reversion was to be dealt with.

2. There were several other questions raised in this suit regarding the valuation for court fee and whether necessary parties have been joined, but at the trial,

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the suit has reduced itself basically to the question as to what is the estate which Shrimati Sham Piari had in property she has purchased in Delhi against compensation claims. The facts can now be stated regarding the property. While the parties were all residents at Hoti Mardan in the North Western Frontier Province, Seth Boota Mal had made a Will. Under the terms of that Will he had left a life estate to his second wife Shrimati Sham Piari in respect of some of his property. Seth Boota Mal was alive even at the time of partition and he came to India. The terms of the Will were that Shrimati Sham Piari was to have a life estate and after her death the property was to go in equal shares to Shri Kundan Lal Kapur on the one hand and to his grand-sons through his first wife on the other. Shrimati Sham Piari got her claims verified on the basis of this very Will because Seth Boota Mal died before the claims were verified under the Claims Act of 1950. As a result of those verifier) claims, Shrimati Sham Piari was able to get compensation under the terms of the Displaced Persons (Compensation and Rehabilitation) Act. The actual compensation that Shrimati Sham Piari got was cash compensation amounting to Rs.8,000/- and for the balance, she utilised the claim to purchase properties Ncs. 625 to 628, Double Storey Quarters, New Rajinder Nagar, New Delhi. Even after that, there was some compensation left which was used by Shri Kundan Lal to get Flat No. 1, at New Rajinder Market. It is claimed in the plaint that there still remained other compensation which was used by the defendant to purchase some other property of which the details are not known. In any case, it is their contention that Shrimati Sham Piari purchased 4 flats Nos. 625 to 628, Double Storey Quarters, New Rajinder Nagar and also got Rs.8,000/- compensation. After her death, the question is whether the property is to be treated as being the same property that was left under the Will or whether the property is to pass as the absolute and complete estate of the lady and Therefore, has to go to her own heirs and not in accordance with the terms of the Will.

3. On the pleadings the following issues were framed:-

"l. Is the (suit) properly valued for purposes of court-fees ?

2. Are the plaintiffs in joint possession or constructive possession of the property as alleged and, if not, is the court-fee on the plaint properly paid?

3. Is the suit bad for non-joinder of necessary parties?

4. Has the plaintiff cause of action?

5. Has the plaintiff got any rights regarding the alleged Will dated 30-7-1935, and what are the contents of that Will?

6. Has the plaintiff any right qua the property in suit by reason of the aforementioned Will when the aforementioned property is not the same property as was the one specified in the Will?

7. Was the compensation, if any, received by the late Smt. Shyam Pyari from the Rehabilitation Authorities to be treated as being subject to the same limitations

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as the life estate in Mardan which was the subject matter of the Will, and is any property purchased by utilising such compensation also to be, treated as property subject to the limitations of that Will, if any, and what is the effect of the conversion of the property into monetary compensation or compensation in the shape of Immovable property ?

8. Is the suit within time of any reason?

9. Relief."

Taking up the issue of court-fee first, it may be stated that according to the plaint the jurisdictional value is Rupees 1,25,000/- and as the property is in possession of the defendant, it is claimed by the plaintiffs that they are in possession also as co-sharers and hence court-fee of Rs.19.50 has been paid. I think the suit is properly valued for purposes of jurisdiction because if the plaintiffs are entitled to a share, they are in constructive- possession through the tenants. I decide issues Nos. 1 and 2 in favor of the plaintiffs.

4. Issues Nos. 3 and 4 involve a question regarding the joinder of parties and cause of action. I see nothing wrong with the plaint and if the plaintiffs have a share they have also a cause of action. So, no separate decision is necessary on these two issues. As far as Issue No. 5 is concerned a Will has been established on record and as the same is registered and a certified copy of the same has been obtained from the Sub-Registrar''s office in Mardan in Pakistan, I think it is fully proved. The certified copy is Exhibit P-6. A pencil copy is Exhibit P-4 and Exhibit P-5 is another copy made from the pencil copy. Exhibit P/A is the English translation. So, there are a number of copies of the Will. As the Will was made on 30th July, 1935, and registered at Mardan, I think it cannot be questioned that the plaintiffs have a Will in their favor. The contents of the Will show that the property left to Shrimati Sham Piari was left to her for her lifetime and then it had to revert to the plaintiffs and the defendant. The plaintiffs were to get half share between them and the defendant was to get the other half share. So this is established from the Will. I hold accordingly.

