
(1977) 08 DEL CK 0020

In the Delhi High Court

Case No : Regular First Appeal No. 102 of 1974

Raghubir Singh and Others

APPELLANT

Vs

Budh Singh etc.

RESPONDENT

Date of Decision : 11-08-1977

Acts Referred:

Citation : AIR 1978 Delhi 86 : (1977) 13 DLT 196 : (1977) 2 ILR Delhi 584

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : R.S. Malhotra, Daya Kishan, Maehswar Dayal and S. Bansal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The decision of this appeal turns on the construction of a will made by a Hindu testator. One Chaudhary Zaharia Mall made this will on 23-3-1967. After his death, one of his sons, Budh Singh, filed a suit for partition against the other sons and daughters of the testator without disclosing "the will and on the ground that the succession, to the property of late Zaharia Mall would be intestate. The suit was contested by the other three sons of the testator, the daughters remaining ex parte. The contesting sons set up the will and pointed out that Budh Singh had been excluded from succession to the testator by the said will. The plaintiff Budh Singh 586 filed a replication in, which the factum and the validity of the will was denied. Alternatively, however, it was pleaded that even according to the alleged will Budh Singh was entitled to 1/6th share in the property. The parties did not adduce any evidence and the court first decided only the following question of law, namely,-

"Whether the plaintiff is entitled to a decree as claimed in the suit even if the will is taken to be valid ?"

(2) The trial Court construed the will to mean that the whole of the property of the testator was first absolutely bequeathed to the widow. After the death of the

widow, all the four sons and two daughters of the testator were legal heirs of the widow under the Hindu law and hence the plaintiff was entitled to 1/6th share in the property. The bequest of the various items of immovable property by the testator to his three sons, who were defendants 1 to 3 in the suit, did not take effect, according to the learned trial Court, because an absolute estate was created in favor of the widow and nothing was left thereafter for the testator to bequeath to the sons-defendants 1 to 3. A preliminary decree for partition was, Therefore, passed. The present appeal is filed by the three sons of the testator while Budh Singh, the 4th son, is the respondent.

(3) The will which comes up for construction is as follows :-

"I, Chaudhary Zaharia Mall alias Ziaharria Singh, son of Chaudhary Chunni Singh, resident of House No. 4055, Gali Jain Girls School Pahari Dheeraj, Delhi, do hereby declare as under :-

(4) I am an old man of 90 years. Life is transient. In spite of being old aged I enjoy my right senses and I can distinguish between good and bad. I have got four sons, namely, Raghbir Singh, Budh Singh, Balbir Singh and Kishan Singh and two daughters, namely, Shanti and Manti. All are married and blessed with children. My wife Shrimati Bhaktawari daughter of Shri Nathu Ram is also alive. She is quite obedient and renders every possible help to me. I am quite pleased with her. My sons Raghbir Singh, Balbir Singh and Kishan Singh aforesaid, are also very obedient and serve me. However, my elder son Budh Singh is quite disobedient and I am not satisfied with his character. I am quite displeased with him. Hence I reduce this will into writing as under :-

(5) So long as I, the testator, am alive I shall continue to be the absolute owner of my entire moveable and immovable property. After my death my wife Shrimati Bhaktawari aforesaid, shall become the absolute owner of my entire moveable and immovable property. She will have the right to transfer the aforesaid property in the manner she likes. No one shall have any objection thereto. My son Budh Singh aforesaid, and his children, my daughters and their children shall have no concern with my movable and immovable property. Besides, none of my heirs or legal representatives etc. shall have any concern with my property. After the death of my wife Bhaktawari, my son Raghbir Singh aforesaid, shall become the absolute owner of the house bearing No. 4055 (new) and 2294 (old) purchased from Ram Saran son of Meeda vide the sale deed registered at Serial No. 2878, book No. 1, volume No. 1162 at pages 34 to 37 on the 29th September, 1919. This house is situated in Gali Jain Girls School, Pahari Dheeraj, Delhi City. My son Balbir Singh aforesaid shall become the owner of House No. 3902 (new) and 3107 (old), purchased from Ram Pershad son of Devi Singh vide the sale deed registered at No. 76, Book No. 1 volume No. 1618 at pages 103 to 106 on the 9th January 1931. My son Kishan Singh shall become the absolute owner of the shop bearing No. 4054 (new) and 3260 (old) purchased from Dwarka Ram vide the sale deed registered at No. 2159, Book No. 1, volume 1979 at pages 87 to 90 on the 26th July 1954. In case any one raises any objection

