MAULESHWAR MANI AND ORS. A

v.

JAGDISH PRASAD AND ORS.

JANUARY 23, 2002

[V.N. KHARE AND ASHOK BHAN, JJ.] B

Hindu Succession Act, 1956 :

Will—Execution of—Rule of construction—It has to be read in its entirely—No part of it is excluded or made redundant—Court to reconcile any inconsistency in it—Absolute estate—Conferment of—Where testator has given the property to devisee with a right of alienation—The Testator cannot be allowed to bequeath the same property in favour of second set of persons in the same Will. C

D

U.P. Zamindari Abolition and Land Reforms Act 1950—Ss. 169, 172 and 174—Law does not permit a Bhumidhar to create successive legatees under a Will—He can bequeath his property to any one but he cannot create further succession contrary to the provision of the Act.

One 'J' executed a Will bequeathing his entire property in favour of his second wife (whom he married after the death of his first wife), and after her death in favour of his daughters' sons from both the wives. He had three daughters from each wife. He died in 1961 and his second wife died in 1964. E

F

Plaintiffs-respondents purchased the property from the grandsons of the first wife. On 1.6.1966 the plaintiffs-respondents filed a suit alleging that defendants had cut the crops wrongfully and prayed for a decree for a sum of Rs. 1946.66 and in the alternative for mesne profit and for just possession to the extent of their share in the properties. Trial Court held, the second wife having obtained an absolute estate under the Will, the subsequent bequeath in the said Will in favour of daughter's sons was invalid and, therefore, the grandsons of first wife were not entitled to inherit the property. Appeal preferred by the plaintiffs-respondents was dismissed by the first appellate Court. On second appeal High Court held that under the Will the second wife got only restricted or limited right G H

A and, therefore, after her death, all the grandsons of the first wife as well as the second wife were entitled to inherit the property. Hence this appeal.

It was contended for the appellants that under the Will, the second wife acquired an absolute estate and any subsequent bequeath in the same Will was repugnant to the absolute interest created in her favour.

B

It has contended for the respondents that Will has to be read as a whole and effort should be made to give effect to the wishes of the testator and therefore, all the sons of daughters of the testator would inherit the property.

C Allowing the appeal, the Court

HELD : 1.1. Ordinarily, the rule of construction of a Will is that a Will (bequeath) has to be read in its entirely and effort should be made that no part of it is excluded or made redundant. It is the duty of the Court to reconcile if there is any inconsistency in the Will. [427-F]

D

Radha Sundar Dutta v. *Mohd. Jahadur Rahim and Ors.*, [1959] SCR 1309, relied on.

1.2. Where the property has been given by a testator to the devisee with a right of alienation, such bequeath is a conferment of an absolute E estate. In the instant case, the Will gave in express terms the inheritable estate with power of alienation to the second wife. Thus what was given to her was an unlimited and an absolute estate. [428-E-F-G]

2. Once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further F bequeath the same property in favour of second set of persons in the same Will. A testator cannot create successive legatees in the Will. The object behind is that once an absolute right is vested in the first devisee, the testator cannot change the line of succession of first devisee where a testator having conferred an absolute right on any one the subsequent G bequeath for the same property in favour of other persons would be repugnant to the first bequeath in the Will and has to be held invalid. [429-F-G]

Ramkishorelal and Anr. v. *Kamalnarayan*, [1963] Suppl 2 SCR 417 ; *Radha Sunder Dutta* v. *Mohd. Jahadur Rahim and Ors.*, [1959] SCR 1309 H and *Rameshwar Bakhsh Singh and Ors.* v. *Balraj Kaur and Ors.*, AIR Privy

Council 187, relied on. A

3. Law does not permit a Bhumidhar to create a successive legatees under a Will. In the present case, the second wife having obtained an absolute estate (interest in the Bhumidhari Land) under the Will and not as a widow of the testor, the succession to such holding after her death shall be governed by the provisions of Section 174 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and not under Section 172. Thus after her death her daughters and thereafter their sons would succeed to the holding and not all sons of the daughters of the testator.[430-D-E-F] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1961 of 1982. C

From the Judgment and Order dated 7.1.82 of the Allahabad High Court in S.A. No. 2496 of 1970.

