

(2001) 08 DEL CK 0084
In the Delhi High Court
Case No : Suit No. 2024 of 1997

Maj. Gen. Rajinder Singh Chowdhary	APPELLANT
Vs	
Sardar Manjit Singh Chowdhary and Others	RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Hindu Succession Act, 1956 — Section 14
Succession Act, 1925 — Section 138, 82, 88

Citation : AIR 2002 Delhi 135 : (2002) 95 DLT 302 : (2002) 61 DRJ 135

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. Daljit Singh and Ms. Anu Narula, for the Appellant; Mr. Gulab Rai Chhabria, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This suit has been filed by the plaintiff for partition of the properties on the ground that Sardar Mohan Singh Chowdhary, father of the parties left a Will dated 22.2.1978 by which he bequeathed all his movable as well as immovable properties including house No.9707/XVI, 2C/23, New Rohtak Raod, New Delhi in favor of his wife Smt. Ved Kaur absolutely with full powers of disposal in any manner she liked. The written statement was filed by defendant nos.1 and 2 i.e.. Sardar Manjit Singh Chowdhary and Dr. Mohinder Pratap Singh Chowdhary, inter alia, contending that the Will of their deceased father only created a life estate and no absolute bequest was made in favor of Smt. Ved Kaur, mother of the parties.

2. On the pleadings of the parties, on 28.8.1998 and issue was framed to the following effect :

(i) Whether on the death of Shri Mohan Singh Chowdhary, his widow Smt. Ved Kaur became an absolute owner of all the properties mentioned in Schedule-B to the plaint by virtue of the Will dated 22.2.78? If so, to what effect?

(ii) Relief.

3. It was further stated at the bar the learned counsel appearing for the parties that the entire case hinges on the interpretation of Ex.P 1 i.e. the Will dated 22.2.1978 and the matter could be disposed of without adducing any oral evidence into the category of short cause. Predecessor of this Court on 2.2.2000, inter alia, held that the judgment of a Division Bench of this Court in Raghbir Singh and Others Vs. Budh Singh etc., may not be a good law in view of the law laid down by Supreme Court in Gopala Menon Vs. Sivaraman Nair and Others, and referred the matter before a Full Bench. Pursuant to that reference a Full Bench was constituted and the Full Bench vide its decision on 15.9.2000 returned the reference in the following terms:

(i) In the above background we felt unnecessary to go into the question relating to correctness of view expressed in Raghbir Singh's case (supra)

(ii) The Court while dealing with the matter has to read the Will and decide true intention of the testator in the background of legal principles as set out above. We, Therefore, feel that is a matter which shall be dealt with by the learned single Judge. It is necessary to state that while deciding the suit, the legal principles applicable to interpretation of wills as broadly stated above shall be kept in view. The reference is accordingly answered.

4. Mr. Daljit Singh, learned senior counsel appearing for the plaintiff has contended that Ex.P 1 is the Will of the father of the parties by which he bequeathed all his movable and immovable properties including the property in question in favor of his wife Smt. Ved Kaur and as Smt. Ved Kaur died intestate leaving behind plaintiff and defendants as legal heirs, they were entitled to 1/7th share as per the law of succession.

5. It was contended by Mr. Singh that the bequest made by Sardar Mohan Singh to his wife was absolute and anything which was repugnant to the absolute bequest given to Ved Kaur was inconsequential as from the plain reading of the Will it would be manifestly clear that the bequest made to the wife was absolute. Learned counsel for the plaintiff placed reliance on Section 138 of Indian Succession Act, which is reproduced below:

"Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person. where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction."

6. Reliance was placed by Mr. Singh on Gopala Menon Vs. Sivaraman Nair and Others, and it was contended that absolute and unrestricted power to dispose of the property is a necessary incident of an absolute estate and that being the situation the testator in the Will has granted an unrestricted power to dispose of the property in her sole discretion as well as to manage and to deal the property

in any manner to Ved Kaur. It was further contended that if an absolute grant is burdened with a restraint on alienation, the grant is good and the condition void. In support of his contention, learned counsel for the plaintiff further cited Shantilal Babubhai and Others Vs. Bai Chhani and Others, , a full Bench decision of Gujarat High Court and on the basis of the aforesaid discussion it was contended that once absolute interest in the property was granted by the testator to the first donee no subsequent dispossession could be made of the interest of the property which would be repugnant to the absolute interest granted to the first donee and the subsequent dispossession would be void as being repugnant to the absolute estate first granted.

