
(1916) 02 BOM CK 0020
In the Bombay High Court

Pranjiwandas Kalidas and Others

APPELLANT

Vs

Shamkorebai

RESPONDENT

Date of Decision : 08-02-1916

Acts Referred:

Citation : AIR 1916 Bom 136 : 37 Ind. Cas. 263

Hon'ble Judges : Basil Scott, C.J;Heaton, J

Bench : Division Bench

Judgement

1. We have to construe a deed the purport of which may be briefly summarised thus. There were three brothers, Vasta, Kalidas and Narsi, sons of Kallianji. They were the principal parties to the deed which was executed on the 8th September 1887. The deed provides that the property of the brothers, which is described as joint family property, is divided into three separate lots, one for each brother. There is also a house for residence and some provision for charity, but that is immaterial for the present purpose. The whole property is vested in four trustees out of whom the brothers are three. The object of the trust is thus described:

And whereas the said three brothers, Vasta Kallianji, Kalidas Kallianji and Narsi Kallianji, are desirous of apportioning all and singular the said Immovable properties, all of which are of the estimated value of Rs. 64,392, for the benefit and use of themselves jointly during their joint lives, and afterwards for the benefit and use of the survivor of them and of the family or families of such of them as may have predeceased and after the decease of the last survivor of them for the benefit and use of the respective families of each of the said three brothers in manner hereinafter appearing and for certain charitable purposes.

2. Then one of the lots which are entered in detail in Schedules A, B and C, is recited to have been allotted to Vasta, another to Kalidas and the third to Narsi. The operative part contains certain provisions as to residence and charity. Then comes this provision:

The said trustees shall hold and stand possessed as regards the several

hereditaments and premises described in Schedules A, B and C hereunder written upon trust to recover, receive, collect and take the rents and profits thereof and pay the same after defraying all outgoings to them the said Vasta Kallianji, Kalidas Kallianji and Narsi Kallianji jointly for the use of themselves and their respective families during the joint lives of them all.

3. Next comes the provision for what is to be done after the death of any one of the three who may die first. Broadly speaking, each of the two surviving brothers is to be paid separately the rents and profits of his lot so long as he lives, and elaborate and special provision is made as to what the trustees are to do with the profits of the lot of the brother who dies first. There is no provision for what is to happen as regards the lot of the brother who next dies, when he dies; and similarly when the third brother dies. The specific trust continues in regard to the lot of the brother who dies first, but there is no specific trust in regard to the lots of the brothers who die second and third, after the death of each; though there may be a resulting trust.

4. What has happened is this: all the brothers are now dead. Vasta and Narsi left no issue. Kalidas, who died last in 1910, left three sons living and the widow of a fourth son who predeceased him. The widow sues and claims, as an heir, one-fourth share of the profits of the portion of the lot which constituted the share of Kalidas according to the deed, i.e., of the profits of the properties described in Schedule B. The defendants, the three surviving sons of Kalidas, oppose the claim.

5. The Trial Court decreed the claim and the defendants have appealed. The Trial Judge wrote as follows:

I do not think there can be any doubt that the trust was to Kalidas for life, remainder to his sons for life, remainder to their heirs. If any son of Kalidas dies in lifetime of Kalidas, his heirs take his place, and on death of Kalidas succeed to that son's life estate, just as the heir of a son of Kalidas dying after the death of Kalidas would take for life that share.

6. But he did not give detailed reasons for his decision.

7. The exact terms of the operative provision in respect of each lot are as follows *mutatis mutandis*:

And further to pay and apply the rents and profits of the hereditaments and premises described in Schedule B hereunder written after making suitable provision thereout for repairs, maintenance taxes and all outgoings payable for the said premises to the said Kalidas Kallianji if he be one of the survivors of them three, the said Vasta Kallianji, Kalidas Kallianji and Narsi Kallianji, for his natural life and if he be not one of such survivors then to the son or sons of the said Kalidas Kallianji and if more than one in equal shares for their respective natural lives, and after the death of the last survivor of such sons in trust to apportion or sell the said several hereditaments and premises described in the

said Schedule B hereunder written, and in the event of a sale to divide the proceeds thereof amongst the respective heirs of such son or sons of the said Kalidas Kallianji per stirpes, provided always that on the death of any son of the said Kalidas Kallianji during the lifetime of his brothers the heirs of such deceased shall until final division as aforesaid be entitled to be paid by the said trustees the proportionate share of the said rents and profits which such deceased son himself would have been entitled to, if alive.

8. It is contended that the provisions in the operative part of the deed should be expanded by reference to the recital which purports to express the desire of the settlors in making the settlement. That recital is, as I read it, of a desire to apportion the properties scheduled A, B and C, among the three settlors for the use and benefit of themselves jointly during their joint lives and afterwards for the benefit and use of the survivor of them (i.e., the three settlors) and of the family or families of such of them as may have predeceased and after the decease of the last survivor (of the three settlors), for the benefit and use of the respective families of each in manner thereafter appearing. In other words, the joint user is to continue till the death of the last of the three settlors and the distribution into severalty according to the schedules among the respective families of each is to be postponed till that event. But the Court is not agreed as to the intention expressed in this recital.

9. In the view above expressed the operative provisions of the deed depart from the proposed intention treating the settled properties as to be enjoyed jointly only until the death of the first dying of the three settlors. I think therefore, the construction of the operative provisions will not be advanced by reference to the recital.

10. Upon the operative part, in so far as it concerns the scheduled share falling to Kalidas' family, two questions arise; first, does the remainder in favour of his sons take effect only if he is the first settlor to die or does it take effect on his death at any time; and, secondly, does the substitutionary proviso in favour of the heirs of a deceased son apply to the heirs of a son predeceasing Kalidas?

11. In my opinion both questions should be answered in favour of the respondent.

12. As regards the first question, the joint enjoyment by the three brothers of the scheduled property is necessarily broken by the death of any one of them, and two alternatives would then naturally arise: either the sons of the first deceased brother would then take his scheduled share or the joint tenancy of such sons and their uncles would continue for the lives of the other surviving settlors. The operative clause, however, clearly provides for the sons of the first deceased brother taking their father's scheduled share. It cannot, however, have been the intention that the limitations regarding each scheduled share should not be read alike, viz., that, on the death of each brother, his scheduled share should go to his family. Such a reading necessitates the addition of the words "or having survived he die" after the words one of such survivors," It appears to me that

this is permissible in the circumstances---a similar case is *Greenwood v. Greenwood* (1877) 5 Ch.D. 954 : 47 L.J. Ch. 298 : 37 L.T. 305 : 26 W. R. 5. where under a bequest in trust for the testator's widow for her life in trust for her children, followed by power of maintenance and advancement after the widow's death with an ultimate gift over after her death in default of children attaining vested interests, the Court supplied the words "and after her death" after the words "for her life."

13. As regards the second question, the words are "on the death of any son of the said Kalidas during the lifetime of his brothers the heirs of such deceased shall until final division be entitled," etc. This substitution is not limited in terms to heirs of sons surviving the testator; the only condition being that the heirs should be of a son of Kalidas predeceasing his brothers. Naturally every son of Kalidas must predecease the last surviving brother whose death marks the period of division and distribution. We have in a subsequent provision regarding the expectant shares of minors an indication that on the death of Kalidas as also of his brothers "remoter issue" (presumably remoter than sons) might in the contemplation of the settlors be entitled in expectancy to a share of the trust funds. This would only be possible if the substitutive proviso included sons predeceasing Kalidas.

14. The result is in accord with the conclusion arrived at in the lower Court. We affirm the decree and dismiss the appeal. We make no order as to costs.