

Privy Council Appeal No. 3 of 1929.

Pandit Shalig Ram and others - - - - - *Appellants*

v.

Bawa Charanjit Lal and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE NORTH-
WEST FRONTIER PROVINCE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH JUNE, 1930.

Present at the Hearing :

LORD TOMLIN.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the defendants in the suit against a decree of the Judicial Commissioner of the North-West Frontier Province, dated the 25th of July, 1927, which reversed a decree of the Subordinate Judge of Peshawar dated the 1st of July, 1926, and decreed the major portion of the plaintiffs' claim.

The suit was brought by Hukam Chand and Charanjit Lal, alleging that they were the reversionary heirs of one Mul Chand and that on the death of his last surviving widow, Musammat Sahib Devi, they were entitled to recover possession of the properties specified in the plaint, which they alleged were in the possession of the defendants, and which were originally the ancestral property of the said Mul Chand. Hukam Chand died *pendente lite* and is now represented by Musammat Sitan Devi, the second respondent.

The defendants claim title to the said properties by transfer either "*inter vivos*" or by will from the said Musammat Sahib Devi.

Mul Chand was a Baba or Hindu priest, who lived in Peshawar city, and the properties in suit consist chiefly of houses in Peshawar city and some revenue-free land near Peshawar, the revenue of which had been assigned by Government to a shrine known as Devi Dawara.

The Subordinate Judge who tried the case in the first instance dismissed the plaintiffs' suit with costs.

The plaintiffs appealed to the Court of the Judicial Commissioner, who allowed the appeal and remanded the suit to the Subordinate Judge for the decision of certain issues which the Subordinate Judge had left undecided.

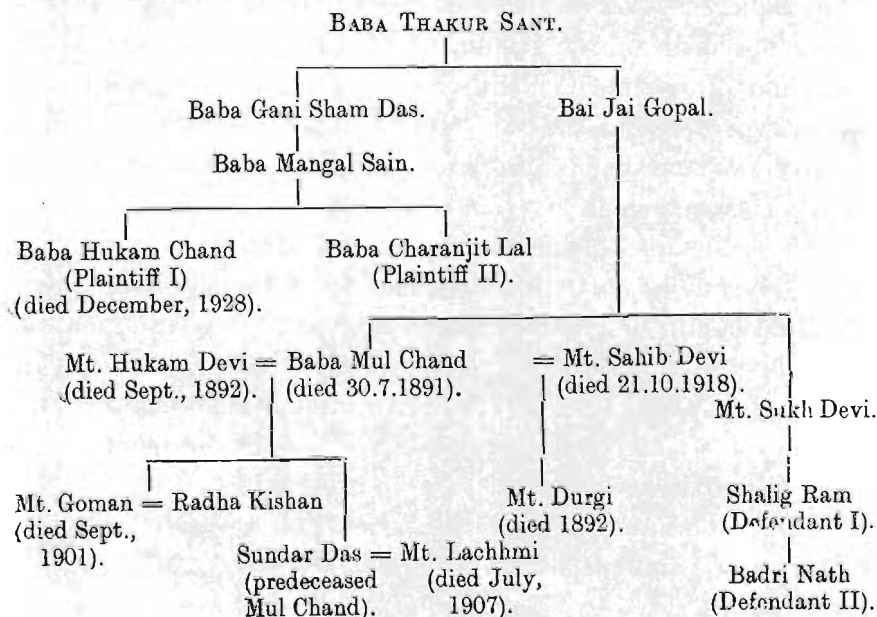
On the further hearing on remand the Subordinate Judge made a decree in favour of the plaintiffs for possession of one-third of the properties numbered 3 and 11, and for redemption of the mortgaged property numbered 8, on payment of the mortgage money and costs and the amount spent in reconstruction of the property after a fire, namely, Rs. 5,749. The suit with respect to the remaining property was dismissed.

The plaintiffs again appealed to the Court of the Judicial Commissioner, who made a decree in their favour for possession of the properties numbered 1, 2, 3, 4, 6, 10 and 13 with *Jagir*—and for redemption of the property numbered 8 on payment of Rs. 3,695. The said sum of Rs. 3,695 was sufficient, in the opinion of the Judicial Commissioner, to cover the mortgage money, the interest thereon and the enhanced value caused by the reconstruction of the property after the fire. The remainder of the plaintiffs' claim was dismissed, and the Judicial Commissioner directed that the plaintiffs should recover costs on the properties which they had won and pay costs on those which they had lost from and to the defendants, who were in possession.

From this decree the defendants have appealed to His Majesty in Council.

At the hearing of the appeal before the Board the learned Counsel for the plaintiffs did not rely on the contention of "*res judicata*" which was raised in the Court of the Judicial Commissioner. Their Lordships, for reasons which need not be set out, are of opinion that the learned Counsel was right in adopting that course.

The questions in the appeal relate to the wills of Mul Chand, and before dealing with the points relating thereto it will be convenient to set out the following pedigree, which shows the relationship existing between the parties :—



Mul Chand died on the 30th of July, 1891. There is no doubt that Mul Chand on the 19th of July, 1891, made a will, which was duly registered on the 20th of July, 1891.

It was alleged by the defendants that he made a second will on the 26th of July, 1891. This will was not registered.

It was contended on behalf of the plaintiffs that there was no proper proof of the second will dated the 26th July, 1891, and it will be convenient to deal with this contention at once.

A document which purported to be a copy of that will was produced at the trial.

Both the Courts in India came to the conclusion that the aforesaid document represented the will of Mul Chand.

The original will was alleged to have been lost, and their Lordships are of opinion that there was evidence which would entitle the Courts in India to arrive at the above-mentioned conclusion, and they see no reason for interfering with their finding in this respect.

