SUPREME COURT OF INDIA

Purnendu Nath Tagore

Vs.

Administrator-General of West Bengal

C.A.No.199 of 1952

(Mehr Chand Mahajan, Vivian Bose and B. Jagannadhadas, JJ.)

20.05.1953

JUDGEMENT

MAHAJAN, J.:

1. This appeal is directed against a judgment of the High Court of Judicature at Calcutta, dated 27-6-1950, affirming the judgment of S. R. Das Gupta J., dated 8-7-1949, in Suit No. 3798 of 1948.

2. The principal question to be determined in the case was whether upon a proper construction of the will, dated 14-3-1927, of Raja Prafulla Nath Tagore, deceased, the Administrator-General of Bengal was entitled to possession of a house known as "Tagore villa" at Alambazar for a period of 15 years as provided in the said will. The High Court answered the question in the affirmative. This answer is in challenge in this appeal before us.

3. Raja Prafulla Nath Tagore, a Hindu governed by the Dayabhaga School of Hindu Law, died on 2-7-1938, leaving him surviving his widow and five sons. Kumar Purnendu Nath Tagore, the appellant, is his eldest son. On 14-3-1927, the late Raja executed his last will and testament. Clause 82 of the will is in these terms:

"I give my Alambazar Garden House "Tagore Villa' together with all articles of furniture to my eldest son Sriman Purnendu Nath Tagore. On the expiry of the term of office of the Executors and Trustees, Sriman Purnendu Nath shall get the said Garden House. No other son of mine shall be competent to put forward any claim to the said Garden House or the articles of furniture."

The late Raja owned and possessed extensive properties, moveable and immoveable, lying within and outside the Original Jurisdiction of the High Court at Calcutta. The will is divided into 83 paragraphs. It gives full and elaborate directions for the management of his vast estate and in respect of its final disposition.

After the death of the Raja, his five sons obtained on 24-8-1938, in testamentary Suit No. 12 of 1938, an order for the issue of probate, which was later issued to them. On 8-4-1948, they were removed from their office as trustees and executors, and the Administrator-General of West Bengal was appointed the sole executor. On 22-11-1948, the Administrator-General took out an Originating Summons for the determination of the question above mentioned arising in the administration of the estate of the late Raja and for incidental directions.

4. The appellant resisted the contention of the Administrator-General on the ground that on a proper construction of the will, he alone was entitled to remain in exclusive possession of "Tagore Villa" at Alambazar and to the income thereof from the date of the death of the late Raja. Tois claim was based on the terms of clause 82 of the will.

5. The general rule of law is well settled that a donee or a legatee can only take what is given to him on the terms on which it is given. By clause 82 of the will, the appellant was entitled to the Garden House of Alambazar on the expiry of the term of office of the executors and trustees. By clause 10 of the will, the testator directed that after his death, his executors and trustees shall conduct the affirs of the estate according to the rules fixed by him.

For payment of the legacies, he gave the following directions in this clause:

"The legacies fixed in this my present will shall have to be paid in full within fifteen years of my death and these fifteen years my estate shall be managed under the supervision of the Executors and Trustees. As to the various legacies that I have made a mention of, in this my will, my executors and trustees shall pay up all the said legacies out of the small savings made from the income of my estate year after year. For paying up the legacies my executors and trustees shall not be competent to sell any portion of my estate or any immoveable property."

The executors appointed under the will were, therefore, directed to take possession and charge of the whole of the estate left by the testator, and they were directed to pay the legacies out of the savings from the income of the whole of the estate within a period of 15 years. In other words, the whole estate was vested in the executors for a period of 15 years for the benefit of the legatees, and it was after the termination of the period of administration of the estate by the executors, that the appellant was given the Alambazar Garden House, and, that being so, under the ordinary rule of law, he was only entitled to this house after the expiry of the term of office of the executors and trustees.

6. It was, however, contended on his behalf that the Alambazar House had been gifted to him absolutely and that the condition postoponing his enjoyment of that house for a period of 15 years was repugnant to the gift and was thus void. Reliance was placed for this contention on the provisions of S. 138, Succession Act, and a number of English cases, the first being .... "Saunders v. Vautier', (1841) 4 Beav 115(A). In that case, a testator by his will had bequeathed to his executors and trustees all his East India stocks upon trust to accumulate the interest and dividends which should accrued thereon until X should attain the age of twenty-five years and then to transfer the stock together with accumulated interest and dividends to X absolutely.

