
(2003) 04 DEL CK 0084

In the Delhi High Court

Case No : Regular First Appeal : 31 of 2001

Maj. Gen. Rajinder Singh Chowdhary (Retd.)

APPELLANT

Vs

S. Manjit Singh Chowdhary and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 1 ILR Delhi 338

Hon'ble Judges : Usha Mehra, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Daljit Singh, with Mr. M.S. Vинаик, for the Appellant; Gulab Rai Chhabria, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Judgment and decree dated 27.8.2001 passed by the learned Single Judge dismissing suit filed by the appellant/plaintiff is a subject matter of challenge in the present appeal. By the impugned judgment, the learned Single Judge has held against the appellant, that the will dated 22.2.1978 executed by the deceased S. Mohan Singh Chowdhary has created a life estate in favour of his wife Smt. Ved Kaur. As a result of the said interpretation, the consequence being that on the death of Smt. Ved Kaur the bequest in respect of house No. 9707/XVII 2C/23 New Rohtak Road, New Delhi came into effect in favour of two of the four sons of the deceased namely, S. Manjit Singh and Dr. Mohan Pratap Singh in the ratio as per the will.

2. Parties to the suit, being the heirs of the deceased late S. Mohan Singh Chowdhary had not disputed that the deceased, during his life time, had executed a will dated 21.2.1978 bequeathing his movable as well as immovable properties including the house at Rohtak Road. Dispute related only to one part of the will, namely, bequest pertaining to the house in question.

3. The salient features of the will may be noted by us before we refer to the various authorities cited at the bar. After containing recitals pertaining to the

execution of the will, the reason as to why the will was being executed (old age and there should be no dispute amongst the legal heirs). Will contains recitals that the properties which were a subject matter of the will were as self acquired properties of the testators. After description of the family of the testator, a recital in the will reads as follows:-

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 has good income but has yet no house. They too are very helpful.

4. Thereafter, the bequest, in respect of the house read as follows:-

(i) That after my death my wife, Shrimati Ved Kaur, daughter of S. Hukam Singh, shall be the sole and absolute owner with 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)

(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. Ved Kaur, expires during my lifetime or in case she expires after me, intestate and without disposing of my movable and immovable properties, then all my remaining movable and immovable properties, assets and belongings etc. be disposed of as described hereunder:

(a) House No. 9706/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 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 4/5 share of Mr. Manjit Singh in the said house.

(b)

(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.

5. A will, somewhat similar to the will in question came up for consideration before a Division Bench of this Court. The will was interpreted as conferring the limited interest in favour of the wife. Decision is reported as Raghbir Singh and Others Vs. Budh Singh etc., In the present proceedings, the learned Single Judge, vide his order dated 2.2.2000 noted the said judgment, but in view of the judgment of the Supreme Court reported as Gopala Menon Vs. Sivaraman Nair and Others, prima facie was of the view that the judgement of this Court in Raghbir Singh's case may not be good law in view of the judgment of the Supreme Court in Gopala Menon's case. Since the judgement in Raghbir Singh's case was by a Division Bench, matter was placed before Hon'ble the Chief Justice for constituting a Full Bench.

6. The Full Bench answered the reference by its judgement dated 15.9.2000, holding that it was unnecessary to go into the question relating to the correctness of the view expressed in Raghbir Singh's case. On a reference to various judgments and texts relating to the Wills, the Full Bench held that in matters pertaining to Wills, the Court has to decide the true intention to the testator. How this true intention was to be determined, had to be on certain legal principles which were set out by the Full Bench. The same are as under:-

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 expression 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 the 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 constructions would lead to intestacy, that should be discarded in favour 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 a void repugnancy so that effect could be given as far as possible to every testamentary intention contained in the will.

7. The matter being placed before the learned Single Judge, after the reference was answered by the Full Bench, applying the principle of law enunciated by the Full Bench, learned Single Judge came to the conclusion that a true and correct interpretation of the will was that the testator created a life estate in favour of his wife Smt. Ved Kaur in respect of house at Rohtak Road. The two sons namely Manjit Singh and Dr. Mohan Pratap Singh, therefore, inherited the house in the ratio as per the will on the death of their mother Smt. Ved Kaur.

