Privy Council Appeal No. 98 of 1912.

Chunilal Parvatishankar - - - - *Appellant.*

v.

Bai Samrath - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH MARCH 1914.

Present at the Hearing:

LORD SHAW.
LORD MOULTON.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an Appeal from a Decree of the High Court of Judicature at Bombay, dated the 20th July 1910, reversing a Decree of the Court of the District Judge, Surat, dated the 27th August 1908, which had affirmed with modifications a Decree of the Court of the First Class Subordinate Judge, Surat, dated the 4th February 1907.

The only question for determination in the Appeal relates to the construction of a Will dated the 20th August 1899, made by a Hindu named Parvatishankar Durgashankar. He was a resident of Surat in the Bombay Presidency: and it may be at once stated that it was admitted by both parties at their Lordships' Bar that the Hindu Wills Act, Chapter 21, of the year 1870, did not apply to this case, which falls to be determined not by the law operative within the territories subject to the Lieutenant-Governor of Bengal or the local limits of the ordinary original civil

jurisdiction of the High Courts at Madras and Bombay. It may well be that the sections of that Act upon interpretation would yield the same result as has been arrived at in the present case. But no decision on that topic is given: and the case is treated as one applying in the mofussil, and therefore to be dealt with on ordinary legal principles. It must also be stated that the various terms employed in the particular will are special, and that no general rule can be said to be precisely applicable in its construction except that the Court must make its best endeavour to extract the intention of the testator.

Parvatishankar, the testator, died on the 4th July 1901. He left surviving him two sons, Shambhuprasad (who died on the 2nd January 1903, leaving a widow, the Respondent in this Appeal, and a daughter) and Chunilal, the Appellant. A third son of Parvatishankar, Surajlal, had predeceased his father, but had left one son. Surajlal had separated from his father many years previous to his death; the other sons were in family with him.

The Will was executed about two years before the testator's death and it purports to dispose of the whole of his property. By Clause 2 he appointed his two sons executors, heirs and owners of the whole. In various other clauses details as to the immoveable property are given, and directions that his sons are to divide and take in equal shares the whole of it with certain exceptions. In Clause 7 there is a declaration as follows:—

"As to the moveable property which I possessed, I "have during my lifetime divided the same between my "two sons, Shambhuprasad and Chunilal, according to "my wishes and have made over the same in their "possession."

A certain enumeration with directions is also given as to gold and silver ornaments in his possession. By Clause 8 the testator gives each

of his said two sons a half of his estate not specifically disposed of by his Will.

It is clear up to this point in the Will that the one predominant desire of the testator was that his two sons should have his property between them.

It was in the course of the case, however, found in fact that he had not accomplished, or completely accomplished, this desire. And the Will accordingly falls to be appealed to as the governing instrument in regard to the distribution.

The question of survivorship as between these two sons was not dealt with until Clause 9 of the Will was reached, and it is in the following terms :—

"I have divided between and given to my two sons "Shambhuprasad and Chunilal the whole of my property "as mentioned above. But should either of these two sons "die without having had (leaving) any male issue, the "survivor of the said two sons is duly to take the whole of "the property appertaining to the share of the deceased son "who may have (leave) no male issue (behind him) after "undertaking (to defray) the expenses in connection with "the maintenance of his widow and the maintenance and "marriage of his minor daughters. But under these "circumstances the heirs of my deceased son Surajlal shall "not get any right whatever."

Various issues were raised in the case, including whether the estate in question was self-acquired. This was answered in the affirmative, and that answer is not now disputed. As stated, the one question remaining in the case has reference to the construction of Clause 9 above quoted. The learned Judges of the High Court of Bombay have held that—

"The period of distribution contemplated by the testator "is clearly the period of his death, and under these "circumstances the event which may interfere with that "distribution and give rise to the necessity for other "arrangements must be an event occurring prior to his "death."

As already mentioned, Shambhuprasad

survived the testator. And the result of the judgment is that one-half of the property now to be disposed of is held to have vested in him *a morte testatoris* and that the whole provision of Clause 9 with reference to survivorship falls, in the events which have occurred, to the ground. The effect of the learned Judges' Decree is that the clause must be read as if the survivorship there provided for was limited to survivorship as at the testator's death.

