

(1981) 12 CAL CK 0013
In the Calcutta High Court

Lalit Mohan Mondal and Another

APPELLANT

Vs

Uma Rani Mondal and Others

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Hindu Succession Act, 1956 — Section 14
Succession Act, 1925 — Section 87, 88

Citation : AIR 1982 Cal 52 : 86 CWN 398

Hon'ble Judges : Pradyot Kumar Banerjee, J; Bimalendra Nath Maitra, J

Bench : Division Bench

Advocate : Ranjit Kumar Banerjee and Naresh Nath Banerjee, for the Appellant; S.N. Ganguly, Kumud Ranjan Purkait and Parimal Das, for the Respondent

Final Decision : Allowed

Judgement

1. The plaintiffs instituted the suit for the grant of Letters of Administration. They alleged that on the 21st November, 1955, their father, Nagendra Nath Mondal, executed a Will. On the 18th December, 1967, he expired. The Executrix under the Will was his wife, Aiswarjyamoyee Dasi. She instituted Original Suit No. 13 of 1968 for grant of a probate in her favour. But she was prevailed upon by the interested parties to withdraw that suit. The plaintiffs, who are three of his sons, are the beneficiaries under the Will.

2. Defendant Nos. 1 and 2, who are Nagen's sons, filed a written statement. It has been alleged, inter alia, that the suit is not maintainable and the plaintiffs have no locus standi to bring it. Nagendra Nath Mondal did not execute any such Will. It is not at all a genuine document. He had been suffering from illness from before the execution of the alleged Will. There was no reason to deprive his two sons (contesting defendants) of his property. Moreover, Nagendra Nath Mondal filed Title Suit No. 714 of 1965 in the 3rd Munsif's Court, Sealdah. After his death, all his legal heirs and representatives including the defendants were duly substituted in his place.

3. The learned Additional District Judge accepted the plaintiff's version, decreed the suit and issued Letters of Administration with a copy of the Will annexed. Hence this appeal.

4. It has been argued on behalf of the appellants that the suit is not maintainable. Reference has been made to Jarman on Wills, 7th Edition, Vol. III, page 2080, to show that it has become an established rule, that where the bequest is simply to "A", and in case of his death, or if he dies, to "B", "A" surviving the testator, takes it absolutely. Reference has also been made to Williams on Executors and Administrators, 14th Edition, Vol. II, paragraph 1022, at page 665, to show that if there is an immediate absolute grant, to which is annexed a condition, no matter how it is worded, to the effect that if the legatee dies, then the property shall go over to another, this condition will be held to refer to the death of the legatee in the testator's life-time, unless there appears in the Will an intention to the contrary. The case of (1) Jehangir Dadabhoy v. Kaikhusru Kavasha, in LR 5\42 IA 71 at page 78 has been cited to show, how after the testator's death, his estate has to be made over.

5. The learned Advocate appearing on behalf of the respondents has stated that the suit was rightly decreed. Reference has been made to sections 87 and 88 of the Indian Succession Act. Section 87 shows that the testator's intention shall not be set aside because it cannot take effect to the full extent. Section 88 provides for a contingency where two clauses of a Will are incongruous so that they cannot possibly stand together and in that event, the last one shall prevail. It has been stated that the Will in question clearly shows that no absolute interest was given by Nagendra Nath Mondal to his wife, Aiswarjhamoye Dasi. On the contrary, the entire reading of the Will shows that a life interest was given to her because it has been stated that in case she dies leaving any portion of those properties, the testator's third son, Amulya Kumar Mondal, fourth son, Sankar Hari Mondal and youngest son, Rabindra Nath Mondal, or in the absence of any of them, his or their heirs will receive the same. These clauses are inconsistent. So, the last one will prevail and the Court will find that the testator's intention was to confer a mere life estate on her.

6. Reference has also been made for the respondents to Theobald on the Law of Wills, 10th Edition, page 303, to show that the fact that the Will contains other devises with words of limitation will not prevent a devise without such words from passing the fee. A devise without words of limitation, followed by a devise of the same property to another person with words of limitation, will give the first devise a life interest only. In this case, there are such limitations and the Court will hold that a mere life interest was given by Nagendra Nath Mondal to his wife.

