
(1930) 04 AHC CK 0005
In the Allahabad High Court

Natwar

APPELLANT

Vs

Mt. Loi and Others

RESPONDENT

Date of Decision : 10-04-1930

Acts Referred:

Citation : AIR 1930 All 652 : 129 Ind. Cas. 433

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Judgement

Niamatullah, J.—The property in suit except hundis for Rs. 3,600 as to which there is dispute, admittedly belonged to one Dangal who had no male issue. He had, however, three daughters one of whom, Mt. Laltia, was married to the plaintiff-appellant. All the three daughters survived Dangal.

2. On 19th March 1903 Dangal executed a will bequeathing his entire property to Mt. Kalawati, the widow of his predeceased son, for life, with remainder to his three daughters, Mt. Loi, defendant 1, Mt. Lukyan, defendant 2, and Mt. Laltia, the plaintiff's wife, since deceased, in equal shares. The will also provides that in case on the death of Mt. Kalawati, any of his daughters be found to have predeceased leaving a son, such son would take the share of his mother, otherwise her share would devolve on her surviving sisters.

3. Subsequently on 30th April 1906 there was a partition between Dangal and some members of his family by which certain properties were assigned to Dangal, who added a testamentary clause to the deed in respect of what he received under the deed of partition. The devise contained in the deed of partition admittedly supersedes the will, dated 19th March 1903. Mt. Kalawati (the widow of the predeceased son) is given half of Dangal's property, the other half being devised to his three daughters, who are also declared entitled to succeed to Mt. Kalawati's half on her death. The parties are at variance as regards the interpretation to be placed upon the aforesaid clause, which is the main question calling for a decision in this appeal.

4. Dangal died some time after the deed of partition already referred to. It does not appear whether Mt. Kalawati survived Dangal. Whether she did or not there is no dispute that all the three daughters of Dangal survived her, so as to entitle them to the entire estate obtained by Dangal under the deed of partition. Mt. Laltia died afterwards (the exact date of her death does not appear and is not material) leaving no issue. Plaintiff Natwar is her husband and claims to be her heir in respect of the property, which she got under the testamentary clause in the deed of partition. The plaintiff's case is that the interest acquired by his deceased wife under her father's devise was a heritable estate and that he is entitled to succeed to it in preference to her surviving sisters. The contesting defendants are Mt. Loi and Mt. Lukyan, the two surviving daughters of Dangal. They deny the plaintiff's right to succeed to the interest of his deceased wife, on the allegation that, in accordance with the proper interpretation to be placed upon the testamentary clause occurring in the deed of partition, Mt. Laltia's interest would devolve upon them by survivorship.

5. One of the properties in dispute is a hundi for Rs. 3,600 as to which the dispute was whether it formed part of Dangal's estate. Both the lower Courts have found that it did not. The decision of that question of fact turned on evidence which satisfied the Courts below that the hundi in question, which is ex facie in favour of Girraj, did not form part of the estate of Dangal. The finding being one of fact cannot be reopened on second appeal. Under these circumstances we need not further advert to this part of the case.

6. As regards the rest of the property in dispute consisting of two houses and a shop in Muttra, both the lower Courts have held that the plaintiff is not entitled to succeed to the interest of his deceased wife having regard to the intention of the testator as disclosed by the terms of the devise contained in the deed of partition. Accordingly they dismissed the plaintiff's suit.

7. It has been contended in second appeal before us that the Courts below have misinterpreted the clause on which the right decision of the case depends. We have already indicated generally the purport of the clause under which the parties claim a right to the property in dispute. It is, however, necessary to state precisely the words in which the devise is couched before we proceed to interpret it and deal with the contentions put forward on behalf of the parties before us. The relevant part of the clause in question is as follows:

My three daughters shall be the owners (malik) of my immovable property situate in Muttra after the death of Mt. Kalawati. As regards my birt jajmani and the property appertaining thereto, my daughters shall be the owners (malik) of half and the remaining half would be taken by the second party to this document this refers to members of his family other than his daughters or Mt. Kalawati) ... and after the death of any of my daughters the legal heirs (wurasa-i-qanuni) shall be the owners (malik), but in respect of my immovable property situate in Muttra, birt jajmani" rights and the property appertaining thereto, which I may leave, no one will have the power to make a transfer of any kind.

8. It is contended on behalf of the defendants that the above clause should be construed with due regard to the notions of a Hindu, as Dangal was, and that he would naturally wish his daughters to take such estate in the property bequeathed by him as they would have taken under the ordinary Hindu law, which makes the interest of one of the daughters descendible on the survivors to the exclusion of her personal heirs. In other words it is argued that the three daughters took no more than a joint estate in the property bequeathed to them, so that on the death of any one of them her interest would survive to the remaining daughters. This interpretation militates against the clear provision that in case of the death of any one of the daughters the heirs of the deceased will succeed to her interest. It could not have been the intention of the testator, having regard to the words used by him, that sisters should be her heirs.

