
(1933) 03 BOM CK 0010
In the Bombay High Court
Case No : Second Appeal No. 281 of 1930

Nagasi Ukheda Gujar

APPELLANT

Vs

Anandji Dharsi Gujar

RESPONDENT

Date of Decision : 10-03-1933

Acts Referred:

Citation : AIR 1933 Bom 445 : (1933) 35 BOMLR 952 : 147 Ind. Cas. 770

Hon'ble Judges : Patkar, J

Bench : Single Bench

Judgement

Patkar, J.—The plaintiff in this case sued for a declaration that he was the owner of the moveable property in suit and for an injunction restraining defendants Nos. 1 and 2 from recovering the property and for recovery of possession of the property or the price thereof from defendant No. 3 and defendants Nos. 1 and 2.

2. It appears that one Dharsee Thackersey Gujar died on November 13, 1915, leaving behind him a son, the plaintiff, a widow, Ratanbai or Bayabai, his mother and a daughter. He was possessed of moveable and Immoveable properties and had considerable debts. He made a will, Exhibit 77, on November 18, 1915, bequeathing his property and appointing panchas. He directed that his moveable and Immoveable property at Cutch Varadia should be enjoyed by his mother during her lifetime, and after her death his wife and son Anandji should enjoy this property, and that after referring to certain other properties, he directed as follows :-

If in future Anandji, and my wife do not pull on wall together, twelve annas out of my property should be given to Anandji and four annas out of my property should be given to my wife.

3. The question in the present case is whether the property which was divided between Anandji, the son, and the wife by the panchas after the death of Dharsee was absolute property or was a limited estate of a Hindu widow. It appears that the panchas co-opted three other persons in order to wind up the

affairs of the deceased Dharsee. They settled with the creditors of Dharsee and paid them a portion of the debts, consolidated the moveable and Immovable property, and divided the property between Anandji and his stop-mother in the proportion of 3 to 1.

4. The learned Subordinate Judge held that the property which came to the widow was absolute property, and that the conduct of the panaches and the plaintiff's own conduct in Exhibit 24 supported the inference that the property which the widow obtained was absolute property. The case before the Subordinate Judge was that the property was given to the widow on the express condition that it was for her maintenance, and witnesses Exhibits 94 and 96 were examined on behalf of the plaintiff. The learned Subordinate Judge disbelieved those witnesses and came to the conclusion that the interest which was obtained by the step-mother was an absolute estate.

5. When the case came up to the lower appellate Court, the learned Additional First Class Subordinate Judge held that the question depended upon the construction of the will, and the method by which the property was divided by the panchas after the death of Dharsee was not conclusive as to the nature of the property which was given to the step-mother and the plaintiff in the proportion of 1 to 3.

6. The question reduces itself into this: whether according to the terms of the will Ratanbai took an absolute estate in the property which was allotted to her. The material words in the will are :-

If in future Anandji and my wife do not pull on well together, twelve annas out of my property should be given to Anandji and four annas out of my property should be given to my wife.

The words of bequest are the same in so far as the bequest to the son is concerned and also to the wife is concerned, and it is difficult to hold that the bequest in favour of the son is an absolute bequest and that in favour of the wife is a limited estate unless it is held that a bequest to the wife must necessarily be a limited estate. Where there is a joint bequest to a wife and to a son it is difficult to differentiate between the nature of the estate given to the son and the nature of the estate given to the wife. Reliance is placed on behalf of the respondent on the decision in the case of Hirabai v. Lakshmibai ILR (1887) Bom. 573 In that case the property was given to the widow and the adopted son with a direction that they should maintain themselves out of the income. There is a similar provision in the initial portion of the will, but subsequently after reference to other matters, the testator directed the property to be divided between the son and his own wife in the proportion of 3 to 1. The question, therefore, is whether under these circumstances the son would take an absolute estate and the wife would take a limited estate. It is very difficult to construe one will in accordance with the construction put by other Courts on the provisions of another will. If there are clear words like "Malik" or "from generation to

generation" in the case of a gift made to a wife, it would necessarily invest the wife with the full proprietary right, and it would not be necessary further to give her any power of alienation. The question is whether in the absence of such clear words the gift to a wife must necessarily be held to be a gift of a limited estate.

7. In *Shalig Ram Vs. Charanjit Lal*, , p.c. it was held that in construing a will the intention of the testator must be gathered from the terms of the will then before the Court, reading it as a whole, and not much assistance is derived from previous decisions on the construction of other wills, where the language was different from that of the will under consideration. At page 1585 it was observed as follows :-

It is, however, desirable to observe that at one time it was held by some of the Courts in India that, under the Hindu law, in the case of immovable property given or devised by a husband to his wife, the wife had no power to alienate unless the power of alienation was conferred upon her in express terms.

It has been held by decisions of this Board that that proposition was not sound, and that-

"If words were used conferring absolute ownership upon the wife, the wife enjoyed the rights of ownership without their being conferred by express and additional terms, unless the circumstances or the context were sufficient to show that such absolute ownership was not intended".

8. In *Jag Mohan Singh Vs. Sri Nath*, it was observed as follows (p. 1611) :-

If, as in the present case, the donor does not confer upon the lady express power of alienation, such power may nevertheless be deduced from the terms of the gift if the words used are sufficient to confer upon her absolute ownership, unless the circumstances or the context show that such absolute ownership was not intended. There is, their Lordships think, no magic in the use of any particular word or form of words; the document must be construed as a whole, and its fair import deduced in the ordinary way, and if the conclusion come to is that it confers the estate out and out with no reservation, the right of alienation will be included just as much as any of the other incidents of ownership, and just as much where the gift is to a female as where it is to a male.

9. I may in this connection refer to the decision of Mitter J. in *Mussamut Kollany Kooer v. Luchmee Pershad* (1875) 24 W.R. 395 approved by the Privy Council in (1907) L.R. 35 I.A. 17 (Privy Council)

10. I have read carefully the terms of this will and I cannot find any reason to differentiate between the bequest made to the son and the bequest made to the wife, and if the bequest made to the son is absolute, there are no circumstances in the case and there are no other clauses in the will which would cut down the absolute interest in favour of the wife. It appears clear from the will that the testator knew the appropriate language to be used for giving a life estate when he dealt with the properties in Cutch and gave a life estate to his mother. It is

clear from the terms of the will and surrounding circumstances that the testator intended to give an absolute interest in the property to his wife.

11. I think, therefore, that the view taken by the learned Subordinate Judge is right and the view taken by the lower appellate Court is not correct. The view which I take is consistent also with the subsequent events. The panchas who distributed the property, according to the view of the learned Subordinate Judge, intended that the property should be given to the wife as absolute property. The plaintiff also in his notice, Exhibit 24, stated that he claimed the property as heir of Ratanbai. It would, therefore, follow that he considered Ratanbai as the owner of the property.

12. I think, therefore, that the decree of the lower appellate Court should be reversed and that of the Subordinate Judge restored with costs of this Court and of the lower appellate Court on respondent No. 1.