1962

December, 10.

PEAREY LAL

v.

RAMESHWAR DAS

(S. J. IMAM, J. L. KAPUR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Hindu Will—Widow devisee—Construction of will—Use of word 'Malik', if conveyed absolute ownership—Indian Succession Act, 1925 (39 of 1925), ss. 75, 82, 86.

In the year 1897, one Girdhari Lal executed a will bequething his property to his wife Mst. Kishen Dei and adopted son. The adopted son predeceased Girdhari Lal. After the death of Girdhari Lal his wife executed a will bequething the property in dispute i. e. the house to her brother's grandson, the respondent. The appellant who was in occupation of a portion of the said house refused to execute a lease deed in favour of the respondent or pay him the rent after the death of Mst. Kishen Dei. The respondent filed a suit for eviction against the appellant. The appellant denied the title of the respondent as Mst. Kishen Dei did not get an absolute interest under the will of her husband and pleaded that Girdhari Lal dedicated the said house to one Shiv Temple by executing a will and appointed him as a trustee. The Subordinate Judge decreed the plaintiff-respondent suit. On appeal the District Judge set aside the decree of the Subordinate Judge and dismissed the suit, holding that under the will of 1897, Kishen Dei got only a limited estate. The plaintiff-respondent preferred a second appeal to the High Court and the decree of the District Judge was set aside and that of the Subordinate Judge was restored and on construction of the will of 1897 it held that as the gift over failed, the life estate became an absolute estate and she got an absolute interest in the property. The appellant preferred a Letters Patent appeal before the Division Bench of the High Court and the judgment of the Single Judge was confirmed.

Held, that in construing a will the court should try its best to get at : (i) the intention of the testator by reading the will as a whole and if possible, such construction as would give to every expression some effect rather than that which could render any of the expression inoperative must be accepted; (ii) another rule is that the words occurring more than once in a will shall be presumed to be used always in the same sense

unless a contrary intention appears from the will; (iii) all parts of a will should be construed in relation to each other; (iv) the court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like; (v) where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator; (vi) where one of the two reasonable construction would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus.

On the above rule of construction, under the present will the gift over in favour of the son was only by way of defeasance and the widow had got an obsolute interest in the property.

Subbamma v. *Ramanaidu*, A. I. R. 1937 Mad. 476, distinguished.

Held, further, that the expression 'Malik' has been consistently understood by courts as conveying the idea of absolute ownership and therefore, the testator used the word 'Malik' to describe his absolute interest in the property.

Sasiman Chowdhurain v. *Shiv Narain Chaudhury*, (1921) L. R. 49 I. A. 25 and *Ram Gopal* v. *Nand Lal*, [1950] S. C. R. 766, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 338/1960.

Appeal by special leave from the judgment and order dated August 31, 1951, of the Punjab High Court in Letters Patent Appeal No. 64 of 1949.

S. P. Verma, for the appellant.

Bishan Narain and *A. D. Mathur*, for the respondent.

1962. December 10. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—This appeal raises the question of the construction of a will executed by one Girdhari Lal in the year 1897.

1962

Pearey Lal
v.
Rameshwar Das

Subba Rao, J.

