ANDHRA PRADESH HIGH COURT

Rajah Malraju Venkata Rama Kondal Rao Bahadur Zamindar Varu

Vs.

Rani Rajyalakshmi Papayamma Rao

Appeal No. 327 of 1954

(P. Chandra Reddy, C.J. and Mohd. Ahmed Ansari, J.)

15.03.1954. 28.10.1959

JUDGMENT

Ansari, J.

1. The plaintiff is the appellant and seeks to reverse the decree by the Subordinate Judge, dismissing his suit to obtain possession of the properties, which had been later converted into one for the declaration of his title. The following pedigree would show how the appellant and two of the three defendants to the plaint are related :

2. The appellants maternal grand-father was the Zamindar of Vuyyur and other estate in the old Nuzvid Zamindari; and his mother was his grandfather's only child. On 10-7-1900 the grand-father had executed a will. Ex. A-1, making thereby various dispositions, and among others bequeathing to his daughter three villages of Krishnampalem, Mangayapalem and Guddigudem. It is common ground that the aforesaid will was executed while the testator was in a sound and disposing state of mind, and its being genuine is also not disputed in this case. In the same year the will was written, the testator had entered into an ante-adoption agreement, which is dated 8-8-1900 and is Ex. A-2 in the case. In the later document a reference is made to the will and the natural father of the would-be adopted son was one of the attesting witnesses to the will. The testator on 12-8-1900 took in adoption Raja Venkatagiri Apparao, and is alleged to have executed another will on 15-1-1906. A copy of this later will has been filed in this case, which is Ex. B-2. and it is respondent's case that therein the bequest in favor of the daughter, her mother, was reiterated with the modification that the estate created in favor of the daughter would not revert to the testator even if there were no male issue born to the daughter but only female children. The mother died on or about 10-11-1943, and the suit giving rise to the present appeal, was filed on 13-3-1948.

3. The appellant's case in the plaint is that the grand-father had by the will given his daughter only a life estate in the three villages, after her had directed the properties being enjoyed absolutely by her male issue, and failing such issues, had directed the estate to revert to the parent estate, thereby showing the dominant intention of conferring only a life estate on his daughter which was in accordance with the deep-rooted notions prevailing at the time in the

testator's community. The next part of the appellant's case is that the Madras High Court had in an earlier litigation found the daughter to have died intestate, a will put forward as hers having been then held to be void and the appellant as the only son was therefore entitled to the properties as the next heir under the will: the defendants not having been given any right under the document. The concluding part of the appellant's case is that their father was appointed a Receiver by the Madras High Court over the suit properties along with other properties after his mother's death; but on the termination of the Receivership the sisters got into possession, were wrongfully enjoying the Income and had refused to deliver possession, or to render account. The plaint was subsequently amended in consequence of the Madras Estates Abolition Act, No. XXVI of 1948, whereunder a Notification was also issued in the Gazette of 15-8-1950, about taking over the estate from 7-9-1950. The appellant by the amendment of the plaint has sought a declaration of his title, if he be found not entitled to the possession because of the Act. This alternative relief was in addition to the prayer for accounts, which had been already claimed in the original plaint.

4. The 3rd defendant to the suit was the Receiver who had been appointed by the Madras High Court during the pendency of the earlier Writ Petition, the appellant had filed for challenging the constitutionality of the Estates Abolition Act. The 2nd defendant, who is the younger sister, has compromised with the appellant and accordingly a decree had been passed. The suit proceeded to trial only between the appellant and the respondent, who was the 1st defendant and the elder sister. The position taken by her is that the three villages were given to the mother absolutely and the testator's dominant intention was not to create a life estate for his daughter; the intention of giving her an absolute estate having been again manifested in the later will of 15-1-1906. She has further pleaded that by long period of adverse possession the daughter, her mother, had acquired an absolute title to the villages which would after her death devolve on her stridhana heirs. The parties had adduced no oral evidence and the trial Court after an elaborate discussion of the cases relied by the parties has found the will to have created an absolute estate in favor of the appellant's mother, with the result that the appellant had no title to the villages as against his sister, who was the preferential heir to her mother's stridhan property. The Court has further found the estate, if any, conferred by the will in favor of the appellant to be void due to the bequest being in favor of a person, who was unborn at the time of the testator's death.

