PRIVY COUNCIL.

P. C.*
1908
Feb. 5, 11.

RADHA PRASAD MULLICK
v.
RANEE MANI DASSEE.*

[On appeal from the High Court at Fort William in Bengal.]

Hindu law—Will—Construction of will—Bequest to daughters "and their respective sons"—Whether absolute estate or estate for life—Principles of construction of Hindu wills—Hindu Wills Act (Act XXI of 1870)—Succession Act (Act X of 1865) ss. 82, 111.

The will of a Hindu directed his executors in case of failure of his sons, natural or adopted, and after the death of his wife "to make over and divide the whole of my estate both real and personal unto and between my daughters in equal shares to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons, share and share alike."

The testator left no sons and of two sons adopted by his widow after his death the former died and the adoption of the latter was held by the Privy Council to be illegal. In a suit brought after the death of the widow by one of the two daughters of the testator for construction of the will and a declaration of the rights of the parties, to which suit the other daughter and her sons and the adopted son of the plaintiff were made defendants.

Held (reversing the decisions of the Courts in India) that according to the true construction of the will the intention of the testator was to create in favour of his daughters an estate for life with a remainder over to their sons, and that in the events that had happened the daughters were entitled to the testator's estate in equal shares for life with benefit of survivorship between themselves. The language of the will clearly showed that the testator's intention was to exclude his daughters' daughters from the succession, to which they would have been entitled under ordinary Hindu law, had their mother's estate been an absolute one.

The principles as to construing the will of a Hindu laid down in *Mahomed Shumsool Hooda* v. *Shewukram*(1), followed.

* *Present*:—Lord Macnaghten, Lord Atkinson, Sir Andrew Scoble and Sir Arthur Wilson.

(1) (1874) L. R. 2 I. A. 7, 14: 14 B. L. R. 226, 232, 233.

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APPEAL from a judgment and decree (23rd April 1906) of the High Court of Judicature at Calcutta, which substantially affirmed a judgment and decree (31st July 1905) of the Judge sitting in exercise of the Original Civil Jurisdiction of that Court.

Two of the defendants were the appellants to His Majesty in Council.

The principal questions raised in this appeal were questions of law relating to the proper construction of the will of one Hurry Dass Dutt, who died on 30th October 1875, leaving a will executed on the same date. By the will three executors and trustees were appointed, namely, Surnomoni Dassi, the widow of the testator, Modhusudan Dutt, his father and Dwarka Nath Dutt, his uncle.

At his death the testator left him surviving his widow, Surnomoni Dassi, his two daughters, Ranimoni Dassi and Premmoni Dassi, and three sons of his daughter Premmoni Dassi, namely, Radha Prosad Mullick, Kasi Prosad Mullick, and Jyoti Prosad Mullick. Probate of the will was, on 20th December 1875 granted to the widow and uncle of the testator, two of the executors named in the will.

In pursuance of the power of adoption conferred by the will, Surnomoni Dassi, on 9th August 1876, adopted Jyoti Prosad Mullick, who died on 29th January 1881. She then adopted Amrita Lal Dutt on 9th February 1881. As to the validity of this adoption litigation took place, which terminated in the judgment of the Judicial Committee of the Privy Council in *Amrito Lal Dutt* v. *Surnomoye Dassi*(1), which decided that a joint power to adopt was conferred on the three executors of the will, and was invalid in law in consequence of which the adopted son has no status in the family.

Surnomoni died on 14th August 1904, and on 19th December 1904 the suit, out of which this appeal arose, was instituted on the Original Side of the High Cour at Calcutta. The plaintiff was Ranimoni Dassi, one of the daughters of the testator. The defendants were Premmoni Dassi, his other daughter, her four sons, Radha Prosad Mullick, Kasi Prosad Mullick, Peary Lal

(1) (1899) I. L. R. 27 Calc. 996; L. R. 27 I. A. 128; 2 C. W. N. 389.

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Mullick and Behary Lal (the two last of whom were born after the testator's death), and Jogul Kishore Sen, a son adopted to the plaintiff and her husband on 2nd November 1900.

