Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant :—*T. L. Wilson & Co.*

Solicitors for the respondent :—*Barrow, Rogers and Nevill.*

J. V. W.

1912

DHARAM KUNWAR v. BALWANT SINGH.

BRIJ LAL AND ANOTHER (DECREE-HOLDERS) v. SURAJ BIKRAM SINGH (REPRESENTATIVE OF DEBI BAKHSH SINGH), (JUDGEMENT-DEBTOR) *and another appeal consolidated.*

P. C.* 1912, *May*, 2.

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

Hindu Law—Will—Construction of will—Bequest to testator's daughter-in-law after death of wife—Whether it conferred an absolute or only a life estate in the property.

The will of a Hindu testator after reciting that he had no male heir, and had already provided for his widowed daughter, stated :—"I have resolved that after my death my wife, legatee No. 1, shall remain in possession and enjoyment of all my property with all powers or authority like myself; and that after the death of my wife my daughter-in-law, widow of Raghuraj Singh, legatee No. 2, shall remain in possession and enjoyment of all the properties aforesaid like myself and legatee No. 1 * * * * I therefore execute a will in favour of my daughter-in-law, so that on the demise of myself and my wife the estate and name of my ancestors may continue as before, and she in place of Raghuraj Singh shall perform my funeral ceremonies and those of my wife according to the *shashtras* and the custom of the family, and then she shall have power to nominate any one whom she may think fit as 'heir,' so that the name of the family may continue as formerly and now with honour."

Held (affirming the decision of the Court of the Judicial Commissioner) that on the true construction of the will the word "heir" meant heir to the testator, and the daughter-in-law took (as did the wife) not an absolute interest, but only a life estate in the testator's property, which was therefore on her death not liable to attachment and sale under decrees against her representative.

Two consolidated appeals from the judgements and decrees (7th August, 1907) of the Court of the Judicial Commissioner of Oudh which reversed two decrees (12th February, 1907) of the Subordinate Judge of tahsil Biswan in the district of Sitapur.

The question for decision in these appeals was whether upon the true construction of the will of one Narpat Singh, dated the 11th of July, 1893, an absolute, or merely a life, estate passed to Rani Brij Nath Kunwar (since deceased) in the village of Intgaon, which had been attached in execution of decrees.

*Present :—Lord MACNAGHTEN, Lord ATKINSON, Lord SHAW, Sir JOHN EDGE and Mr. AMEER ALI.

1912

BRIJ LAL v. SURAJ BIKRAM SINGH.

The facts were that on the 26th of June, 1906, the present appellants obtained decrees for Rs. 8,325-4-0 and Rs. 4,599 with interest in two suits (4 and 5 of 1906) in the Court of the Subordinate Judge of tahsil Biswan, against one Debi Bakhsh Singh as representing the said Rani Brij Nath Kunwar deceased, and the amounts of the decrees were to be realized from the assets of the said deceased. On the 25th of July, 1906, the appellants applied for execution of the decrees by attachment and sale of the village Intgaon as being an asset of the estate of the deceased then in possession of the respondent.

On the 25th of August, 1906, Debi Bakhsh Singh filed objections to the attachment and sale, on the ground that the deceased had only been entitled to a Hindu widow's interest in the property, which terminated on her death; and to those objections the appellants filed a reply maintaining that the deceased had an absolute interest in the property under the will of the 11th of July, 1893.

Narpat Singh died on the 2nd of February, 1894. The following pedigree shows the relationship between the parties to this litigation:—

CHANDRIKA BAKHSH SINGH.

Ram Narain Singh.			Gur Bakhsh Singh.		
Rana Beni Madho.	Narpat Singh, (widow Sheolagan Kunwar).	Jugraj Singh.	Sheogopal Singh.	Debi Bakhsh Singh, Judgement-debtor.	Bijai Bahadur, deceased.
Rana Raghuraj Singh, (widow Rani Brij Nath Kunwar).		Hanuman Bakhsh.			