regarding the will executed by me that will have no force. In case any claimant comes forward, his claim shall be liable to be rejected. My daughters are leading a prosperous life. Moreover, I have already given a lot to them. Hence. I while enjoying right senses and intellect, without coercion or persuasion on the part of anybody else have reduced this will into writing of my own accord and free will so that it may serve as an authority and be of use in the time of need. My sons Raghbir Singh, Balbir Singh and Kishan Singh shall be liable to pay the enhanced rent of the land underneath shop No. 3902 if the rent is enhanced by Nazul, in equal shares.

"AGAIN: My son Budh Singh uses filthy language against me and his mother. 23-3-67. Executant: Thumb Impression of Zaharia Mall."

(6) The rules regarding the construction of the wills are to be found firstly in the relevant provisions of the Indian Succession Act, 1925 (hereinafter referred to as the Act) and secondly in the relevant decisions of -the Supreme Court. Section 57 of the Act applies those provisions of Part Vi of the Act as are mentioned in Schedule Iii Hindu wills. These provisions include sections 74 to 111 comprised in Chapter Vi of the Act which is entitled "Of the Construction of Wills." The relevant rules bearing on the will before us are as follows:-

"SECTION 82. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other. Sec. 83. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense. Sec. 85. No part of a will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. Sec. 87. The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible."

The main features of the will are as follows :-

(1)This testator says that his wife and three sons. namely. Raghbir Singh, Balbir Singh and Kishan Singh are obedient and serve him.

(2)But his son Budh Singh is quite disobedient and the testator is not satisfied with him. The testator again says that his son Budh Singh used filthy language against his father and mother.

(3)The daughters are leading a prosperous life. Moreover, the testator has given quite a lot to them.

(4)The testator in the first half of the will gives an apparently absolute title to both movable and immovable property to his wife. Nonetheless in the second part of the will, the testator gives on absolute title to three different items of immovable property to his three sons with effect from the death of his wife. He

does not give anything either to Budh Singh or to his daughters.

(7) There are two possible ways to construe the will. One way, which was adopted by the trial Court, was to give effect to the first part of the will as conferring an absolute estate on the widow and regard the second part of the will bequeathing different properties to the three sons as invalid in view of the absolute estate conferred on the widow. An alternative construction of the will is to take the will as a whole and try to give effect to both the parts of the will and to avoid the necessity of treating any part of the will as a mere surplusage and to secure the validity and effectiveness of the will as a whole to read down the language of the first part of the will in which an apparently absolute estate has been given to the widow.

(8) The construction adopted by the trial Court was contrary to the rules of construction embodied in sections 82, 83, 85 and 87 of the Act reproduced above. On the contrary, the alternative construction suggested above would be in consonance with the rules which should guide the Court of construction according to these provisions of law. We would presently show the effect of application of these rules to the will.

(9) Firstly, section 82 of the Act requires that the meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other. This prohibits us from considering the first part of the will alone whereby the testator purported to give an absolute estate to the widow. On the other hand, the language in which such absolute estate was conferred by the testator on the widow has to be read along with the other parts of the will so that the whole of the will has a bearing on the meaning of those words in which an apparently absolute estate is given to the widow. The testator has purported to give absolute estate not only to the widow but absolute estate in the immovable property after the death of the widow to the three sons (appellants herein) also. If the will is read as a whole, the intention of the testator would appear to bequeath the movable and immovable properties first to the widow and after the death of the widow, to bequeath the immovable property to the appellants. It may be asked how is it possible to read the second part of the will as being effective once absolute estate is conferred on the widow by the first part thereof? The answer to the question is provided by section 83 of the Act. The general words conferring an absolute estate on the widow have to be understood in a restricted sense if the will as a whole shows that the testator intended to use them in restricted sense. The testator was not a lawyer. He expressed himself as one would do without knowing what the relevant law was. He said that he wanted to give an absolute estate to the widow in the movable and immovable properties, but after her death, he also wanted to give absolute estate to the appellants. Had he been a lawyer, he would have realised that after granting absolute estate to the widow, he lost the power of disposition which is to take effect after her death. For, the property of the widow would have to go to the heirs of the widow after her death and the succession to the property of the

