PETITIONER:
TALKESHWARI DEVI

Vs.

RESPONDENT:
RAM RAN BIKAT PRASAD SINGH & ANR.

DATE OF JUDGMENT12/01/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN
PALEKAR, D.G.

CITATION:
1972 AIR 639 1972 SCR (3) 71

ACT:
Indian Succession Act 1925-Ss. 124, 131-Scope-Will, construction of.

HEADNOTE:
By clause 4 of a will the testator bequeathed to his grand daughters T and S an absolute right in the properties that were to devolve on them after the death of his wife., Clause 5 further provided that if one of the two grand daughters were to die issueless the other living grand daughter was to enter into possession of the entire property as absolute owner. After the death of the testator’s wife T and S divided the properties which devolved on them in equal shares. On S dying issueless T instituted a suit for possession of the properties that fell to the share of S basing her claim on clause 5 of the will. The suit was dismissed. Dismissing the appeal,
HELD : Clause 5 of the will relates to devolution, it does not provide for any divestment of an estate which had vested. The estate that vested in S under clause 4 of the will was not a conditional estate, it was an absolute one. The will does not provide for the divestment of that estate. Clause 5 would have come into operation if the contingency mentioned therein had happened before the properties absolutely devolved on T and S. What the testator intended was that if any of his grand daughters died issueless before the devolution took place then the entire property should go to another grand daughter. The intention of the testator is plain from the language of the will. [73 E]
Section 124 of the Indian Succession Act, 1925 applies to the facts of the case and not s. 131. The legacy claimed by the appellant is unavailable as the contemplated contingency did not occur before the fund bequeathed was payable or distributable. Section 131 provides for the divestment of an estate which had already vested; it speaks of an estate going over to another person. [74B]
Norendra Nath Sircar and anr. v. Kamal Basini Dasi, I.L.R. 23, Cal. 563, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 213 of 1967.
Appeal from the Judgment and order dated February, 17th 1965 of the Patna High Court in First Appeal No. 113 of 1960.
M. C. Chagla, D. P. Singh, S. C. Agarwal, V. J. Francis, R. Goburdhun and D. Goburdhun, for the appellant.
M. C. Setalvad, Sarjoo Prasad, A. G. Ratnaparkhi and Rajiv Shah, for respondent No. 1.
The Judgment of the Court-was decided by
Hegde, J. In this appeal by certificate we are to consider the effect of the will executed by one Raghunath Prasad Singh, on August 31, 1938. The said testator died very soon after the execution of the will leaving behind him his widow Jageshwar Kuer,
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his daughter Satrupa Kuer and his two grand daughters Talkeshwari Devi (the appellant herein) and Sheorani. The appellant and Sheorani are the daughters of Sukhdeo Prasad Singh, the son of the testator who had predeceased the testator. Jageshwar Kuer died in November 1948 and Sheorani Devi on November 1, 1949 without leaving any issue. The dispute in this case is as to who is entitled to the properties devolved on Sheorani under the provisions of the will left by the testator. For deciding that question we have to refer to the relevant provisions of the will. the genuineness or validity of which is not in dispute.
The will in question provides that after the death of the testator a portion of his properties (detailed in the will) was to devolve on Jageshwar Kuer absolutely and the remaining properties are also to devolve on her but therein she was to have only a life interest. The will further provides that after her death "the entire property will be treated as 16 annas property out of which 5 annas 4 pies(five annas four pies) share constituting proprietary interest will pass to Shrimati Satrupa Kuer alias Nan daughter of me, the executant and her heirs as absolute owners and the remaining 10 annas 8 pies (annas ten and eight pies) share will pass to both the minor grand daughters, (1) Shrimati Talkeshwari Kuer alias Babu and (2) Shrimati Sheorani Kuer alias Bachan in equal shares as absolute proprietary interest" (cf. 4 of the will). Clause 5 of the will says :

> "That if one of the two grand daughters named above, dies issueless, then under such circumstances the other living grand daughter will enter into possession and occupation of the entire 10 annas 8 pies and become the absolute owner thereof."