Goodwill Indeevar, Pramod Kumar Yadav and Vijai Prakash for the Appellants. D

E.C. Agrawala, Mahesh Agarwal, Rishi Agarwal, Alok Kr. Agrawal, Ashwini, Atul Sharma and Sumita Mukherjee for the Respondents.

The Judgment of the Court was delivered by E

V.N. KHARE, J. One Jamuna Prasad was the owner of a house as well as certain other properties including Bhumadhari land, situated at village Kakhra Kaurd, Pargana Naugarh, District Basti. Jamuna Prasad had two wives - Smt Suraja Devi and Smt. Sona Devi. Jamuna Prasad married Smt. Sona Devi after the death of his first wife Smt. Suraja Devi. Jamuna Prasad had F no male issue. He had three daughters from his first wife Smt. Surja Devi - Smt. Mishara, Smt. Partapa and Smt. Dulari. From second wife Smt. Sona Devi, Jamuna Prasad had also three daughters - Smt. Gunjan Devi, Smt. Ram Sanwari and Smt. Dhupa. Smt. Mishara has a son Chandrakant. Smt. Partapa has three sons - Ram Sureman, Ram Ujagar and Ram Millan. Smt. Dulari has G two sons - Sesh Chandra and Ram Chandra. Smt. Gunjan Devi - daughter of Smt. Sona Devi, has a son Balbhaddar. Smt. Ram Sanwari has a son Ram Kirpal and Smt. Dhupa ha› a son Bindhabasni.

After the Hindu Succession Act came into force, Jamuna Prasad executed a Will dated 3.7.1956 bequeathing his entire property in favour of his second H

A wife Smt. Sona Devi and after her death subsequent bequeath was in favour of his daughters' son (s) from both the wives. Jamuna Prasad died in 1961, whereas Smt. Sona Devi died in 1964. On 4.9.1964, plaintiff nos. 1 to 3 who are respondents herein, purchased the land through a sale deed from Ram Sureman, Ram Ujagar and Ram Millan - sons of Smt. Partapa. In the said sale deed, Smt. Partapa also joined as vendor. On 24.3.1965, plaintiff no. 6 B obtained sale deed from defendant no. 11 - Chandrakant in respect of his share in the property. On 4.2.1966, plaintiff nos. 4 and 5 who are respondents herein, obtained sale deed from defendant Sesh Chandra in respect of his share in the property.

C On 1.6.1966, the plaintiffs who were purchasers of the shares in the land filed a suit out of which the present appeal arises, praying therein for a decree for a sum of Rs. 1946.66 against defendant I and II sets by way of damages on account of the defendants having wrongfully cut away the crop and, in the alternative, for mesne profits - Rs. 330 as damages in lieu of their share and for partition of 4/9th share in the disputed house and for joint D possession to the extent of their shares in the disputed Bhumidhari lands. The plaintiffs' case was that Smt. Sona Devi obtained a limited estate on the death of Jamuna Prasad under the will and after her death, all the nine sons of the daughters from both the wives inherited the property in accordance with the provisions of the Will. Defendant nos. 1 to 10 contested the suit. E Defendants-appellants' case was that Smt. Sona Devi - second wife of Jamuna Prasad, through the Will obtained an absolute estate and became full owner of the property on the death of Jamuna Prasad, and in that view of the matter, any subsequent bequeath in the same Will in favour of daughters' sons was invalid. It was also their case that after the death of Smt. Sona Devi, her daughters succeeded to her interest in respect of Bhumadhari plots under F Section 174 of U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as the Act). The trial court was of the view that Smt. Sona Devi having obtained an absolute estate under the Will executed by Jamuna Prasad, the subsequent bequeath in the said Will in favour of daughters' sons was invalid and, therefore, the daughters' sons from first G wife Smt. Surja Devi were not entitled to inherit the property. The appeal preferred by the plaintiffs-respondents was also dismissed by the first appellate court and decree of the trial court was affirmed. However, in the second appeal, filed by the plaintiffs-respondents, the High Court came to the view that under the Will Smt. Sona Devi got only restricted or limited right and, therefore, after her death all the daughters' sons from his first wife as well H as his second wife were entitled to inherit the property. In that view of the