widow would open on the death of the widow. The will takes effect on the death of the testator and exhausts itself. The testator cannot, Therefore, provide for what is to happen after the death of the widow. Had this law been explained to the testator, he would have said that the estate to be given to the widow should only be a life estate so that his intention to give the movable and immovable property first to the widow and the immovable property after her death to the appellants would be duly carried out. It is the duty of the Court of construction to give effect as much to the will as possible u/s 87 of the Act. This duty would be done by adopting the second construction but not by adopting the first one. Adoption of the first construction would also be contrary to section 85 of the Act because it would result in the second part of the will being totally rejected. On the contrary, reasonable construction of the will would avoid the rejection of the second part of the will and would give effect to the intention of the testator as much as possible.

(10) The same rules of construction have resulted from English decisions the substance of which is given in paragraphs 1499 and 1611 of vol. 39 of Halsbury's Laws of England, Third Edition at pages 990 and 1080. It is emphasized there that "the will should be so construed that every word should have effect". It is further stated that "the rule is not adhered to where its application would defeat the intention of the testator as collected from the context of the whole will". In the present case, it is only when every word of the will is given effect to that the intention of the testator is collected from the context of the whole will. If only the first part conferring absolute estate on the widow is allowed to defeat the second part of the will. then such a construction would be contrary to these can one which require that "every word should have effect" and that the intension should be "collected from the context of the whole will".

(11) The point which weighed with the trial Court was that as a matter of law the widow had been given an absolute estate and, Therefore, he had no power to cut down the said absolute estate. He could, Therefore, not hold that anything was left to pass to the appellants after the death of the widow. The learned Judge, however, ignored that the Court of construction has innumerable cases to cut down an absolute estate to a life interest to give effect to the whole of the will and to respect the real intention of the testator. The rule expressed in Halsbury's Laws of England is as follows :-

"An interest apparently in fee simple in real estate, or an interest in personal estate, may be made subject to defeasance, or may, on the context of the whole will, be cut down to a life interest."

(12) The results of numerous Supreme Court decisions have recently been summarised in Navneet Lal alias Rangi Vs. Gokul and Others, in the form of propositions. The following two propositions, inter alia, are-

"(1)The court must accept, if possible, such construction as would give to every

expression some effect rather than that which would render any of the expressions inoperative. xx. xx. xx. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. (2) To the extent that it is legally possible, effect should be given to every disposition contained in the will unless the law prevents effect being given to it. xx. xx. xx. xx. xx. If the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will."

(13) The decisions relied upon by the learned trial Court are distinguishable. In AIR 1931 179 (Privy Council) , it was recognised that-

"A Hindu, no doubt, may give property by way of executory gift upon an event which is to happen, if at all, immediately on the close of a life in being and in favor of a person born at the date of the gift, and such a gift ever might be a sufficient indication that only a life estate to the first taker was intended, xx. xx. xx. xx. That, however, is not the case here."

In the case before us, the bequest to the widow, though apparently made in absolute terms, is followed by a gift over to the appellants after the widow's death. Since the testator has said that not only the widow but also the appellants were obedient and served him, he did not intend to make any real distinction between the two. The testator was an old man of 90. The widow must have been very old. The widow was not expected to live long. The testator knew that during the short span of life left to her, the widow was not likely to alienate the property given to her. The testator could not, Therefore, intend that there was any need for the widow to alienate the estate. Had he so intended, he would have given the immovable property by a gift over to the appellants. The object of apparently giving full rights to the widow during her life time is obvious. He wanted the appellants to respect their mother so long as she lived. Such respect would be commanded if the sons knew that during her life time they would not be entitled to interfere with the property. If the sons had been given such rights of interference or even obvious reversion expressly stated after her death, the position of the widow would not have been so honourable as the testator would have liked. Taking these circumstances into account, the apparently absolute estate had to be read down to mean a life estate in favor of the widow.

