Dal Koer Vs. Lala Ramjewan Lal

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Court : Kolkata

Decided On : Feb-18-1897

Reported in : (1897)ILR24Cal406

Judge : Trevelyan and ;Beverley, JJ.

Appellant : Dal Koer

Respondent : Lala Ramjewan Lal

Judgement :

Trevelyan and Beverley, JJ.

1. These three appeals are against decrees made in three, several [409] suits were tried together; and the only question before us is as to the construc-the will of one Lala Sunder Lal made on the 25th May 1882.

2. Before referring to the terms of the will it will be well to mention that the point is shortly whether, having regard to the terms of the will, the husband of a daughter who survived the testator is entitled to obtain the share given by the will to that daughter, or whether he is to be excluded from any rights under the terms of the will. It is not disputed that if an absolute estate was given to the daughter by this will, and there was nothing in the will giving the share to some one else on her death, the husband as her stridhan heir would be entitled to it. The important parts of the will are referred to by the learned Judge in the Court below. The testator begins by expressing a hope that the family will continue to live jointly, but in the event of disputes he makes certain provisions. Paragraphs 10 and 11 are the two first which we have to consider. Paragraph 9 first of all gives Rs. 50 a month to the widow of the testator's brother, and Rs. 50 a month to the testator's fourth wife, and then paragraph 10 provides that the three daughters of his elder brother and the two daughters of the testator's second wife as well as the daughter or daughters who may be born of the testator's fourth wife, shall be maliks and come in possession in equal shares of all the moveable and immoveable properties. Prima facie there can be no question but that a gift, when there are no controlling words, is an absolute gift, and the expression 'maliks' used here would ordinarily imply an absolute gift. But it is contended that we must introduce into this will what is said to be the prevalent Hindu idea that a female ought not to obtain anything beyond an estate for her lifetime, and, therefore, although the word 'maliks' is used, we must cut down the estate to the extent of an estate given to a Hindu daughter. There is no authority for such a proposition. The words are absolute, and if they stood by themselves without anything to the contrary it would be impossible for us to say that they did not give an absolute estate. The following are the words upon which the lower Court has acted and upon which reliance has been placed in this Court: 'Perchance any of the above

daughters die, and she leaves any male child, then such male child shall be the representative of his mother and get the share left by her. But in case any of [410] the daughters die childless, then in that case the share left by such deceased daughter shall devolve in equal shares on the surviving daughters of my elder brother and of me the declarant. But such share shall have no connection with her husband's family. Perchance any of the daughters of my elder brother or the daughters of me the declarant give birth to no son, on the contrary she or they give birth to daughter, or daughters, then in the place of a son, such daughter or daughters who will be born from her own womb shall inherit the properties of the daughter (who may not give birth to a son) which she might have inherited from me the declarant and will succeed her mother as her representative. No other person shall have any claim to it.'

3. We think that having regard to the provisions of Section 111 of the Indian Succession Act, which is made applicable to Hindus by the Hindu Wills Act, and having regard also to the recent case of Norendra Nath Sircar v. Kamalbasini Dasi L.L.R. 23 Cal. 563 these provisions can apply only to the case of a daughter dying during the lifetime of the testator. 'Perchance any of the above daughters die' as has been pointed out, must refer to their death at some particular time. No other time is pointed at by the will except the time when the share would be distributable, namely, the time of the death of the testator, and quite apart from Section 111 and the case to which we have referred, it is clear that the scheme of this portion of the will provides for all events which might happen before the testator's death. If the daughter dies leaving a male child, the male child is to become the representative of his mother and to get the share left by her, that is to say, the share which she would have obtained if she had survived the testator. It is not disputed that a male child would obtain an absolute estate in this property. If the construction sought to be put upon this will by the respondent is correct, although the daughter would succeed to a life-estate, yet a son who succeeded her would get a very much greater interest in the estate than that of his mother, whereas the will provides that he is to get the very share left by her. Similarly, if the daughter dies childless, the share which she would have acquired goes over to the other daughters. If she dies leaving a daughter, then the daughter will also succeed her mother as her representative in the same way as the son.

4. [411] Much reliance was placed upon the words 'but such share shall have no connection with the husband's family.' That expression, it is true, is somewhat vague. The husband's family would of course include his son, etc. But assuming that it was intended to apply to the husband and persons of the family other than those related by blood to the testator, we think it was only intended so to apply where the daughter dies during the testator's lifetime. One can well understand that, a man leaving property and wishing to provide for his daughter would not desire to provide for his son-in-law on the death of the daughter, as a son-in-law's relationship to the father-in-law would necessarily be altered by the death of the daughter, and the father-in-law would not have the same interest in providing for him, though he would not necessarily wish to exclude him entirely, in case his daughter was alive. He would not contemplate events happening so long after his own death. It is not to be supposed, in the absence of anything more definite, that the exclusion was to be for ever and ever, whatever events might happen, of any person connected with the husband. There is nothing on the face of the will to suggest such an exclusion. In our opinion the testator in this case intended to exclude his son-in-law only in the event of the daughter dying before his own death.

5. The only remaining question is, whether there is anything in the will to cut down

the absolute gift in the 10th paragraph. There is nothing in any of the paragraphs in any way affecting this question, unless it be paragraph 17; and the only portion of that paragraph which may be said to deal with it is at the end: 'But my daughter or the daughters of my elder brother shall not have on any account the right to sell or alienate directly or indirectly the shares of the properties or of the houses which may fall to their respective shares. In case any of them does so, it will be held null and void in the Courts of Justice.' It is said that the effect of that is to give a life-estate to the daughter, that is, that the effect of giving an absolute estate, plus a restriction on its sale or alienation is to give a life-estate. There is nothing in the will about a life-estate being given to the daughters, and if they had a life-estate given to them, there is no reason why there should be any provision restricting them from selling or alienating. [412] Having a life-estate, they would have no right to sell or alienate. This case is not different from any other case where a testator makes an absolute gift, and in some other part of his will puts in a provision against sale or alienation. It is a case provided for by Section 125 of the Indian Succession Act. That section says: 'When a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee1 shall be entitled to receive the fund as if the will had contained no such direction.' That embodies a well known principle of law. Moreover, regarding this question as to whether there was a life-estate, one would expect, having regard to the express gifts to the legatees as maliks, to find that there have been some gifts over after the deaths of the daughters. Paragraphs 10 and 11 refer only to events happening during their life, and there is no provision in the will as to who should enjoy the property after their deaths. We think that this will is not open to the construction that there was a life-estate. Giving a reasonable construction to the will, and taking the whole of it into consideration, we are unable to say that the estate should in any way be limited. It follows that the appeals must be allowed, the decrees of the lower Court set aside, and the suits dismissed.

6. Regarding the question of costs, this is, we think, a case where the defendant is entitled to his costs. This is not an ordinary case of a suit brought for the construction of a will. It is a case in which an attempt has been made to oust from his property a person who has been enjoying possession of it, although the title of the plaintiff depends upon the construction of a will. He took his risk as to whether the Court would take his view of the construction, and, having failed, he must pay for the litigation. The defendant (appellant) is, in our opinion, entitled to costs against the plaintiffs-respondents in each case, and the order we make is that the appellant, do recover in each of the appeals one-third of the highest set of costs, in respect to the hearing fee, that he is entitled to in any one of these three appeals. This concerns the hearing fee in this Court alone. He is also entitled to all other costs in these appeals, and to the costs, in the lower Court.