Smt. Pramod Kumari Bhatia

Vs

Om Prakash Bhatia and Others

Civil Appeal No. 2577 of 1969

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

15.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. The question in the appeal is about the construction of a will. The facts which are now not in dispute before us are as follows : The testator, Pearey Lal Singh Bhatia died on March 30, 1952 leaving behind him a will dated April 8, 1944, a widow Lakshmi Devi being his second wife, a son Om Prakash by Lakshmi Devi, and the widow and daughters (Manmohini, Raj Kumari and Pramod Kumari respectively) of a predeceased son by a predeceased first wife. Manmohini and her daughter Raj Kumari had left the family house and moved away to Mathura, while Pramod Kumari stayed on with her grandfather and was brought up by him. Lakshmi Devi, widow of Pearey Lal Singh, died in 1958. We are now concerned with the title to a sum of Rs. 16,490 lying in deposit with the State Bank of India and the District Co-operative Bank, Bulandshahr. Om Prakash claims the amount under the will dated April 8, 1944. The will, a registered one, was in the following terms :

> I, Pearey Lal Singh, son of Babu Ghanshyam Narain Saheb, by caste Kshatriya Bhatia, resident of Mohalla Sheopuri, Bulandshahr, do declare as follows : -

I, the executant, am owner in possession of the property specified as given below in Schedules 'A', 'B' and 'C'. The property given in Schedules 'B' and 'C' has been purchased by me, the executant, with my own funds in the name of my wife Smt. Lakshmi Devi and my son Om Prakash. In fact I, the executant, am the owner of it as well. The entire moveable and immovable property, owned and possessed by me, is my self-acquired property and is not ancestral property, and I, the executant, have all sorts of rights to make transfers in respect thereof. Now I, the executant, am about sixty years of age and I have a wife, Lakshmi Devi, a son, Om Prakash, and two dear granddaughters, Raj Kumari and Pramod Kumari, daughters of my first son Krishna Chandra Singh, M.A., LL.B., who has already died in June, 1932, leaving behind his widowed wife Smt. Manmohini Devi, besides these two daughters aforesaid. Both the daughters of my deceased son aforesaid, who are my granddaughters, are still minors. By way of prudence and for future management I, the executant, make a will as under :-

That I, the executant, till I am alive, shall remain owner of my entire moveable and immovable property, cash, etc., which I possess at present or which may be added to it during my lifetime and which I, the executant, leave behind at the time of my death. After my death, if my wife Smt. Lakshmi Devi remains alive, she will become owner of my entire estate with life interest, but she shall have no power to transfer any moveable and immovable property. If my wife Smt. Lakshmi Devi predeceases me, then under such circumstances after my death son Om Prakash, who has now

appeared at the examination of the X class of the English School and who is 18 years of age, shall become permanent owner in possession of my entire estate and he shall be bound by the conditions laid down in this will. I and my wife shall be duty-bound to maintain and perform marriage etc. of my granddaughter Pramod Kumari and my son Om Prakash and will be incumbent upon me and my wife to discharge that duty. My second granddaughter Raj Kumari lives with her mother at Mathura. After the death of her father, she or her mother did not come to me and remained under the guidance of her maternal grandfather and grandmother. Therefore, it is the duty of the mother of my granddaughter Raj Kumari, who is a teacher in a girl's school in Mathura City, to maintain her and perform her marriage. Even then I lay down for her as well that a sum upto Rs. 2000 may be given or spent for her marriage. Appropriate expenses are to be incurred over the education and marriage of my second granddaughter Pramod Kumari and my son Om Prakash, who are living with me and are getting education. My daughter-in-law Smt. Manmohini Devi aforesaid or her daughters aforesaid or my any other relation shall not have any right or share in my any estate under any circumstances. Only the expenses of maintenance, marriage, etc. of my both the granddaughters aforesaid and later on the expenses of their bringing here and sending off shall be met according to custom in accordance with the directions given above. It is also my will that after my death, a sum of about Rs. 20 per mensem out of the income from rent of shops and houses and other field property may be spent for charitable purposes in the following manner :-

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I shall continue to do all the charitable acts aforesaid during my lifetime. After my death, if my wife remains alive, she shall, and after her death my son Om Prakash, may he live long, shall be duty-bound to continue this charitable act. I have strong hopes that my wife Lakshmi Devi and my son Om Prakash shall execute this will of mine in every way and in this way they shall cause benediction to my soul, and that they shall make additions to my estate and shall not allow it to be under charge or to decrease in any way.