7. The case of (2) Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, has been referred to for them to show that it is one of the cardinal principles of construction of Wills that if it is legally possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Lastly, the case of (3) Navneet Lal alias Rangi Vs. Gokul and

Others, at page 797 has been referred to show that in construing the language of the Will, the Court is entitled to put itself to the testator's anschair and is bound to bear in mind also other matters than merely the words used. The Court must find out the intention of the testator by reference to the words which have been actually employed. The true intention has to be gathered not by attaching importance to isolated expressions, but by reading the Will as a whole with all its provisions and ignoring none of them as redundant or contradictory.

8. In the case of *Jehangir v. Kaikhusru* (supra), the Will laid down that the testator's estate would be divided equally between his two sons, Pallonji and Jehangirji, and the latter would manage the estate. If Pallonji gets a son, half of the estate will go to him on his attaining full age. If he has no son, Jehangirji will give away his son as Pallonji's adopted son. The testator died in 1866 and Pallonji in 1897 intestate and without any son. It was alleged that in 1866, Jehangirji gave his son to Pallonji. Jehangirji's son claimed to succeed under the Will to Pallonji's half estate. It was held that such claim could not be allowed and the Will vested a moiety of the estate in Pallonji absolutely upon the testator's death.

9. Now, the broad fact is that Nagendra's wife did not die during his life-time. He instituted Title Suit No. 714 of 1965 in the 3rd Munsif's Court at Sealdah. During the pendency of that suit, he breathed his last and all his heirs and legal representatives were duly substituted. Then his widow filed Original Suit No. 13 of 1968 for grant of a probate in her favour and withdrew the same. Let us now consider the provisions of the entire Will with a view to gathering the testator's intention and for arriving at a finding whether an absolute estate or a mere life-estate was conferred on Aiswarjyamoyee Dasi. That Will, Ext. 1, shows, "I give away thereafter to my lawfully married wife, Srimati Aiswarjyamoyee Dasi, all those that will remain after meeting the expenses of my funeral rites absolutely with the rights of gift, sale etc. user at her pleasure. But if she dies leaving anything of those properties, my third son, Sriman Amulya Kumar Mondal, and the fourth and the youngest son, Sriman Sankar Hari Mondal and Sriman Rabindra Nath Mondal, or in the absence of any of them, his or their legal heirs will receive the property.

10. A proper reading of the entire Will, Ext. 1, clearly shows that there are no such limitations, as envisaged by Theobald on his *Treatise on the Law of Wills*, at page 303. The cases of *Ramchandra v. H. Brite* (supra) and of *Navneet Lal v. Gokul* (supra) do not lay down any contrary proposition. Moreover, the case of *Navneet Lal v. Gokul* was considered by a Bench of the Judges presided over by Chandrachud, C.J., in the latest Supreme Court case of (4) *Gopala Menon Vs. Sivaraman Nair and Others*, . There also the testator used the expression that his property "shall vest in my wife...with power of alienation in the present case. It has been stated in that case that an unrestricted power of disposal is necessary to make it an absolute estate for the wife and not a limited interest. In case of conflict between the provisions of a Will, the conflicting clauses will have to be

reconciled. The words "property shall vest in my wife...with power of alienation" suggest that the testator intended to confer on her an absolute estate and not a limited interest in the property.

11. Law is that in order to gather the testator's intention the Will has to be read as a whole.

12. It has already been stated that the testator stated that Aiswarjyamoyee would get the property absolutely with full right of alienation by way of gift, sale etc. at her pleasure. The use of these words confirming unfettered power of transfer shows that the testator's intention was to confer an absolute estate on her and consequently, the subsequent clauses are of no effect whatsoever. From a construction of the contents of the entire Will, we hold that Nagendra Nath Mondal intended to confer an absolute estate with full power of alienation to his wife, Aiswarjyamoyee Dasi, and he did not intend to confer a mere life-estate on her.

13. She applied for a probate and then withdrew the suit. She did not execute any Will. According to the provisions of section 14(1) of the Hindu Succession Act, she got an absolute estate. After her death, all the children of Nagendra Nath and Aiswarjyamoyee Dasi will get that property, and we hold accordingly. The submissions advanced on behalf of the respondents cannot be accepted. We, therefore, find that the suit instituted by their three sons for grant of Letters of Administration is not maintainable in law and they have no locus standi to file the suit.

The appeal is allowed. The judgment and decree appealed against be set aside and the suit dismissed without any order as to costs.

Banerjee, J.

14. I agree.