5. Issue No. 6 concerns the right of the plaintiffs in the present property and Issue No. 7 concerns the question whether the compensation received by Shrimati Sham Piari is to be treated as being part of the life estate or is to be treated differently. The 8th Issue appears to be wrongly typed and should be "Is the suit not within time for any reason"? Because the suit has been filed within three years of the death of Shrimati Sham Piari, so I hold the 8th issue in favor of the plaintiff and hold the suit is within time.

6. The only question now remaining to be decided is what is the nature of the estate that Shrimati Sham Piari had in the property she purchased with the compensation monies obtained by her under the Displaced Persons (Compensation and Rehabilitation) Act, 1956. It may be recalled that Seth Boota Mal died after the partition of the country and then Shrimati Sham Piari applied for compensation which she got. The compensation was unconditionally received

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by her in respect of the property which had been left by her husband. Admittedly, that property is still there in Pakistan. The question for decision is whether the compensation amount is to be treated as life estate or whether it is to be treated as the absolute personal estate of Shrimati Sham Piari.

7. There is not a single case even remotely similar to the present which has been brought to my notice. It has been urged by learned counsel for the plaintiffs that two decisions, which he has brought to my notice, cover this case. In P. D. Sharma v. Shri Ram Lubhaya, 1969 Ren Cr 992, which was decided in this Court, it was held that property acquired through the utilisation of compensation obtained for loss of ancestral property in Pakistan, was also ancestral property. In Maya Ram v. Santa Singh, 1966 Cur Lj 723, which was decided by a Division Bench of the Punjab High Court, it was held that where land was allotted to a displaced person in lieu of agricultural property lost in Pakistan it was also ancestral when allotment was made in India. Obviously, when a joint family had property in Pakistan or owned agricultural land the land given in compensation for the same would also be the ancestral property and with this proposition there can be no quarrel. The problem in this case is that the compensation which has been given to Shrimati Sham Piari and has resulted in her acquiring property is undoubtedly her own property during her lifetime, but the problem only arises after her death. The problem is (by) no means an easy one to resolve. If Shrimati Sham Piari had got this property as a female widow, it would become her own property under S. 14(1) of the Hindu Succession Act. As she has got this property under the terms of a Will, the property is governed by S. 14(2) of the Hindu Succession Act, and Therefore, she would have a restricted right over the property. Unfortunately, the property is not the same as was left in the Will. If the property was the same, then there would be no problem at all. It would certainly belong to the plaintiffs and the defendant in equal shares. The defendant getting half share and the plaintiffs remaining half share.

8. In the present case, the late Shrimati Sham Piari got a limited estate not as a Hindu widow, but under the terms of a Will. It is the terms of the Will that have to be looked to for the purpose of determining what is to happen to the property. The relevant portion of the Will reads as follows, I am quoting from Exhibit P/A which is an English Translation.

"However, since I have not given any share to Smt. Sham Piari who is entitled to a share according to Dharamshastar, I Therefore bequeath that if any son is born to me henceforth then he will be entitled to all the property after my death which stand in my name and also entitled to the property which I acquire sole owner, but after my death till Smt. Sham Piari is alive, she would be the limited owner in respect of urban property situated in bazaar Takhatbai and also of houses situated within abadi Mardan and of half the garden situated in Mardan, she would remain in possession and derive income from the same, since she has to spend on living respectful life and so that she as elder in the family may be able to give to the daughters and daughters-in-law and spend on guests and she

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would have to bear the burden of the relatives and the baradi. Similarly, if a son is born to her herein after then he would be sole owner of the rest of the property owned by me after my death and after death of Smt. Piari would also become the owner of the urban property and half of the garden. Smt. Sham Piari would not be entitled to dispose of the property in any way either by gift, sale, mortgage, exchange, etc., except that she would remain in possession and "would be entitled to the income thereof for her maintenance. However, in case no son is born to me then after my death, Smt. Shyam Piari till she is alive according to the aforesaid condition she would be owner in respect of the urban property situated at Takhathai and Mardan as well as half of the garden as-life estate, and in respect of the remaining property, half would be owned by Kundan Lal and the rest of half would be owned by sons of Ganga Bishan (at present there are three sons and in case any other son is born). Similarly after the death of Smt. Shyam Piari in respect of the property which she has been given as limited owner half of it would come to the share of Kundan Lal and the remaining half to the sons of Shri Ganga Bishan in equal shares. After my death, Smt. Shyam Piari would manage and comply with my property in accordance with my Will."

