(1927) 08 CAL CK 0017

Calcutta High Court

Case No: None

Bipradas Goswami		APPELLANT
	Vs	
Sadhan Chandra Banerji		RESPONDENT

Date of Decision: Aug. 11, 1927

Citation: AIR 1929 Cal 801

Hon'ble Judges: Rankin, C.J; Mitter, J

Bench: Full Bench

Judgement

Mitter, J.
This is an appeal from a judgment and decree of the District Judge of Murshidabad, dated 9th February 1925, which affirmed a judgment and decree of the Subordinate Judge of the same place, dated 13th May 1924.

2. The plaintiff, now appellant, brought a suit for the construction of a will of his father, Kunja Behari Goswami, and for a declaration of his title to the immovable properties mentioned in the ka and kha schedules of the plaint and for recovery of possession of property ka with mesne profits and for an injunction restraining the defendant from taking any step for recovery of rent from the plaintiff with respect to properties described in schedule ka.

3. The case stated in the plaint is that plaintiff''s father died on 13th Falgun 1924, corresponding to 24th February 1886, leaving behind him the plaintiff, his only son, and Nabinkali Debi, his only daughter; that the plaintiff''s father executed a will sometime before his death: that probate was taken of the will and the plaintiff was possessing the properties left by his father according to the terms of the will; that in the will there was a provision that Nabinkali would get 3-annas share in a brahmottar property named Baguladangi and that there was a further provision in the will that a sum of Us. 1,000 should be paid to Nabinkali for the construction of a dwelling house out of the estate of the testator, that Nabinkali possessed and enjoyed ka and kha schedule properties and died on 14th Falgun 1325, corresponding to 26th February 1919, that the defendant, Satyendra, son of

Nabinkali, was born on 6th Aswin 1297, corresponding to 21st September 1890; that the said Satyendra having been born after the testator''s death, any bequest in his favour was void under the Hindu Law, as being a bequest in favour of an unborn person; that Nabinkali got only a life-interest in the suit properties; that during Nabinkali''s lifetime, the plaintiff took a jote settlement from Nabinkali in respect of the ka properties and that, on her death, the jote has ceased to exist and the plaintiff became entitled to the full brahmottar right in schedule ka properties and the plaintiff also acquired title to the dwelling house (schedule kha) and that the defendant, in spite of the plaintiff''s protest, got his name registered in the land registration register with regard to the ka schedule properties and has brought a suit for recovery of rent against the plaintiff and that the defendant was in wrongful possession of the schedule ka properties.

4. The defence of the defendant is that the defendant''s mother, Nabinkali, acquired an absolute interest in the properties in suit and that, on Nabinkali''s death, her son Satyendra, succeeded to the properties in suit as her heir. It was further said that with regard to kha schedule property that it was partly acquired by the stridhan of Nabinkali and partly by the money derived from the estate of the testator and that the plaintiff was estopped from bringing this suit.

5. The defendant Satyendra died during the pendency of the suit and his son, Sadhan has been substituted in his place.

6. Several issues were framed in the suit, of which it is necessary to notice only two, viz., issues 7 and 8.

7. Issue 7 is as follows:

Had the defendant''s mother permanent, absolute and heritable interest in properties in suit?

8. And issue 8 is as follows:

Has the plaintiff any title to the properties in suit?

9. The Court of first instance came to the conclusion that, on a proper construction of the will, issue 7 should be answered in the affirmative and against the plaintiff and issue 8 should be answered in the negative. The trial Court accordingly dismissed the plaintiff''s suit.

10. An appeal was taken by the plaintiff to the Court of the District Judge and the learned District Judge has come to the same conclusion as the trial Court and has affirmed its decision dismissing the plaintiff''s suit.

11. Against this decision, an appeal has been taken to this Court and it has been contended by Mr. Brajalal Chakravarti, who has appeared for the appellant, that on a proper construction of the will, the Courts below should have held that Nabinkali had only a Hindu daughter''s estate in the disputed properties, which after her

death reverted to the plaintiff.

12. The question turns on the construction of the will of Kunja Behari and we sent for the original will from the Court of the District Judge of Murshidabad and we have before us both the original will and the authorised translation made in this Court. The respondent contends that the construction put on the will by the Courts below, namely, that Nabinkali acquired an absolute interest in the properties in suit, is the right one.