The plaint, after setting out the facts referred to, contended that under the will, in the events that had occurred, the plaintiff and her sister Premmoni Dassi were each entitled absolutely to a moiety in their father's estate. The principal relief claimed was a declaration of the rights of the parties to the suit on the true construction of the will: there was also a prayer for the administration and partition of the estate. A written statement was filed on behalf of the defendants Peary Lal Mullick and Behary Lal Mullick, which challenged the validity of the adoption of Jogul Kishore Sen, and contended that in the events which had happened Hurry Das Dutt had died intestate as to the residue of his estate, to which Premmoni Dassi succeeded in preference to the plaintiff. A written statement to the same effect was filed by Premmoni Dassi. The defendants Radha Prosad Mullick and Kasi Prosad Mullick claimed to be absolutely entitled to the whole estate subject to the life interest of the plaintiff and the defendant Premmoni Dassi.

The written statement of Jogul Kishore Sen supported the claim of the plaintiff.

The first Court (WOODROFFE J.,) held that on the true construction of the will there was a gift to the adopted son with a valid gift over to the testator's daughters, and that there was no intestacy. He also held that each of the daughters took an absolute estate in her half share, and expressed no opinion as to the rights of the parties in the event of the death of one of the daughters leaving no natural son her surviving. A decree was accordingly made declaring that the plaintiff was entitled absolutely to a one-half share in her father's estate, directing an enquiry to ascertain of what the estate consisted and ordering partition thereof.

Against this decree two appeals were brought, one by Radha Prosad Mullick and Kasi Prosad Mullick, and the other by Peary Lal Mullick and Behary Lal Mullick. The appeals were heard by a Bench of five Judges (SIR FRANCIS MACLEAN, C.J. and SALE, HARINGTON, MITRA AND MOOKERJEE JJ.), who held

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that under the will the daughters each took a one-half share in their father's estate absolutely, but declined to decide what the rights of the parties would be in the event of one of the daughters dying without male issue. In the result the declaration of the plaintiff's rights was affirmed, and the enquiry as to the property and partition thereof were refused in the present suit.

The provisions of the will so far as they were material, and the judgments of the Courts in India will be found in the report of the case.(1)

On this appeal—

DeGruyther K.C. for the appellants contended that on the true construction of the will, in the events that had happened, the daughters of the testator were entitled only to estates for life; and that, subject to those life estates, the appellants took an absolute estate in remainder. The authorities showed that in construing a Hindu will a woman must be held to take a limited estate in any property bequeathed to her, unless a larger estate is given by express words. Here the language of the will, it was submitted, in providing that in the event of one of the daughters dying "without leaving male issue" her share would go to the surviving daughter was clearly intended to give the daughters only a limited, and not an absolute estate; and the same intention was also shown by the proviso that in case of either daughter dying leaving sons her share was to be paid to her sons "share and share alike." The testator's intention was that his daughters should have life estates and that their male issue should eventually succeed. As the testator left no sons, and of the sons adopted after his death, one had died, and the adoption of the other had been declared illegal by the Privy Council [see *Amrito Lal Dutt* v. *Surnomoye Dassi*(2),] the appellants as the only survivors of the daughters' sons living at the death of the testator were entitled to the estate subject to the daughters' life estate. Reference was made to *Mahomed Shumsool Hooda* v. *Shewukram*(3): *Hirabai* v. *Lakshmibai*(4): *Annaji*

(1) (1906) I. L. R. 33 Calc. 947.
(2) (1900) I. L. R. 27 Calc. 996; L. R. 27 I. A. 128.
(3) (1874) L. R. 2 I. A. 7, 12, 13; 14 B. L. R. 226, 231, 232.
(4) (1887) I. L. R. 11 Bom. 573, 578.

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Dattatraya v. *Chandrabai*(1): *Harilal Pranlal* v. *Bai Rewa*(2); *Surajmani* v. *Rabi Nath Ojha*(3): *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy*(4): Stoke's Hindu Law Books 247, 253, 259, Dayabhaga Chapter IV sections 2 and 3, sub-section 37: Mayne's Hindu Law, 7th Ed. page 900, paragraph 673: and *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore*(5). The Courts in India ought to have decided the rights of all parties in the event of the death of one of the daughters leaving no natural son her surviving.