The testator in his will recited that he had no male heir, but a widowed daughter Bachchi Sahiba, to whom he had given for "life maintenance" a village called Lilauli, and that as she was unwilling to have possession of it, he had in lieu thereof executed and registered a deed of agreement for Rs. 700 annually in her favour; and stated that as regards the remaining villages and other movable and immovable property "I have resolved that after my death my wife Sheolagan Kunwar, legatee No. 1, shall remain in possession and enjoyment (*qabiz-o-mutsarrif rahe*) of all the property aforesaid with all powers (or authority) like myself (*mai jami ikhtiarat misl mere*) and that after the death of my wife, my daughter-in-law Rani Brij Nath Kunwar, widow of Rana Raghuraj

Singh, legatee No. 2, shall remain in possession and enjoyment (*qabiz-o-mutsarrif dakhil rahe*) of all the property aforesaid like myself (*misl mere*) and legatee No. 1."

The testator then referred to other wills which he had made and subsequently revoked, among them one in favour of Suraj Bikram Singh, son of Babu Debi Bakhsh Singh, and, after giving his reasons (mainly the bad conduct of the boy) for cancelling that will, he said:—"I, therefore, having cancelled the will in favour of Suraj Bikram Singh again execute a will in favour of my daughter-in-law Rani Brij Nath Kunwar, and get it registered, having compelled her to consent to it, so that on the demise of myself and my wife, the estate and name of my ancestors may continue as before, and she in place of Raghuraj Singh shall perform my funeral ceremonies, and those of my wife according to the *shashtras* and the custom of the family, and then she shall have power to nominate any one whom she may think fit as 'heir' so that the name of the family may continue as formerly and now with honour (*sath nek nami*)."

On the 12th of February, 1907, the Subordinate Judge held in the matter of the execution of the decrees that Rani Brij Nath Kunwar took an absolute interest in the property under the will of Narpat Singh and that the property was consequently liable to attachment and sale in execution of the decrees.

From that decision Debi Bakhsh Singh appealed to the Court of the Judicial Commissioner in the more highly valued case, and to the District Judge of Sitapur in the other case, and the latter was transferred for hearing to the Court of the Judicial Commissioner. The appeal was heard by *Mr. E. Chamier*, Judicial Commissioner, and *Mr. J. Sanders*, First Additional Judicial Commissioner, who held in separate judgements that Rani Brij Nath Kunwar took only a life interest in the property in dispute, and not an absolute estate, and that it was therefore not liable to attachment and sale in execution of the decrees.

MR. CHAMIER in his judgement said :—

"Rani Brij Nath Kunwar was the widow of the testator's nephew, not the widow of his son, but the testator would according to the custom of his class call her his daughter-in-law. The point is of no importance.

"It appears to me that the decree-holders are on the horns of the dilemma. The testator uses the same words to describe the estate conferred upon Brij Nath Kunwar as he does to describe the estate conferred upon Sheolagan Kunwar.

1912

BRIJ LAL v. SURAJ BIKRAM SINGH.

This Court held in a previous case that Sheolagan Kunwar took only a life estate. If that decision was wrong then Sheolagan Kunwar took an absolute estate and Brij Nath Kunwar took nothing, for she was not the heir of Sheolagan Kunwar and she did not acquire title by long possession. If Sheolagan Kunwar took only a life estate then (the same language being employed) Brij Nath Kunwar took a life estate also. There is a good deal in the will which supports this conclusion. The testator confers upon Brij Nath Kunwar a power to nominate an heir (*waris*). The passage cannot possibly mean that she should nominate an heir to herself, the word *waris* obviously means an heir to the testator. This power could not have been required if Brij Nath Kunwar was to take a heritable estate and to have power to nominate an heir to herself.

"The words used with reference to both the women (*qabiz-o-mutsarrif*) (one who possesses and one who spends or enjoys) do not by any means indicate an intention to confer a transferable estate. The notion that a woman should have a transferable estate and be able to divert the estate to her own family is positively repugnant to the Hindu mind and the soundness of the decisions which lay stress upon this is to my mind beyond question.

"It is unnecessary to observe that the word *dakhil* used with reference to Brij Nath Kunwar means no more than *qabiz*. It denotes possession only.

