(1927) 10 BOM CK 0005

Bombay High Court

Case No: None

Mangaldas Kilabhai Patel		APPELLANT
	Vs	
The Secretary of State for India		RESPONDENT

Date of Decision: Oct. 10, 1927

Acts Referred:

- Court Fees Act, 1870 - Section 19D
- Limitation Act, 1908 - Section 10

Citation: 108 Ind. Cas. 709

Hon'ble Judges: Patkar, J; Baker, J

Bench: Division Bench

Judgement

Patkar, J.

In this case, one Patel Trikamlal Gopaldas died on June 20, 1919, having made a Will, dated May 10, 1919. By his Will he appointed his wife Bai Ujam and nephew''s sons, the minors Ramkrishna and Govindlal, as joint owners of his estate, and he appointed his wife as the executrix of the Will. According to para. 12 of the Will, on the death of his wife, the aforesaid sons of his nephew, Ramkrishna Jethalal and Govindlal Jethalal, were to take possession of his estate. Patel Trikamlal left moveable and Immovable property and made detailed dispositions with regard to them in his Will. Bai Ujam died on August 8, 1924, and an application was made by one Mangaldas Kilabhai on behalf of minors Ramkrishna and Govindlal for Letters of Administration to the estate of Bai Ujam in respect of certain shares and fixed deposits and current accounts mentioned in Schedule A of the application amounting to Rs. 39,611. The applicant was ordered to pay the full Court fees under Clause 11, Sch. I of the Court Pees Act. In this appeal the applicant claims exemption from payment of Court-fees u/s 19-D read with Annexure B of Sch. III of the Court Fees Act.

2. It is urged that under the Will of Patel Trikamlal the deceased Bai Ujam held the property jointly with the minor applicants, and that on her death they were entitled to the property by right of survivorship, In the alternative, it is suggested that at least so far as the two-thirds share belonging to the applicants is concerned, Bai Ujam was possessed of or entitled to as a trustee within the meaning of Section 19-D of the Court Fees Act. The property belonging to Trikamlal was his self acquired property, and though he appointed Bai Ujam and the sons of his nephew as joint owners of the property, he did not thereby create a joint tenancy with a right of survivorship. In Jageswar Narain Deo v. Ram Chandra Dutt 23 I.A 37 44; 23 0 670; 6 M. L. T. 75 12 Ind Deo (N. 8.) 445 (P. C). the Privy Council held that the principle of joint tenancy appeared to be unknown to Hindu Law except in the case of co-parcenary between members of an undivided Hindu family. In Hirabai v. Lakshmibai 11 B 573; 6 Ind Dec (N. S.) 377. where the property was given to a widow and an adopted son as heirs, the Court held that they were intended to take several interests, and that there was no presumption that the donor intended to annex the condition of survivorship which would have the effect of excluding the heirs of one of the donees The view that the bequest in favour of two or more persons does not create a joint tenancy between the donees but creates a tenancy-in-common is accepted in the case of Bai Diwali v. Patel Bechardas ; 4 Bom. L R. 102.; The decisions relied upon on behalf of the appellants in Collector of Kaira v. Chunilal 6 Bom. L. R. 652. and Keshavlal Punjalal v. Collector of Ahmedabad 77 Ind. Gas. 749; 25 Bom L R 1240; A. I. R. 1924 Bom. 228. relate to members of a joint Hindu family with the right of survivorship and will not apply to the facts of the present case. It is, therefore, clear that go far as Bai Ujam''s interest to the extent of one third share is concerned, the Court-fees on that share must be paid.

3. The question as regards the Court fees payable on the remaining two thirds share belonging to the applicants depends on the question whether Bai Ujam held the two-thirds share as a trustee within the meaning of Section 19-D of the Court Fees Act. The clause in the Will by which the testator appointed Bai Ujam and the sons of his deceased nephew as co-owners is not consistent with the later clause under which the nephews were entitled to take possession of the property after the death of the widow and to dispose of it as they pleased subject to the dispositions with regard to the sanatorium and other charities. Heading the Will as a whole, it appears that the testator intended to give the widow either an absolute or life-estate in one-third of the property and a life-estate in the remaining two-thirds share, and subject to such estate the entire property was to vest absolutely in the two sons of the deceased nephew after the death of the widow. The estate in respect of which the Letters of Administration are sought was pospessed by Bai Ujam as an executrix under the Will. There is no trust created by the Will. Bai Ujam was not appointed as a trustee for the minor sons of the nephew. She is not directed under the Will to hand over the two-thirds share in the estate to the applicants on their attaining majority. They were entitled to take possession of the estate only after the death of Bai Ujam.