8. Assailing the said findings, S. Daljit Singh, Sr. Advocate on behalf of the appellant contended that the learned Single Judge had ignored the principles of law flowing out from the judgment of the Supreme Court in Gopal Menon's case as well as by the Full Bench of this Court and, therefore, urged that the impugned judgment be set aside. Counsel also contended that the judgment of the Full Bench of the Gujarat High Court reported as Shantilal Babubhai and Others Vs. Bai Chhani and Others, where similar will was construed was the correct law and urged that the same should be followed by us. Counsel also relied upon judgment of the Calcutta High Court reported as Lalit Mohan Mondal Vs. Profulla Kumar Mondal (Deceased through his L. Rs.), . Counsel for the respondent urged before us that the interpretation on the will in the judgment of the Division Bench of this Court in Raghubir Singh's case should be followed. Counsel also relied upon judgments of the Supreme Court reported as 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, , Navneet Lal alias Rangi Vs. Gokul and Others, Decision of a Division Bench of this Court reported as Kanwaljet Singh Chowdhary Vs. Harnam Singh and Another, as also the judgment of the Supreme Court reported as Kaivelikkal Ambunhi (dead) by LRs. and others Vs. H. Ganesh Bhandary, were also cited.

9. A will speaks after the death of the testator and since he is no more to explain and clarify what he intended to do under the will, the Court has to put itself in the armchair of the testator and construe the will. The five legal principles culled out by the Full Bench as a result of the various judicial pronouncements which should instruct a judge who is interpreting the will have been noted by us above.

10. We are of the opinion that except to refer to earlier judgments for purposes

of understand legal principles applied by Courts while interpreting Wills, it would indeed be unsafe for the Courts to look at decided cases and rely upon the particular wording of the will which was considered therein, to construe the will which is the subject matter before the Court. Indeed, as observed in *Re Minchell's W.T.* (1964) 2 ALL. E.R. 47: "One testator's nonsense is no guide to another testator's nonsense."

11. The law is one settled, to quote Lord Davey in *Hancock Vs. Watson* (1902) AC 14: "If you find an absolute gift to a legatee in the first instance and trusts are ingrafted or imposed on that absolute interest, the absolute gift takes effect and the restrictions fail being invalid." Once an absolute interest is created under a will the same cannot be cut down.

12. The difficulty, however, is in determining whether at all there is an absolute gift at the first instance. In applying the rule *Hancock's* case, the Court must be satisfied on the construction of the will as a whole that the testator has segregated the bequeath property from the remainder of his estate once for all or not. Issue have to be determined whether there remains an interest which will spring up and take effect on the happening of a contingency in the will or whether the bequest gets exhausted qua the subject matter of the bequest immediately on the death of the testator.

13. A word of caution. Inconsistency in the clauses of the will and harmonious construction of the different clauses of the wills are two different things. Inconsistency would arise where, in one clause of the will a bequest is made to A and later on, in another clause, the bequest is made to B, Both the clauses to come into operation on the death of the testator. Such a situation would be covered by the decision of the Supreme Court in *K. Ambhuni's* case (*supra*). The later clause would prevail over the former. In a case of a harmonious construction of the will the situation is different. A takes the bequest on the death of the testator and B claims the legacy in his favour on the death of A. A & B do not claim under the will at the same point of time. Interest of A & B require harmonious construction.

14. If the testator gives property to A and on A's death, gives what remains of the property (or the then balance or the like) to B, three different construction may be adopted:-

- 1) One construction is that A takes absolutely and the bequest over to B is void, because it is repugnant to A's absolute interest.
- 2) Another construction could be that A takes the life interest coupled with power to dispose of capital and subject thereto B takes absolutely.
- 3) A third construction is that A takes a life interest and subject thereto B takes absolutely.

(Refer *Theobald on WILLS* 16th Edition page 566).

15. Before we delve into the will, we are of the view that the judgment of the Supreme Court in Gopala Menon's case was somewhat misconstrued by the learned Single Judge who made the reference to the Full Bench and indeed the learned Single Judge who has passed the judgement under Appeal. In Gopala Menon's case, the Supreme Court was dealing with a will executed by the husband in favour of his wife whereunder the immovable properties were bequeathed to the wife as an absolute estate. Clauses 6 & 7 of the will which were being relied upon were noted by the Supreme Court in para 5 of the judgement as dealing with the income of the property and not with corpus. It was noted that the corpus was dealt with in clause 5 of the will. Drawing the distinction between the corpus and provisions dealing with the income of the property, the Supreme Court categorically held that the bequest of the corpus was unequivocal and absolute in favour of the wife. The Supreme Court held that the directions to the wife to apply a part of the income from the property for the family could not be read to mean that the intention of the testator was that his wife should take the property as Tavashi property on behalf of her sons and daughters.