Girdhari Lal, a resident of Delhi, executed a will dated February 8, 1897, bequeathing his property, both movable and immovable, to his wife, Mst. Kishen Dei, and adopted son. The adopted son predeceased Girdhari Lal. After the death of Girdhari Lal in 1923, Mst. Kishen Dei exeuted a will dated October 8, 1941, bequeathing the property in dispute i. e., house No. 2045, situate in Delhi, to her brother's grandson, Rameshwar Dass. One Peraeylal, who is the defendant in this case, has been in occupation of a portion of the said house. After the death of Mst. Kishen Dei, Peareylal refused to execute a lease deed in favour of Rameshwar Dass or pay him the rent in respect of the portion of the house occupied by him. Rameshwar Dass had therefore to file a suit in the Court of the Subordinate Judge, Delhi, for evicting the defendant from the portion of the house occupied by him. The defendant, *inter alia*, pleaded that the plaintiff had no title to the said property, as Mst. Kishen Dei did not get an absolute interest therein under the will of her husband; he further pleaded that Girdhari Lal during his lifetime dedicated the said house under a will executed by him to Shiv Temple in Gali Patashe Minor and appointed him to be trustee of the said house. The learned Subordinate Judge found that under the will executed by Girdhari Lal, Mst. Kishen Dei got an absolute interest in the house. He further found that the will set up by the defendant whereunder he claimed that the house was dedicated to the said Minor had not been proved and on the date when it was alleged to have been executed, Girdhari Lal was not of sound mind. In the result, he made a decree in favour of the plaintiff. On appeal the learned District Judge held that under the will of 1897 executed by Girdhari Lal, Kishen Dei got only a limited estate and, therefore, she could not under a will confer any interest on the plaintiff. In that view, he did not give his fiinding on the question whether the will set up by the defendant

was true and valid. The decree of the learned Subordinate Judge was set aside and the suit was dismissed. The plaintiff preferred a second appeal to the High Court of East Punjab at Simla. Khosla J. held, on a construction of the will of 1897, that under the said will the testator gave a life interest to Mst. Kishen Dei and made a gift over to the adopted son; but as the gift over failed, the life estate became an absolute estate under s. 112 of the Indian Succession Act. Alternatively he also found that on the wording of the will Mst. Kishen Dei got an absolute interest in the property. In the result he set aside the decree of the District Judge and restored that of the Subordinate Judge. It may be noticed at this stage that no argument was made before Khosla, J., that the defendant acquired a title to the portion of the house under a subsquent will executed by Girdhari Lal; presumbly in view of the finding given by the learned Subordinate Judge that the executant was not of sound mind at the time the will was alleged to have been executed, no attempt was made to sustain its execution or validity. The defendant preferred a Letters Patent Appeal against the said judgment to a division Bench of the same High Court. The said appeal was disposed of by Weston, C.J., and Falshaw, J. Weston, C.J., who delivered the Judgment on behalf of the Bench, held on a construction of the will of 1897 that the intention of the testator should be taken to be that at any rate on failure of the bequest to Nathi Mal, the testator's widow Mst. Kishen Dei should take an absolute interest in his property. The division Bench confirmed the Judgment of Khosla, J. It may again be noticed that even before the Division Bench the defendant did not rely upon the will alleged to have been executed by Girdhari Lal in his favour. The present appeal has been filed by special leave against the said judgment.

Mr. Verma, learned counsel for the appellant,

1962

Pearey Lal
v.
Rameshwar Das

Subba Rao, J.

raised before us the following two points :

(1) On a true construction of the will of 1897 executed by Girdhari Lal, Mst. Kishen Dei only got a life estate thereunder and, therefore, the plaintiff did not get any title to the property under the will executed by her in his favour. (2) The High Court went wrong in not considering and giving a finding on the question of the truth and validity of the will alleged to have been executed by Girdhari Lal in defendant's favour.

As the first question turns upon the construction of the will excuted by Girdhari Lal in 1897, it will be convenient to read the relevant part thereof. Ex. P-1 is the will executed by him on February 8, 1897. After the usual preamble that appears in wills, the testor proceeds to state—

> "Further, I have reached the age of nearly 50 years and with my consent Nathi Mal a boy of 7 years has been adopted and an agreement has been got written from his father Bega Mal. Now my wife Mst. Kishen Dei daughter of Bega Mal is living and I have got one storeyed house situated in the City of Delhi, Bazar Khari Baoli, inside Gali Batashan and some goods, and my belongings are in my possession without partnership with anybody else. As long as I the testator am alive, I shall remain malik of entire movable and immovable property and am entitled to do whatever I wish to do. When I die then Mst. Kishen Dei, my wife, and after the death of the said Mussammat, my adopted son Nathi Mal, will become Malik of all my movable and immovable property without partnership with anybody. The said Mst. Kishen Dei should live in this house and said Nathi Mal will get all the proprietary rights just like

the testator. And no relation of mine has and will have any kind of claim to my movable and immovable property left by me."