"Counsel for the decree-holders laid stress upon the words '*mai jami ikhtiarat*' (with all power or authority). In the first place they are used with reference to Sheolagan Kunwar, so that if they denote a transferable estate there was nothing left for Brij Nath Kunwar. Next, full effect can be given to these words without construing them as imparting a transferable estate, and lastly this must be read with the context. It is noticeable that the testator does not say that either of the ladies is the 'malik' (proprietor). The whole will seems to work up to the nomination of an heir, obviously a male heir, by Brij Nath Kunwar who, he assumed, would survive both Sheolagan Kunwar and himself.

"In my opinion there can be very little doubt that the testator did not *intend to confer a heritable estate upon either of the ladies.*

"I would allow the appeal and dismiss the decree-holders' application with costs in both Courts."

MR. SANDERS said:—

"Rani Brij Nath Kunwar held the property for less than 12 years and nominated no heir before she died.

"The learned Subordinate Judge referred to former litigation between Babu Debi Bakhsh Singh and Bijai Bahadur Singh on the one hand and Musammat Brij Nath Kunwar and Suraj Bikram Singh on the other, in which the construction of the will was in question, and to the judgement of Mr. Spankie, Additional Judicial Commissioner, with which that litigation ended. The judgement is dated the 18th of January, 1901, and it decides only the nature of the estate conferred on Musammat Sheolagan Kunwar. In it Mr. Spankie has considered the nature of the interest that Babu Narpat Singh's widow Sheolagan Kunwar took. The plaintiffs in that suit contended that the will conferred an absolute estate on the widow and that it contained no subsequent words indicating an intention on the testator's part to cut that estate down to a life interest. The defendants on the other hand contended that by the will an absolute estate was conferred

on both the widows. Mr. Spankie held that for the construction of a will the intention of the testator, as found from the whole instrument, is to be the guide; that his intention, as gathered from the will, was that the widow should succeed and on her death Musammat Brij Nath Kunwar was to succeed; that if the will could be construed so as to give effect to such an intention, such a construction should be placed on it; and he concluded that a widow's estate only was given to Sheolagan Kunwar and that there were no subsequent words evidencing the testator's intention to give a larger estate to her.

"The learned Subordinate Judge, after discussing the terms of the will, proceeded to hold that the similarity in the words of the will conveying an estate to each of the widows furnishes no reason why the same construction should be put on the words of both bequests; that because the bequest to Sheolagan Kunwar was that of a limited estate, the words conveying the estate to Brij Nath Kunwar should not be similarly construed; that the document should be construed so as to meet the wishes of the person who made it; that it is quite possible that a word (probably meaning a phrase) might have been used by him in two different senses; and that in order to arrive at a conclusion that the words (or phrases) were so used it was necessary to look into 'all the circumstances.' He then went on to draw an inference from Mr. Spankie's judgement, that as the gift to Sheolagan Kunwar was followed by another to Brij Nath Kunwar the former was necessarily held to be a gift for life for otherwise the gift in favour of Brij Nath Kunwar could not be given effect to; and he concluded that because there are no words limiting the latter gift to the term of her life only and because a power was conferred on her of nominating an heir, therefore the gift to Brij Nath Kunwar was one of an absolute estate. The Subordinate Judge considered that this conclusion was in conformity with the decision of their Lordships of the Privy Council in *Mahomed Shums-ool-Hooda* v. *Shewukram* (1).

After referring to the cases cited on the construction of such documents as that under consideration, and referring to the principles laid down by their Lordships of the Privy Council in the above case as to the construction of wills, the judgement continued:

"In order to ascertain the intention of the testator former wills cannot be looked at; and in the light of the principles laid down in the Privy Council ruling *Mahomed Shums-ool-Hooda* v. *Shewukram* (1), I hold that in the case of Narpat Singh it may be assumed that the testator, a Hindu gentleman of advanced age, had some knowledge of Hindu law. That he was aware of the distinction between an estate for life and an absolute estate may be inferred from the words in the preamble that he made over the village Lilauli for 'life maintenance' to his daughter.