(14) In AIR 1935 187 (Privy Council) the situation was exactly the opposite to the situation in the present case to which the second part of section 83 of the Act as distinguished from the first part thereof was applicable. What was needed there to give effect to the intention of the testator was not to read down the absolute estate given to the family but rather to give the full effect to the words conferring the absolute estate. Thereby the intention of the testator to exclude his collaterals from claiming the property after the death of the widow would be

carried out. For, these collaterals of the testator would not be the heirs of the widow. For that purpose, the widow had to be an absolute owner as the testator desired to exclude these collaterals from succession. On the contrary, in the present case, the desire of the testator was to exclude the plaintiff-respondent Budh Singh from getting any of his properties. This intention of the testator would be carried out if the estate given to the widow is construed to be a life estate. The intention of the testator would be defeated if the estate given to the widow is construed to be her absolute estate. For, after the death of the widow if the property is to go by succession under the Hindu law, Budh Singh would be an heir along with the appellants. The testator wanted to avoid this result. The will cannot, Therefore, be so construed as was done by the trial Court because such a construction would be directly contrary to the intention of the testator. The testator also excluded his two daughters from the benefit of the will after stating that they were leading a prosperous life and he had already given a lot to them. If the first part of the will is given effect to as conferring an absolute estate on the widow and the second part of the will is defeated as being repugnant to the first part, the daughters who were excluded by the testator from getting any part of his estate, would also become entitled to share in the estate as being heirs of the widow under the Hindu law after the widow's death. Such a result would also be contrary to the intention of the testator.

(15) The central rule of construction of wills is that the intention of the testator should be carried out. With that central object in view, the different parts of the will should be construed harmoniously. It is this reason which prevents the Court of construction from rejecting any part of the will as being a surplusage. For, the testator could not have intended to make any bequest in the will as an exercise in futility. It is also this central rule which enables the Court of construction to read down the language of a part of the will if giving full effect to the general words of that part of the will would result in making the other part of the will defeasible. Ample authority has been given above to explain why the apparently wide language conferring an absolute estate on the widow in the present case has to be read in a restricted sense to prevent the second part of the will from being defeated and to prevent Budh Singh and the daughters of the testator from becoming eligible to share in the estate of the testator.

(16) There is one more reason why the construction of the will suggested above is to be supported. The apparently absolute estate conferred on the widow by the testator can be related, to the movables which were bequeathed by him absolutely. For, no bequest of these movables is made in favor of the appellants after the death of the widow. On the other hand, the same language may justifiably be read in its restricted sense in respect of immovable property, because the second part of the will gives the immovable property to the appellants after the death of the widow. In this way, the words conferring an absolute estate on the widow were not entirely without application. The only modification done in construing them is to apply those words with full force to the movables but in restricted sense to the immovable property. If the testator

were more careful, he would have dealt with the movables and the immovable property separately. But merely because he dealt with them together in respect of the widow, the Court of construction is not prevented from dealing with them separately with a view to give effect to the whole of the will and to all the recitals contained in the will and to carry out all the wishes of the testator as expressed in the will.

(17) For the above reasons, we hold that the will conferred an absolute estate on the widow only in respect of the movables. It conferred a life estate on the widow in respect of the immovable property. It also conferred an absolute right on the appellants to the immovable property after the death of the widow. Since this construction is contrary to the one adopted by the trial Court, the judgment and decree of the trial Court are set aside. We, however, find that the trial Court has assumed that the will was properly executed and attested. This assumption was made only to try the question of law relating to the construction of the will. "The plaintiff has not, however, admitted the execution and attestation and the validity of the will. This issue is still to be framed and decided by the trial Court. Since the decision of the trial Court was based on a preliminary issue and the said decision has been set aside, the case is remanded to the trial Court for the framing of the issue regarding the execution, attestation and the validity of the will and deciding the same. The construction of the will has, however, been done by us and is not to be attempted again by the trial Court. After deciding the issue regarding the execution, attestation and validity of the will, the suit will be disposed of by the trial Court in the light of the decisions given by us in this appeal. We order the costs of this appeal to be costs in the cause. The parties are directed to appear before the trial Court on 22nd August, 1977.