

(1935) 07 PRI CK 0003

In the Privy Council

Case No : Privy Council Appeal No. 81 of 1933

(Kunwar) Rameshwar Bakhsh Singh and others

APPELLANT

Vs

(Thakurain) Balraj Kuar and others

RESPONDENT

Date of Decision : 23-07-1935

Acts Referred:

Citation : (1935) AIR(PC) 187

Hon'ble Judges : Shadi Lal, John Wallis, Lord Thankerton, JJ.

Advocate : T.L. Wilson, C. Naimullah, S. Hyam, L. DeGruyther, M.A. Jinnah, W.A. Upjohn, for the Appearing Parties.

Judgement

Sir Shadi Lal, J.

On 4th June 1918, one Babu Indarsen Singh, a talukdar of the estate of Dhaurwa situate in the Province of Oudh, died, leaving him surviving two widows, Annapurna Kuar and Balraj Kuar, and two daughters, namely, Brijraj Kuar by his deceased wife Jadunath Kuar, and Hemraj Kuar by his wife Balraj Kuar. The senior widow, Annapurna Kuar, succeeded to the entire property of her deceased husband and on 22nd November 1923, she made a will by which she devised the property in dispute to the junior widow, Balraj Kuar, for her life, and, after the latter's death, to the two daughters of her husband in equal shares as absolute owners. In June 1929, Annapurna Kuar died, and the estate left by her was claimed by the surviving widow, but her claim was resisted by the sons of Babu Indarsen Singh's daughter Brijraj Kuar. The revenue authorities, who dealt with the dispute in the first instance, accepted the counter claim made by the sons of Brijraj Kuar; and directed that the mutation of the estate should be effected in their favour.

Thereupon, Balraj Kuar commenced, in May 1930, the present action to recover possession of the property. She founded her title upon the will made in her favour by Annapurna Kuar in November 1923, and it is common ground that she would be entitled to succeed to the estate, if Annapurna Kuar was competent to make the testamentary disposition in her favour. It is however clear that she

could make the devise in question only if she had got an absolute estate from her husband.

Now, it is an undisputed fact that Babu Indarsen Singh made a will on 15th March 1899, and that it was followed by a codicil on 29th September 1910. The crucial question is whether the testator thereby conferred upon Annapurna Kuar an absolute estate in his property. The answer to the question depends upon the interpretation to be placed upon his will, which must be read along with his codicil. The parties are agreed that both these documents were executed by him, and that he was competent to do so. The trial Judge, after an elaborate discussion of the terms of both the will and the codicil, reached the conclusion that the testator gave his senior widow an absolute estate of inheritance, and that conclusion has been endorsed on appeal by a Division Bench of the Chief Court of Oudh. On this appeal preferred by the defendants, their Lordships have carefully examined the scope and effect of the various clauses contained in the will and also the codicil in the light of the arguments advanced by the learned counsel on both sides; and are not prepared to dissent from the concurrent decisions of the Courts in India.

The language of the codicil, as will be seen presently, does not create any difficulty; but the clauses of the will making dispositions of the property have given rise to a controversy between the parties. The will is couched in high-flown Urdu language, but its translation embodied in the judgment of the trial Judge was, as stated by the learned Judges of the appellate Court, "accepted to be correct for all practical purposes" by both the parties in the Courts below. The testator, after describing his property, proceeds to dispose of it as follows:

In respect of all this property I make a will according to the conditions below in favour of my high placed wife Mt. Annapurna Kuar Sahiba, daughter of Sardar Shivji Singh, for whom I have great affection and love, and who has looked upon serving me in every way and giving me satisfaction as her main duty, and has given preference to it over her comfort, health and heartfelt desires; and in future also judging from her refined and sound common sense and her far reaching and subtle intellect as well as from her genuine, artless and unadulterated affection for me, I have this strong hope that this very condition of hers in accordance with my temperament shall continue all throughout my life without any change or alteration.

1. If, God forbid, I do not have any male issue or if one is born and dies thereafter, then my aforesaid high placed wife, namely Mt. Annapurna Kuar, shall after me always remain in possession and enjoyment of my aforesaid estates and landed property which I shall possess at present and might possess in future with full powers of transfer of every description forever in this way, that she may, on the occasion of any suitable and proper necessity arising, sell any share or part of the land or the entire estate, or she may make any other kind of transfer or may appoint anyone as her successor except any male or female issue of my Uncle B. Chandrez Singh (whom, God forgive and on whom may He have mercy).

2. In the event of no male issue of mine existing, the said high-placed wife after her own possession and enjoyment of the estate is authorised to select any one of my daughter's issue as her successor.

3. In case the said wife does not do so, and in the event of my daughter or daughters having more than one issue then the said children after the death of my high-placed wife will possess and enjoy my estate and property in the same manner and subject to the same conditions as my own child or children would have held possession of the property.

4. If, God forbid, there be no male or female issue even from the daughter, then the said high-placed wife, without regard to the conditions and limitations laid down in the second and third clauses mentioned in this instrument, shall have power to transfer by any means her estate to her own family or to any stranger or to appoint any one as her successor.