As it happened, no further son was born to Shri Ganga Bishan and no other son was born to Shrimati Sham Piari. So, in terms of this Will, Shrimati Sham Piari was to get a life estate with limited ownership of the property situated in Abadi Mardan and half the garden, and also the urban property situated in Bazar Takhatbai. As a matter of fact, it is on the basis of this document, that Shrimati Sham Piari got compensation. The direction in the Will is that after her death the said property is to revert to Shri Kundan Lal and the sons of Shri Ganga Bishan half and half. The plaintiffs are the sons of Shri Ganga Bishan and the defendant is Shri Kundan Lal, if the direction in the Will ''governs the compensation, then it would also mean that the plaintiffs and the defendant would get half share in the property in the suit.

9. The problem in complying with this direction is that there is a change in the property in the meantime. Under the terms of the Will, if Shrimati Sham Piari had the property in Mardan, North Western Frontier Province, it would certainly go to the plaintiffs and the defendant in equal shares, but as the property has been transformed and suffered metamorphosis due to circumstances completely outside the control of the parties, the problem now to be solved is whether this direction can be complied with in the present case.

10. I am of the view that the property cannot go to the plaintiffs. This may be an unfortunate result in the sense that they should have got a half share, but it is the obvious result of a complete transformation in the property. I would now like to set out the reasons which have prompted me to reach this result.

11. If the Will was enforced in full, the right of Shrimati Sham Piari was restricted to enjoying the property for her life time. She could not sell it at all. Now she has got compensation for that property. That compensation is in the form of money.

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It can by no stretch of imagination be treated as property situated at Mardan. As far as I can see, Shrimati Sham Piari need not have bought any property with this compensation. She might have sold the property acquired by the compensation. She could have bought other property and she certainly could utilise the income. There was no restriction in the Will regarding what she could do with the compensation. Once the property has ceased to exist in its original form, then the limitations on the rights of enjoyment no longer apply. Let me take an example. There is a person who is given a life estate in a particular property. The person cannot sell the property, but can utilise the income, the reversioner has the right to get that property after the death of the life estate holder or the tenant for life as commonly called. Now suppose that property is burnt, destroyed by accidental fire or natural calamity. In such a case, it may be that some insurance money comes to the life estate holder, that insurance money cannot obviously be treated as being the same as the original property. The insurance money can be utilised to purchase other forms of property, may be securities, may be shares of Joint Stock Companies, it may be invested or lent out. Other types of property can be bought. It would be difficult to hold that in such a case the life estate holder who has got compensation has to be treated as still having a life estate even in the compensation. As I said no parallel can be found, but because of the intricacy of the question, I have examined the point from some other aspects.

12. It is the law in England as stated in ''Volume 10, Art. 355 of Halsbury''s Laws of England, Third Edition'' that compensation paid on compulsory acquisition of land in the hands of a person who is not entitled to sell shall be invested in a particular manner under the control of the Court. The object of this rule, which is statutory in nature is to ensure that the life estate holder only gets the income and does not get the corpus or capital which belongs to the residuary or remainderman. There is no such rule in Indian law. I fancy that in similar circumstances, there might be a contest between the life estate holder and the reminder holder so as to divide the compensation. This could not happen in the present case because the compensation has been paid under a special Act. Undoubtedly, the only person who could get the compensation was Shrimati Sham Piari. Having got the compensation in this manner, I have to ask myself why this compensation is to be treated as being of a limited type in her hands. The restrictions in the Will which I have reproduced above only state that Shrimati Sham Piari cannot sell the property which has been left to her during her lifetime. She is a limited, owner. But suppose she is made to sell it under a statutory power, for instance, if the property in Mardan had been acquired and compensation had been given to Shrimati Sham Piari, then there would be no limitation on her regarding the utilisation of the money. So I am of the view that even in the case of compensation received in India as a refugee under the rehabilitation schemes promulgated- by the Government for the purpose of resettling refugees, she gets the compensation without any restriction at all. There is no legal fiction available by which the compensation amount can be