matter, the second appeal was allowed and the suit stood decreed. It is against the said judgment of the High Court, the appellants are in appeal by way of special leave petition.

The case of the appellants is that under the Will, Smt. Sona Devi acquired an absolute estate and any subsequent bequeath in the same Will in favour of the daughters' sons was repugnant to the absolute interest created in favour of Smt. Sona Devi and, therefore, invalid. On the other hand, it was argued on behalf of the respondents that the Will has to be read as a whole and an effort should be made to give effect the wishes of the testator and, in that view of the matter, all the sons of the daughters of Jamuna Prasad would inherit the property left by Jamuna Prasad.

On the argument of learned counsel for the parties, the questions that arise for consideration are these:

(1) whether under the Will Jamuna Prasad bequeathed an absolute estate in favour of his second wife Smt. Sona Devi or restricted right;

(2) whether the subsequent bequeath in the Will in favour of the sons of the daughters of Jamuna Prasad is invalid if it is found that Jamuna Prasad bequeathed an absolute interest in the property in favour of his second wife Smt. Sona Devi; and

(3) whether all the sons of all the daughters of Jamuna Prasad would inherit under the Act, if it is found that Jamuna Prasad bequeathed an absolute estate in favour of his second wife Smt. Sona Devi.

The first and the second question are overlapping and, we shall, therefore, consider both the questions together. Ordinarily, the rule of construction of a Will is that a Will (bequeath) has to be read in its entirety and effort should be made that no part of it is excluded or made redundant. In other words, it is the duty of the Court to reconcile if there is any apparent inconsistency in a Will. In *Radha Sundar Dutta* v. *Mohd. Jahadur Rahim and Ors.*, [1959] SCR 1309, it was held that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim '*ut res magis valeat quam pereat*'.

We shall now look into the Will in the light of the rule of construction

propounded by this Court in *Radha Sundar Dutta* v. *Mohd. Jahadur Rahim* (supra). The relevant clause of the Will is as under:

> "Wasiyat nama haza iqrar karte vo likh dete hai ki bad vafat Mukir mere Jumla tarka mol mankoola vo ghair mankoola vo jumla asasulbat vo arazi sir vo khudkast vo makan vo bag bagaicha gharz jo kuch bhi maujood rahe uske pane ki musthak phalay jauza mukir *ba akhtiyar intakal hogi jiska nam Sona Devi hai* vo bad wafat Sona Devi ke Ram Sureman vo ram ujagair vo Ram Milan haikki hamare hai, honge."

The English translation of first part of Will is :

> The testator is wife whose name is Smt. Sona Devi, would be entitled to the entire assets and properties with the right of transfer and after death of Sona Devi."

The first part of the Will provided that after the death of the testator or author of the Will, his wife whose name is Smt. Sona Devi would be entitled to the entire assets and properties of Jamuna Prasad with the right of transfer. The second part of the Will is that after the death of Smt. Sona Devi nine sons of daughters' would inherit the property. Here what we are concerned with is whether Smt. Sona Devi has acquired an absolute estate or a limited estate under the Will. In this connection the employment of words "Pane ki Musthak" and "ba Akhtiar Intakal" in the Will which means entitlement of properties with the right of transfer are very relevant. It is obvious from the aforesaid clause that the testator conferred on an estate by providing that the wife would be entitled to get the property with right of alienation. Where the property has been given by a testator to the devisee with a right of alienation such bequeath is a conferment of an absolute estate. Thus the first devisee was to get the property with a right of transfer under the Will and under subsequent clause the very same property was to go to the nine sons of the daughters after the death of the first devisee. The Will, therefore, gave in the express term inheritable estate with power of alienation to Smt. Sona Devi. We are, therefore, very clear in our mind that what was given to Smt. Sona Devi was an unlimited and an absolute estate.

