## APPELLATE CIVIL.

*Before Mr. Justice Chevis, Acting Chief Justice and Mr. Justice Dundas.*

1920

*June* 21.

*Mussammat* WAZIR DEVI, ETC. (DEFENDANTS)—*Appellants*

*versus*

RAM CHAND (PLAINTIFF) AND OTHERS (DEFENDANTS) } *Respondents.*

Civil Appeal No. 2867 of 1916.

*Hindu Law—Will in favour of a female—proper interpretation—whether same in case of a female beneficiary as in a male.*

A Hindu executed a will bequeathing his moveable and immoveable property in equal shares to his mother and widow using the words "*Kulli ikhtiyar wa milkiat*" in the document. After his death his mother made a gift of her share to her daughter and daughter's son. The next heir of the testator then brought the present suit for a declaration that the gift should not affect his reversionary right.

*Held*, that a will by a Hindu in favour of a female must be interpreted in the same way as if it was in favour of a male, and that the word *milkiat* implies an absolute estate unless there is something in the context to qualify it.

*Surajmani* v. *Rabi Nath Ojha* (1), *Gurmukh Singh* v. *Makhan Singh* (2), *Vaishno Das* v. *Mussammat Deoki* (3), *Nek Muhammad* v. *Maya Ram* (4), *Sulochana Debi* v. *Jagattarini Debi* (5), and *Deorao* v. *Bapuji* (6), followed.

*Moti Lal Mitha Lal* v. *The Advocate General of Bombay* (7), and *Kadarpa Nath* v. *Jogendra Nath* (8), distinguished.

*Rallia Ram* v. *Mussammat Ved Kaur* (9), dissented from.

On the 28th of May 1911 one Lal Chand executed a will bequeathing his moveable and immoveable property in equal shares to his mother and his widow. After his death the mother made a gift of her share in favour of her daughter and daughter's son. The

(1) (1907) I. L. R. 30 All. 84 P. C.
(2) 61 P. R. 1911.
(3) 214 P. L. R. 1908.
(4) (1916) 32 Indian Cases 605.
(5) (1919) 30 Cal. L. J. 51.
(6) (1919) 53 Indian Cases 195.
(7) (1910) I. L. R. 35 Bom. 279.
(8) (1910) 6 Indian Cases 141.
(9) 27 P. R. 1898.

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present suit was brought by Ram Chand, an uncle of Lal Chand, for a declaration that the gift should not affect his reversionary rights on the death of the widow. The first Court found that it was not proved that Lal Chand had executed the alleged will, and even if it were held to be duly executed, there was no intention expressed to give a full estate to the mother. Accordingly it decreed the suit in favour of plaintiff. On appeal the Lower Appellate Court did not think it necessary to discuss the finding as to the execution of the will as it agreed with the first Court in holding that though in the said will Lal Chand was supposed to have spoken of *Mussammat* Wazir Devi as a "*malik,*" the term "*malik*" when applied to a female did not necessarily mean an absolute owner, and that a Court would always lean against considerations giving unqualified control to a widow. The defendants then appealed to the High Court on the ground that the interpretation of the will by the Lower Courts was incorrect, and that the will conveyed an absolute estate to *Mussammat* Wazir Devi. The operative part of the will was as follows:—

> "*Meri walida wa aurat ba hisa nisfa nisfi ke amadni apas men taksim karke kharach karen aur jabtak main zinda hun main malik hun, bad wafat mere ke meri walida wa meri aurat agar mere parde men rahegi to nisif jaedad mankula wa ghair mankula ke kulli ikhtiar wa milkiat meri aurat wa walida ki samjha jaegi. Intakal waghaira ke waqt zarurat unko ikhtiar hoga,*" etc.

*M. S. Bhagat*, for Bhagat Govind Das, for the appellants contended that the testator intended to convey an absolute estate to his mother *Mussammat* Wazir Devi, the words "*kulli ikhtiar*" and "*milkiat*" leaving no doubt as to the nature of the estate intended to be conveyed. The principle laid down in *Rallia Ram* v. *Mussammat Ved Kaur* (1) was no longer good law—*vide Gurmukh Singh* v. *Makhan Singh* (2), following *Surajmani* v. *Rabi Nath Ojha* (3), and the same rule of interpretation should be applied to this will as in a case where the beneficiary is a man—*Amarendra Nath* v. *Shuradhani Dasi* (4), *Vaishno Das* v. *Mussammat Deoki* (5).