Their Lordships are clearly of opinion that this judgment cannot be maintained. There is nothing specifically either English or Indian in the idea that the Will of a testator must be construed on that principle which would enable Courts of Law most fully to give effect to the intention expressed by his words. It may be that if the words he employs are *voces signatae* they must be so accepted, whatever the suspicion may be as to the testator having had that particular view of his own language. But in ordinary circumstances ordinary words must bear their ordinary construction, and the whole Will, that is, the whole of the words employed by the testator, must be looked at together so as to determine his whole intention. Furthermore, it is not on this principle legitimate to take words which have a general meaning and subject them to limitations which the words do not necessarily imply. It may be true that there is a body of older cases which would warrant a suggestion that the term employed in this Will, namely, "should either of these two sons die without having had (leaving) any male issue" should be limited to such death occurring before the death of the testator himself, but the Will does not say that, and it has for many years been a settled principle that words of this class, being in general terms, must receive their full, and not a restricted, meaning.

The leading authority on the subject is, of course, *O'Mahoney* v. *Burdett* (7. English and Irish Appeals, 388), and two sentences of Lord Hatherley's opinion may be here repeated. He refers to the duty of the Courts always to consider carefully the whole Will,

" and, having regard to all the various clauses contained in " it, to see what is the full and complete and perfect " intention of the testator."

He corrects the case of *Edwards* v. *Edwards* (15 Beav., 357), and makes the statement of the principle run thus :

" that the period to which the executory devise will be " referred will be the period of the death of the first taker, " unless there are other circumstances and directions in the " Will which are inconsistent with that supposition."

If it did not appear presumptuous to say so, one might comment on the case of *O'Mahoney* v. *Burdett* as one which emerged through a thicket of technical decisions to a ground of plain and pre-eminent good sense. It was also, of course, fortified by authority, and notably by the case of *Allen* v. *Farthing*, the fullest report of which was given by Mr. Jarman in his work on " Wills." (6th Ed., p. 2160.)

But so far from the language employed in the present Will leaving any serious ambiguity as to the intention of the testator, their Lordships are of the opposite opinion. In their view the words clearly point to survivorship whenever it should occur. When Shambhuprasad, having, with his brother Chunilal, survived his father, died, leaving a widow and a daughter, the language employed to cover such a situation seems exact and clear.

" Should either of these two sons," it says, " die without " having had (leaving) any male issue, the survivor . . . " is duly to take the whole of the property appertaining to " the share of the deceased son who may have (leave) no " male issue."

And, as if this were not sufficient, the Will proceeds to lay upon the surviving brother a duty

in the event of that survivorship in the following language :

" after undertaking (to defray) the expenses in connection " with the maintenance of his widow and the maintenance " and marriage of his minor daughters."

It seems to their Lordships that it would be a strained construction of a Will in that form (which manifestly contemplates death occurring at any time—with the receipt of property by way of survivorship—on the one hand, and the duties to be laid upon the survivor at any time, on the other hand) to say that the whole of these provisions fall to the ground, although Shambhuprasad had in point of fact left no male issue, because he did not die in that situation before the testator himself. The testator, in their Lordships' opinion, had clearly in view a much wider and more general provision, and they think that the events which have in fact occurred, viz., the survival of the testator by his two sons and the death of one of these sons leaving a widow and daughters but no male issue, are events to which the will has operative application. They accordingly do not doubt that Chunilal, the surviving son, is, as such survivor, entitled to the estate conveyed by this clause, and that the correlative obligation resting upon him comes into play.

Their Lordships desire to put on record an admission made by Counsel for the Appellant to the effect that he had no knowledge of any property of the deceased testator in possession of the Respondent, Shambhuprasad's widow, and that, if the Respondent came into possession of such property under arrangements made in the lifetime of her husband with his brother the Appellant, the present Judgment would not be used to disturb such an arrangement.

Their Lordships do not feel themselves able to give effect to the argument presented under

Section 42 of the specific Relief Act or to interfere with the judgment of the District Judge on this question of procedure.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, and that the cause be remitted to the High Court in order that upon provision being made and security being given to its satisfaction for the maintenance of the Respondent and for the maintenance and marriage expenses of the minor daughter a declaration and injunction be given in terms of the Plaint. In view of the special difficulties in the construction of the will the appellant will pay to the respondent all costs incurred by her before this Board and in the Courts below.

In the Privy Council.

CHUNILAL PARVATISHANKAR

v.

BAI SAMRATH.

DELIVERED BY LORD SHAW.

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