7. To buttress his arguments, Mr. Singh cited Lalit Mohan Mondal Vs. Profulla Kumar Mondal (Deceased through his L. Rs.), . On the basis of the aforesaid authority, learned counsel for the plaintiff has contended that absolute bequest was made in favor of Smt. Ved Kaur and whatever has been stated which is repugnant to that grant of absolute estate is void and cannot be considered. Mr. Singh further contended that as a matter of fact in Raghbir Singh's case (supra), the question of repugnancy of Section 138 was not considered by the Division Bench. He has further contended that inconsistency and repugnancy are two different fields and the decision of Kanwaljet Singh Chowdhary Vs. Harnam Singh and Another, cited by the learned counsel for the defendant was a case where a life estate was created in favor of the donee and, Therefore, that case is not applicable to the facts and circumstances of this case.

8. On the other hand, Mr. Gulab Rai Chhabaria, learned counsel for the defendants has contended that will has to be read as a whole to cull out the real intention of the testator. He has further contended that will is not like other conveyances. Therefore, the rule of construction of Will is different than that of construction of other conveyance, like mortgages and gifts etc. He has contended that when property remains available with the first donee and the testator has intended it in a particular manner to be bequeathed, the intention of the testator cannot be nullified as actual effect to the words is to be given its meaning in interpreting the contents of the Will. Counsel for the defendants has contended that the authority of Gopala Menon's case and Shantilal Babubhai & Ors.'s (supra) cited by learned counsel for the plaintiff are distinguishable. He has contended that in both the aforesaid cases the first donee has exercised the right during their life time, whereas it is not the case in the present case as no right was exercised by the first donee in her lifetime. Distinguishing the case of Lalit Mohan Mondal (supra), learned counsel for the defendant has contended that in that case also the Court took the decision in view of Section 14 of the Hindu Succession Act and not on account of the fact that it was an absolute bequest. In support of his contention, learned counsel for the defendant has cited Kanwaljet Singh Chowdhary Vs. Harnam Singh and Another, and has contended that the Court should not read one part of the Will only, different part of the Will should be considered harmoniously. Reliance was placed by the learned counsel for the defendant to the observation of the Division Bench of this Court in Kanwaljet

Singh's case (supra) to the following effect :

"Learned Counsel for the appellant then cited the decision of the Delhi High Court in Raghbir Singh and Others Vs. Budh Singh etc., . In that case it was mentioned that the central rule of construction of Wills is that the intention of the testator should be carried out. With that central object in view, the different parts of the Will should be construed harmoniously. No bequest in the Will would have been made as a futile exercise. The Court could read down the language of one part of the Will if giving full effect to the general words of that part of the Will would result in making the other part of the Will defeasible. We have no quarrel with the proposition laid down in the above said Judgment. In fact in para 8 of that Judgment, it is stated that the principle in Section 82 of the Indian Succession Act that the intention of the testator is to be gathered from the entire instrument would prohibit the Court from considering the first part of the Will alone whereby the testator purported to give an absolute estate to the widow in that case. It was pointed out that the language in which such absolute estate was conferred by the testator on the widow has to be read along with the other parts of the Will so that the whole of the Will would become meaningful. If the Will was read as a whole, the properties would first go to the widow and after her death to the appellants therein. Far from supporting the appellant's case, this case goes against them."

9. Mr. Chhabaria has contended that in view of the fact that the testator can change his mind always and create another interest in place of the bequest already made, Therefore, what has been stated in the earlier part in the Will or subsequent part of the Will cannot be made superfluous by ignoring the same or by treating the same as inconsequential. In support of his contention, he further cited *Kaivelikkal Ambunhi (Dead) by LRs. & Ors. Vs. H. Ganesh Bhandary* 60 (1995) DLT 832. Counsel for the defendant further contended that provision of Section 138 of the will not be applicable to the present case and has further contended that as a matter of fact even if there is inconsistency, Section 88 of the Indian Succession Act saves such inconsistency and lastly contended that last stand taken by the testator must prevail than the earlier stand. Section 88 of the Indian Succession Act is to the following effect:

"The last of two inconsistent clauses prevails. -- Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail."

10. It was contended that Full Bench has also held that while interpreting other document, if there was any inconsistency between the earlier and the subsequent part or specific clauses inter se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a will under which the subsequent part, clause or portion prevails over the earlier part.