"It was argued by the Hon'ble Rai Sri Ram Bahadur for the decree-holders that the absence of express words limiting the gift to a life estate in favour of Rani Brij Nath Kunwar indicated the testator's intention that her interest in the estate should be absolute. I would draw a contrary inference. It was held by the Additional Judicial Commissioner, Mr. Spankie, that the testator's intention

(1) (1874) L. R., 2 I. A., 7: 14 B. L. R., 226.

1912

BRIJ LAL v. SURAJ BIKRAM SINGH.

was to confer a limited estate on Musammat Sheolagan Kunwar. Rai Sri Ram Bahadur was at first disposed to dispute the correctness of this finding, but he afterwards acknowledged it. Inasmuch, therefore, as the gift to Sheolagan Kunwar was for life only, the intention of the testator must have been to confer a similar estate on Rani Brij Nath Kunwar.

"I cannot agree with the learned Subordinate Judge's opinion that the similarity of the words conferring the estate on the two ladies is no reason for the placing of the same construction on them. On the contrary I think that it is a very good reason and that it was intended.

"The only 'circumstances' that he refers to are the absence of words limiting the estate to Brij Nath Kunwar for life and the power given to her of nominating an heir. But if it were the intention of the testator to confer an absolute estate on Rani Brij Nath Kunwar then the grant of the power to nominate an heir would have been superfluous. I think that the grant of that power is another indication of his intention to confer a limited estate. In the will the testator has expressed his anxiety that the estate and the name of the family may continue to exist as heretofore. It may be implied from these words that the testator wanted an heir from his own family to be nominated, for he was aware that there were reversioners in it. There are other circumstances which appear to me to help towards the conclusion that the testator's intention was to confer a limited estate on Brij Nath Kunwar, in addition to his knowledge that women do not as a rule take absolute estates by inheritance.

"The will contains no indications that he had any extraordinary affection for Brij Nath Kunwar. It says that she was childless and past the hope of bearing children, that she was already well provided for. It does not show that he was at feud with his kinsmen; while in two places it expresses his wish that the estate should remain as heretofore.

"My conclusion therefore, as drawn from the whole tenor of the will and these circumstances, is that the testator intended to confer the same estate on both the ladies; that if he had wished to give an absolute estate to Brij Nath Kunwar he would have used express words indicating that intention, and that the power he gave to her of nominating an heir do not indicate any such intention. No inference as to such an intention can be drawn from the fact that Sheolagan Kunwar in her life-time made over the estate to Rani Brij Nath Kunwar."

Pending the appeals to the Privy Council Suraj Bikram Singh was put on the record in place of his father Debi Bakhsh Singh deceased.

Kenworthy Brown, for the appellants, contended that on the true construction of the will, Rani Brij Nath Kunwar took an absolute estate, and not a limited or life estate in the property; and that consequently the property was liable to attachment and sale in execution of the decrees of 26th June, 1906. Reference was made to *Muhomed Shums-ool-Hooda* v. *Shewukram* (1) and the principles

(1) (1874) L. R., 2 I. A., 7; 14 B. L. R., 226.

there laid down by their Lordships of the Judicial Committee as to the construction of wills, which it was submitted were applicable to the document now under consideration. *Hoy* v. *Master* (1) was also referred to.

De Gruyther, K. C., and *Ross*, for the respondent, were not called upon.

1912, *May 2nd* :—The judgement of their Lordships was delivered by LORD MACNAGHTEN :—

This is a very simple case. The only question is whether the daughter took an absolute estate or an estate for life?

In the first place, there is no estate at all given to the lady, in terms. The only direction is that she is to remain in possession and occupation of the property, and then she is invested with the power of appointing an heir either in her life-time or by will. It seems to their Lordships that the word "heir" in that clause means heir to the testator and that the judgement of the Judicial Commissioners is perfectly right.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be dismissed, and with costs.

Appeal dismissed.

Solicitors for the appellants :—*T. L. Wilson & Co.*

Solicitors for the respondent :—*Barrow, Rogers & Nevill.*

J. V. W.

(1) (1834) 6 Sim., 568.