5. Therefore, the short question arising for adjudication in this appeal is what estate the daughter had obtained under the will. If she had only a life estate because of the subsequent bequests in the will in favor of her male issue the respondent would not inherit. On the other hand the appellant would not succeed if the mother be held to have got under the will an absolute estate. The original will is in Telugu and the parties are not agreed about its translation. The Subordinate Judge has translated clause 2 of Ex. A-1, which is the relevant part of the document, for the purposes of this case, as follows :

> "The three villages Krishnapuram, Mangayapalem and Guddigudem called Krishnampalem Mutta of our Vuyyur Estate in Godavari District are given away to my daughter Lakshmi Venkayamma Rao for Pasupu Kumkuma. She shall herself pay the Government taxes and other taxes payable thereon. The said properties shall be enjoyed by herself so long as she has male issues absolutely. In case she has no male issues, the said 3 villages should revert back to the estate of the testator."

The Counsel for the Appellant has furnished us with another translation, whose relevant extract reads as follows :

> "Krishna Narayapalem Mutta containing the villages of (1) Krishnampalem, (2) Mangayapalem and (3) Guddigudem attached to my Vuyyur Estate situate in Godavari District are given away to my daughter Raja Malraja Lakshmi Venkayamma Rao towards Pasupu Kumkuma. She shall pay the revenue and other taxes payable to Government on the said villages. She and members of her lineage so long as a male issue survives, shall be in free enjoyment of the said villages. When the male issue does not survive in the said manner, the said three villages shall again be amalgamated in my estate."

It is clear that the three villages had been given to the daughter for 'Pasupu Kumkuma'. It is equally clear that the parties before us are not agreed as to the translation of that provision in the will concerning enjoyment of the estate while the male issue of the daughter survive. We think, for the purposes of deciding the appeal, the correct translation of this part of the will is;

> "She and family will enjoy so long as there be male issue in the family."

Now the appellant's counsel relying on these latter directions i. e., about the enjoyment of the family to be so long as there be male issue and also about the estate reverting to the parent estate on failure of such issue, has urged that the daughter was given only a life estate with executory bequests to her male issue. Before dealing with these arguments, it is necessary to state that the words 'Pasupu Kumkuma' used in earlier part of the clause in connection with the bequest to the testator's daughter connote an absolute right and is not consistent with the conferment of limited estate. It follows that the will, because it gave the three villages to the daughter 'towards Pasupu Kumkuma', created an absolute estate in them in favor of the daughter. That the meaning of these words is such has not been disputed before us; as in *Chatrathi Jagannadha Rao v. M/s. Jatmal Madanlal*[1], it has been held that the phrase 'for Pasupu Kumkuma' connotes an absolute right and was not consistent with the conferment of a limited estate. Indeed in the case these words were construed as of sufficient amplitude to convey full rights of ownership and as indicating the intention of the donor to confer an absolute estate on the donee and not one determined with donee's life. What was said of gifts would apply to bequests also should they be accompanied with these words. Another case illustrative of this principle is *Yadeorao v. Vithal Shamaji*[2], where the gift by will was for 'choli Bangdi' or 'Haldi Kumkum' and these were interpreted as set of words conveying the idea that the daughter should have independent means of her own to satisfy her personal needs. They have been further construed to convey not a limited estate, nor that the property would revert as

[1] AIR 1958 And Pra 662
[2] AIR 1952 Nag 55

soon as the woman became a widow.

6. The appellant's counsel has however taken the position that the meaning of the words in the will has been curtailed by the subsequent qualifications concerning the male issue of the beneficiary; but before deciding this argument, we would deal with another contention that because the beneficiary was the daughter, the testator, who was a Hindu, did not intend to confer

on her the estate in absolute ownership. It is true that in *Mahomed Shumsool v. Shewukram*[3], the Privy Council had held that in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to devolution of property. It was also held there that it might be assumed that a Hindu generally desired that an estate, especially an ancestral estate, should be retained in his family, and it might be assumed that he knew that, as a general rule, at all events, women did not take absolute estates of inheritance. Another case in similar lines is *Radha Prasad Mullick v. Ranee Mani Dassee*[4], But the later pronouncements of Privy Council have amply affirmed the principle that if words are used conferring an absolute ownership, the wife or the widow would be thereby entitled to the fullest right of ownership. One such case is *Bhaidas Shivdas v. Baigulab*[5], where a testator had made a gift in favor of his widow in words conferring absolute ownership in her and it was held that the widow took an absolute estate, clauses 18 and 23 not being sufficient to displace the effect of clause 3 fortified by clause 20. Lord Buckmaster at pp. 6 and 7 (of Ind App) : (at pp. 193-194 of AIR) observed as follows :

> "At the time when the will was executed it may well have been that whoever drew the will was aware that at the time words of absolute gift in favor of a Hindu widow might not be supposed capable of conferring upon her a power of alienation for in the case of *Suraj Mani v. Nath Ojah*[6], which ultimately came before this Board we find that the High Court had ruled 'that under the Hindu Law, as interpreted upto the present time in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate, unless the power of alienation is conferred upon her in express terms'. The decision on appeal to this Board showed that that provision was no longer sound and that if words were used conferring absolute ownership upon the wife, the wife enjoyed the rights of ownership without their being conferred by express and additional terms, unless the circumstances or the context were sufficient to show that such absolute ownership was not intended."