(1) 27 P. R. 1898.
(2) 61 P. R. 1911.
(3) (1907) I. L. R. 30 All. 84, P. C.
(4) (1909) 14 Cal. W. N. 458.
(5) 214 P. L. R. 1908.

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After an absolute estate had been conferred subsequent controlling words would not make it a limited one and any condition attached in restraint of alienation would be void in law, *Nek Muhammad* v. *Maya Ram* (1). The case was practically on all fours with *Sulochana Debi* v. *Jagattarini Debi* (2). In the interpretation of a deed the plain meaning should be given to the words used especially when the language used was not the language of a skilled draftsman; *Ganga Bakhsh Singh* v. *Gokul Prasad* (3). The subsequent clause *waqat zarurat* regarding the power to alienate was mere surplusage; *Chuni Lal* v. *Boghi Lal* (4), and *Vasonji Maraji* v. *Chanda Bibi* (5).

*Sheo Narain* for Respondents—The Court has to determine whether the will confers a full estate or not. In order to determine this all the terms of the will, and the surrounding circumstances have to be taken into consideration. The will in the present case was written by one of the collaterals, who admittedly was not a skilled draftsman. The object of the will was apparently to confer some estate on the mother in order to provide for her. In regard to the wife it was provided in the will that she would hold the estate subject to remaining faithful to the testator. The sentence in the will conferring the estate was at once qualified by the words "as long as I am alive I am owner." The testator directed the usufruct to be enjoyed half and half. He only intended to convey an estate for life. The case of *Sulochana Debi* v. *Jagattarini Debi* (2) is distinguishable, as there full power is given in the very first clause. The Privy Council nowhere says that a will is to be construed in a certain way. The mere word *milkiat* does not confer an absolute ownership. The case should be decided on its own merits—*vide Moti Lal Mitha Lal* v. *The Advocate General of Bombay* (5), *Kadarpa Nath* v. *Jogendra Nath* (6), and *Deorao* v. *Bapuji* (7).

*M. S. Bhagat* replied for the appellants.

(1) (1916) 32 Indian Cases 605.
(2) (1919) 30 Cal. L. J. 51
(3) (1917) 44 Indian Cases 645.
(4) (1917) 19 Bom. L. R. 930.
(5) (1910) I. L. R. 35 Bom. 279.
(6) (1910) 6 Indian Cases 141.
(7) (1919) 53 Indian Cases 195.

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*Second appeal from the decree of L. Leslie-Jones, Esquire, District Judge, Rawalpindi, dated the 8th July 1916, affirming that of N. H. Prenter, Esquire, Senior Subordinate Judge, Rawalpindi, dated the 25th January 1915, decreeing the claim.*

The judgment of the Court was delivered by—

DUNDAS, J.—On the 28th of May 1911 one Lal Chand is said to have executed a will bequeathing his property in equal shares to his mother, *Mussammat* Wazir Devi, and his widow, *Mussammat* Har Devi. On the 12th May 1913 *Mussammat* Wazir Devi made a gift of certain property left by Lal Chand in favour of her daughter and daughter's son. The present suit has been brought by Ram Chand, an uncle of Lal Chand for a declaration that this gift shall not affect his reversionary rights on the death of the widow, *Mussammat* Hardevi. The first Court found that Lal Chand was not proved to have executed the alleged will and consequently *Mussammat* Wazir Devi had no proprietary estate to gift in favour of her daughter. It also held that even if the will were duly executed, it did not confer full powers of alienation on *Mussammat* Wazir Devi. On these two grounds it decreed the suit in favour of the plaintiff. On appeal by the defendants the Lower Appellate Court came to no finding on the question of the execution of the will as it agreed with the first Court that the will did not convey an absolute estate to *Mussammat* Wazir Devi, and that therefore she was incompetent to make the gift which was the subject of the suit.