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treated as being the same as the land, property or houses in Mardan. The result would be that Smt. Sham Piari could utilise the compensation amount in whatever way she liked. It would be too much to say that this compensation money hat S 10 be preserved forever in whatever form it goes and treated as if it is property in Mardan.

13. There is in equity a doctrine known as ''The Equitable Doctrines of conversion''. (See Snell''s Principles of Equity, 27th Edition, page 467). Under this doctrine, if property is transformed by a trustee into another form of property, it is deemed that the property retains its previous form. For instance, if a property was left in trust, say a house with a life estate to ''A'' and then to ''B'' and his descendants and trustees are to administer the same. If for any reason the trustee exercises the right to sell the property, then the property is to be treated as if it is a house and it is not to be treated as money. The money is then to be invested and the income is to be paid to the life estate holder and the corpus which means the funds is to go to ''13''. Thus, for all intents and purposes the money is to be treated as still being a house whose income is to be enjoyed by the life estate holder and the corpus is to go to the remainderman. This formula only applies when there is a trust. Shrimati Sham Piari cannot be treated as being a trustee under the terms of the Will in question. She had n7o right to sell at all being a limited owner. If by accident, the property is sold either through legislation or through other circumstances, then there is no obligation on her to live only on the income of that compensation and leave the corpus to the persons entitled to the residue of the estate. Therefore, this doctrine cannot be invoked in the present case.

14. Another doctrine that has been mooted on behalf of the defendant as being applicable to this case seems to be more appropriate. This is the doctrine of ademption. The way this doctrine operates is described in ''Halsbury''s Laws of England, Third Edn., Vol. 39, Art. 1412, at p. 934. I quote this paragraph: -

"1412. Methods of ademption. A testamentary gift may be a deemed or taken away from the done in several ways: (1) by a subsequent disposition by the testator of the subject-matter of the gift; (2) by a change in the ownership or nature of the property; and (3) by the presumption that the testator does not intend to provide double portions for his children or other persons to whom he stands in loco parentis. If, however, in a will there are gifts of two properties settled in trust, one by reference to the trusts of the other (for example where heirlooms are settled to follow the trusts of realty), the subsequent alteration of the trusts of one property by a deed executed by the testator in his lifetime will not affect earlier testamentary limitations relating to the other property. Apart from the presumption as to double portions, there can be no ademption of a residuary gift."

It appears from this, that in several ways a property which is intended to be gifted ceases to be subject to that gift. In the present case, the testator stated that particular property in Mardan would be enjoyed by his wife Shrimati Sham

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Piari for her lifetime. If the circumstances had remained unchanged after the death of Shrimati Sham Piari this property would have come to the plaintiffs and the defendant. Unfortunately, the property is still there and capable of being enjoyed, neither the plaintiffs nor the defendant can go to Mardan to enjoy the same. So the dispute is regarding the compensation money. There is no direction in this Will that any compensation received in respect of that property will go to the persons who would otherwise have ''got the property in Mardan. This means that the gift has been a deemed because it cannot be given effect to. In a sense this is unfortunate because if this situation had at all been in the mind of the testator, he could have made a direction regarding the same. As it happened, the testator died in India after partition and he could have made a codicil to the Will or made a new Will regarding the compensation. He could have altered the old Will to cover the amount of compensation. But he never made any new Will. The Court cannot alter the Will, it must be read strictly as it is. In the strictest sense the Will gave the plaintiffs the right to get a half share in the property which is now in Mardan. The Will is silent regarding the compensation and it cannot be made operative qua the compensation.

15. I am, Therefore, of the view that the suit has to be decided against the plaintiffs. I accordingly dismiss the suit. Keeping in view the fact that the plaintiffs have based the suit on an established right under a Will which fails due to circumstances outside their control, I would leave the parties to bear their own costs.

16. Suit dismissed.

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