1930

JAHANDAD KHAN v. ABDUL GHAFUR KHAN.

point of view, and that he came to a correct conclusion upon the evidence. They think that the decree of the Judicial Commissioner should be set aside, and that of the District Judge restored, and they will humbly advise His Majesty accordingly. The respondent must pay the costs before the Judicial Commissioner and here.

A. M. T.

Appeal accepted.

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

Solicitor for respondent: *H. S. L. Polak.*

PRIVY COUNCIL.

Before Lord Tomlin, Sir Lancelot Sanderson, and Sir George Lowndes.

1930

June 26.

SHALIG RAM AND OTHERS (DEFENDANTS) Appellants

versus

CHARANJIT LAL (PLAINTIFF) Respondent.

On Appeal from the Court of the Judicial Commissioner, North-West Frontier Province.

P. C. Appeal No. 3 of 1929.

N.-W. F. P. Civil First Appeal No. 143-12 of 1922.

Hindu Law—Will—Construction—Devise to Widows and Son's Widow—Heirs (Waris)—*Absence of Gift over.*

A Hindu testator by his will, after devising a house to his daughter for her life, provided that his property should be divided into three shares, and that his two widows and the widow of his son, who was childless, should be heirs (*waris*). The will contained no gift over upon the death of the widows.

Held that the intention of the testator was to confer upon each of his two widows and his daughter-in-law full proprietary rights in a one-third share in the residue of his estate.

Bhaidas Shivdas v. *Bai Gulab* (1), followed. *Ramachandra Rao* v. *Ramachandra Rao* (2), explaining *Surajmani* v. *Rabi Nath Ojha* (3), referred to.

(1) (1921) I. L. R. 46 Bom. 153: L. R. 49 I. A. 1.

(2) (1922) I. L. R. 45 Mad. 320, 327, 328: L. R. 49 I. A. 129, 135.

(3) (1907) I. L. R. 30 All. 84: L. R. 35 I. A. 17.

1930

SHALIG RAM v. JHARANJIT LAL.

Appeal (No. 3 of 1929) from a decree of the Judicial Commissioner, N.-W. F. P. (July 25, 1927) reversing a decree of the Subordinate Judge of Peshawar (July 1st, 1926).

The above named respondent and another, since deceased and represented by the respondent, brought a suit claiming certain movable and immovable property, as nearest reversionary heirs of one Mul Chand, upon the death of his last surviving widow Sahib Devi.

The substantial question arising upon the appeal was whether a will of Mul Chand. conferred upon his two widows and his daughter-in-law absolute interests or only life interests.

The terms of the will, according to the official translation, appear in the judgment of the Judicial Committee. The word translated as " heirs " in the clause to be construed was " waris."

The Judicial Commissioner, by a judgment delivered on April 10, 1924, held (reversing the trial judge), that the testator's widows and daughter-in-law took only life interests under the will. The case was remitted to be dealt with upon other points. The Subordinate Judge made a decree allowing the plaintiff's claim in part only; upon an appeal by the plaintiffs the Judicial Commissioner varied that decree by a decree of July 25, 1927, now appealed from.

DUNNE K. C. and WALLACH for the appellants. Upon the true construction of the will the testator's widows and daughter-in-law took absolute interests; the plaintiffs accordingly had no title. The Board has held that a devise to a person, including a devise to the testator's widow, as " malik " confers an absolute in-

terest: *Lalit Mohan Singh Roy* v. *Chukkun Lal Roy* (1), *Fateh Chand* v. *Rup Chand* (2), *Bhaidas Shivdas* v. *Bai Gulab* (3). Here the word "waris" was used. It has been held in Bombay that the use of that word has the same effect as where "malik" is used: *Chunilal* v. *Bai Muli* (4). The terms of the will were of sufficient amplitude to pass full proprietary rights: *Surajmani* v. *Rabi Nath Ojha* (5). *Ramachandra Rao* v. *Ramachandra Rao* (6), *Sasiman Chowdhurain* v. *Shib Narayan Chowdhury* (7). It was held by Mitter J. in *Kollany Koaer* v. *Luchmee Pershad* (8) in 1875, that it is not part of Hindu law that a gift to a female carries only an interest equivalent to a widow's estate. That view appears to have been departed from in certain later decisions in India, but has been reaffirmed in effect by the decisions of the Board mentioned. Apart from the terms of the clause in question the will shows that the testator intended that his widows and daughter-in-law should take absolute interests. In the case of his daughter he in express terms limited her interest in the house to her life; the earlier will also shows that the testator when he so wished limited the interests given to life interests. No provision was made for the devolution of the property on the deaths of the widows or the daughter-in-law.

DEGRUYTHER K. C. and FORTUNE for the respondent. The will should be construed in the light

(1) (1897) I. L. R. 24 Cal. 834: L. R. 24 I. A. 76.
(2) (1916) I. L. R. 38 All. 446: L. R. 43 I. A. 183.
(3) (1921) I. L. R. 46 Bom. 153: L. R. 49 I. A. 1.
(4) (1899) I. L. R. 24 Bom. 420.
(5) (1907) I. L. R. 30 All. 84: L. R. 35 I. A. 17.
(6) (1921) I. L. R. 45 Mad. 320, 327, 328: L. R. 49 I. A. 129, 135.
(7) (1921) I. L. R. 1 Pat. 305: L. R. 49 I. A. 25.
(8) (1875) 24 W. R. 395.