There was no gift over. The residuary estate was bequeathed to others. It was held that there was an immediate gift of the East India stock and that, notwithstanding the direction contained in the will, X was entitled to it upon his attaining the age of twnety-one. The principle given effect to in this case in an exception to the general rule that a donee or a legatee can only take what is given to him on the term on which it is given. The conditions as to accumulation and postoponment of possession were, however, held to be void, as they could not be annexed to an absolute gift of property.

7. The principle involved in the case of - 'Saunders v. Vautier,' (1841) 4 Beav 115 (A) was again considered in the leading case of - 'Gosling v. Gosling,' (1859) Johns 265 (B). In that case Wood, V. C. observed as follows:

"The principle of this Court has always been to recognise the right of all persons who attain the age

of twenty-one to enter upon the absolute use and enjoyment of the property given to them by a will, notwithstanding any directions by the testator to the effect that they are not to enjoy it until a late age... unless, during the interval, the property is given for the benefit of another. If the property is once theirs, it is useless for the testator to attempt to impose any fetter upon their enjoyments of it in full so soon as they attain twenty-one.

And upon that principle, unless there is in the will, or in some condicil to it, a clear indication of an intention of the part of the testator, not only that his devisees are not to have the enjoyment... of property he has devised to them until they attain twenty-five but some other persons is to have that enjoyment... or, unless the property is so clearly taken away from the devisees upto the time of their attaining twenty-five as to induce the Court to hold that, as to the previous rents and profits there has been an intestacy - the Court does not hesitate to strike out of the will any direction that the devisees shall not enjoy it in full until they attain the age of twenty-five years."

This case has been repeatedly followed in England, and the same rule has been applied in India and finds recognition in the statutory provisions of Ss.138 and 119. Succession Act. Section 119 of the Act deals only with the legatees who are not entitled to immediate possession. In their case an interest in the estate is vested in such legatees, though the estate is not vested in possession in them. Section 138 provides.

"Whether a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direc-tion that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction."

Therefore, if by the terms of a will an absolute interest in certain property is given to a legatee, any subsequent provision postoponing the legatee's right to possession of the property for any period beyond the majority of such legatee is contrary to the provisions of S. 138, Succession Act, and as such is void. Such postoponement of possession is repugnant to the absolute interest coupled with the right to immediate possession, and is therefore void also according to the general principles of repugnancy applied to wills by English Courts in - 'Saunders v,. Vautier', (1841) 4 Beav 115, (A) and in - 'Gosling v. Gosling' (1859) Johns 265 (B) which have been followed by Indian Courts. If, however, during such period of postponed possession beyond the minority of the legatee, the income of the property is given to a third person, this rule has no application.

8. S. R. Das Gupta J., held the appeal Bench concurring, that the scheme of the present will was that the income of all the properties of the testator was to be utilized for meeting the payments mentioned in the will including the expenses of seva and periodical ceremonies of the Thakur, and that it was after having paid in full all the legatees and on completion of the other works mentioned in the will, that the executors and trustees were to dedicate the zamindaries mentioned in clause 23 of the will for the seva and periodical ceremonies of the Thakur and to make over the Alambazar property to the appellant and the residuary estate to the heirs.

The learned Judge also held that on a proper construction of the will, the expression "estate" out of whose income the payments mentioned in the will, were to be met, could not be considered to mean ...... "properties other than Alambazar Garden House." We are in entire agreement with this view. In our judgment, clause 10 of the will makes it perfectly clear that the whole of the estate of the testator including the Alambazar house was to vest in the executors for a period of 15 years and they were to realise the income of the estate for the benefit of the legatees indicated in the will, and after the various legatees had been paid, then the estate had to be distributed as stated in the various

clauses of the will.

