

(1924) 01 BOM CK 0015
In the Bombay High Court
Case No : Second Appeal No. 169 of 1923

Dhanji Natha

APPELLANT

Vs

Dhuma Hiraji Mali

RESPONDENT

Date of Decision : 15-01-1924

Acts Referred:

Citation : AIR 1924 Bom 382 : (1924) 26 BOMLR 277

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, C.J.—The few facts which have given rise to this appeal are these. One Piraji died leaving two widows Deoba and DImma. Deoba had a daughter named Chindhi. On April 16, 1911, Deoba and Dhuma made a gift of the property in suit in favour of Chindhi. Deoba died on November 10, 1918, and the next day Chindhi died. The present suit was filed by Dhuma to recover possession of the property which was gifted by her and Deoba to Chindhi. Defendant who is the daughter of Chindhi claims to be entitled to Chindhi's interest. The trial Court held the gift to be invalid and decreed the plaintiff's claim for possession. The lower appellate Court decreed possession of a moiety in favour of the plaintiff on the footing that Dhuma was entitled to a moiety of the property in respect of which Deoba had an interest during her life-time, that interest having come to an end on her death. In effect a decree was passed in favour of the plaintiff on the footing that she was the heir after Deoba's death in respect of the share of Deoba in this property.

2. The defendants have appealed from this decree, and in support of the appeal it is urged that the view taken by the lower appellate Court is wrong inasmuch as the husband's estate was one estate jointly taken by the two widows, and that the gift would be operative during the life-time of either of the two widows. In other words it is contended that both the widows being joint owners, on the death of Deoba, the other widow does not take anything as the heir of her co-

widow but the estate survives to her. In support of this contention reliance is placed upon the observations in *Bhugwandeem Doobey v. Myna Baee* (1867) 11 M.I.A. 487 and (1877) L.R. 4 I.A. 212 (Privy Council) .

3. It is clear that the present plaintiff could not claim any interest in the property given by way of gift by her and her co-widow to Chindhi during her life-time. So long as the present plaintiff is alive the interest which Chindhi got under the deed of gift would enure for the benefit of her heir after Chindhi's death, The gift was a joint gift by the two widows and would be operative during the life-time of either of the two widows in favour of the donee. There is no suggestion in the present case that there was any partition of the estate between the two widows, so that the question of inheritance to the co-widow's estate does, not arise. Even assuming that such a question could arise or that there could be a severance of interests, it in by no means clear that it would make any difference in the result in a case where the original gift is by both the widows. It is however, unnecessary to consider that aspect of the case, as in the present case there is a joint gift and there is no suggestion of any severance of interest between the two co-widows, assuming without admitting that there could be such severance as would defeat the right of survivorship in the co-widow. The present suit for possession of either the whole or a moiety of the property given by way of gift to Chindhi is not sustainable, as the reversion to the husband's estate has not opened yet. The result is that this appeal is allowed, the decree of the lower appellate Court reversed and the plaintiff's suit dismissed with costs throughout. The cross-objections are dismissed with costs.