

(1932) 12 BOM CK 0022
In the Bombay High Court

Rai Bishunath Prasad Singh

APPELLANT

Vs

Rani Chandika Prasad Kumari

RESPONDENT

Date of Decision : 15-12-1932

Acts Referred:

Citation : (1933) 35 BOMLR 341

Hon'ble Judges : Russell, J;Macmillan, J;John Wallis, J;Dinshah Mulla, J;Blanesburgh, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Blanesburgh, J.—In this case many questions were canvassed in the Courts in India, but all, except one, have passed into history. They survive merely as an excuse for the over elaborate and bulky record which is before their Lordships.

2. The one issue which remains effective concerns a moiety share of a taluqa known as Jakhania in the Jaunpur district in the province of Agra which by a registered deed of gift dated September 16, 1862, was given by Pirthipal Singh, the head of his family, to Musammat Balraj Kunwar his daughter-in-law. The question is whether that lady had under the deed power to make alienations of the property giving to the respondents titles which are valid after her death. That question has been answered in the affirmative by the Subordinate Judge of Jaunpur and the result is embodied in his decree of December 21, 1921, which on appeal was affirmed by a decree of the High Court of Judicature at Allahabad, dated March 2, 1926. The surviving plaintiff claiming under the donor Pirthipal Singh who is long since deceased again appeals.

3. The deed in question is short and in terms simple. Its true effect falls to be determined by the construction placed upon the following passages from it, read together :-

A moiety share of "taluqa" Jakhania...belongs to me by virtue of purchase made at auction...As I have attained old age now, as it is possible that some dispute

might arise after my death, and as it is my desire to make some arrangement for the support and maintenance of Musammat Balraj Kunwar, my daughter-in-law. I the executant have...made a gift of the entire above mentioned property...i.e., the Zamindari rights appertaining to a moiety share of the above-mentioned "taluka" to my daughter-in-law...for her support and maintenance. I declare and give it in writing that the said Musammat should remain absolute owner (malik mastakil) of this property under this deed of gift and pay the Government revenue. I, the executant, and my heirs and representatives neither have nor shall have anything to do with the above-mentioned gifted property. If any person brings any sort of claim in future it shall be considered false and invalid in face of this document. I shall get the name of the said donee to be entered in the Government papers under this deed.

4. This deed of gift has been most carefully analysed by Mr. Justice Lindsay in his judgment in the High Court and therein he has set forth with great clarity the reasons which have led him to the conclusion that the deed confers upon the donee an absolute estate in the property and not one which determined with her life.

5. Their Lordships find themselves in entire agreement with the learned Judge. They are satisfied that his reasoning, so far as based upon the terms of the deed alone, is correct and that his conclusion is completely justified by authority. Nothing said by Mr. De Gruyther or by Mr. Parikh for the appellant has weakened his judgment in any way, and their Lordships might well leave the matter there. But as they find further support for the learned Judge's conclusion in at least two cases cited to the Board, but not specifically discussed by him, they think it may be not without advantage shortly to refer to these now.

6. The first is (1896) L.R. 23 I.A. 37 (Privy Council) and it has a bearing upon the feature of the deed of gift here to which much importance was attached by the appellant. In the deed as was pointed out not only do you find the "support and maintenance" of the donee recited as the purpose of the gift, but you find that expression repeated also in the words of disposition.

7. Now in Jogeswar Narain Deo v. Ram Chund Dutt the effect of a disposition of a four annas share in a certain zemindary made by will in favour of the youngest wife of the testator and their son was in question.

8. The words of bequest of the four annas share were: "I give to you...and the son born of your womb for your maintenance," succeeded after an interval by the following words, attached, by construction, to the original gift, "and I give to you the power of making alienation by sale or gift,"

9. Upon these words it was held by the Board that the words "for your maintenance," parcel of the words of gift were not sufficient to cut down to life interests only the estates taken by the legatees and the reason is stated by Lord Watson in delivering the judgment of their Lordships (p. 43):-"

It is no doubt true that the gift of the 4-annas share of Silda bears to be made to the Rani and the appellant "for your maintenance"; but these words are quite capable of signifying that the gift was made for the purpose of enabling them to live in comfort, and do not necessarily mean that it was to be limited to a bare right of maintenance.

10. In that case the wide construction was assisted and adopted as a result of the words conferring upon the legatees a power of disposition by sale or gift.

11. But here the donee described in the deed as "malik mustaqil" and the comprehensive intendment of that expression is illustrated in the second of the two authorities to which their Lordships think it desirable to refer.

12. It is the case of *Naulakhi Kunwar v. Jai Kishan Singh* ILR (1918) All. 575 where, as here, a Hindu being the full owner of certain property made a gift of it to his daughter-in-law, describing the donee to the deed as malik mastakil. It appears from the argument of counsel that the gift was expressed to be for "maintenance" (see p. 576, line 13).

13. In these circumstances the Court pointed out that this Board in *Surajntani v. Rabi Nath Ojha* ILR (1907) All. 84: 10 Bom. L.R. 59 had held that the word "malik" alone, unless there was something definite to the contrary in the surrounding circumstances to qualify the meaning of the expression, indicates an absolute estate. "Here," they go on, "we have the word "malik" followed by the word "mastakil" which even makes it stronger."

14. The other indications in this deed pointing in the same direction and all discussed by Mr. Justice Lindsay lend to the words in the present case a completely compelling force.

15. Their Lordships accordingly do not consider it necessary to go further into the authorities, being really well content to accept on the whole matter the reasoning and the conclusion of that learned Judge.

16. In their Lordships' judgment the appeal fails, and they will humbly advise His Majesty that it be dismissed with costs.