*Mussammat* Wazir Devi has preferred a second appeal to this Court on the ground that the will does, in fact, confer upon her an absolute estate. The will in question commences with the recital that the testator has had bad health for some time and does not expect to live ; that he is in full possession of his senses and proposes to dispose of his separate property, moveable and immoveable, between his wife and mother in the following proportions. The operative part of the will, so far as it can be deciphered, as it seems to have been much damaged by water, runs as follows :—

"Meri walida wa aurat ba hissa nisfa nisfi ke amadni apas men taksim karke kharch karen aur iabtak main zinda hun main malik

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> hun, bad wafat mere ke meri walida wa meri aurat agar mere parde men rahegi to nisf jaedad, mankula wa ghair mankula, ke kulli ikhtiar wa milkiat meri aurat wa walida ki samjha jaegi. Intakal waghaira ke waqt zarurat unko ikhtiar hoga lihaza main chand kalama bataur wasiat nama ba khushi khud tahrir kar deta hun ki sanad rahe."

Some slight doubt exists as to the actual word preceding the word *ikhtiar*, but we think that counsel for the appellants is correct in saying that it appears to be *kulli*. Now the first Court considers that *Mussammat* Wazir Devi only had power to alienate in case of necessity. The Lower Appellate Court considers that the term *malik* when applied to a female in possession of moveable property does not necessarily mean an absolute owner, and that a Court will always lean against considerations giving unqualified control to a widow.

It is contended before us, first that the terms *milkiat* and *ikhtiar* must be presumed to convey an absolute estate; secondly, that this grant of an absolute estate cannot be limited by any subsequent provisions purporting to curtail the enjoyment of the estate; and, thirdly, that the word *zarurat* cannot be held to be equivalent to *jaiz zarurat, i e.*, legal necessity. In short, that the subsequent clause regarding the power of alienation merely amplifies the terms of a previous grant of an absolute estate. In support of this view we have been referred to several authorities. Now no doubt the view formerly taken in this Court was that expressed in *Rallia Ram* v. *Mussammat Ved Kaur* (1) *viz.*, that it may be presumed in the absence of clear indication to the contrary that a devise of immoveable property to a Hindu widow does not give an estate of inheritance, but only a life estate, or a widow's estate as understood by Hindu Law. This view, however, can no longer be held to be good law as stated. In *Surajmani* v. *Rabi Nath Ojha* (2), a Privy Council decision, a Hindu executed a deed of gift to take effect after his death in

(1) 27 P. R. 1898. (2) (1907) I. L. R. 30 All. 84, P. C.

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favour of his wives and his son's widow; the words used by him in describing the estate bequeathed were *malik wa khud ikhtiar*. The Privy Council held that in order to cut down the full proprietary rights, that the word *malik* imports, something must be found in the context to qualify it; but the only fact relied upon was that the donee was a woman and a widow, and this was expressly decided not to suffice to cut down the full proprietary right. In *Gurmukh Singh* v. *Makhan Singh* (1), which was a case of gift by a Hindu to his wife and mother in equal shares, it was remarked that a deed in favour of a Hindu female is to be interpreted in just the same way as any other deed, and if the wording of the deed taken as a whole points to an intention to carry full ownership, then full ownership is conveyed just as if the beneficiary were a man. In *Vaishno Das* v. *Mussammat Deoki* (2) the words *malik waris hogi* as describing the estate conveyed by a Hindu to his daughter-in-law were held by a Division Bench to be equivalent to the words *malik wa khud ikhtiar* in the Privy Council Allahabad decision and to convey an absolute estate; and the same interpretation was placed on the words *malik kamil* in a case of a devise to a widow decided by the Hon'ble Mr. Justice Shadi Lal and reported as *Nek Muhammad* v. *Maya Ram* (3). The same interpretation was placed on the words *sampuran malik* as applied to a widow in a case reported as *Sulochana Debi* v. *Jagattarini Debi* (4). In Bombay when a testator divided his property between his wife and his daughter, saying that one part should be given to his daughter Mani and after her to her issue, the bequest was held to be that of an absolute estate (5). The general conclusion to be drawn from these instances is that the word *malik* by itself implies an absolute estate and the word *milkiat* in the deed now in question is equivalent to describing *Mussammat* Wazir Devi as *malik*.