The next question that arises for consideration is, the validity of the second part of the Will whereby and whereunder the testator gave the very same property to nine sons of his daughters.

In *Ramkishorelal and Anr.* v. *Kamalnarayan,* [1963] Suppl. 2 SCR

417, it was held that in a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. In *Radha Sundar Dutta* v. *Mohd. Jahadur Rahim & Ors.* (Supra), it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In *Rameshwar Bakhsh Singh and Ors.* v. *Balraj Kuar and Ors.*, AIR (1935) Privy Council 187, it was laid down that where an absolute estate is created by Will in favour of devisee, the clauses in the Will which are repugnant to such absolute estate cannot cut down the estate; but they must be held to be invalid.

From the decisions referred to above, the legal principle that emerges, *inter alia*, are -

(1) where under a Will, a testator has bequeathed his an absolute interest in the property in favour of his wife, any subsequent bequeath which is repugnant to the first bequeath would be invalid; and

(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same Will.

In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of second set of persons in the same Will. A testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of first devisee. Where a testator having conferred an absolute right on anyone the subsequent bequeath for the same property in favour of other persons would be repugnant to the first bequeath in the Will and has to be held invalid. In the present case the testator Jamuna Prasad under the Will had bequeath his entire estate movable and immovable property including the land in self-cultivation, house and groves etc. to his wife Smt. Sona Devi and thereafter by subsequent

A bequeath the testator gave the same very properties to nine sons of his daughters which was not permissible. We have already recorded a finding that under the Will Smt. Sona Devi had got an absolute estate and, therefore, subsequent bequeath in the Will by Jamuna Prasad in favour of nine daughters' sons was repugnant to the first bequeath and, therefore, invalid. We are, therefore, of the view that once the testator has given an absolute estate in B favour of first devisee it is not open to him to further bequeath the same very property in favour of second set of persons.

Coming to the third question. Under Section 169 of the Act, a Bhumidhar with a transferable right is entitle to bequeath his holdings or any part thereof C in favour of any one except as what is provided therein. In the present case, Jamuna Prasad by virtue of his Will has bequeathed an absolute interest in the Bhumadhari land in favour of Smt. Sona Devi and by virtue of the said Will, Smt. Sona Devi being a legatee acquired Bhumidari rights after the death of Jamuna Prasad. It is true that under Section 171(2) (g) of the Act, the married daughters of Jamuna Prasad were entitled to succeed to the D Bhumidhari plots of land. But in the present case, Smt. Sona Devi did not inherit the property (Bhumadhari land) as a widow of Jamuna Prasad but succeeded to the Bhumidhari land as legatee of Jamuna Prasad in pursuance of the Will dated 3.7.1958. The law does not permit a Bhumidhar to create successive legatees under a Will. It is open to him to make a bequeath of his E Bhumadhari land in favour of whomsoever he wants but he cannot create further succession contrary to the provisions of the Act. The second part of the Will created succession in favour of daughters' sons which was contrary and repugnant to the provisions of the Act. In the present case, Smt. Sona Devi having obtained an absolute estate (interest in the Bhumadhari land) under the Will and not as a widow of Jamuna Prasad, the succession to such F holding after the death of Smt. Sona Devi shall be governed by the provisions of Section 174 of the Act and not under Section 172 of the Act. In that view of the matter, after the death of Smt. Sona Devi, her daughters' and thereafter their sons would succeed to the holding and not all daughters' sons of Jamuna Prasad.

G For the aforesaid reasons, this appeal deserves to succeed. The judgments under challenge is set aside. The appeal is allowed. There shall be no order as to costs.

S.K.S. Appeal allowed.