

(1991) 08 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 90 of 1983

Shanti Devi

APPELLANT

Vs

Maya Devi and Others

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Succession Act, 1925 — Section 100, 101, 102, 103, 104

Citation : (1992) 1 ShimLC 227

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; Vijay Thakur and Inder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—At the time of admission of appeal, the following question of law was formulated:

Whether the interpretation of the Will shows that the testator had individual share in the legacy to the legatees?

2. One Babu Ram son of Nihala owned and possessed the suit property. He died in the year 1973 without leaving any male issue. His wife had predeceased him Maya Devi, Respondent, is his only daughter. On December 4, 1967, he executed a Will, Ex. P-I, which was got registered by him with the Sub-Registrar, Una, on the same day, bequeathing his movable and immovable property in favour of three grandsons of his brother Piara Singh. One of the legatees, under the Will, namely, Shakunt Raj, a son of Jagdish Singh son of Piara Singh died on June 25, 1970. After the death of Babu Ram, mutation of inheritance No. 4812 to his estate was entered by the revenue officials, on the basis of a Will, in favour of three legatees, although one of them had pre-deceased Babu Ram but at the time of attestation, on the objection of the daughter of the deceased, mutation was instead attested in her favour as if Babu Ram had died intestate. This

prompted the two legatees, namely, Kewal Singh and Yog Raj and Smt. Shanti Devi the widow of third legatee to file a suit in the trial Court for grant of a decree for possession of the suit property on the ground that the deceased had died testate by having executed a Will bequeathing his movable and immovable property, therefore, his daughter, Maya Devi, Respondent had neither inherited the same, nor had acquired any right, title or interest therein The order of attestation of mutation in her favour was challenged being bad in law.

3. The suit was contested by Maya Devi, Defendant-Respondent, who denied the deceased having executed any valid Will in favour of the three legatees. In the alternative, it was claimed by her that the Will propounded by the plaintiffs was not a valid Will and the same was the result of fraud, misrepresentation and undue influence It was specifically contended in the written statement that it was just possible that the plaintiffs, in the garb of getting a general power of attorney executed, might have got the thumb impression of Babu Ram on the Will. Defendant also pleaded that there was no valid ground in bequeathing his properties in favour of the three legatees by ignoring her claim to the property. On the pleadings of the parties, the trial Court framed the following two issues:

1. Whether Babu Ram deceased had executed a valid Will in favour of the plaintiffs as alleged? OPP

2. Whether the Will was got executed as a result of fraud, misrepresentation and undue influence as alleged? OPD.

4. The trial Court on the basis of discussion of evidence found that the Will Ex. P-I was validly executed by deceased Babu Ram and it further held that no fraud and misrepresentation was practiced upon Babu Ram, nor the execution of the Will was the result of any undue influence. As a result of these findings, suit of the plaintiffs was decreed. Feeling aggrieved, the Respondent preferred appeal before the lower appellate Court. The lower appellate Court upheld the findings of fact as regards due execution of the Will holding that conclusions arrived at by the trial Court on the facts and in the circumstances of the case were correct. Further, it after noticing the fact of death of one of the legatees prior to the death of the executants of the Will held that by virtue of the provisions of Section 107 of the Indian Succession Act, the share of the deceased legatee had become undisposed and accordingly modified the judgment and decree of the trial Court, The two legatees, namely, Kewal Singh and Yog Raj were held entitled to 2/3 share out of the suit property and the Respondent-Defendant Maya Devi, daughter of the deceased was held entitled to the remaining 1/3 share. Feeling aggrieved, the judgment and decree of the lower appellate Court has been challenged in this Second Appeal by the widow of third legatee. Respondent Maya Devi has also preferred cross-objections against the findings of the Courts below with respect to the due execution of the Will.