Against these authorities three cases have been cited for the respondents. The first of these is *Moti Lal Mitha Lal* v. *The Advocate-General of Bombay* (6). There it was held that the Allahabad Privy Council

(1) 61 P. R. 1911.
(2) 214 P. L. R. 1908.
(3) (1916) 32 Indian Cases 605.
(4) (1919) 30 Cal. L. J. 51.
(5) (1917) 19 Bom. L. R. 930.
(6) (1910) I. L. R. 35 Bom. 279.

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decision did not affect previous decisions, but that the knowledge of the testator as to the incidents of a widow's estate and the ordinary notions or customs of Hindus is to be considered in construing a will. In that case the words used were: My wife shall be *malik*; but these words were much qualified by the following provisions in the will—

She was to carry on the management of the estate with the advice of two persons who were to appoint a good agent and in case of death of one of them another was to be appointed. They were to take action in case she disobeyed their advice and the testator's jewelry was to be open to periodical inspection by them.

It was gathered that the testator's intention was not to convey an absolute estate. In a similar case reported as *Kadarpa Nath* v. *Jogendra Nath* (1) a bequest to wife and mother was limited by numerous provisions quite inconsistent with the conveyance of an absolute title. In fact, alienations, except of a small portion, for pious objects were strictly prohibited. The third case cited *Deoram* v. *Bapuji* (2) was a will in favour of a widow and described her as *pura malik*. This case hardly helps the respondents as it was held that the testator conveyed an absolute estate to his widow.

In the present case we do not think that there is any presumptiont hat the testator assuming that he did, in fact, execute this will can be presumed to have had any intention of limiting the estate of his mother or that there is anything in the clear wording of the will to lead us to this conclusion. Had the beneficiary been a man the interpretation would be clear that full estate was conveyed to him, and that he could alienate it, and if this be conceded, it follows that the same conclusion must be reached; although the beneficiary is a woman.

We must therefore hold that the terms of the will conveyed an absolute estate to *Mussammat* Wazir Devi, and accepting the appeal we remand the case to the Lower Appellate Court for decision of the other

Order XLI, Rule 23.

(1) (1910) 6 Indian Cases 141.

(2) (1919) 53 Indian Cases 195.

points arising in the appeal before it. Costs will be costs in the cause. Stamp on appeal to this Court to be refunded.

*Appeal accepted.*

*A. N. C.*

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## LETTERS PATENT APPEAL.

*Before Mr. Justice Chevis, Acting Chief Justice, and Mr. Justice Dundas.*

1920

June 22.

### THE ORIENT BANK OF INDIA, LTD. (IN LIQUIDATION)—*Appellant*,

*versus*

### *Mussammat* GHULAM FATIMA AND NUR ILAHI—*Respondents*.

Letters Patent Appeal No. 33 of 1920.

*Mortagage—Hypothecation of stock in trade left in possession of the debtor—subsequently sold to a purchaser with notice of the creditor's lien—whether the creditor can follow the property into the hands of the purchaser.*

*Held*, that in India there is no rule of law by which a person having a mortgage on immoveable property is debarred from following that property into the hands of a purchaser with notice of the mortgage.

*Deans* v. *Richardson* (1), *Ko Kyw-tuee* v. *Ko Koung Bane* (2), and *Tatham* v. *Andree* (3), cited in Ghose's Law of Mortgage, 4th Edition, Volume 1, page 108, followed.

Addison's Law of Contract, 10th Edition, page 766, referred to and discussed.

The facts of this dispute, which arose in execution proceedings are as follows :—

On the 11th March 1913, one Sardar Khan executed a promissory note for Rs. 2,000 in favour of the Orient Bank, and by way of collateral security hypothecated his whole stock-in-trade to the Bank. Thereafter from time to time he borrowed various sums of money, and after his death the Bank got a decree for Rs. 1,863-9-1 against his estate in the possession of *Mussammat* Ghulam Fatima, the mother, and Nur Ilahi, a cousin of deceased. Sardar Khan died on the 24th

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(1) (1871) 3 N. W. P. H. C. R. 54. (2) (1866) 5 W. R. 189.

(3) 1 Moo. P. C. 386.