In *Shaligram v. Charanjitlal*[7], after devising a house to his daughter for life a testator had provided that his property should be divided into three shares and that his two widows and the widow of his son, who was a child, should be given each a share. The will contained no gift-over upon the death of the widows. It was held that the intention of the testator was to confer upon each of his two widows and his daughter-in-law full proprietary rights in one-third share in the residue, of an estate with power to alienate. It follows that the interpretation placed on the earlier decisions of the Privy Council by some Courts that words which would be sufficient

[3]2 Ind App 7 (PC) [5]49 Ind App 1 [7]57 Ind App 28
[4] ILR 35 Cal 896 (PC) [6]35 Ind App 17 (PC)

to confer an absolute estate on a man would not operate similarly in cases of woman and that a Hindu Woman was presumed to take nothing more than a life estate, is no longer correct. It is now well settled that a gift or bequest to a woman should be construed in the same spirit as a gift in favor of a male. In this connection we would refer to *Poomalal Ammal v. Subbammal*[8], and *Seshayya v. Padalamma*[9], In the latter case the rule has been so affirmed that in construing gift there is no distinction in the mode of construction between a gift to a male and a gift to a female and therefore the will in this case must be construed according to the general rules for construing wills.

7. The counsel for the appellant has urged that the directions relating to the male issue in the later parts of the clause have curtailed the full estate conferred on the daughter by the earlier words, the later provisions amount to gift-over in favor of the male issue and thereby they have reduced the estate created in favor of the daughter to that of the life estate. He has urged that one way to reduce an absolute estate to a life estate is the presence of gift-over in unmistakable terms. On the other hand the respondent's counsel has argued that these words are descriptive of the absolute estate conferred on the daughter, in case they confer separate estate they become inconsistent with absolute estate and must be rejected and that at any rate, they created void bequest in favor of the male issue. It would be of advantage at this stage to have in chronological order the relevant cases cited before us by the counsel of either party.

8. In *Nanda Gopal v. Pareshmoni Debi*[10], there was a gift to the daughter, which had provided that she was to remain in possession of the land down to her son, son's son and so on in succession. The document further restrained the donee from giving the land to anybody and provided that the son and heirs in succession would have the right to own or possess the property, the husband and the husband's heirs or any member of another family being excluded. The aforesaid provisions were held as showing the intention to create a life estate in favor of the donee with remainder over to her son and that no heritable estate passed to the daughter. The learned Judges had observed at p. 356 as follows :

> ".....the words Putra Poutradi Krame being used, which ordinarily would create an absolute estate of inheritance, still the words following indicate that the intention of the testator was to retain the property within his own family and the directions that neither the husband nor his heirs, nor any member of a different family, should succeed, indicate that his intention was to restrict the succession to the male issue of his daughter, so that the property might not go out of the family."

The legal proposition deducible from the aforesaid decision is that all provisions of the document should be read together, and if the intention thus gathered be to create a limited estate, that should be given effect to. The will in *Ratna Chettiar v. Narayanaswami Chettiar*[11], was that all the properties after the testator's death should be in the possession of his wife and she herself should be the heir to every thing. It also contained a provision that in case of a dispute with Muthu Arunachella Chetty the wife should pay Rs. 4,000 and separate him. The will then

[8]1952-2 Mad LJ 884 [10]6 Ind Cas 354 (Cal)
[9] AIR 1957 And Pra 534 [11]24 Ind Cas 796

said that she should enjoy all the remaining properties with absolute right. There was a further provision that in case of the aforesaid Chetty living amicably with the wife, he would enjoy the properties which remain after the death of the wife. It was held that the words 'should be heir', 'Remaining' and 'which remain in the will' did not enlarge the interest which the wife took under the Hindu Law. The two aforesaid cases in so far as they decide that words of wide amplitude in wills do not confer full ownership on Hindu women are no longer correct; for the legal proposition is well settled that words conferring full ownership do confer absolute estates on such women.