11. I have given my careful consideration to the arguments advanced by the learned counsel for both the parties. The only question involves is whether will

made by Mohan Singh Chowdhary dated 22.2.1978 created absolute bequest in favor in Smt. Ved Kaur or what was intended by the testator was creation of a life estate in favor of Smt. Ved Kaur. It is necessary of reproduce the will made by Shri Mohan Singh Chowdhary same is to the following effect :-

I, Mohan Singh Chowdhary (Retd.) E.A.C. Forests, son of Ch. Gobind Singh, Resident of House no. 9707/XVI, 2C/23, Rohtak Road, New Delhi-110005, revoke hereby all my previous Wills and Codicils, if any, and declare This Will made at Delhi on this 22nd day of February, 1978 to be my last WILL and testament.

WHEREAS I have attained old age and wish that there be no dispute after my death amongst my legal heirs and successors i.e., my wife, Shrimate Ved Kaur, daughter of late Sardar Hukam Singh Tehsildar and my sons and daughter regarding the inheritance or sharing of my movable or immovable properties, I am desirous of making a WILL, which I do hereby;

AND WHEREAS during my lifetime out of my savings in Government service and afterwards, I acquired a 2-1/2 storeyed house constructed on Plot no.2C/23, New Rohtak Road, New Delhi-110005, and a small amount of cash lying deposited in Bank;

AND WHEREAS I have a wife Shrimate Ved Kaur and six sons and one daughter;

- (1) Lt. Col. Saroop Singh Chowdhary
- (2) Brigadier Sarjit Singh Chowdhary
- (3) Brigadier Rajinder Singh Chowdhary
- (4) Dr. Mohinder Partap Singh Chowdhary, M.Sc., Ph.D.
- (5) Shrimate Harsharan Kaur, B.A., wife of Lt. Col. Basant Singh
- (6) S.Shamsher Singh Chowdhary, Textile Engineer,
- (7) Ch. Manjit Singh, B.A.A LL.B.

All my sons , their wives and children are very good to both of us and so is our daughter.

As Manjit Singh is not so financially strong, so I am anxious about him and desire to help him. Besides, all my sons except Manjit Singh are well off financially and hold good social position. Manjit Singh, though intelligent and well educated, has not been able to secure a suitable job of reasonable income. Manjit Singh has been living with us and also now lives with his wife and children. With the exception of Manjit Singh and other one or two, all my children have their own houses. Excepting Manjit Singh, others can construct their respective houses. I am anxious about Manjit Singh, the youngest. He cannot construct a house. Both Manjit Singh and his wife, Balbir Kaur, are very helpful and look after me and my wife.

Dr. M.P. Singh with his wife and children is also living with us. He was good income but has yet no house. They too are very helpful.

Now by this WILL I hereby bequeath and devise all my movable and immovable properties including my House No.9707/XVI, 2C/23, New Rohtak Road and Fixed Deposit and Savings Bank Account in bank and movable and immovable properties as follows:

(i) That after my death my wife, Shrimati Ved Kaur, daughter of S.Hukam Singh, shah be the sole and absolute owner will full powers of disposal in any manner she likes, of my House bearing No. 9707/XVI, 2C/23, New Rohtak Road, New Delhi-110005.

(ii) All my Fixed Deposits, Savings Bank Accounts and other money lying in Banks, Units of Unit Trust of India and my all other movable assets and property including household goods and belongings shall also go to my wife above named. She shall hold the same and also manage as an absolute owner thereof with full power and rights of disposal in any manner she may like.

(iii) My sons and daughter shall have no right to interfere and restrain her, in any manner, from managing, controlling or disposing of my movable and immovable assets, which my wife may acquire under this Will.

I further desire that in case my wife, Smt. Vide Kaur, expires during my life time or in case she expires after me, intestate and without disposing of my movable and immovable properties, assets and belongings etc. be disposed of as described hereunder :

(a) House no.9707/XVI, 2C/23, New Rohtak Road, New Delhi, 2-1/2, storeyed, if available, will devolve only on my youngest son Manjit Singh and fourth son, Dr. Mohinder Partap Singh. Manjit Singh will get 4/5th (four-fifth) share and Dr. Mohinder Partap Singh 1/5 (one-fifth) share in the said house. I bequeath to Dr. M.P. Singh a 3-room flat on the south side on the first floor of the said house; this would more or less be equivalent to 1/5th share of Dr. M.P. Singh in the said house and rest of the whole house would go to the share of Manjit Singh and this would more or less cover 4/5th share of Mr. Manjit Singh in the said house.