13. In order to decide between these conflicting contentions, it is necessary to set forth the material parts of the will. Para. 1 of the will runs as follows:

My son, Bipradas Goswami, who is born of my loins, shall be entitled to the zemindaris, patnis, darpatnis, upanohouki taluks, jote jamas, brahmottars and other immovable properties in the districts of Rangpur, Jalpaiguri Burdwan, Murshidabad and Rajshahi, with power to make sale or gift, and shall enjoy and possess the same in great felicity, down to sons and grandsons and others in succession. I give to my (torn) son whatever rights I have in the aforesaid properties, and I give to my daughter, Srimati Nabinkali Debi, who us born of my loins, the nishkar brahmottar Baguladangi situate in the said district Jalpaiguri. In the absence of Nabinkali, that is, on her death, her sons born of her womb and grandsons, etc, shall enjoy and possess my 3 annas share in the said brahmottar. If Nabinkali''s sons do not reside at Sadikhandiar, then the said property shall vest in my heirs. If Nabinkali''s sons and grandsons make any claim to that, the same shall be rejected. Nabinkali''s husband Nagendra Nath Banerji or his agnates will not be entitled to possess the said properties or have any right to make a sale or gift of the same. A sum of Rs. 1,000 in cash shall have to be paid to Nabinkali as cost for the construction of a house or a house shall have to be built (for her) at a cost of Rs. 1,000.

14. It is not disputed that the testator''s son, Bipradas (plaintiff), has got an absolute interest in the properties in the districts of Rangpur, Jalpaiguri, etc. The words by which he gets his absolute be quest are as follows:

I give (arpan) to my (torn) son whatever rights I have in the said properties.

15. The bequest to the daughter, Nabinkali, is in the following words:

and I give (arpan) to my daughter, Srimati Nabinkali Debi, who is born of my loins, the nishkar, brahmottar Baguladangi situate in the said district Jalpaiguri.

16. The bequest, therefore, if it is absolute in favour of the plaintiff by reason of the use of the expression "give" (arpan) in favour of the son (plaintiff) must also be taken to be absolute in favour of Nabinkali, for there is no reason that where the same expression is used to indicate the passing of a full proprietary right, that it should be out down to anything less than a full proprietary right in the case of the daughter, Nabinkali, for if this construction is admitted, the appellants have to contend for two contradictory interpretations of the same phrase, which, however,

is not permissible. In para. 5 of the will, the testator, while bequeathing an absolute interest in the moveable properties and the pucca buildings in his share uses the same expression "give" (arpan). Para. 5 of the will runs as follows:

I give to my son, Bipradas Goswami, my moveable properties and the pucca buildings, etc in my share.

17. By using the same dispositive term "give" in both cases, it seems to me, that the testator intended to bequeath the same kind of interest to both the son (plaintiff) and Nabinkali (defendant''s mother). He gave the bulk of his properties, which consisted of zemindari, patnis, darpatnis, etc., in various districts in Bengal, to his son and gave only; a 3 annas share in certain nishkar brahmottar in Jalpaiguri and a sum for the construction of a dwelling house in favour of his daughter by another wife absolutely. The dispositive term in the will, indicating the passing of an absolute interest, is the word "give" (arpan),. It is now well established that if an estate were given to a man simply without express words of inheritance, it would, in the absence of a conflicting context, carry by Hindu law an estate of inheritance : see Jatindra Mohan Tagore v. Ganendra Mohan Tagore I.A. Sup. Vol. 47. The same principle would apply if the donee was a woman, for, as has been pointed out by their Lordships of the Judicial Committee in the case of Surajmani v. Babi Nath Ojha [1907] 30 All. 84, this principle was of general application : see also Sasiman Chowdhurain v. Shib Narayan Chowdhury AIR 1922 P.C. 63. As was pointed out by their Lordships of the Judicial Committee in the case of Lalit Mohun Singh Roy v. Chukkun Lal Roy [1897] 24 Cal. 834, one cardinal principle in the construction of wills is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. It is contended on behalf of the appellant that the words:
In the absence of Nabinkali, that is, on her death, her sons born of her womb and grandsons shall possess the three annas share.

18. coupled with the provision that:

If Nabinkali''s sons do not reside at Sadikhandiar then the said property shall vest in my heirs.