1930

SHALIG RAM v. CHARANJIT LAL.

of the ordinary notions and wishes of Hindus; among Hindus women ordinarily do not take an absolute estate and a Hindu ordinarily wishes that his property should remain in his own family: *Mahomed Shumsool Hooda* v. *Shewukram* (1), *Radha Prasad Mullick* v. *Ranimani Dassi* (2). The use of the word "malik" does not by itself show an intention to give an absolute estate: *Amarendra Nath Bose* v. *Shuradhani Dasi* (3). The decisions of the Board referred to for the appellants do not establish the contrary. If in *Chunilal* v. *Bai Muli* (4), it was held that the word "waris" meant the same as "malik" the decision was erroneous. "Waris" means merely "heirs," and the intention of the will was that the testator's widows and daughter-in-law should take such interests as they would have if they succeeded upon an intestacy. In *Raghunath Prasad Singh* v. *Deputy Commissioner, Partabgarh* (5), a will by which a Hindu provided that his nephew should be his "heir and successor" was construed as giving him an absolute estate, in spite of certain restrictions in the will, on the ground that a male heir takes an absolute estate. It follows that a gift to a female "as heir" carries only a life interest. The effect of the decision in *Surajmani* v. *Rabi Nath Ojha* (6) and *Bhaidas Shivdas* v. *Bai Gulab* (7), as explained in *Ramachandra Rao* v. *Ramachandra Rao* (8), is that if a gift in a Hindu will to a woman is expressed in

(1) (1874) L. R. 2 I. A. 7, 14, 15.
(2) (1908) I. L. R. 35 Cal. 896: L. R. 35 I. A. 118.
(3) (1909) 14 C. W. N. 458.
(4) (1899) I. L. R. 24 Bom. 420.
(5) (1929) I. L. R. 4 Luck. 483: L. R. 56 I. A. 372.
(6) (1907) I. L. R. 30 All. 84: L. R. 35 I. A. 17.
(7) (1921) I. L. R. 46 Bom. 153: L. R. 49 I. A. 1.
(8) (1922) I. L. R. 45 Mad. 320, 327, 328: L. R. 49 I. A. 129, 135.

words wide enough to give her an absolute estate, she has a power of alienation without further express words. The decisions did not affect the authority of earlier decisions in India that a devise to a woman, more especially if she is the testator's widow, give her only a life interest unless there are express words showing a wider intention. Among those decisions are: *Khoonjbehari Dhur* v. *Premchand Dutt* (1), *Hirabai* v. *Lakshmibai* (2), *Seshayya* v. *Narasamma* (3), *Jamna Das* v. *Ramautar Pande* (4). In any case the will should be construed according to the view of the law at the date when it was made.

DUNNE K. C. replied.

The judgment of their Lordships was 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, *Mussammat* 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*

(1) (1880) I. L. R. 5 Cal. 684.
(2) (1887) I. L. R. 11 Bom. 573.
(3) (1899) I. L. 22 Mad. 357.
(4) (1904) I. L. R. 27 All. 364.

1930

SHALIG RAM
v.
CHARANJIT LAL.

and is now represented by *Mussammat* Sitan Devi, the second respondent.

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

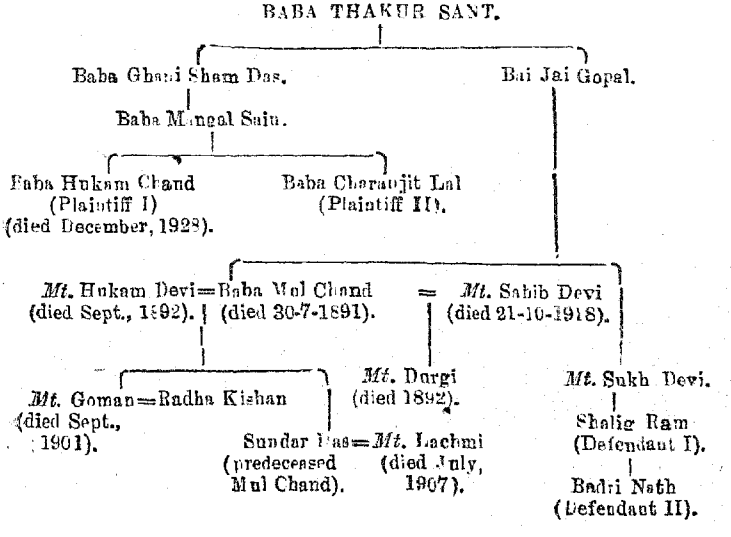
The plaintiffs again appealed to the Court of the Judicial Commissioner, who made a decree in their favour for possession of the properties numbered 1, 2, 3, 4, 6, 10 and 13 with *Jagir*—and for redemption of the property numbered 8 on payment of Rs. 3,695. The said sum of Rs. 3,695 was sufficient, in 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 :—



1930

SHALIG RAM v. CHARANJIT LAL.

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.

1930

SHALIG RAM v. CHARANJIT LAL

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

1930

SHALIG RAM v. CHARANJIT LAL.

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 *Chibber* 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 will, reading it as a whole, and not much assistance is to be gathered from the numerous

1930

SHALIG RAM
v.
CHARANJIT LAL.

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* (1). See also *Ramachandra Rao* v. *Ramachandra Rao* (2), where the decision in *Surajmani* v. *Rabi Nath Ojha* (3), 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

(1) (1921) I. L. R. 46 Bom. 153, 159: L. R. 49 I. A. 1, 7.
(2) (1922) I. L. R. 45 Mad. 320, 327, 328: L. R. 49 I. A. 129, 135.
(3) (1907) I. L. R. 30 All. 84: L. R. 35 I. A. 17.

1930

SHALIG RAM v. CHARANJIT LAL

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.

A. M. T.

Appeal accepted.

Solicitor for appellants: *H. S. L. Polak.*

Solicitors for respondents: *Kimber, Bull, Howland, Clappé & Co.*