

(1982) 02 AHC CK 0027
In the Allahabad High Court
Case No : Second Appeal No. 2286 of 1976

Nand Kishore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-1982

Acts Referred:

Citation : (1982) AWC 499

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : S.A. Khan, for the Appellant; S.M. Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—After hearing the learned Counsel for the parties I feel that the present appeal must fail. The admitted facts of the case are that one Narayani Bai was the Maurasidar under a lease granted by Maharaja of Tehri Garhwal in the year 1918. Subsequently she made a boundary wall and some construction over a portion of it. She remained in possession over that property till her death as mentioned in paragraph 4 of the plaint. She died at Calcutta on 6th January, 1964. The present suit was filed by the Plaintiffs claiming the disputed land as devolving on them by virtue of a will executed by Narayani Bai aforesaid on 11th February, 1957. The will was executed and got registered at Calcutta. Under that will the Plaintiff was appointed the executor and trustee as well as the heir. He was mentioned as the brother's son of the testator Smt. Narayani Bai. The will was made for the purposes mentioned in paragraphs 4 and 5 of the same as under:

I direct that my said executor shall out of my estate pay:

(a) my funeral expenses ;

(b) the costs and expenses of taking out representation to my estate and other testamentary expenses.

(c) pay all my debts if I die leaving any debts payable by me.

5. My said Executor shall hold the said Immovable property upon trust to apply the same for such charitable objects and purposes as he the said Executor may in his absolute discretion think proper.

2. After the death of the lady it appears that the land was taken possession of by the State and some portion of it was allotted as Nazul land in favour of the Defendant No. 2. Some portion was in possession of the State Government and is still in their possession. The registered lease deed executed in favour of Defendant No. 2 by the Deputy Commissioner also contained a site plan of the portion leased out under that document. In the instant case the entire land which was in the Maurasi of the deceased have been claimed by the Plaintiff.

3. The trial court decreed the suit. The lower appellate court has reversed the decree. The present appeal has been contested only by the Respondent Daya Dhar and not by State. The appeal has been allowed by the court below on the ground that u/s 9 of the Bhumi Sambandhi Adhikari Niyam then applicable to the Maurusidars, the transfer or otherwise disposal of land was subject to certain conditions. If the land "was to be gifted it could be done only under the specific permission of the Darbar under Sub-section (4) of Section 9 of the Niyam aforesaid. The court below came to a finding that the will was not valid.

4. The learned Counsel for the Appellant contended that the transfer was permitted under Sub-section (3) of Section 9. That could be only for the purpose of "Gati Kriya" and "Parwarish", further such a transfer could be made in favour of a Sapinda or relations mentioned in that clause.

5. The court below held that the Plaintiff was not within the list of the Sapindas and, therefore, the disputed property could not be given to him by Smt. Narayani Bai. It was also held that she did not have a right to execute a will as it was the case of the Plaintiff himself that she died issueless i. e. became a "Muyali". It was stated that the State was entitled to the property by way of escheat. In the relevant rule the escheat is governed by Sub-section (g) of Section 2 i.e. a person is deemed to be Muyali, when he has no heir as mentioned in Section 5 of the rules. Consequently the court below dismissed the suit of the Plaintiff.

6. The Plaintiff Appellant has argued in this case that the will was included in the definition of transfer and, therefore, in case the will complied with the provisions of Sub-section (3) of Section 9 it should be deemed to be a transfer for "Gati Kriya" and "Parwarish". After examining the will I am unable to agree with him. In paragraphs 4 and 5 it is clear that the will was not made for any of such purposes. Gati Kriya includes the ceremonies which are to be performed after the death of the person till his salvation. In the instant case Gati Kriya would include not only the cremation but also other acts subsequent to that, for Moksh of the deceased. That will include the ceremonies on the tenth day after death, the thirteenth day after death, after six months of the death and the "Barsi" after one year of the death. Not only that it will also include the annual observance of

Pitra Paksha and Shradh. Those ceremonies are to be performed till the deceased is presumed to have attained salvation by going to Gaya.

7. Coming to the cause of "Parwarish", it covers transfers by the deceased. It was not intended to cover the wills which were to take effect after the death of the person. The learned Counsel for the Appellant has relied upon a case reported in 1968 ALJ 11. It is case of Kaneez Shora v. Deputy Director, Consolidation decided by a Division Bench of this Court. It was held that transfer included transfer by will; that case arose out of a dispute where Sir rights were intended to be transferred by will. Sir rights under the U.P. Tenancy Act are not transferable except that the proprietary rights themselves are transferred or by gift to a person to whom the proprietary right is also gifted or by exchange. Under the circumstances the court while dealing with the right to give away Sir rights by will came to a conclusion that as the transfer of Sir rights as such was prohibited even the will could not be made. Even if we accept the argument of the learned Counsel for the Appellant that will included every sort of transfer, still there is another hurdle in his way. In the instant case, in paragraph 5 of the will, quoted above, the will has not been executed for any charity or specific charitable purposes. The choice has been left to the executor. Therefore the will was not valid as it was neither for " Gati Kriya" nor for "Parwairsh" as contemplated by Tehri Garhwal Rajya Bhumi Sambandhi Adhikari Niyam Tatha Vidhan. Consequently the will in favour of the Plaintiff was not valid and has to be ignored. As the Plaintiff has failed to prove his title, he could not get a decree on the basis of the will.

8. In the result, the Appellant is not entitled to any relief. The present appeal fails and is dismissed. There will, however, be no order as to costs.