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Durga Pershad and Others Vs Raghunandan Lal and Others

Court: Calcutta High Court

Date of Decision: April 1, 1914

Final Decision: Allowed

Judgement

Fletcher, J.
This appeal arises out of a suit brought by the Plaintiffs for the construction of the Will of one Earn Narain Sahu, a Hindu,

governed by the Mitakshara School of Hindu Law, which is dated the 1st July 1890. The testator died on the 1st March 1901 leaving him

surviving his widow Musammat Chhoto Kuar, two daughters Musammat Bindadebi and Musammat Jaidebi and an only son Tej Narain. The

testator also left a brother and the two sons of his brother, namely, Ganesh Lal and Kaghunandan Lal who are the Defendants in the suit. The son

of the testator, namely, Tej Narain; died some time in March 1904, having survived his mother Musammat Chhoto Kuar by a few days. The eldest

sister of Tej Narain, that is, the testator''s eldest daughter died in the lifetime of her mother Musammat Chhoto Kuar, namely, in the 15th June

1903. She left a daughter Musammat Janki Kuar who died in 1906. No question arises as to the interest that Janki Kuar might take, because it is

the common case of both the parties that, if Janki Kuar took any interest under the Will, the Plaintiffs would take in the usual course of succession

any interest that Janki Kuar had taken, as she died apparently unmarried and without any children. The two Plaintiffs in this case are the two

surviving sons of the other daughter of the testator, namely, Jaidebi, the third son having died in February 1904 and, therefore, he could not take

any interest under the terms of the Will. The Will of the testator is in these terms:---The testator proceeds, in the first place, to make his son Tej

Narain Lal Sahu who is described therein as his minor son and his legal heir the Malik of all his properties, and the Will states that he should

succeed to and enter upon possession and occupation of the whole of his estate. Then the testator proceeds to appoint his widow Chhoto Kuar as

the manager and legal guardian of the infant. Then the testator deals with the contingency which did not happen, namely, the contingency of any

other son being born to him. Next he deals with the case of the wife predeceasing the son before he attains the age of majority and he appoints in

that case another person to be the guardian of the infant Tej Narain. It is quite clear that, down to this, the Will contemplates the case of Tej

Narain being an infant and the management of the property during his infancy. Then comes the gift which the present ""appeal turns on. The clause

runs thus :-- ""If after my death the said minor son dies, which God forbid, the mother of the said son shall in his stead become the Malik in

possession and occupation when like myself the said Musammat shall acquire all the proprietory powers and all kinds of properties moveable and

immoveable."" Now, the learned Judge considered that, that gift over in favour of the widow in the event of the "son Tej Narain dying without

having attained majority was a void gift as being repugnant to the form of the gift that was previously made in favour of Tej Narain. That is wholly

an unarguable proposition. The gift over to a person in the event of the minor legatee not having attained full age has been supported in a large

number of decisions both in the Courts in India and elsewhere. As a matter of fact, the learned Judge considered that, under sec. 111 of the Indian

Succession Act, there was so specified uncertain event. The specified uncertain event in this case was the failure of Tej Narain to attain his

majority. It is quite clear that the provisions of the Indian Succession Act render such a gift perfectly good. Then, after the death of the widow, the

property was given by the testator in equal shares to his two daughters Bindadebi and Jaidebi. The learned Judge considered that, that gift was

void on the ground that it was dependent on the gift in favour of the mother and that, as the mother predeceased the son, the gift over in favour of

the daughters did not take effect. Sec. 116 of the Indian Succession Act which merely incorporates the. rules of the English Law provides clearly

that the gift over shall take effect on the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by. the

testator. The mere fact that the testator contemplated that, if his son died a minor and the widow survived him, she would acquire the property

before the two daughters and that that event did not take effect in that order, because the widow predeceased the son, does not deprive the two

daughters of the benefit of the legacy given to them by the testator. Sec. 116 is quite clear as to that. In my opinion, the learned Judge came to a

wrong conclusion on the construction of the Will. The gift in favour of the daughters, in my opinion, was a valid bequest to them and the

Defendants who claim as being the next heirs of Tej Narain have no interest in the estate of the testator. The present appeal ought, therefore, to be

allowed and the decree of the Subordinate Judge reversed and the Defendants Nos. 1 and 2 ordered to pay to the Plaintiffs their costs both in this

Court and in the Court below. We make no order as to the costs of the Defendant No. 7, who appears to have been added as a formal party. We

assess the hearing fee at five hundred rupees.

Richardson, J.

I agree.