19. show that it was intended to give Nabinkali a life-estate with remainder over to her son and as the son was not born during the testator''s lifetime, the gift to the son was void under the Hindu law and, consequently, this property reverted to the next heir of the testator, viz., the plaintiff. It is also said that the words putra poutradikrame signify that the succession after Nabinkali''s death would be in the line of male heirs and was intended to prevent the succession of female heirs and that this was a Provision contrary to rule of succession under the Hindu Law and was void. It seems to me that this provision in the will as to what is to happen on the death of Nabinkali is somewhat involved and obscure. It is possible to read the words " Nabinkaliro'' garbhajata putra poutradikrame bhog dakhal karibe " to mean

that those born of the womb of Nabinkali will enjoy and possess from generation to generation. The words putra poutradikrame have acquired a technical meaning. The words giving lands to the donee putra poutradikrame confer upon him or her an absolute estate. The word garbhajata means born of womb and if after that word the testator had used the word "children" and after that the words Putra poutradikrame, then the meaning would have been absolutely clear and there could be no doubt that an absolute interest would have been bequeathed to Nabinkali. The absence of any such word after the word garbhajata creates the obscurity, but it seems to me that would be a more natural construction to fill up the ellipses after the word garbhajata by using the word children, rather than split up the phrase putra poutradikrame into words by tacking the word putra with garbhajata and reading poutradikrame as an independent phrase. If we look to the setting in which these words are placed, the latter construction becomes all the more unnatural, for in an earlier part of para 1, while bequeathing an absolute interest to the plaintiff, the testator uses the phrase putra poutradikrame and does not use the phrase poutradikrame by itself divorced from the word putra. In other words, the phrase putra poutradikrame is a term of art, whereas the word poutradikrame is rarely used in Bengali documents to indicate succession in the male line.

20. The respondent lays stress on the provision:

that Nabinkali''s son was also to enjoy from generation to generation in the absence of Nabinkali.

and contends, that the word "also" signifies that Nabinkali was to enjoy the properties bequeathed to her in the same manner as his son Bipradas was to enjoy properties bequeathed to him. I think the word "also" has this significance'' and shows that the intention of the testator was to make the gift to his daughter absolute like the gift to his son. .The meaning of every word in an Indian will must always depend on 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. The will was drawn outside Calcutta and we know that, outside the presidency towns, the art of conveyancing is but little understood, and the drafting of wills is generally of a very simple and inartificial character. It seems to me that, having regard to the whole frame and wording of the will the intention of the testator was to give Nabinkali an absolute interest and such restrictions as was repugnant to such interest must be disregarded.

21. Mr. Chakravarti has drawn our attenion to the case of Radha Prasad Mullick v. Ranee Mani Dasee [1908] 35 Cal. 896, where there-was a gift to the daughters and the sons-jointly and their Lordships of the Judicial Committee held that the daughters took only a life-interest. It is always dangerous to construe the words of one will by the construction of more or less similar words in a different will which. was adopted by a Court in another case But on an examination of the case it will appear that there was a gift to the daughters and sons jointly and there was a

proviso that, in the event of one of the daughters dying without leaving any surviving male issue, then the share of the deceased daughter is to go to the surviving daughter and her son to the exclusion in both cases of female issue and in these circumstances it was held that the daughters had only a life estate. In the present case the gift is to the daughter in the same terms as the gift to the son in respect of other properties, and there does not seem to be much resemblance between the present case and the decision of the Judicial Committee just referred to.

22. The case of estoppel made by the defendant is that the plaintiff himself put the same construction of the will when he took a permanent lease from Nabinkali of the ka schedule property as the defendants are contending for. It is true that this circumstance does not operate as an estoppel and prevent the plaintiff from asking relief on a proper and different construction of the will but the circumstance is significant as, showing that all the parties benefited by the will have proceeded on the footing that Nabinkali took an absolute interest in the ka schedule property. The plaintiff also suffers very little, for, after all, he enjoys the ka schedule properties absolutely subject only to the payment of a fixed rent to the defendant and his successor-in-title.

23. For the above reasons, I am of opinion that the view taken by the lower Courts is right and that the appeal must be dismissed with costs.

Rankin, C.J.

24. I agree.