9. The appellant's counsel has further relied on *Surendra Nath v. Saroj Bandhu*[12], where it was

held that if subsequent words in the will show contrary intention to the earlier parti of the will, the Court should not hold the decree to have absolute estate by ignoring the other provisions of the will. The decision proceeds on the accepted legal proposition that the Court in construing a will must as far as possible give effect to all the provisions of the will. The next case relied by appellant's counsel is *Gulbaji Ajisigi and Co. v. Rustomji Kharsedji*[13], where certain properties were given to 'R' and a later clause of the will provided that should 'R' die and then leave a son, the son would be the owner. The will then provided for the manner of distribution if 'R' did not leave any son. The two clauses were read together as conferring a life estate on 'R'. This case is a clear illustration of a gift-over, where the gift-over is precise and definite. These decisions may be compared with *Nand Kishore v. Pasupathi Nath*[14], which was referred to on behalf of the respondent. In the case the testator had given to his grand-daughter properties as absolute proprietor and after her death to a male issue born of her as absolute owner and finally where there be no male issue, to the female issue in absolute ownership. There was no provision as to the gift-over should the grand-daughter have neither male nor female issue. It was held that the grand-daughter took an absolute estate and the agnates had no share. Also in *Bipradas v. Sadhan Chandra*[15], there was bequest to the daughter, a son was born to the daughter after the testator's death, and on her death the brother brought a suit claiming that the sister got only a life estate and as the remainder was to persons unborn at the death of the testator, the bequest in his favor failed. It was held that the daughter got an absolute estate and not a life estate. It would also be of advantage here to refer to *Saraju Bala v. Joytirmoyee*[16], cited by the respondent's counsel, where Sir Dinshaw Mulla reiterates what has been held earlier by the Privy Council that the words conferring absolute estate do convey full proprietary rights, unless there be something in the context to indicate intention to the contrary.

10. The counsel for the appellant has relied on *Manumallaswami v. C. Narayana Swami*[17], where the will contained a gift and then it was followed by a gift-over. The will was held as conferring a limited estate on the widow; but the learned Judges also observed that if the intention of the testator as represented by his words be to confer an absolute estate, that estate cannot be cut down by anything that followed. They further held that if the intention be doubtful, the addition of a gift-over may be evidence of the intention to confer a limited interest. The same principle emerges from *Umrao Singh v. Baldev Singh*[18],

[12] AIR 1921 Cal 408 [14] AIR 1928 Pat 348 [16] AIR 1931 PC 179
[13] AIR 1925 Bom 282 [15] AIR 1929 Cal 801 [17] AIR 1932 Mad 489
[18] AIR 1933 Lah 201

relied by the respondent, where a Hindu testator had declared in his will his three sons to be his heirs and absolute heirs, but in subsequent clauses he tried to restrict the power of alienation. It was held that the restriction was clearly repugnant and therefore invalid. Further the pronouncement in *Rameshwar Baksh v. Balraj Kuar*[19], is illustrative of the same principle for it was held therein that where an absolute estate was created, by will, the clauses in the will which are repugnant to such absolute estate, must be held to be invalid

11. Coming to *Thayalai Achi v. Kannammal*[20], which has been cited on behalf of the appellant, the testator in the case had provided for his wife's enjoying all powers of exchange, gift and alienation and there was a further provision that what was left at her death was to be taken by another. These words were construed as conferring absolute estate on the wife, but the bequest to the other was void because of repugnancy or uncertainty. We do not think the case lays down any proposition contrary to the view we are taking in this case. In *Govindbhai Lallu Bhai v. Dahya*

Bhai Nathabhai[21], it was held that unambiguous dispositive words in a will are not to be controlled or qualified by any general expression of intention. It further laid down that an absolute estate may be defeasible in certain circumstances, but it cannot be Cut down to a life estate merely by a gift-over of the residue. The case is based on the principle that an earlier absolute disposition in will should be controlled only by valid and unambiguous gift-over. *Mt. Chhatarpati v. Mt. Kalap Dei*[22], lays down the general proposition that a will should be construed as a whole, that a particular clause in which the words 'Permanent owner' occur, should not be taken as standing by itself, and that the Court should not hold about an absolute estate having been conferred upon the legatee and then pass to the other clauses indicating the contrary intention in order to reject them on the ground that they are repugnant to the earlier clause or that they merely express pious wishes of the testator; also in *Subbamma v. Rama Naidu*[23], Varadachariar J., has held that the will should be construed as a whole and that the presence of a gift-over not being one of defeasance is an indication that the prior gift is only of a limited interest.

