

NAGPUR HIGH COURT

Yadeorao Jageshwar

Vs

Vithal Shamaji

Second Appeal No. 671 of 1946

(R. Kaushalendra Rao, J.)

20.03.1951

JUDGMENT

R. Kaushalendra Rao, J.

1. The only question in this appeal is whether Mt. Manabai obtained an absolute estate under the will of her father, Exhibit P-2, dated the 15th December 1926.
2. The suit was instituted by the appellant as the adopted son of Jageshwar cLalming possession of field No. 133, area 7.21 acres, 'jama' Rs. 24/-, 'malik makbuza', and half portion of 'kotha' at Narkhed, tahsil Katol, after the death of Manabai on the 21st January 1944.
3. The respondent is in possession of the field by virtue of a sale-deed executed by Manabai. Both the Courts held that she obtained an absolute estate and dismissed the suit. The direction in the will is (Vernacular Matter Omitted) (She should enjoy this property on (as) being the owner thereof.)" This direction was preceded by a statement that Mt. Manabai was not rich and that the father was thinking of giving some property to her "for 'choli bangdi' since very long."
4. The learned Counsel for the appellant submits that the expression "choli bangdi" is a comprehensive term for female apparel and adorning and it means pin-money. According to the learned Counsel as the purpose of the gift was to provide for the maintenance of the daughter the estate would necessarily be limited to the life of the donee. On this basis the alienee did not get any interest in the property and the appellant was entitled to succeed on the death of the daughter.
5. The learned Counsel for the appellant relies upon '*Rameshar Baksh v. Arjun Singh*¹', '*Nand Lal v. Sunder Lal*²', '*G. C. Krishnamraju v. Chintalapudi Reddamma*³', and '*Nagammal v. Subbalakshmi Ammal*⁴', In my view none of these cases can help the appellant.
6. In '*Rameshwar Bakhsh v. Arjun Singh*', 23 All 194 (PC) (Supra), the Court had to determine the effect of a grant made by the holder of an impartible estate for the maintenance of a member of the joint family to which they both belonged. It was held that the estate did not extend beyond the life of the grantee.

7. In '*Nand Lal v. Sunder Lal*', I.L.R (1943) All 892 (*supra*), the Court had to consider the effect of a 'tamliknama' in favor of a widow. In the deed there was an acknowledgment of a duty to maintain the widow and the property was given specifically for the purpose of her maintenance and residence. It was held that the widow obtained only a life estate.

8. In *G. C. Krishnamraju v. Chintalapudi Reddamma*, 1951-1 Mad LJ 49, (*Supra*), the Court had to determine the effect of a settlement referred to in the recitals of a deed. According to the recitals the last male holder of the estate directed, in order that there should be no disputes between his wife and mother regarding his mother's maintenance, that the properties in suit should be enjoyed by the mother while the remaining half of the estate should be enjoyed by the wife. Raghava Rao, J., held that enjoyment for maintenance did not connote anything more than an enjoyment for the life-time of the person entitled to maintenance. There was nothing in the context that the last male-holder meant to make his mother a co-owner of the estate with his widow in all respects so that his mother might alienate the properties in favor of whomsoever she liked to the prejudice of the widow, even if she survived his mother.

9. In '*Nagammal v. Subbalakshmi Ammal*', AIR 1947 Madras 319 (*supra*), a widow was allotted property for her maintenance after the death of her husband and during the minority of her stepson. There was nothing to show what exactly was the nature of the grant in favor of the widow. It was held that as the step-son was under an obligation to support her during her lifetime and she had a right to be maintained during her lifetime, the burden of showing that the property had been allotted to her absolutely in lieu of her rights to maintenance in the property was upon those asserting to that effect.