Sir R. Finlay, K.C. and *Kenworthy Brown* for the respondent, Raimoni Dasi, contended that, for the reasons given by the Lower Courts, the daughters of the testator took absolute estates under the will, and that the appellants were consequently excluded. The Hindu Wills Act (XXI of 1870) made certain sections of the Succession Act (X of 1865) applicable to Hindu wills, of which sections 82, 106 and 111 were referred to. By section 82 a person, to whom property is bequeathed, was entitled to the whole interest of the testator, unless it appeared from the language of the will, that the intention was that he should get only a restricted interest. Here there was nothing to restrict the interest given to the daughters. By section 111 of the Succession Act, it was submitted, the provision for survivorship in the will only referred to the case of the death of a daughter during the life-time of the testator; and that on the authorities an absolute estate was given to the daughters. Reference was made to *Lala Ramjewan Lal* v. *Dal Koer*(6): *Norendra Nath Sircar* v. *Kamal-Basini Dasi*(7): *Manikyamala Bose* v. *Nanda Kumar Bose*(8): *Bhoba Tarini Debya* v. *Peary Lall Sanyal*(9): *Atul Krishna Sircar* v. *Sanyasi Churn Sircar*(10): Stoke's Hindu Law Books, 241, Dayabhaga, Chapter IV, section 1, paragraph 23. *Annaji Dattatraya* v. *Chandrabai*(11): *Lakshmibai* v. *Hirabai*(12): *Hiratai* v.

(1) (1892) I. L. R. 17 Bom. 503.
(2) (1895) I. L. R. 21 Bom. 376.
(3) (1907) I. L. R. 30 All. 84; L. R. 35 I. A. 17.
(4) (1897) I. L. R. 24 Calc. 834; L. R. 24 I. A. 76.
(5) (1872) 9 B. L. R. 377; 18 W. R. 359; L. R. IA. Sup. Vol 47.
(6) (1897) I. L. R. 24 Calc. 406, 410.
(7) (1896) I. L. R. 23 Calc. 563, 565, 572, 573; L. R. 23 I. A. 18, 23.
(8) (1906) I. L. R. 33 Calc. 1306, 1314, 1323.
(9) (1897) I. L. R. 24 Calc. 646.
(10) (1905) I. L. R. 32 Calc. 1056.
(11) (1892) I. L. R. 17 Bom. 503.
(12) (1886) I. L. R. 11 Bom. 69.

Lakshmibai(1): *Ramasami* v. *Papayya*(2): *Ram Lal Mookerjee* v. *Secretary of State for India*(3): *Bhoobun Mohini Debia* v. *Hurrish Chunder Chowdhry*(4): and *Basanta Kumari Debi* v. *Kamikshya Kumari Debi*(5). Reference was also made to the *Trustees' Executors* and *Agency Company* v. *Short*(6).

DeGruyther K.C. in reply contended that section 111 of the Succession Act was not applicable to this case. As to section 82 it was submitted that the interest of the daughters was restricted by the words of the will. Only those daughters' sons, who were born before the testator's death, were entitled to inherit his estate. Reference was made to *Hunooman Persaud Panday* v. *Munraj Koonweree*(7): *Ram Lal Mookerjee* v. *Secretary of State for India*(3): *Bhoobun Mohini Debia* v. *Hurrish Chunder Chowdhry*(4): *Mahomed Shumsool Hooda* v. *Shewukram*(8): and *Chotay Lall* v. *Chunnoo Lall* (9): [*Kenworthy Brown* referred to Macnaghten's Principles and Precedents of Hindu law, page 39, Ed. 1865: and Mayne's Hindu law, 7th Ed., page 900.]

The judgment of their Lordships was delivered by

SIR ANDREW SCOBLE. Hurry Dass Dutt, a Hindu inhabitant of Calcutta, died on the 30th October 1875, leaving a will, which was admitted to probate by the High Court on the 20th December in the same year. The will was in the English language, and was probably drawn by an English solicitor, who is one of the attesting witnesses.

The only question raised upon this appeal is as to the nature of the estate which, in the events which have happened, the testator's daughters take under the terms of the will.