5. Firstly, while dealing with the cross-objections filed by Respondent No. 1 and to find out as to whether the Courts below were right in concluding that the Will

had duly and validly been executed by the deceased and the same was not the result of misrepresentation, fraud or undue influence and further whether all the suspicious circumstances attending to the due execution of the Will had been satisfactorily explained by the propounder, it would be necessary to examine the oral evidence adduced by the parties and also to glance through the Will, Ex. P-I, which is in vernacular and the following is its translation:

I, Babu son of Nihala son of Sucheta, aged 80 years, caste Rajput, am a resident of village Bhadsali, Tehsil and Police Station Una. My wife has since died. I have one daughter namely Maya Devi and I have solemnised her marriage after providing sufficient dowry and gifts. She lives at her in-laws' house. Shakunt Raj, Kewal Singh and yog Raj sons of Jagdish Singh son of Piara Singh caste Rajput, resident of village Bhadsali, Tehsil and Police Station Una are real grandsons of my brother Piara Singh. In a way they are my grandsons also. I am being looked after by them in all respects. They are obedient to me, therefore, I have deep love and affection for all of the three and I wish for their welfare. I have grown old and there is no certainty of life. Therefore, I make this Will and write it down that after my death all of my lands, houses, all types of Abadi, any rights of redemption, all my deposits and my all other rights and privileges, that is, my entire movable and immovable properties located everywhere shall devolve in equal shares on the aforementioned three, namely, Shakunt Raj Kewal Singh and Jog Raj.

in the Will that the grand-sons would share the same equally, the same should be held to have been inherited by the surviving legatees. In support of the submission, learned Counsel referred to Section 106 of the Indian Succession Act and placed reliance upon the decision of a Division Bench of the Andhra Pradesh High Court in Koppula Surareddy (died) and Others Vs. Koppula Venkata Subbareddi and Others, The further submission of the learned Counsel was that the intention of the testator being clear, full effect thereto was to be given by holding that on the death of testator by virtue of the Will the property should devolve on the two surviving legatees.

6. Learned Counsel for the Respondent-Defendant on the other hand, contended that in the facts and circumstances of the case, Section 106 of the Indian Succession Act has no applicability to the present case. The provisions of law, which would be attracted, are Section 107 and Section 108 of the said Act, which provide that if a legacy is given to the legatees, in words which show that the testator intended to give them distinct shares and if any legatee dies before the testator, then the legacy as was intended for him shall fall into the residue of the testator's property and ultimately it will go as undisposed and by applying these principles no interference is called for in the judgment and decree of the lower Appellate Court vide which the share of the deceased legatee has rightly been held to have been inherited by the Respondent as undisposed.

7. Sections 74 - 111 contained in Chapter VI of the Indian Succession Act 1925 (hereinafter referred to as the Act) deals with the construction of the Will as also

the lapse of legacies. Two cardinal principles are to be observed in the construction of the Wills, namely, the rule of law and rule of construction. The rule of law is one which takes effect when certain conditions are found, although the testator may have intended an intention to the contrary, whereas, the rule of construction is one which points out that what a Court should do in the absence of express or implied intention. The primary duty of the Court, in such like situation, is to ascertain the intention of the testator from the Will itself by reading it as a whole without indulging in any conjecture or speculation. While doing so, the Court must consider the surrounding circumstances, the position of the testator, his family relationship and the probability that he would use words in particular sense. This has somewhat been described in a picturesque phrase "the Court is entitled to put itself in the testator's arm chair". This rule of construction can be found embedded in Section 75 of the Act, which reads as follows:

75. Inquiries to determine questions as to object or subject of Will--For the purpose of determining question as to what person or what property is denoted by any words used in a Will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

8. This provision of law deals with the admissibility of extrinsic evidence in aid of construction of Wills and by virtue of Section 57 of the Act is applicable to a Will made by a Hindu with the modifications specified in Clause 5 of Schedule III of the Act. In case legatees have correctly been described in the Will, no further inquiry is necessary and no extrinsic evidence will be admissible, but if a person claiming as a legatee is not the one mentioned in the Will or if the person described in the Will has died or the property described has ceased to conform to the description, further evidence may be admitted to discover some other subject existing at the date of the Will to which the words may refer as understood by the testator.