10. No assistance can be derived from cases of maintenance because there was in the instant case no obligation to provide for the maintenance of the daughter. The testator was giving the property to his daughter under coverture. The married daughter must seek her maintenance from her husband's family : See '*Bai Mangal v. Bai Rukhmini*'⁵, That being so, it would be wrong to equate the words "choli bangdi" with maintenance and then determine the nature of the estate by reference to the rule applicable to a maintenance grant.

11. Further, even if the purpose of the gift is. stated to be for maintenance of the donee, it does not necessarily follow that the estate given is limited to the life of the donee if the dispositive words are clear that an absolute estate is given. Thus in '*Bishnath Prasad v. Chandrika Prasad*'⁶, the material words of the deed were in the following terms :

"A moiety share of 'taluqa' Jakhania belongs to me by virtue of purchase made at auction As I have attained old age now, as it is possible that some dispute might arise after my death, and as it is my desire to make some arrangement for the support and maintenance of Mt. Balraj Kunwar, my daughter-in-law, I, the executant, have made a gift of the entire above-mentioned property i.e., the 'zamindari' rights appertaining to a moiety share of the above mentioned 'taluqa' to my daughter-in-lawfor her support and maintenance. I declare and give it in writing that the said Mt. should remain absolute owner (malik mustaqil) of this property under this deed of gift and pay the Government revenue. I, the executant and my heirs and representatives neither

have nor shall have anything to do with the above mentioned gifted property."

Their Lordships held that the donee obtained an absolute interest. The word 'malik' in that case was no doubt followed by the word 'mustaqil.' But it has been held more than once that the word 'malik' imports an absolute interest in the absence of any indication to the contrary. See '*Surajmani v. Rabi Nath*⁷', '*Mt. Sasiman Chowdhurain v. Shib Naraian*⁸', and '*Sarajubala Debi v. Jyotirmoyee Debi*⁹',

12. The dispositive words in the will under consideration are : (Vernacular Matter Omitted) (She should enjoy this property on (as) being the owner thereof.)" The words are clear and unambiguous and on the authorities must be construed as importing an absolute estate. The same expression is used to connote the ownership held by the father and the ownership to be enjoyed by the daughter. The words (Vernacular Matter Omitted) cannot be construed as words of limitation. See '*Hilalsingh Govinda v. Udesing Vithal*¹⁰', The whole argument of the learned counsel to limit the nature of the estate is based upon the presence of the words "for purposes of 'choli bangdi." No authority has been shown for construing the words "choli bangdi" as technical words of limitation. The expression, for 'choli bangdi', or the similar expression for 'haldi kunkum' is a traditional set of words employed on the occasion of gift made to a woman either at the time of her marriage or under coverture. The idea is that the daughter who is going or has gone into a new family should not be without independent means of her own to satisfy her personal needs. In such a case the nature of the estate cannot be said to be limited by the purpose for which the estate is given. There is no warrant for holding that the estate reverts to the doner on cessation of the need for 'choli bangdi' or 'haldi kunkum', i.e., on the woman becoming a widow.

13. In the instant case, there is nothing in the surrounding circumstances of the will to indicate that the gift was of a limited estate. Further I cannot be oblivious of the fact that I am construing a gift in favor of a daughter under the Maharashtra School. Under that School the daughter and the sister have always been entitled to inherit an absolute estate. They have fortunately been free from the disabilities to which their sisters in other parts of India are subject to. Reading the document as a whole, I see no compelling necessity to limit the normal import of the dispositive words that the donee is to enjoy the estate as owner thereof.

14. I, therefore hold that Manabai obtained an absolute estate. The appeal is dismissed with costs. Appeal dismissed.

Cases Referred.

¹23 All 194 (PC)

²I.L.R (1943) All 892

³1951-1 Mad LJ 49

⁴AIR 1947 Mad 319

⁵23 Bom 291

⁶55 All 61 at p. 65 (PC)

⁷30 All 84 (PC)

⁸1 Pat 305 (PC)

⁹59 Cal 142 at p. 148 (PC)

¹⁰ AIR 1938 Bom 125