The clause of the will relating to the daughters is as follows:—

"But in case none of such adopted sons survive my said wife, or in case of either surviving my said wife and dying under the said age without leaving a son or sons, I desire and direct my executors, after the death of my said wife, or the death of such son after her, but under the age of eighteen years without leaving

(1) (1886) I. L. R. 11 Bom. 537, 579.
(2) (1893) I. L. R. 16 Mad. 466.
(3) (1881) I. L. R. 7 Calc. 304, 314; L. R. 8 I. A. 46, 61.
(4) (1878) I. L. R. 4 Calc. 23; 3 C. L. R. 339; L. R. 5 I. A. 138.
(5) (1905) I. L. R. 33 Calc. 23.
(6) (1888) L. R. 13 App. Cas. 793.
(7) (1856) 6 Moo. I. A. 393; 18 W. R. 81 note.
(8) (1874) L. R. 2 I. A. 7, 12, 13; 14 B. L. R. 226, 231, 232.
(9) (1874) 14 B. L. R. 253; 22 W. R. 496.

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a son or sons, to make over and divide the whole of my estate, both real and personal, unto and between my daughters in equal shares, to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter her surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her sons or son, share and share alike."

WOODROFFE J., by whom the case was heard in the first instance, held that the intention of the testator was "to benefit the adopted son, and should the provisions (of the will) in this respect in any manner fail, then those who were of his own blood, *viz.*, his daughters"; that the words "and their respective sons" are used as words of limitation and not of purchase; and that upon the true construction of the will, the daughters were "each entitled to a moiety of the estate of the testator absolutely." He expressed no opinion, however, as to the right of the parties in the event of the death of one of the daughters leaving no natural son her surviving. Upon appeal to the High Court his judgment, upon these points, was confirmed.

With great respect for the learned Judges in the Courts below, their Lordships are unable to concur with their decision. This is the will of a Hindu, and as observed by this Committee in the case of *Mahomed Shumsool Hooda* v. *Sheeukram*(1), "in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that as a general rule, at all events, women do not take absolute estates of inheritance, which they are enabled to alienate." In spite of the assistance of his English solicitor, it appears to their Lordships that in this case the testator has clearly succeeded in showing that his daughters, whom he incontestably intended to benefit, were not to have more than what is generally known to be a woman's estate in his property. This is established by the gift to them "and their respective sons," and by the proviso that in the event of one of the daughters dying "without

(1) (1874) L. R. 2 I. A. 7, 14: 14 B. L. R. 226, 231, 232.

leaving any male issue surviving," then the share of the deceased daughter is to go to the surviving daughter and her sons, to the exclusion in both cases of female issue. Moreover, "in the case of the death of either leaving sons, the share of such daughter is to be paid to such her son or sons, share and share alike." No language could more clearly show that the intention of the testator was to exclude his daughters' daughters from the succession, to which they would have been entitled under the ordinary Hindu law, if their mother's estate had been absolute; and the reason of this is obvious, as the sons of his daughters would be competent to offer funeral oblations to him, the strongest of all possible arguments to an orthodox Hindu.

The learned Counsel for the respondents strongly relied on section 82 of the Indian Succession Act, 1865, which provides that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him." As already pointed out, it is abundantly clear that, under the terms of the will, only a restricted interest was intended to pass to a daughter dying without male issue.

In the opinion of their Lordships, according to the true construction of the will, the intention of the testator was to create in favour of his daughters an estate for life with a remainder over to their sons, and the learned Judges of the High Court ought to have held that, in the events that have happened, the daughters of the testator, Ranimoni Dassi and Premmoni Dassi, are entitled to the testator's estate in equal shares for life and with benefit of survivorship between themselves.

They will humbly advise His Majesty that this appeal ought to be allowed and the decree of the High Court varied in accordance with this judgment, and that in other respects the decree ought to be affirmed.

Under the circumstances, the costs of the appeal, taxed as between solicitor and client, must be paid out of the estate.

Appeal allowed.

Solicitors for the appellants: *Watkins & Lempriere.*

Solicitors for the respondent, Ranee Mani Dassee: *T. L. Wilson & Co.*

J. V. W.