
(1929) 01 AHC CK 0056
In the Allahabad High Court

Niranjan Prasad

APPELLANT

Vs

Behari Lal and Others

RESPONDENT

Date of Decision : 28-01-1929

Acts Referred:

Citation : AIR 1929 All 302

Final Decision : Disposed Of

Judgement

1. This was a suit for recovery of separate possession of a one-third share in certain house property and moveable property. The property originally belonged to Chote Lal the common ancestor of the parties. The pedigree showing the relationship between the parties will be found at p. 17 The plaintiff's case was that the parties and Chhote Lal were members of a joint family and that the property in suit was joint family property. After Chhote Lal's death the plaintiff was maintained by Behari Lal who was the manager of the joint family but in 1924 the defendants refused to give the plaintiff some money and the plaintiff was accordingly compelled to bring this suit for possession of his separate share. The principal defences were that the family was not joint but that the plaintiff's father had separated from the other members of the family before his death in 1898 and the plaintiff himself had been brought up by his father-in-law.

2. It was further pleaded that the property in suit was the self-acquired property of Chhote Lal excepting item No. 2 which was the self-acquired property of Behari Lal, defendant 1. The defendants set up a will alleged to have been executed by Chhote Lal on 11th October 1904 by which he had devised items 6 and 7 to Lakhpai Rai and Behari Lal and items 1, 3, 4 and 5 had been dedicated in favour of a family idol, namely, Gangaji. The plaintiff replied that the will was a forgery and that in any case the dedication in favour of the idol was invalid. The trial Court decreed the plaintiff's claim for all the property in suit excepting item 2 which was held to be Behari Lal's self-acquired property.

3. The lower appellate Court found that the family had remained joint even after the death of Chhote Lal. As to the will executed by Chhote Lal in 1904 the Court

below has found that it was genuine. The property in suit was found to be Chhote Lal's self-acquired property which he was entitled to dispose of by will. As regards the dedication in favour of the idol the Court below found that Chhote Lal had clearly intended to make the dedication and that effect should be given to his intention. The result was that the Court below allowed the appeal and dismissed the suit. In this Court the finding that the will executed by Chhote Lal was genuine is not challenged. As regards the finding that the property in suit was the self-acquired property of Chhote Lal we see no reason to differ from the finding of the Court below. It has been expressly held that there was no presumption that the property acquired by Chhote Lal was joint family property. We hold, therefore, that Chhote Lal was competent to dispose of the property by will.

4. The principal question which we have to determine in this appeal is whether the dedication of the property in favour of the idol was valid. Chhote Lal's property which he disposed of in his will consisted of six items of house property which was not bringing in an income of more than about Rs. 15 or Rs. 16. Out of this Chhote Lal purported to dedicate items 1, 3, 4 and 5 to the idol Gangaji. There is no express finding as to the income of the property dedicated but it appears to be about Rs. 11 per mensem.

5. Chhote Lal undoubtedly states that he has earnestly and in good faith dedicated to Gingaji Maharani the property stated in order that management in respect thereof might continue till Doomsday. He also lays down in his will that his two sons, Behari Lal and Lakhpai Rai should be the managers of the property dedicated and that they should see that the rag, bhog and utsav of the idol is in no way neglected. The testator stated that both the sons should, after considering themselves to be the superintendents and managers of the property, jointly spend as much of the income of their own authority from the rent of the property as they think proper towards the rag, bhog and utsav, etc. He further provides that each of the managers or superintendents shall have a right to get Rs. 5 per mensem as remuneration from the endowed property and that if the income of the property expands then the superintendents will be entitled to get a proportionate increase in their salary.

6. It would be seen that on the face of it there could be very little income available for the purposes of the idol. The income of the endowed property would only be about Rs. 11 per mensem and the two superintendents were expressly authorized to appropriate to themselves Rs. 10 per mensem. No fixed amount is laid down for being spent upon the purposes of worship etc., but the superintendents are given complete discretion to spend whatever they think fit.

7. It appears that the managers have not kept any accounts whatever of the income of the endowed property. The only way in which effect is said to have been given to the endowment is that the superintendents have executed leases of the property in the name of Gangaji. We are not satisfied that any expenditure whatever has been incurred for the purposes of the worship etc.: of the idol and

in our opinion the endowment is purely illusory or colourable. The testator's intention was to preserve the property in his family and to let his two sons and their descendants enjoy the income of the property without having the power of alienation.

**** 8. The facts of the case are very similar to those dealt with in the Full Bench ruling of the Allahabad High Court in the case of Sri Thakurji v. Sukhdeo Singh [1920] 42 All. 395. In that case also there was a colourable endowment of property in favour of an idol but it was found that no attempt had been, made to obtain mutation of names in favour of the idol and that no accounts were forthcoming relating to the administration of the property and that the expenditure on the idol did not amount to more than 1/10 of the income. It was held by the Full Bench, that under these circumstances, there had been no real dedication of the property to religious purposes but only an attempt to create a perpetuity in favour of the descendants of the testator's daughter. We are bound by the decision of this Full Bench and we think that the principles laid down in that decision are fully applicable to the facts of the present case. We find that there has been no real dedication of the property to religious purposes but only an attempt to create a perpetuity in favour of the two sons of the testator. It has been argued by the learned advocate for the respondents that even if the dedication be held illusory and inoperative nevertheless the will should be construed as giving proprietary interests to the two sons named in the will as superintendents of the dedicated property. The argument is that the testator intended that these two sons should get the benefit of the property and that effect should be given; to his intention.

9. We are unable to accept this contention. The plaintiff is clearly an heir-at-law and he is entitled to a share in the property unless there is a valid bequest of it in favour of other persons. In the present case we have found that the dedication in favour of the idol is invalid. We are unable to construe the will as giving a proprietary interest to the two sons who were named as superintendents. Clearly the testator never purported to give those two sons proprietary rights and we hold that there is nothing in the will which could defeat the claim of the plaintiff, as heir-at-law, to recover his share.

10. It has further been argued by the learned advocate for the respondents that the plaintiff's suit was barred by time. Chhote Lal died in 1904 and it is argued that the plaintiff has been excluded from his share in the property in suit from the date of Chhote Lal's death. The plaintiff was a minor at that time but he should have instituted his suit within three years of attaining majority and as he did not do so, the suit not having been instituted until 26th May 1924, it is contended that the suit is barred by time. We think there is no force in this argument. We have held that the dedication in favour of the idol is invalid and the property which the will purports to dedicate must be held to be intestate property. In the hands of Chhote Lal it was self-acquired property but in the hands of his sons and grandsons it is ancestral property. The article of limitation

applicable to the suit would be Article 127 which gives a period of 12 years for enforcing a right to a share in joint family property from the time when the exclusion becomes known to the plaintiff. The plaintiff did not attain majority until about eight years before the institution of the suit and even if it be held that he became aware of his exclusion from the date of his attaining majority the suit is still clearly within time.

11. As regards item 2 the trial Court clearly found that this was the self-acquired property of Behari Lal, and the lower appellate Court has not disturbed this finding. As regards items 6 and 7 they have been bequeathed by Chhote Lal to the defendants and there is no reason for holding the bequest invalid. The result is that we allow the appeal in respect of items 1, 3, 4 and 5 and dismiss the appeal in respect of the remaining property. We accordingly pass a preliminary decree declaring the right of the plaintiff to a 1/3 share in items 1, 3, 4 as specified in the plaint. Parties will bear their own costs throughout up to this stage.