We are unable to accept the contention of Mr. Chatterjee on behalf of the appellant that the word "estate" used in clause 10 does not include within its ambit the property gifted to the appellant by clause 82 of the will. There are other clauses in the will which fully support the construction which we have placed on clause 10. Clause 20 directs as follows :

"as to the house and lands which I have in Clacutta and in the mofussil as also such houses and lands if any as may be purchased in future, my executors and trustees shall be competent to increase the income of the estate by letting out the same. But such houses as will be required for the residence of the members of my family shall not be let out."

By this clause, in clear terms, the trustees have been empowered to let out all the houses whether situated in Calcutta or in the mofussil, and they have also been given authority to allow members of the testator's family to live in any of these houses if they are required for residence. Similarly, in clause 41, it was directed that if the testator's widow likes to live at times at any place out of Calcutta, "then arrangement for her residence at my Alambazar Garden House, or at any house at Kasi or at any house at any other place shall have to be made." This also indicates that the management of the houses for 15 years was vested in the executors and trustees.

Mr. Chatterjee argued that Clauses 20 and 41 indicated that the executors were not given power to let out the Alambazar house as it was not only the residential house of the deceased in which he eventually died but it was also intended that house should be kept for the residence of his wife. We are unable to agree with this argument. The true construction of these clauses is that the execturos were given full power to manage these houses and to let them out also, subject of course to any arrangement that may be made, when desired, about the residence of the widow and other members of the testator's family.

9. Considerable reliance was placed on the terms of clause 81 for the contention that the Alambazar Garden House had been absolutely given to the appellant and he was entitled to it from the date of the testator's death. Clause 81 is in these terms.

"Save and except the legatees that I have provided for in this my present will and save my garden house at Alambazar Tagore Villa together with articles of furniture I give to my sons all my remaining movable and immovable properties that will be left and also the movable and immoveable properties whereto my right will accrue in future. Subject to the management and payment of those several trusts (Debutter, etc.) and the legacies that I have created or I have directed the creation thereof in this will my sons shall continue to hold and enjoy all the said movable and immoveable properties."

It was contended that excepting the Alambazar house, all the other properties were give to the sons, subject to the payment of the legacies, but that no such condition was attached in regard to the Alambazar house. In our judgment, this contention of Mr. Chatterjee does not seem to be based on a correct construction of clause 81. For 15 years, all the properties had to remain in charge of the executors but their administration was to come to an end on the expiry of 15 years. If some legacies remain unpaid till then, as regards the other properties, the heirs could only take them subject to the claims of the legatees, while as regards the Alambazar house, it was freed from the claims of the legatees after the expiry of 15 years. Clause 81, therefore, does not in any way help the case of the appellant.

10. On a consideration of all the clauses of the will and of the different arguments placed before us, we have no hesitation in affirming the view taken by the High Court on the construction of the will. This case seems to be analogous to the case of ..... 'Profulla Chander v. Jogendra Nath,' 1 Cal LJ 605 (C). In the 18th clause of the will therein considered, there was a direction to the following effect:

"...... that after 13 years from my death my executors and trustees shall make over to my sons the properties which I devised to them respectively and under this my will, but in the meantime my sons shall only be entitled to the monthly sum of Rs. 100 each as hereinbefore directed to be paid to them, and my executros and trustees shall have in their direction absolute disposal over the balance of the income of the said properties so devised to my said sons for the purpose of carrying out the directions hereinbefore contained for causing new buildings to be erected in the premise ..... and for otherwise improving the other trust properties."

It was contended in that case that there was an absolute gift to the sons of the premises and that the direction regarding dealing with the property for 13 years by the trustees was in the nature of a restraint on the devise to them of the property and was bad in law and should be set aside.

It was held that it was impossible to say that the testator intended to make an absolute gift of the entire present interest of the properties to the sons and that the case was not governed by the rule in - 'Lloyd v. Webb', 24 Calif 44 (D), where there was an absolute gift to the testator's son which was to be given effect to at a later period but in which there was no disposition over of the immediate interest, and that by the will the testator had directed the intermediate interest not to go to the sons but to be dealt with by the trustees for carrying out certain specific trusts, and that the gift to the sons during the period of 13 years was only a limited one which was to become an absolute gift of the entire estate on the expiration of 13 years.

11. For the reasons given above, this appeal fails and is dismissed. The costs of both parties be paid out of the estate.

Appeal dismissed.

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