9. It was contended by the learned Counsel for the appellants that on a proper construction of the Will, alongwith the surrounding circumstances, that the testator intended to make a joint bequest involving joint tenancy in favour of legatees and the bequest made by him cannot be considered having been made in severalty so as to hold that the legatees were to take it as tenants-in-common. According to learned Counsel intention can be gathered from the contents of the Will wherein it is stated that the testator had already provided for his daughter Maya Devi at the time of her marriage and since the father of legatees was maintaining him, therefore, it was further stated by him that grandsons of his brother Piara Singh were to enjoy the property after his death in equal shares and no part thereof should go to his daughter.

10. On the question as to when a Hindu testator makes a bequest, whether the

legatees takes it in severalty or as joint tenants, there has been a catena of decisions of Privy Council and of various High Courts, which all were considered in *Sanjeevi Reddy v. Ahilandathammal and Anr.* ILR (1968) 1 Mad 138 . It was held by the Madras High Court that prima facie view is that the legatees take a bequest in severalty even if they constitute a Hindu joint family and those who contend in favour of joint tenancy have to show some clear foundation for it in the terms of the Will. Even according to Mitakshra school two or more persons inheriting jointly take the estate as tenants-in-common except in some of the cases where they are living as members of a joint family and succeeding as heirs to the separate or self-acquired property of their paternal ancestor The question was considered by the Supreme Court in *C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another*, wherein after the consideration of the text on the subject and variant opinions of the High Court, it took the view that the question was primarily one of the intentions of donor or the testator to be gathered from the terms of the deed of gift or Will. If there are no clear words describing the kind of interest intended to be given, the Court has to collect the intention from the language of the document taken alongwith the surrounding circumstances in accordance with the established canons of construction. It further held that the material question in such cases would be whether the testator really wanted to make a gift of the property to his son or the apparent gift was only a integral part of a scheme to partition the same but there is no presumption that he intended the one or the other. Even otherwise, the Hindu testator is perfectly at liberty like any other testator to create a joint tenancy in favour of two or more legatees either by explicit language or by the fact that the surrounding circumstances justified that inference alone as his true intention in the Will. The testator in this case by having provided that the three legatees would take bequest in equal shares would be deemed to have intended that the same be enjoyed by them in 1/3 share each, that is in severalty and not as joint tenants. The language of the Will Ex. P-I is clear. The probable intention of the testator can also be gathered therefrom that he intended to make bequest in favour of the three grand-sons and that too in specified shares. I have no doubt in my mind that this testament must be interpreted as a bequest in severalty. If this interpretation is to prevail, it would be indisputable that upon the death of testator Babu Ram, Shakunt Raj, one of the legatees having predeceased him, the devolution would follow u/s 107 and not Section 106 of the Act. Section 106 provides for devolution where the legacy is joint one and similarly Section 107 provides for devolution where the same is in severalty. Section 107 cannot be interpreted so as to apply in case of joint legacy. Part of Section 107 of the Act which runs to the effect that "in words which show that the testator intended to give them distinct shares of it" have to be strictly interpreted, that is, there must be actual expression in the Will justifying this inference and it is not a warranted rule of interpretation to draw such an inference either by mere implication or by the addition of words to the Will which are not there. When Will Ex. P-I clearly shows that the testator intended to give to the three legatees distinct shares of his property, the bequest has to be taken as having been made in severalty.

11. On a true interpretation of the Will and correctly applying the law, as discussed above, it must be held that the Will Ex. P-I shows that the testator had provided individual shares in the legacy to the three legatees and Shakunt Raj having pre-deceased Babu Ram testator, the legacy as was intended for him fell into the residue and the trial Court was right in holding that there was nothing wrong in inheriting the same by the daughter of the deceased testator. The question of law, as such, is answered in the affirmative.

12. In the result, the appeal is dismissed the cross-objections, in view of the aforementioned discussion, are also dismissed. The judgment and decree of the lower appellate Court is affirmed.

13. The parties are left to bear their own costs.