9. It is suggested that the daughters were not given an absolute interest by the devise contained in the deed of partition, the word "malik" being controlled by the limitation as regards power of transfer to be found at the end of the clause. It should, however, be noticed that the restraint on alienation has reference not only to the daughters but to all succeeding heirs, and includes the case of male holders after the death of all the daughters. That each daughter takes a heritable estate is made clear in a preceding part of the clause. In substance it provides that each of the testator's daughters should take a heritable estate but none of them or their heirs shall have power to transfer. Ordinarily, the word "malik" imports full ownership; but having regard to the context and the setting in which that word occurs, it may denote a life-estate. Where, however, the will expressly states that the interest given to the "malik" is descendible on his or her heirs, no question of life-estate can arise. In *Thakur Harihar Baksh v. Thakur Uman Parshad* [1887] 14 Cal. 296 at p. 307 their Lordships of the Privy Council expressed the opinion that the use of the words "naslan bad naslan" in a document conclusively indicates that an absolute interest was conferred. In the document which their Lordships had to construe, power of transfer had not been expressly given and the contention was that the estate conferred by it was not an absolute one. Their Lordships seem to be of opinion that where an estate of inheritance is conferred by a deed, it must be taken to be full ownership. In that view the restraint on alienation can only be regarded as repugnant to the absolute estate previously given by the use of the word "malik" and by declaring it to be heritable, being imposed not only on the immediate legatees but also on their heirs including the ultimate male holder, who ex hypothesi is to take an absolute estate.

10. The learned District Judge has adopted a somewhat different line of reasoning than that of the learned advocate for the appellant. He observes:

In Hindu law as regards property which has been given by a father to a daughter the sister is not a legal heir but after the father and mother and other heirs are exhausted, the husband is a legal heir. Therefore, strictly accordingly to Hindu law, if there was no provision the plaintiff would be heir to the share of Mt. Lalta;

but the question is: Did Dangal intend by the words "legal heir" that the plaintiff should inherit or that his remaining daughters should inherit? It does not appear to me at all probable that Dangal was an expert on Hindu law. In his view and in the ordinary view a sister would be more correctly described as a legal heir of a deceased sister rather than the husband. This construction is supported by the fact that in an earlier document, a will dated 19th March 1903, Dangal made special provision that on the death of any daughter her son would take the share and if she died without issue (la wald), the other daughters would take her share. It does not seem to me at all probable that Dangal intended to make any change in the method of disposal between 1903 and 1906.... I consider, therefore,... that the daughters should take jointly and not as tenants-in-common.

11. According to the testator's intention as expressed by the will of 19th March 1903, on the death of any daughter the surviving daughters would not necessarily succeed to her interest on the supposition that they were joint tenants and not tenants in common because if any of them leaves a son he is to take his mother's interest as her heir. If, therefore, the will of 19th March 1903 be taken as indicative of the testator's intention at the time he executed the deed of partition, the expression "legal heirs" would include one class of heirs, viz., her male issues. There is no reason why the word which is of sufficient amplitude to include all heirs should be confined to sons only. The learned District Judge has inferred the intention of the testator not from the words used in the clause in question, but from the terms of the earlier will of 1903, the probable extent of his knowledge of Hindu law, and the supposed popular notion that a sister is an heir to the exclusion of the husband. We think that the plain meaning of the words used in the will cannot be controlled by inference to be drawn from extrinsic circumstances. As was pointed out by their Lordships in *Manindra Chandra Nandi v. Durga Prasad Singh* AIR 1917 P.C. 23:

In construing the terms of a deed the evidence of the intention of the parties thereto is inadmissible; the question is not what the parties may have intended, but what is the meaning of the words which they used.

12. Primarily, therefore, effect should be given to the testator's intention disclosed by the unambiguous language occurring in the will. The plain and natural meaning of such language should not to be departed from to give effect to a supposed intention of the testator on the assumption that he used it in a peculiar sense, and not in a sense consonant with the personal law.

13. Having considered the language employed in the testamentary clause in question, the contentions of the parties and the view of the lower appellate Court, we are clearly of opinion that the three daughters of Dangal took as tenants in common, each having a heritable estate descendible on her heirs according to Hindu law. It is not disputed that a sister is not an heir according to that law in preference to the husband of the deceased. This being so the plaintiff's claim should be decreed in respect of the shop and the two houses

detailed at foot of the plaint.

14. In the result we allow this appeal and decree the plaintiff's suit as regards the immovable property aforesaid. As both the parties have partially succeeded, we direct the parties to pay their own costs throughout.