Navneet Lal Alias Rangi

Vs

Gokul and Others

Civil Appeal No. 914 of 1968

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

09.12.1975

JUDGMENT

GOSWAMI, J. -

1. This appeal by certificate from the judgment and decree of the Allahabad High Court raises an important question with regard to the construction of a will. The respondent Gokul (whose heirs have been impleaded after his death) was the original plaintiff in a suit for declaration that he was the absolute owner under a will of the property in suit and for possession of certain of them. He also claimed certain movable properties with which we are not concerned in this appeal.

2. The property in suit was originally in exclusive ownership and possession of Bhola Chaubey, the testator. Bhola Chaubey was governed by the Mitakshara School of Hindu Law. He belonged to the class of priests and was an old man of 67 years at the time when he executed the will on September 21, 1916. He had then a legally wedded wife, Smt. Jarian approaching nearly her forty-fifth year and they had no issue in wedlock. The only person whom the testator appeared to have almost treated like a son was the respondent Gokul, doubly related to the testator, being his sister's son and also his wife's brother's son. Gokul had been with him since childhood and the testator got him married. Gokul in return had been serving the testator to his satisfaction and was in enjoyment of his full confidence and affection till the testator's death in 1918. Gokul was then aged about 23 years. It was directed in the will that Smt. Jarian would get the obsequies and other religious rites of the testator performed by Gokul.

3. After the death of the testator Smt. Jarian and Gokul continued to live in cordiality for nearly 18 years. Feelings, however, got estranged some time after that and there was even litigation, criminal and civil, between Smt. Jarian and Gokul. It appears Smt. Jarian, who died in March, 1948, had executed a gift deed and a will in respect of certain properties in suit in favour of the appellant. Navneet Lal. All this led to the institution of the present suit out of which this appeal has arisen.

4. The case of the appellant was that Bhola Chaubey had given an absolute estate under the will to his wife, Smt. Jarian, and she was, therefore, entitled to deal with the property as she liked and hence the deed of gift and the will in favour of the appellant were perfectly valid. According to the appellant the respondent had no right to file the suit basing upon the will executed by Bhola Chaubey.

5. According to the respondent the will conferred on Smt. Jarian only a life estate during her life and after her death an absolute estate of the testator's entire property on the respondent.

6. The Civil Judge, Mathura, decreed the respondent's suit except with reference to the movable property mentioned in Schedule C to the plaint as well as in respect of certain muafi zamindari property in Schedule A to the plaint. The appellant appealed to the High Court at Allahabad and when the matter came up for disposal by a Division Bench of that court, there was a difference of opinion between the judges. Srivastava, J. held that the testator had no intention of conferring a limited life estate only on his wife and that she acquired an absolute estate by virtue of the will. On the other hand, B. Dayal, J. took a contrary view holding that Bhola Chaubey intended to give merely a life estate to Smt. Jarian and to make Gokul full owner of the property after her death. The appeal was then set down for hearing before a third Judge, (Dhawan, J) who agreed with B. Dayal, J. resulting in dismissal of the appeal.

7. We are concerned in this appeal only with the construction of the will executed in the year 1916.

8. From the earlier decisions of this Court the following principles inter alia, are well established :

> (1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered : but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. (Ram Gopal v. Nand Lal (1950 SCR 766, 772 : AIR 1951 SC 139))
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> (2) In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarthy (41 IA 51, 72 : 21 IC 339 : 15 Bom LR 1010)) and is bound to bear in mind also other matters tha.m.rely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense ..... But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. [Venkata Narasimha's case (supra) and Gnanambal Ammal v. T. Raju Ayyar (1950 SCR 949, 955 : AIR 1951 SC 103)]
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> (3) The true intention of the testator has to be gathered not by attaching importance to isolated expression but by reading the will as a whole all its provisions and ignoring none of them as redundant or contradictory. (Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer (1953 SCR 232, 240 : AIR 1953 SC 7))
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> (4) 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. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. 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 clea.m.aning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. (Pearey Lal v. Rameshwar Das (1963 Supp 2 SCR 834, 839, 842 : AIR 1963 SC 1703))
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> (5) It is one of the cardinal principles of construction of wills that to the extent that it

> is legally possible effect should be given to every disposition contained in the will unless the law prevents effects being given to it. Of course, if there are two repugnant provisions conferring successive interests, 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. (Ramachandra Shenoy v. Mrs. Hilda Brite ((1964) 2 SCR 722, 735 : AIR 1964 SC 1323)).

