BOMBAY HIGH COURT

Vithaldas Govindram Gandhi

Vs

Vadilal Chhaganlal Shah

(Barlee and N Wadia, JJ.)

23.09.1935

JUDGMENT

Barlee, J.

1. The appellant applied for limited letters of administration in respect of certain property in the Ahmedabad District which, he said, belonged to one Vadilal Gulabji who died on April 16, 1912. At the date of his death he left a son Jivrara, who was then a lunatic though he does not appear to have been a congenital lunatic. Jivram was married and had a daughter called Bai Jashi. Bai Jashi married one Vadilal Chhaganlal and died on June 16, 1930. The petitioner presented his application on behalf of the lunatic Jivram since he had been appointed a curator of the lunatic by the Huzur Court of the Mansa State. The property in respect of which letters of administration were asked consisted of certain shares in a company at Ahmedabad, The application was contested by Vadilal Chhaganlal, the husband of the deceased Bai Jashi, and the question on which the parties fought in the Court of the Assistant Judge of Ahmedabad was whether the lunatic Jivram was entitled to the estate of the deceased Vadilal Gulabji as his heir. The opponents" case was that Jivram was not entitled as he was a lunatic, and the learned Assistant Judge, following the case of *Bapuji v. Pandurang*[1] decided that the lunatic Jivram was debarred from taking the property as the heir of the deceased Vadilal Gulabji and that the petitioner was, therefore, not entitled to letters of administration under Section 246 of the Indian Succession Act.

2. The curator has appealed and Mr. C. K. Shah on behalf of the respondents has taken a preliminary objection that the curator has no locus standi inasmuch as his appointment has been cancelled by the Huzur Court of the Mansa State. We have not all the papers here on this point; but it appears that the order of the Huzur Court of the Mansa State has been suspended and prima facie the appellant, V.G. Gandhi, is still the curator. There would apparently be no objection to his being recognised by a Court in British India since he is the person who has been appointed by the Mans Court and presumably the lunatic was domiciled in Mansa.

3. The decision on which the learned Assistant Judge has based his finding (Bapuji V. Pandurang) was not directly in point. One Bapuji died, leaving him surviving Lakshman, his undivided son, who had been born deaf an dumb, and the defendant Pandurang, his undivided nephew. It was held that Lakshman was disqualified from inheriting and that, therefore, on Bapuji' death Pandurang had succeeded to the entire family estate and was competent to dispose of it; and that a son subsequently born to Lakshman could not recover any part of the estate sold from the purchaser. The present case is distinguishable on the ground that Jivram was not a congenital idiot am therefore did become a coparcener on birth, whereas in Bapuji V. Panduratu the son never became a coparcener. The present case seems to us to be of all fours with that of *Muthusami Gurukkal v. Meenammal*[2] One Gangadhara Gurukkal was entitled to an archaka office in a temple. Though h was born sane, he became insane after his son Subbayya attained his majority. During the period of Gangadhara's insanity Subbayya was doing th archaka service. Subbayya died in 1874. Gangadhara continued in sane until his death, which took place in 1880. Subbayya's widow died ii 1911 and Gangadhara's widow died in 1912. The plaintiff as the reversioner of Subbayya, the son, brought the suit against the daughter and daughter' son of Gangadhara for a declaration of his right to, and for possession of the office of archaka. Defendants were the daughter and grandsons of Gangadhara and so they were sister and sister's sons of Subbayya. If the property belonged to Subbayya, the defendants being only the sister and sister' sons of the owner were excluded by the plaintiff. If, on the other hand Gangadhara was the owner at the time of his death, the defendants, as hi daughter and daughter's sons, would exclude the plaintiff. The question then was whether Gangadhara, on the death of his son, took the property a the last male holder of the family. Their Lordships considered at length the Sanskrit texts and decided that the right of a member of Hindu join family to share in ancestral property comes into existence at birth, and is no lost but is only in abeyance by reason of a disqualification. It subsists a] through, although it is incapable of enforcement at the time of partition, i the disqualification then exists. Hence, if on the death of all the other members the disqualified member becomes the sole surviving member of to family, he takes the whole property by survivorship. This decision is direct in point; for here Jivram was a coparcener at birth and though his lunacy would have disqualified him from asking for a share on partition, on th death of his father he became the last surviving male of the family. The learned Assistant Judge failed to notice that the Bombay case of Bapuji V Pandurang was distinguishable. It is of course binding on us so far as goes. But it merely decides that the congenital deaf mute is not a coparcene: and goes no further. We think that it would be dangerous to extend this principle by analogy to the case of members of a family who become disqualified by subsequent disqualifications.