12. The case of *Golak Behari v. Suradhani Dassi*[24], is of interest in that it draws the distinction between clause in defeasance and repugnant clause. This case also reiterates the well settled principle that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. In *Vasantharao Ammanamma v. Venkata Kodanda Rao*[25], a will had provided for devolution of a certain share on the death of the testator to his wife and after her death to the son of the elder brother. It had also provided for the devolution of the movables to the wife till her death, thereafter to the daughter and thereafter to the grandson by the daughter. It was held that the grandson did not take a vested remainder, as the estate which the daughter got was one under their personal law of inheritance. It was also held that it was not possible to create vested remainder after conferring a limited estate analogous to a woman's estate under the Hindu Law.

13. We think the undermentioned general rules follow from the aforesaid decisions :

[19] AIR 1935 PC 187 [21] AIR 1936 Bom 201 [23] AIR 1937 Mad 476
[20]68 Mad LJ 707 [22] AIR 1936 All 50 [24] AIR 1939 Cal 226
[25]1939 Mad WN 1181

1. All parts of a will are to be construed in relation to each other so as to form one consistent whole;

2. A gift arising upon a future contingency and operative by way of defeasance of a prior gift, does limit the absoluteness of the earlier gift; but to do so, the gift-over must conform to the same rules as the original gift i. e., it

(a) must not be repugnant to the original gift; and

(b) must not be void, nor in equivocal terms;

3. The original gift is affected to the extent necessary for the introduction of the contingent estate, so that if the contingency on which the gift-over is to take effect, never happens, the prior gift in derogation of which the latter was to take effect, would remain absolute.

14. An illustration of the last rule is to be found in *Bhoobun Mohini Debia v. Hurrish Chunder Chowdhry*[26], where a Hindu granted a talooq to his sister and further provided that her children would enjoy the property and no other heirs would have right or interest. The words "no other

heir of yours" were held by the Privy Council to be words of defeasance, in which event the estate was to return to the donor and his heirs; but as that had not occurred, the sister took the absolute estate which she could gift away.

15. We would now examine clause 2 of Ex. A-1 in the light of the several propositions stated above. As already mentioned, the clause has by using the words "Pasupu Kumkuma" provided an absolute estate for the daughter. It then provided for its enjoyment so long as there be male issue and directs the villages to revert should no male issue survive. In order to constitute a gift-over in favor of the male issue of the daughter the two provisions mentioned later in the clause must clearly show that the testator intended the earlier absolute bequest to his daughter to operate only as life estate; but this cannot be said. To begin with, the female heirs of the daughter have not been expressly excluded from the enjoyment, and unless there be such express exclusion they would enjoy the benefit. This follows from what has been decided in *Lalithakumari Devi v. Raja of Vizianagram*[27], that provisions in the will concerning male issue and, in absence of express exclusion, do not debar female heirs from inheriting. It follows that the testator's daughter, notwithstanding the later provisions, could devise her estate to her daughter and her estate was therefore not reduced by the later provisions to a life estate. Again there being no prohibition against alienation the testator's daughter could settle the estate on her daughter and she on her daughter, which means the estate could be transferred. It follows that because the estate to the testator's daughter was notwithstanding the later provisions of the clause still heritable and transferable beyond her life, there is no gift-over to cut the earlier absolute estate in favor of the daughter into a life estate.

16. Even on the assumption that the second provision in the clause does create some estate in favor of the male issue, the nature of such an estate is not clear. The female heirs of the male issue would inherit; for they also have not been excluded and if their female heirs were to inherit, there are no reasons why such heirs of the testator's daughter should be excluded. In these circumstances the later provisions as to

[26] ILR 4 Cal 23 (PC)
[27]66 Mad LW 231

enjoyment become words of description of the daughter's estate, which was already
given to her absolutely, and the provisions in the clause relating to the male issue surviving become mere words of defeasance on the absolute estate of the daughter. As the contingency has not happened, the testator's daughter had obtained under the will an absolute estate.

17. We further think that the daughter's male issue being given by the later provisions of the clause a defeasible absolute estate or estate tail does not help the appellant's case. The second provision in the clause does not convey to the male issue the estate that the testator had in the three villages and therefore the provision is hit by Section 113 of the Succession Act. This section provides that a bequest to a person not in existence at the testator's death and subject to a prior bequest would be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed. The appellant was admittedly not born when his grandfather died and the will does not confer absolute estate on the male issue. The result is that the gift-over in the second clause of the will becomes void and the, absolute estate in favor of the daughter remains; for the original gift is affected only by legal gift-over.

18. The third provision in the clause has lost all importance, as the contingency on which the gift-over was to take place had never happened so that the prior bequest in favor of the testator's daughter still remains absolute. It follows that as the mother had an absolute estate under the will and the respondent is a preferential heir to such an estate, the appellant's suit has been rightly dismissed and accordingly this appeal fails, and is dismissed with costs throughout.
Appeal dismissed.