9. Bearing in mind the above principles we may now look at the will in question as a whole. This will is written in the Urdu language. An official translation is placed on the record. From the Contents of the will we find the background and the exact position of relationship of the parties set out earlier. Gokul was residing with Bhola Chaubey and Smt. Jarian. It may bear repetition that Gokul was held in great love and affection by the testator who was keenly anxious for the welfare both of his wife and of Gokul. There is yet another feature which is prominent in the will. The testator was apprehensive of his only brother, Ram Raj and his nephew, Kishnu, who "might trouble his wife and Gokul after his death".

10. From such of the aforesaid prefatory recitals as appear in the will, two objects stand out, namely that he was deeply interested in the enjoyment of his property movable and immovable after his death by his wife and after her death by Gokul. The second object was that he intended that his property should not fall into the hands of his brother and nephew who had been separate from him since long after some arbitration and even bore ill-will against him and his wife.

11. After the above revelation of his mental attitude in the will there follows the following recitals :

So long as I, the executant, am alive, I myself shall remain the owner in possession (malik wa qabiz) of my entire movable and immovable property and of the income from Birt Jijmani. After my death Mst. Jarian, the wedded wife of me, the executant, shall be the owner (malik) of my entire estate, movable and immovable, and of the income from Birt Jijmani and shall have all the proprietary powers (aur usko akhtiyara.m.likana hasil honge). After the death of Mst. Jarian, Gokul aforesaid shall be the owner of the entire estate left by me (malik kamil jaida.m.truka meri ka hoga), and he shall have all the proprietary powers and the power of making transfer of all sorts (aur usko jamiya akhtiyarat malikana was inteqalat har qism hasil honge). If per chance, Mst. Jarian dies in my lifetime, then Gokul aforesaid will be the absolute owner (malik kamil) of the estate left by me (matruka meri) and he shall have power of making all sorts of transfers (aur usko har qism ke akhtiyarat inteqalat hasil honge). Gokul aforesaid should go to Jijmans and should continue to give to Mst. Jarian during her life-time the charitable gifts (daan dakshina) which he brings from there. After her death he might continue to be benefited thereby. Mst. Jarian should get my obsequies, barsi (annual death ceremony), Chhamchhi etc. performed through Gokul aforesaid according to the custom prevalent in the brotherhood. It will be the duty of Gokul aforesaid to obey and serve my life Mst. Jarian. It will be necessary for Mst. Jarian to keep my heir (waris) Gokul aforesaid and to act in consultation with him. At present I have the following immovable properties and Birt Jijmani. If in addition to these I purchase or get any property the aforesaid persons shall be the owners of that also according to the aforesaid conditions.

12. Mr. Naunit Lal, on behalf of the appellant, submits that since the testator stated in the will that after his death Smt. Jarian

shall be the owner (malik) of my entire estate ..... and shall have all the proprietary powers (aur

usko jamiya akhtiyarat malikana hasil honge),

it is absolutely clear that he intended to confer upon his wife an absolute estate to his entire property. Mr. G. S. Pathak, on behalf of the respondents, contents the proposition.

13. In support of his contentions, Mr. Naunit Lal draws our attention to several decisions wherein the word 'malik' has been noticed and explained.

14. The term 'malik' when used in a will or other document as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred, but the meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning. (Sasiman Chowdhurain v. Shib Narayan Chowdhury (49 IA 25, 35 : 66 IC 193 : 24 Bom LR 576)).

15. We find observations to the same effect in Musammat Surajmani v. Rahi Nath Ojha (35 IA 17 : ILR 30 All 84 : 10 Bom LR 59). It is approved therein that in order to cut down the full proprietary rights that the word malik imports something must be found in the context to qualify it.

16. Similarly Counsel has referred to the expression 'malik mustakil' which was noticed in a decision of this Court in Krishna Biharilal v. Gulabchand (1971 Supp SCR 27 : (1971) 1 SCC 337), and this Court observed at page 31 as follows :

The meaning of the expression 'malik mustakil' and Urdu word, has come for consideration before this Court in some cases. In Dhyan Singh v. Jugal Kishore (1952 SCR 478 : AIR 1952 SC 145), this Court ruled that the words 'malik mustakil' were strong, clear and unambiguous and if those words are not qualified by other words and circumstances appearing in the same document, the courts must hold that the estate given is an absolute one.