5. In no case and under no circumstances and for no reason whatsoever shall any right of inheritance in my estate, property or thing devolve on any male or female descendant of my uncle B. Chandrez Singh (whom God forgive and on whom may He have mercy) but solely on my male or female issue : nor shall the said high-placed wife be competent to transfer under any circumstances, and for any reason any right mentioned in this deed to any descendant, male or female, of my said uncle B. Chandrez Singh.

These are the material provisions of the will, and they have to be considered with the document of 29th September 1910, which is described by the testator as a deed of declaration or acknowledgment, but is admitted to be a codicil. This instrument, the language of which is free from ambiguity, is in these terms: By virtue of this deed of declaration or acknowledgment I hereby make manifest and known (to all and sundry) that I have by means of the will of 15th March 1899, appointed and declared my wife Thakurain Annapurna Kuar permanent owner; like myself she has and will continue to have proprietary rights of an owner in my entire talukdari estate and properties both moveable and immovable situated in But of course if a male child were to be born to me from the womb of Thakurain Annapurna Kuar either before or after the birth of a son from the womb of my second wife Thakurain Balraj Kuar, then that son will be the permanent owner (of my estate) and in any case my second wife will be entitled to a maintenance allowance (from the estate).

And if no son is born to me from the womb of Thakurain Annapurna Kuar (but) a son is born to me from the womb of Thakurain Balraj Kuar, then he alone will be the permanent owner of the estate and property mentioned above.

The sons of my uncles' sons neither have nor shall have, under any circumstances, any right or interest in my property and estate.

These two documents constitute the testamentary instrument, and in interpreting them it is the duty of the Court to find out the intention of the

testator. It is clear that that intention is to be gathered from the language used by the testator, because it is the words used in the instrument by which he has conveyed the expression of his wishes. The meaning to be attached to the words may however be affected by surrounding circumstances; and, when this is the case, those circumstances should be taken into consideration. As laid down by S. 82, Succession Act, the meaning of any clause in a will is to be collected from the entire instrument; and all the parts of a will are to be construed with reference to each other and so as, if possible, to form one consistent whole. Where it is not possible to reconcile all the parts, the latter must prevail.

Now, a perusal of the will and the codicil leaves no doubt that the testator was most anxious that no part of his estate should, in any event, go to his uncle Chandrez Singh or to his descendants. This was the overriding consideration as revealed by the documents, and he did not want to leave any loophole which would enable them to get his property either by succession or by transfer. It is also clear that his wife Annapurna Kuar, to whom he refers in eulogistic terms, was the chief object of his bounty, and that he desired to benefit her as far as possible.

It is however argued that he gave her only a restricted and not an absolute estate; and that argument rests upon the phrase "on the occasion of any suitable and proper necessity arising" which is found in Cl. 1 of the will. It cannot be seriously disputed that, in the absence of that phrase, the language of the clause in question is wide enough to confer upon her an absolute estate of inheritance. The learned Judges of the Chief Court hold that the testator did not intend to restrict her estate, but gave her "the power to decide as to whether suitable and proper necessity" for a sale has or has not arisen. Whatever may be the exact meaning of the phrase, it limits only her power of sale, but does not qualify the right of making any other kind of transfer or of appointing a successor. Indeed, the language of the phrase appears to be wholly inappropriate in its application to the power of appointing a successor. The view that he intended to give her an absolute estate of inheritance receives confirmation from the expressions "her successor" and "her estate" which are to be found in Cls. 1, 2 and 4.

All doubt on the subject is however dispelled by the codicil, which states in explicit terms that the testator had, by the will of 15th March 1899, declared his wife Annapurna Kuar to be "permanent owner" of the estate like himself. He himself was admittedly the absolute owner of his property, and he makes it clear in this document that he intended to give her an estate similar to his own. This is the testator's own interpretation of the language used by him in his will, and this interpretation must be treated as authoritative. Their Lordships observe that the trial Judge and also both the Judges of the Court of appeal were familiar with the language used by the testator, and their opinion, as to the meaning of the clause, is entitled to great weight. They are unanimous that the testator intended to bestow an absolute estate of inheritance upon the lady, and the appellant has not satisfied their Lordships that that decision is erroneous.

It is true that some of the later provisions of the will appear to be in conflict with the absolute estate given to her by O1. 1. While O1. 2 is merely permissive, C1. 3 can have no operation, if she takes the estate as an absolute owner. In the event of her dying without disposing of the property or appointing a successor, the estate would descend to her heirs ab intestato, and not to the persons mentioned in O1. 3. Nor can C1. 4 take effect, as the power to transfer or to appoint a successor, which it seeks to confer, has already been given to her by the wide language of C1. 1; and the provision in C1. 4 appears to be a surplusage.

There can, however, be no doubt that if these clauses are repugnant to the absolute estate created in favour of the lady, they cannot cut down that estate and must consequently be held to be invalid. For the reasons stated above, their Lordships concur with the Court's in India that Annapurna Kuar, took an absolute estate of inheritance under the testamentary instrument of her husband and that she was competent to make the devise invoked by the respondent. They will therefore humbly advise His Majesty that the appeal should be dismissed with costs.