(b) All my movable assets, including Saving Bank Accounts, Fixed Deposit Accounts and other money lying in the State Bank of India, State Bank of Bikaner and Jaipur, Rohtak Road, New Delhi, Punjab National Ban, Karol Bagh, New Delhi and other Banks, Units of Unit Trust of India, jewellery and ornaments lying in the locker of the State Bank of Bikaner and Jaipur, New Rohtak Road, New Delhi, shall be equally shared by all six sons and daughter named above as a humble gift as token of my love and affection for them.

(c) That all my household goods lying in my House shall go to my sons Manjit Singh and Dr. M.P. Singh in the manner they are lying in their respective shares at the time of my death.

That my wife Smt. Ved Kaur shall be the Executor of my Will. In her absence Manjit Singh shall be the Executor of my this Will.

IN WITNESS WHEREOF, I, Mohan Singh Chowdharay, above named, have signed this Will in the presence of Witnesses hereafter mentioned, who have also signed this Will as witnesses thereof in my presence.

TESTATOR"

12. The Testator bequeathed all this movable as well as immovable properties including House no.9707/XVI, 2C/23, New Rohtak Road, New Delhi in favor of his wife Smt. Ved Kaur absolutely with full powers of disposal in any manner she likes. Learned counsel for the plaintiff relied heavily on the words that none of his sons and daughter had any right to interfere with or could restrain Ved Kaur in any manner from managing, controlling or disposing of the movable and immovable assets which she was to acquire under the Will. On the basis of authorities Gopala Menon's case (supra), Shantilal Babubhai & Ors. (supra) and Lalit Mohan Mondal's case (supra) the learned counsel for the plaintiff has vehemently contended that the issue which has been framed has to be decided in favor of the plaintiff as Smt. Ved Kaur became the absolute owner with powers to dispose of the property and the property has to be partitioned equally between the legal heirs of Smt. Ved Kaur as Smt. Ved Kaur has died intestate.

13. Full Bench which was constituted after the reference from this Court after considering Ram Gopal Vs. Nand Lal and Others, , Gnanambal Ammal Vs. T. Raju Ayyar and Others, , Raj Bajrang Bahadur Singh Vs. Thakurain Bakhtraj Kuer, , Pearey Lal Vs. Rameshwar Das, , Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, and Navneet Lal alias Rangi Vs. Gokul and Others, laid down certain principles which are well established. The following are those principles:-

1. In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed.

2. In construing the language of the will the court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship the probability that he would use words in a particular sense. But all this is solely as an aid to arriving at a right construction of the will and to ascertain the meaning of its language when used by that particular testator in that document.

3. The true intention of the testator 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.

4. The court must accept, if possible such construction as would give to every

expressions some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further where one of the two reasonable construction would lead to intestacy, that should be discarded in favor of a construction which does not create any such hiatus.

5. To the extent that it is legally possible, effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a court of construction will proceed to the farthest extent to avoid repugnancy so that effect could be given as far as possible to every testamentary intention contained in the will.

14. Law relating to interpretation of the will is well settled that each and every word of the will has to be understood in order to understand the intention of the testator. The intention of the testator has to be found out on the reading of the will and there cannot be any hard and fast rule of uniform application to find out as to whether grant was absolute or it was subject to any condition or stipulation. The true intention of the testator has to be gathered not only by attaching importance to one paragraph or one sentence in an isolated manner but by reading the will as a whole with all the provisions and not ignoring any expression as superfluous, contradictory or inconsistent. It is also not proper to compare the words of one will with another in order to apply the decision of a particular case based on another will. In the matter of interpretation of will cases to provide light and precedent in the context of laying down the general principle of construction, the intention of the testator has to be gathered primarily from the language of the will which has to be read as a whole without indulging into any conjecture or speculation. The Full Bench as observed earlier in para-2 above, *inter alia*, held that in construing the language of the will the court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matter than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship the probability that he would use words in a particular sense. But all this is solely as an aid to arrive at right construction of the will and to ascertain the meaning of its language when used by that particularly testator in that document.

15. From the bare reading of the will after giving the name of all his sons, daughter and wife testator has written :-

"As Manjit Singh is not so financially strong, so I am anxious about him and desire to help him. Besides, all my sons except Manjit Singh are well off financially and hold good social position. Manjit Singh, though intelligent and well

educated, has not been able to secure a suitable job of reasonable income. Manjit Singh has been living with us and also now lives with his wife and children. With the exception of Manjit Singh and other one or two, all my children have their own houses. Excepting Manjit Singh, others can construct their respective houses. I am anxious about Manjit Singh, the youngest. He cannot construct a house. Both Manjit Singh and his wife, Balbir Kaur, are very helpful and look after me and my wife."