17. We are, however, not required to consider the words 'malik mustakil' in this case. But it is clear that even those words can be qualified by other words and circumstances appearing in the same document,

18. It is, therefore, abundantly clear that the intention of the testator will have to be gathered from all the relevant and material contents in the entire will made in the situation in which the testator was placed in life in the background of his property, his inclinations, wishes, desires and attitudes as can be clearly and unambiguously found either from the recitals from the instrument or from absolutely undoubted contemporaneous legally admissible evidence.

19. Reading the present will as a whole and if every disposition has to be rationally harmonised, we find that the testator intended a life estate for his wife so long as she lived. This is consistent with his description of Gokul as "my heir (waris) " after his death. It is further consistent with the recital that

if her chance, Mst. Jarian dies in my lifetime, then Gokul aforesaid will be the absolute owner (malik kamil) of the estate left by me (matruka meri) and he shall have power of making all sorts of transfers (aur usko qism ke akhtiyarat inteqalat hasil honge).

In obvious contrast even though Smt. Jarian wa.m.de the malik of his entire estate after his death "having all the proprietary rights" nothing is stated about her "power of making all sorts of transfers" which power is expressly mentioned as belonging to him and also exclusively conferred upon Gokul after Smt. Jarian's death. While describing his own "proprietary powers" the testator made reference to his "power of making transfers of all sorts". This power of transfer which was prominent in the mind of the testator at the time of execution of the will is conspicuous by total omission in relation to Smt. Jarian's enjoyment of the property.

20. We have to give due importance to the lexicon in the will and we find that the testator ha.m.de a definite distinction between mere ownership of property and ownership of the same coupled with powers of transfer "in every way".

21. Ordinarily, however, without such clear evidence from the recitals in the will itself it may not be possible to hold that ownership of property, which is devised, without anything more, would not connote absolute ownership of the same with the power of alienation.

22. There is another significant feature in the recitals, when reference is made in the will to acquisition of future property. Says the testator,

if in addition to these I purchase or get any property the aforesaid persons shall be the owners of that also according to the aforesaid conditions.

The testator thus unerringly conceives of any future property being owned by both, by the widow during her lifetime and by Gokul after her death in the same manner as the property that had already been bequeathed. The expression "according to the aforesaid conditions" is, therefore, very significant in the context. We also find that during her lifetime Gokul would be collecting "daan dakshina" of the Jijmani to Smt. Jarian and after her death Gokul would enjoy the same. There is no contemplation of any possibility of deprive Gokul of the enjoyment of the property in any event.

23. All the above features run counter to the theory of an absolute estate in favour of Smt. Jarian. There is still another clinching factor. It is clear from the will that the testator had misunderstanding and quarrels with his brother regarding ancestral property and the matter had to be settled by arbitration leading to partition and separate enjoyment of property as far back as 1889. It also appears from the recitals in the will that he had grave apprehension that after his death his only reversioners, his brother and nephew, "might trouble and harass my wife Mst. Jarian and my sister's son Gokul". One thing was, therefore, clear that the testator never intended that his property should pass to his brother and nephew. This intention of the testator would best be achieved by holding that there was a devise of a life estate to his wife and an absolute estate thereafter to Gokul indicating a different line of inheritance in the will. On the other hand, if any absolute estate would have been conferred on the widow, then on her death the property would have passed on by inheritance to her husband's heirs who were none else than the brother and the nephew of the testator. There was no other heir of Mst. Jarian to inherit the property after her death.

24. A plenitude of absolute estate in favour of the wife will make the absolute bequest to Gokul void in law. No such repugnant interpretation detrimental to the interest of Gokul can be made in the light of the entire tenor of the instrument.

25. Having regard to the context and the circumstances apparent from the will, we are clearly of opinion that the testator intended to bequeath in favour of his widow only a life estate and after her

death an absolute estate to Gokul. That being the position the will by Smt. Jarian in favour of the appellant fails and her gift in favour of the appellant also similarly fails on her death. The respondent's suit is rightly decreed by the courts below. The appeal fails and is dismissed. We will, however, make no order as to costs.

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