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2. The testator, it is seen, noticed the existence of five possible heirs : his wife, Lakshmi Devi, his son Om Prakash, his deceased son Krishna Chandra's widow, Manmohini and Krishna Chandra's daughters, Raj Kumari and Pramod Kumari. He was desirous that Pramod Kumari should be brought up by himself and his wife and that they should also perform her marriage. He was also desirous that a sum of Rs. 2000 should be set apart for the marriage of Raj Kumari. Apart from that, he did make it clear that Manmohini, Raj Kumari and Pramod Kumari should have no right or interest in any of his properties under any circumstances. On his death his properties were to go to his wife Lakshmi Devi who was to have a life interest in them. If his wife Lakshmi Devi predeceased him, the properties were to go to his son Om Prakash. Directions were given for the carrying out of certain charitable objects. His wife Lakshmi Devi and after her death, his son Om Prakash were enjoined to perform the charitable acts. A reading of the whole of the will clearly shows that it was the intention of the testator that his son Om Prakash and none else was to be the ultimate owner of the properties. No doubt, the testator while specifying that Om Prakash was to take the properties in case Lakshmi Devi predeceased the testator, did not specify that Om Prakash should take the properties after the death of Lakshmi Devi in case Lakshmi Devi survived the testator to enjoy the life estate given to her under the will. But this is a case where the testator's intention to give the properties to Om Prakash in case Lakshmi Devi predeceased the testator was as patently and reasonably certain, 'no speculation but a compelling conviction', that the court would be justified in exercising its curial draughtsmanship for the testator and supplying the specific words

missing from the will. The Court has undoubted jurisdiction to do so.

3. In William Abbott v. Eliza Middleton (7 HCL 68 : 11 ER 28), the testator gave an annuity of Pounds 2000 to his widow, and set apart, out of his personal property, a sum sufficient to provide for its payment. He directed that, on the death of his widow, the sum so set apart was to go to his son George for his life and on his death to George's children, but he directed, "in case of my son dying before his mother, then and in that case the principal sum to be divided among the children of my daughter". On the date of the will, George was not married. He married subsequent to the will and had a son. He died before the testator. The testator's widow died soon thereafter. A question arose whether George's son was entitled to take the sum after the death of the testator's widow. He could so take if the words "without" leaving any child" could be supplied after the word "dying" in the deposition relating to the final gift over. The Lord Chancellor observed, "Where there is an uncertainty as to the meaning of any part of a will, the right of a court of construction even to introduce words, in case of necessity, is clearly stated by Lord St. Leonards, in the passage quoted from Eden v. Wilson (4 HLC 284 : 10 ER 461)", and declared the right of George's son to the sum.

4. Re Smith ((1947) 2 All ER 708 (Ch D), re Corv ((1955) 1 WLR 725 : (1955) 2 All ER 630 (Ch D)) and re Rilev's Trusts ((1962) 1 WLR 344 : (1962) 1 All ER 513), are other instructive cases where words have been supplied by courts because of "as strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed".

5. In Jarman On Wills, 8th Edn. 592, it is said :

Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the word he used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context.

6. As already observed by us, we do not have the slightest doubt in the present case that it was the clear and unambiguous intention of the testator that his son Om Prakash should succeed to his estate after the death of Lakshmi Devi. Necessary words to that effect can and must be read into the will.

7. The learned trial Judge, on a strict and narrow construction of the will, came to the conclusion that Om Prakash was not entitled to succeed, under the will, on the death of Lakshmi Devi, and that the amount had to be divided among Om Prakash, Manmohini, Raj Kumari and Pramod Kumari. On appeal, the High Court of Allahabad held that on a true construction of the will Om Prakash alone was entitled to the amount. In the view that we have taken, we agree with the conclusion of the High Court.

8. Before the High Court, Pramod Kumari file an application for reception of additional evidence. The principal additional evidence sought to be adduced was an alleged letter said to have been written by late Pearey Lal Singh to the bank nominating Pramod Kumari as the person entitled to the amount in deposit with the bank. The letter itself was not filed along with the application but a request was made to summon the letter from the bank. The High Court rejected the application. The application to the High Court was made very many years after the suit had been filed, and also quite some years after the appeal had been filed before the High Court, and we do not think that we will be justified in interfering with the discretion exercised by the High Court in refusing to receive additional evidence at that stage. The appeal is therefore dismissed but in the circumstances with no order as to costs.

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