It must be conceded that there is some conflict of ideas in the document; but in constructing a will executed in 1897 the court should try its best to get at the intention of the testator by reading the will as a whole. We must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expression inoperative. Another rule which may also be useful in the context of the present will is that the words occurring more than once in a will shall be presumed to be used always in the same sense unless a contrary intention appears from the will : see s. 86 of the Indian Succession Act. So too, all parts of a will should be construed in relation to each other : vide s. 82 of the said Act. It is also a well recognized rule of construction that the court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like : see s. 75 of the said Act.

The circumstances under which the will was executed by the testator may be gathered from the will itself. The testator had a wife and an adopted son. He had no other near relations to be provided for. The only objects of his attachment and love were his wife and the minor adopted boy. He was anxious to provide for both of them. His object could be achieved in three ways, namely, (i) by conferring a life estate in his property on his wife and giving a vested remainder in the same to his adpoted son; (ii) by making a joint bequest to both of them; and (iii) by making a bequest of an absolute interest to his wife with a gift over to his son operating by way of defeasance. Learned counsel for the appellant relies upon the following passage

1962

Pearey Lal
v.
Rameshwar Das

Subba Rao, J.

in the will : "The said Mst. Kishen Dei should live in this house and said Nathi Mal will get all the proprietary rights just like the testator," in support of the contention that in this sentence the testator made a clear distinction between the nature of the estate given to the wife and that given to the son. He contends that the direction that Mst. Kishen Dei should only live in the house indicates that her interest was only a life interest in the house whereas the direction that Nathi Mal should be in the place of the testator indicates that he had absolute rights which the father had. If this sentence is disannexed from the rest of the document, it may lend some colour to the said argument; but in the context of the other recitals in the document, it fits in the scheme of bequest clearely expressed by the testator. The testator described his interest in the property thus :

> "I shall remain *malik* of entire movable and immovable property and am entitled to do whatever I wish to do. When I die then Mst. Kishen Dei, my wife and after the death of the said Mussammat, my adopted son Nathi Mal, will become *malik* of all my movable and immovable property without partnership with anybody."

It is not disputed, and it cannot be disputed, that the said description of his right is that of an absolute interest. The expression "malik" has a well-known connotation and it has found judicial recongnition in various decisions of High Courts and the Privy Council. It may not be a term of art but is a word of definite content that has become part of the vocabulary of the common man and particularly of document writers. When the testator used the said word he must have intended to convey the accepted meaning of the said word. In *Sasiman Chowdhurain* v. *Shib Narayan Chowdhury* (1) the

(1) (1921) L.R. 49 I.A. 25, 33.

Privy Council said that the term "malik" when used in a will or other document is descriptive of the position which a divisee or donee is intended to hold and has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred. This Court, in *Ram Gopal* v. *Nand Lal* (1), accepted the said observations of the Privy Council as a correct statement of law, but added that it should be taken with the caution which the Judicial Committee uttered in the course of the same observation, namely, that "the meaning of every word in an Indian document must always depend upon the setting in which it is placed, the subject to which it is related and the locality of the grantor from which it receives its true shade of meaning." It is not necessary to multiply decisions, as the expression "malik" has been consistently understood by courts as conveying the idea of absolute ownership. It must, therefore, be held that the testator used the word "malik" to describe his absolute interest in the property. Apart from the meaning generally given to this word, the testator himself furnished a dictionary for interpreting the said term in the will. With the knowledge of the meaning of the word "malik" the testator proceeded to describe the interest conferred on his wife in the same terms, namely, that she should become "malik" without partnership with anybody. If the will stopped there, there could not have been any controversy as regards the nature of the bequest. But the testator proceeded to state that after the death of his wife, his adopted son would become "malik" without partnership with anybody. The words must bear the same meaning i.e., the testator intended that after the death of his wife, his adopted son should become the absolute owner of the property. These two bequests *prima facie* appear to be inconsistent with each other, for

(1) [1950] S.C.R. 766, 773.