In the absence of any specific appointment of Bai Ujam as a trustee, and in the absence of any declaration of trust in favour of the applicants in the Will, it is difficult to hold that Bai Ujam was possessed of the moveable property mentioned in schedule A as a trustee for the applicants. An executor cannot be turned into a trustee for the performance of duties which appertain to him as an executor: Jamnadas Gordhandas v. Damodardas Chunilal 103 I C. 225; 29 Bom L. R. 418; A. I. R. 1927 Bom. 424. An executor is always in a loose sense a trustee for creditors and legatees but he is not an express trustee and cannot be deprived of the benefit of the Statute of Limitation: see Williams on Executors, page 1590, note (d); In re Davis Evans v. Moore v. Gould (1906) 1 Oh. 25 ; 75 L. J. Ch. 47; 54 W. R. 88; 93 L. T. 694. and Nanalal Lallubhoy v. Harlochand Jagusha 14.476; 7 Ind. Doe (N.S.) 779. The question in each case would depend on the construction of the Will. I do not think that Bai Ujam was possessed of or entitled to the two-thirds share as a trustee under the terms of the Will of her husband.

4. I, therefore, think that the applicants are not entitled to exemption u/s 19-D of the Court Fees Act. I would, therefore, dismiss the appeal with costs.

Baker, J.

5. The sole point in this appeal is one of Court-fees. Patel Trikam das made a Will on May 10, 1919, bequeathing his property to his wife Bai Ujam and the sons of his nephew, Ramkrishna and Govindlal, who were minors. The widow was to manage the property and on her death, Ramkrishna and Govindlal were to take possession of the property. On the death of the widow, Ramkrishna and Govindlal applied for limited Letters of Administration without a copy of the Will annexed, and claimed exemption from Court-fees u/s 19-D read with Sch. III, Annex. B of the Court-Fees Act., They contend that, under the Will, Bai Ujam held the property jointly with the applicants and that on her death the applicants were entitled to the property by right of survivorship. They also contend that in respect of the two thirds share belonging to them, Bai Ujam held it as trustee for their benefit, and that in respect of two-thirds at any rate, they are not liable to pay stamp.

6. The Government Pleader opposed and the Assistant Judge, Ahmedabad, held that the applicants were liable to pay the full Court-fees on the Letters of Administration. The applicants have appealed.

7. It is now admitted that the applicants and Bai Ujam did not constitute a joint family, and were not joint tenants. So far, therefore, as the one-third share of the widow is concerned, the contention that they are not liable to pay Court-fees is given up. But, so far as the remaining two-thirds share is; concerned, it is contended that the widow was a trustee for the applicants, and that no Court-fee is payable u/s 19-D, Annex B to Sch. III to the Court Fees Act. The Will states intzr alia:

On our demise we appoint our wife Ujam and our nephew''s sons, the minors Ramkriahna Jethalal and Govindlal Jethalal as joint owners of our estate. On our

death our, wife shall take possession of and administer our estate.... I appoint my wife Ujam as executor of this my Will.... On the death of my wife, the afore said sons of my nephew, Ramkrishna Jethalal and Govindlal Jethalel shall take possession of my estate.

8. The position of the widow is, therefore, that of an executor but, she has also a life interest in the two-thirds share of the applicants. There is no direction in the Will that she is to hand over the property to the applicants on their attaining majority nor can they take possession till her death.

9. It has been contended that the shares in which, the income of the estate was invest-ed by the widow were held by her in trust for the applicants. In view of the remarks in Jamnadas Gordhandas v. Damodardas Chunilal 103 I C. 225; 29 Bom L. R. 418; A. I. R. 1927 Bom. 424 and of the cases quoted there under and the terms of the present Will, I do not think it can be said that this is a case of an express trustee. It was held in Nanalal Lallubhoy v. Harlochand Jagusha 14.476;7 Ind. Doe (N.S.) 779. that the executors were, no doubt, trustees, and for specific purposes property became vested in them under the Will, but with regard to the residue there was no trust declared and no direction given to distribute it among the heirs at-law and that in the absence of such a trust or direction the executors cannot be held to be express trustees, or trustees for a specific purpose, and Section 10 of the Indian Limitation Act did not apply. It was also held in Muhammad Habibullah Khan v. Safdar Husain Khan 7 A. 25; A. W. N. (1884) 219; 4 Ind. Dec (N. S.) 254. that where there was no express trust Section 10 of the Indian Limitation Act would not apply.

10. On the analogy of these cases it would appear that the widow in the present case was not a trustee for the applicants and that Section 19 D of the Court Fees Act does not apply.

11. I agree, therefore, that the appeal should be dismissed with costs.