16. In the next paragraph the testator expressed his concern with another son in the following manner :-

"Dr. M P Singh with his wife and children is also living with us. He has good income but has yet no house. They too are very helpful."

17. After these recitals the testator bequeathed all the movable and immovable assets in favor of Smt. Ved Kaur with the direction that she will hold the same absolutely with full powers and rights of disposal in any manner she likes with further observation that sons and daughter will have no right to interfere and restrain her in any manner from managing, controlling or disposing of the movable and immovable assets. Thereafter in the will testator further stated :-

"I further desire that in case my wife, Smt. Ved Kaur, expires during my lifetime or in case she expires after me, intestate and without disposing of my movable and immovable properties, assets and belonging etc. be disposed of as described hereunder....."

18. If I agree with the submission of the learned counsel for the plaintiff that because the grant in favor of Smt. Ved Kaur was absolute, that means I have to overlook or not to consider the intention of the testator which has been expressed herein above and if I do that then this Court will not be construing the real intention of the testator. The Supreme Court in *Kaivelikkal Ambunhi (Dead) by LRs. & Ors.*'s case (supra) held :-

"The rules of interpretation of the "Will" are different from the rules which govern the interpretation of other documents say, for example, a Sale Deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or the subsequent part or specific clauses inter se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will" the testator can always change his mind and create another interest in place of the bequest already made in the earlier part on an earlier occasions. Undoubtedly, it is the last Will which prevails."

19. From the ratio of *Kaivelikkal Ambunhi (Dead) by LRs. & Ors.*'s case (supra) it cannot be said that the bequest made in favor of two sons by the testator in case the property still remains on the death of Smt. Ved Kaur, could not be construed

worthy of a bequest as per the will on the ground that anything which was inconsistent with the bequest made in favor of Smt. Ved Kaur was repugnant, would not be the correct interpretation of the intention of the testator.

20. It is common knowledge that in India a husband would like to secure a good and comfortable living for his wife so that after his death the wife is not ill-treated and it is that desire of the testator which has manifested in using the words which have been used while granting a bequest in favor of the wife. At the same time, he was conscious that among all his sons most of them are happily settled, have their own houses, two sons were economically weak, they were not in a position to sustain themselves, Therefore, the estate of the testator was bequeathed after Smt. Ved Kaur to Manjit Singh and Dr. M P Singh. No bequest in the will can be said to be a futile exercise. This Court in Lt. Col. Kanwaljit Singh Chowdhary's case (supra) held:-

".....No bequest in the Will would have been made as a futile exercise. The Court could read down the language of one part of the Will if giving full effect to the general words of that part of the Will would result in making the other part of the Will defeasible."

21. The Court further stated :-

" We have no quarrel with the proposition laid down in the above said Judgment. In fact in para 8 of that Judgment, it is stated that the principle in Section 82 of the Indian Succession Act that the intention of the testator is to be gathered from the entire instrument would prohibit the Court from considering the first part of the Will alone whereby the testator purported to give an absolute estate to the widow in that case. It was pointed out that the language in which such absolute estate was conferred by the testator on the widow has to be read along with the other parts of the Will so that the whole of the Will would become meaningful. If the Will was read as a whole, the properties would first go to the widow and after her death to the appellants herein....."

22. The principles enunciated in Gopala Menon's case (supra), Shantilal Babubhai & Ors. (supra) and Lalit Mohan Mondal's case (supra) are well established principles that one a bequest has been made which is absolute and anything which is inconsistent would be repugnant and that has to be ignored. But can it be said that the present case while interpreting the will at hand in view of the concern and anxiety of the testator with regard to his two sons and his intention to bequeath the property after the demise of Smt. Ved Kaur and words which are used signifying the concern and well being of aforesaid two sons are superfluous it is in this context Court has to see as to whether bequest made in favor of Smt. Ved Kaur was absolute? The answer is in the negative. From the well laid down principle regarding interpretation of will and harmonious construction of the same, I hold that what was intended by the testator was to create a life estate in favor of Smt. Ved Kaur and not an absolute interest. The issue is answered accordingly.

23. As the decision of the issue has gone against the plaintiff, no relief in the suit can be granted in favor of the plaintiff, Therefore, the suit is dismissed with no order as to costs.