4. Both these cases have been considered by a bench of the Patna High Court in *Musammat*

Dilrajkuari v. Rikheswar Ram Dube[3], where it was decided, following the Madras case, that under the Mitakshara school of Hindu law, a coparcener taking an interest in the family property by birth merely becomes incapable of enforcing his right to a share upon partition upon becoming afflicted with madness and does not lose all his coparcenary interest by reason of the disability. The case of Bapuji v. Pandurang was mentioned and distinguished on the ground, which I have noted, that it was a case of congenital deaf mute.

5. Mr. Shah has drawn our attention to a full bench decision of the Madras High Court in *Pudiava Nadar v. Pavanasa Nadar* [4]That case merely decides that the rule of Hindu law that a congenitally blind person is excluded from succession, has not become obsolete. It is not on all fours with the present case. The learned advocate relies on some observations of Mr. Justice Coutts Trotter at p. 976 where the learned Judge expresses the view that the rule of exclusion in the Mitakshara applies to those who take by survivorship as well as to those who take by succession. This may be conceded; but it does not touch the main point whether a member of a family who becomes insane loses his status as a member of a coparcenery. On this ground we differ from the learned Assistant Judge.

6. Mr. Shah has raised another point. He seeks to put the appellant into a dilemma. If the family property be the separate property of Vadilal, the lunatic, he says, cannot claim it; whilst if it be joint property, there is no machinery by which he can be given a certificate under the Succession Certificate Act. But the answer to this is given in various decisions of our Court. In Bombay letters of administration are always granted in respect of undivided family property. The latest case is a decision of Mr. Justice Kania in *Ujambai v. Harakchand*[5] A petition was filed for letters of administration of the joint family properties and credits standing in the name of one Govindji Khushal. No one objected that letters of administration could not be given of the joint family properties, and the order was that letters of administration should issue to Ujambai for the use and benefit of her minor son Amritlal Govindji Khushal and limited to the period of his minority with the exception of the separate property of the deceased, i.e., they were granted with respect to the joint family property only.

7. In the case of *Ochavaram Nanabhai v. Dolatram Jamietram* [6]Jenkins C. J. remarked (p. 646) :- The point urged on behalf of the appellant is that the deceased was, at the time of his death, joint in family and entitled only to joint property; so that Letters of Administration could not be granted, as though he had left separate property. But in Bombay it has been repeatedly held that on applications for probate the Court will not enter on a question as to the title to the property which the testator by his will purports to leave.And letters of administration were granted.

8. Our conclusion then is that the learned Assistant Judge was incorrect in his decision that the applicant was not entitled to letters of administration under Section 246 of the Indian Succession

Act on behalf of the lunatic Jivram.

9. The appeal will, therefore, be allowed. The order of the learned Assistant Judge is set aside. The papers will be returned to him so that he may deal with the case in accordance with law.

10. The appellant will get his costs of the appeal and the security given by the appellant is discharged.

N.J. Wadia, J.

11. I agree.

Cases Referred.

1(1882) I.L.R. 6 Bom. 616
2(1918) I.L.R. 43 Mad. 464
3(1934) I.L.R. 13 Pat. 712
4(1922) I.L.R. 45 Mad. 949
5(1934) 37 Bom. L.R. 300
6(1904) I.L.R. 28 Bom. 644 : s.c. 6 Bom. L.R. 966