At the time of the death of the testator, the appellant as well as Sheorani Kuer were minors. After the death of Jageshwar Kuer, the appellant and her sister Sheorani Kuer divided the ten annas eight pies share of the properties which devolved on them in equal shares and each one came into possession of her share of the properties.
Immediately after the death of Sheorani Kuer, the appellant instituted a suit for possession of the properties that fell to the share of Sheorani Kuer purporting to base her claim on clause 5 of the will to which we have earlier made reference. That suit was resisted by the first defendant, the husband of Sheorani. He claimed that he was entitled to those properties as the heir of his wife. The trial court dismissed the plaintiff’s suit and the decision of the trial court was upheld by the High Court.
It was contended on behalf of the appellant that in view of clause 5 of the will, the appellant is entitled to the suit properties

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as Sheorani Kuer had died issueless. This contention, as mentioned earlier, did not find favour either with the trial court or with the appellate court. They have held that on a proper leading of the will as a whole, it is clear that clause 5 ceased to be operative on the death of Jageshwar Kuer, thereafter caluse 4 of the will was the only operative clause so far as the rights of the appellant and Sheorani ware concerned.

It is undisputed that the duty of the court is to find out the intention of the testator but that intention has to be gathered from the language of the will read as a whole. I+ is clear from clause 4 of the will that the testator wanted to give to his grant-daughters an absolute right in the properties that were to devolve on them after the death of his wife, Jageshwar Kuer. The estate bequeathed under clause 4 of the will is not a conditional estate. Clause 5 of the will relates to devolution and it does not provide for any divestment of an estate which had vested. The estate that vested on Sheorani was an absolute one. The will does not provide for the divestment of that estate. It is plain from the language of clause 5 of the will that it refers to the devolution, which means when the properties devolved on the two sisters on the death of Jageshwar Kuer. We are, unable to accept the contention of Mr. M. C. Chagla, learned Counsel for the appellant that there is an-,- conflict between clause 4 and clause 5 of the will. Clause 5 in our judgment would have come into force if the contingency mentioned therein had happened before the properties absolutely devoted on the two sisters. Clause 5 cannot be considered as a defeasance clause. If the testator wanted that the bequest made to any of his grand-daughters should stand divested on the happening of any contingency, then he would have said so in the will, assuming that he could have made such a provision. But the will nowhere says that the properties bequeathed to the appellant and her sister should cease to be their properties on their dying issueless. Obviously what the testator intended was that if any of his grand-daughters dies issueless before the devolution took place then the entire property should go to the other granddaughter. To our mind the intention of the testator is plain from the language of the will.

To find out the effect of the will before us we have to look to ss. 1-4 and 131 of the Indian Succession Act, 1925. Section 124 says :

> "Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for be occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable."

-L864 Sup.CI/72

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Illustration (ii) to that section says

> "A legacy is bequeathed to A, and in the case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect."

If s. 124 applies to the facts of the case, as we think it does, then it is clear that the legacy claimed by the appellant is unavailable as the contemplated contingency did not occur before the fund bequeathed was payable or distributable. Section 124 deals with devolution. But as we shall presently see s. 131 deals with divestment of an estate that had vested. Mr. Chagla contends that the governing provision is S. 131. That section says:

> "A bequest may be made to any person with the condition super added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person."

had already vested. It speaks of an estate going over to another person. As seen earlier clause 5 of the will is not a defeasance clause.

A case somewhat similar to the one before us came up for consideration before the Judicial Committee of the Privy Council in Norendra Nath Sircar and anr. v. Kamal Basini Dasi(1) Therein a Hindu at his death left three sons, the eldest of full age and the other two minors. In his will were the directions "My three sons shall be entitled to enjoy all the movable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving son shall be entitled to all the properties equally". Interpreting this clause the Judicial Committee held that those words gave a legacy to the survivors contingently on the happening of a specified uncertain event, which had not happened before the period when the property bequeathed was distributable, that period of distribution being the time of the testator's death. In arriving at this conclusion, the Judicial Committee relied on s. 111 of the Indian Succession Act, 1865. That provision is similar to s. 124 of the Indian Succession Act, 1925.

For the reasons mentioned above we are in agreement with the courts below that the suit brought by the appellant is unsustainable. This appeal is accordingly dismissed with costs.

Appeal dismissed.

K.B.N. Appeal dismissed.

(1) I.L.R. 23, Cal, 563.