16. We may now deal with the authorities cited at the bar:-

Gnanambal Ammal Vs. T. Raju Ayyar and Others, . It was held that the cardinal maxim to be observed by Courts in construing a will is to endeavour to ascertain the intention of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. Ram Gopal Vs. Nand Lal and Others, . The same view as in the earlier judgement being Gnanambal Ammal Vs. T. Raju Ayyar and Others, was expressed. It was added that surrounding circumstances may be considered but that is only for the purpose of finding out the intended meaning of the words which have been used by the testator. Raj Bajrang Bahadur Singh Vs. Thakurain Bakhtraj Kuer, . It was held that in cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership. Pearey Lal Vs. Rameshwar Das, . It was held that where there is some conflict in the will the Court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expression inoperative. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, . A view similar to the one in Pearey Lal Vs. Rameshwar Das, was taken. Navneet Lal alias Rangi Vs. Gokul and Others, Relying upon the four earlier judgments of the Supreme Court noted by us above, five principles of law were laid down. The same were extracted by

the Full Bench of this Court and have been extracted by us above.

17. Shantilal Babubhai and Others Vs. Bai Chhani and Others, on which the learned Counsel for the appellant relied, does lay down any principle of law contrary to the ones noted by us above. On facts, the will was interpreted as conferring a full and absolute right in favour of the wife and the purported gift after the death or remainder to the testator's sister's son was held not to detract from the absolute ownership of the wife.

18 Lalit Mohan Mondal Vs. Profulla Kumar Mondal (Deceased through his L. Rs.), No principle of law contrary to what has been noted by us above was laid down. Again, on facts the will was interpreted as conferring an absolute interest in favour of the wife of the testator Raghbir Singh and Others Vs. Budh Singh etc., . The judgment applies establish principle of laws culled out in Navneet Lal alias Rangi Vs. Gokul and Others, It was held that indeed, the central rule of construction of will is to give effect to the intention of the testator. With that central object in view, different parts of the will should be construed harmoniously. It is this reason which prevents the Court from rejecting any part of the will as being a surplusage. For, the testator could not have intended to make any bequest in his will as an exercise in futility. It was held that it is this central rule which enables the Court on construction to read down the language of a part of the will if giving full effect to the general words of that part of the will result in making the other part of the will defeasible.

19. We now turn to the will in question. As rightly observed by the learned Single Judge the testator at the first instance wanted to secure a good and comfortable living for his wife. The testator did not want that after his death his wife should be at the mercy of the children. At the same time, the testator is conscious of the fact that amongst his sons, except for Manjit Singh, all are happily settled. The testator was conscious of the fact that his younger son Manjit Singh was financially weak and was in no position to construct a house. The testator was further conscious of the fact that his other son Dr. M.P. Singh, though having good income, has no house. The testator was conscious of the fact that his son Dr. M.P. Singh was living in part of the house and that his younger son Manjit Singh along with his wife and children were living with the testator and his wife in the rest of the house and were helping and looking after the testator and his wife. In our opinion those recitals cannot be relegated to an idle formality by the testator. It is this desire of the testator contained in the recitals to the will which finds expression in the operative part of the will. It is important to note that in respect of the household goods lying in the house the testator has unequivocal bequeathed the same to his two sons Manjit Singh and Dr. M.P. Singh in the manner they are lying at the time of the death of the testator in the respective shares of the house bequeathed by the testator. {Clause (iii) (c) of the will} We do not find any inconsistency in the will. The question of applying principle of repugnancy does not arise. The concern, anxiety and desire of the testator with regard to his two sons and his intention to make a bequest in favour of his wife

have to be harmonious interpreted to give effect to the desire of the testator. The will has to be interpreted and read as a whole. As far as possible, nothing has to be rendered superfluous in the will. Decided on the well laid down principle of interpretation of Will's noted by us above, we agree with the finding of the learned Single Judge that indeed, testator was creating a life estate in favour of his wife. The appeal is accordingly dismissed. There shall, however, be no order as costs.