1962

Pearey Lal
v.
Rameshwar Das

Subba Rao, J.

there are two absolute bequests of the same property in favour of his wife and, after her death, in favour of his son. Two constructions are possible, one is to accept the first and negative the second on the ground that it is repugnant to the first; the other is to make an attempt to reconcile both in a way legally permissible. Both can be reconciled and full meaning given to all the words used by the testator, if it be held that there was an absolute bequest in favour of the wife with a gift over to operate by way of defeasance, that is to say, if the son survived the wife, the absolute interest of the wife would be cut down and the son would take an absolute interest in the same. If that was the construction, the statement in the will relied upon by learned counsel for the appellant could also be reconciled with such a bequest. That statement recorded a wish on the part of the testator that his wife should reside in the house, for he wanted his minor son and wife to continue to live in his house. The second part of the statement also recorded a wish on his part that his wife should keep the property intact and hand over the same to his son, who would also be a full owner like himself. Be it as it may, the said statement could not detract from the clear words used earlier. If the argument of learned counsel for the appellant be accepted, this Court would be rewriting the will for the testator and introducing words which are not there: it would be cutting down the meaning of the words which the testator designedly used to convey a larger interest to his wife. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. If the construction suggested by learned counsel be

adopted, in the event of his son predeceasing the testator, there would be intestacy after the death of the wife. If the construction suggested by the respondent be adopted, in the event that happened it would not bring about intestacy, as the defeasance clause would not come into operation. That was the intention of the testator is also clear from the fact that he mentioned in the will that no other relation except his wife and son should take his property and also from the fact that though he lived for about a quarter of a century after the execution of the will, he never thought of changing the will though his son had predeceased his wife.

Learned counsel for the appellant relied upon the decision of Varadachariar, J., in *Subbamma* v. *Ramanaidu* (1): There the testator created a limited interest in favour of the widow followed by gift over to grandchildren. In describing the bequest in favour of the widow, the testator used the word "Hakdar" meaning "owner". Still the learned Judge held that the widow took only a woman's estate and the grandchildren took the remainder. The learned Judge observed :

> "To avoid such a possibility, the proper rule of construction has been held to be to take the will as a whole; and the presence of a gift over, which is not a mere gift by way of defeasance, has generally been held to be an indication that the prior gift was only a limited interest."

The learned Judge also relied upon the other circumstances of the will in coming to that conclusion. This decision accepted the same proposition which this Court has laid down in *Ram Gopal* v. *Nand Lal* (2), namely, that the entire document should be considered in arriving at the intention of the testator. No decision on the construction of a will can be of use in construing another document, unless all the

(1) A.I.R. 1937 Mad. 476, 477. (2) [1950] S.C.R. 766, 773.

1962

Pearey Lal
v.
Rameshwar Das

Subba Rao, J.

important recitals are similar. A document will have to be construed on its own terms. In the circumstances of the present document, we have come to the conclusion that under the will the gift over in favour of the son is only by way of defeasance.

We cannot allow the learned counsel to raise the second contention, for it was not raised before the District Court, before Khosla, J., and before the division Bench of the High Court. It was raised before the Subordinate Judge but the learned Subordinate Judge held, on the evidence, that the will had not been proved and indeed he came to the conclusion that the testator was not of sound mind on the date when the will was alleged to have been executed. The point raises a mixed queston of fact and law and there are no exceptional grounds for deviating from the usual practice of this Court and allowing the appellant to raise this point here when he failed to do so in the two courts below.

In the result, the appeal fails and is dismissed with costs. The appellant will pay the Court fee on the memo of appeal.

Appeal dismissed.