This appeal, therefore, must be considered on the assumption that both the wills were duly executed by the testator, Mul Chand, and that the terms thereof are contained in the two documents on the record.

The main question relates to the construction of the will of the 26th July, 1891.

The defendants' case, stated briefly, was that Mul Chand, on the true construction of the will, conferred full proprietary rights on his three devisees, viz., his two widows, Hukam Devi and Sahib Devi, and his son's widow Lachhmi, in the shares devised to them. On the other hand, the contention of the plaintiffs was to the effect that on the true construction of the will each of the three above-mentioned ladies was given an estate for life merely and not an absolute estate.

The determination of this question depends upon the true construction of the will of the 26th July, 1891. The earlier will, viz., that of the 19th July, 1891, was relied upon for certain purposes, e.g., for the purpose of showing that the testator, when so minded, knew how to confer an absolute and a limited interest in his property. For the present, however, it is not necessary to set out in detail the terms of the earlier will.

The translation of the material parts of the will of the 26th July, 1891, is as follows :—

“To-day, 12th Sawan 1948, Sant Baba Mool Chand being in full possession of his senses, has recorded as follows :—

“I (Narinjan Das) have written down from his dictation the method of disposal of his estate, his belongings, his ornaments and his property to whomsoever it is to be given.

“Land Revenue recoverable from the Zemindars in respect of *Muafi* for the last three years (*vide* the detail given below).”

The will then sets out a detailed description of the various properties, both movable and immovable. This is followed by

a paragraph relating to the testator's younger daughter Durgi and her mother Sahib, which is as follows :—

“ Rs. 500 to be kept in deposit for the younger daughter. One house known as Bawa Sunderwala to be given to younger Mata Sahib Devi, who shall realize the rent thereof, as also the interest on Rs. 500. She is the owner during the lifetime of the girl. Otherwise no concern. If she lives in the house, whether at Peshawar or Lahore, she will get food expenses. She should maintain herself on presents. If she goes to her parents' house for good, she shall receive rent of the house only. Rs. 500 shall be kept (in deposit) if it is found to be surplus amount after meeting our expenses.”

The will then recites that a small house has been gifted by the elder Bawa to one Bibi Lali, and that another house occupied by Narshingh Das and Shalig Ram Chhiber has been given to them.

Details of the *muafi* are set out, and then comes the important clause, which is as follows :—

“ As regards the detail of shares there shall be three equal shares. Elder Mata, younger Mata, and the wife of Sundar Bawa, the three persons are the heirs to whatever is left from the property after meeting the expenses. The produce of the *muafi* shall be realised by Narshingh Das, Shalig Ram.”

The elder Mata was Hukam Devi, the younger was Sahib Devi, and the wife of Sundar Bawa was Lachhmi.

The Subordinate Judge held that Mul Chand by his will had bestowed absolute ownership in the residue of his estate on his widows and daughter-in-law Lachhmi.

The Judicial Commissioner held that under the will of the 26th July, 1891, the widows and Lachhmi took a limited interest only. Hence this appeal by the defendants.

The intention of the testator must be gathered from the terms of the will, reading it as a whole, and not much assistance is to be gathered from the numerous cases which were cited to the Board, and in which the terms of the wills under consideration differed from the terms of the will in the present appeal.

It is, however, desirable to observe that at one time it was held by some of the Courts in India that, under the Hindu Law, in the case of immovable property given or devised by a husband to his wife, the wife had no power to alienate unless the power of alienation was conferred upon her in express terms.

It has been held by decisions of this Board that that proposition was not sound, and that—

“ If words were used conferring absolute ownership upon the wife, the wife enjoyed the rights of ownership without their being conferred by express and additional terms, unless the circumstances or the context were sufficient to show that such absolute ownership was not intended.”

See *Bhaidas Shivdas v. Bai Gulab*, 49 I.A., p. 1, at page 7. See also *Ramachandra Rao v. Ramachandra Rao*, 49 I.A. 129 at page 135, where the decision in *Musammam Surajmani v. Rabi Nath Ojha*, 35 I.A. 17, is referred to and explained.

In their Lordships' opinion, the intention of the testator in this case was to confer upon each of his two widows and his

daughter-in-law Lachhmi full proprietary rights in a one-third share of the residue of the estate comprised in his will of the 26th July, 1891.

Their Lordships have arrived at this conclusion on consideration of all the terms of the will.

It is material to notice that the testator nominated as his heirs not only his two widows, but also his daughter-in-law Lachhmi; that all three were put in the same category as "heirs," and that the words used in conferring the gift are sufficient to confer full rights of ownership.

The will contained no provision for dealing with the properties after the deaths of the three devisees, and in their Lordships' opinion there is nothing in the circumstances or in the context to indicate that it was the testator's intention to limit the estate of any of the three persons to a life estate or to a limited estate similar to a "widow's estate" under the law of inheritance.

Their Lordships therefore are unable to adopt the construction placed on the will by the learned Judicial Commissioner.

This decision is sufficient to dispose of the appeal and it is not necessary for their Lordships to deal with the further question whether there was valid necessity for some of the transfers by Sahib Devi as alleged by the defendants.

The result is that the appeal must be allowed and the decrees of the Judicial Commissioner must be set aside and the decree of the subordinate Judge, dated the 17th October, 1922, by which the plaintiffs' suit was dismissed, must be restored.

The plaintiffs must pay the costs of the defendants in this appeal and in the Courts in India.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

PANDIT SHALIG RAM AND OTHERS

v.

BAWA CHARANJIT LAL AND ANOTHER.

DELIVERED BY SIR LANCELOT SANDERSON.

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