

Nathu Ramu Mahajan and others - - - - - *Appellants*

v.

Gangabai - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH JUNE, 1938

Present at the hearing :

LORD THANKERTON.

LORD ROMER.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

This appeal arises out of an action brought by the respondent, Gangabai, for the recovery from her brother-in-law, Ramu Ganpat, of the possession of her husband's estate; and also for an account of the management of that estate. The husband, Dhanaji Dula Mahajan, died on the 24th June, 1907, leaving a will made by him on the 21st June, 1907. The Courts in India have concurred in holding that the will propounded in this case was duly made by the testator; and that he had, at that time, a disposing mind.

It appears that after the death of her husband, Gangabai and Ramu Ganpat took possession of the estate, but that the latter alone was in charge of its management. He, however, fell out with his sister-in-law, with the result, that she brought the present suit as stated above. The Trial Court dismissed the suit, but against the decree dismissing her claim, Gangabai, preferred an appeal to the High Court. During the pendency of the appeal Ramu Ganpat died, leaving only minor children; and the executors appointed by him to administer his own estate were impleaded in the appeal as his legal representatives.

The learned Judges of the High Court have decided that "the plaintiff is entitled to have an account from the date of the notice in 1927"; and have also directed the executors to deliver possession of the property claimed by her. From the decree granted by the High Court the executors have brought this appeal to His Majesty in Council; and the question which requires determination is whether the widow

is entitled to obtain possession of the estate left by her husband. The answer to this question depends upon the construction of the will made by him. In determining the construction, what the Court has to look to, is the intention of the testator.

“ The Hindoo law, no less than the English law, points to the intention as the element by which we are to be guided in determining the effect of a testamentary disposition; nor, so far as we are aware, is there any difference between the one law and the other as to the materials from which the intention is to be collected. Primarily the words of the will are to be considered. They convey the expression of the testator’s wishes; but the meaning to be attached to them may be affected by surrounding circumstances, and where this is the case those circumstances no doubt must be regarded. Amongst the circumstances thus to be regarded, is the law of the country under which the will is made and its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption.” (*Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick.*) (6 Moo. Ind. App., pp. 550-551.)

In view of these principles, their Lordships have to decide what was the intention of the testator as gathered from the language used by him in his will. Now, the language of the will leaves no doubt that the testator was anxious that his estate should devolve upon the members of his family or on his brother Ramu Ganpat. He had no male issue, but his wife Gangabai was *enceinte*. He directed that if a son was born to him, he would succeed to his entire estate. But if she did not give birth to a son, or the son, if born, died issueless, he authorised her to adopt a boy, but the boy to be adopted should be a son of Ramu Ganpat. Indeed, she was forbidden to adopt any other boy. Now, Gangabai neither gave birth to a son, nor availed herself of the authority conferred upon her by her husband to adopt a boy. There was, therefore, no son, natural or adopted, who could succeed to the estate. This contingency was foreseen by the testator, who provided in the will that if Ramu Ganpat “ has no such son as can be given in adoption, or if Gangabai does not take any boy in adoption, then Gangabai should enjoy the income of my estate during her lifetime ”. And it was only after her death, that Ramu Ganpat was to get the estate as “ full owner ”.

On the death of her husband, the widow along with Ramu Ganpat actually took possession of the estate, as the will directed her to “ carry on administration in respect of the property in consultation with Ramu Ganpat ”. Indeed, she allowed him to manage the estate; and probably she would not have brought her action to dispossess him, if he had not quarrelled with her.

As the will gave her the right to “ enjoy ” the income of the estate during her lifetime, it was evidently contemplated that she should, as provided by the Hindu law in the case of a widow, be in possession of the estate and realise its income. She was, no doubt, to consult Ramu Ganpat

in managing the estate, but he died during the pendency of the appeal, and his executors have no right to represent him in the management. Nor is there any provision in the will associating any other person with her in carrying on the management.

For these reasons, their Lordships consider that the widow is, in the circumstances, entitled to the possession of the estate and also to manage it. They will, therefore, humbly advise His Majesty that the judgment of the High Court should be affirmed and that this appeal should be dismissed with costs.

In the Privy Council

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v.

GANGABAI

DELIVERED BY SIR SHADI LAL

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