

CASE NO.:
Appeal (civil) 9961-9962 of 1995

PETITIONER:
ARUNKUMAR AND ANR.

RESPONDENT:
SHRINIWAS AND ORS.

DATE OF JUDGMENT: 08/04/2003

BENCH:
DORAISWAMY RAJU & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003 (3) SCR 453

The following Order of the Court was delivered:

The above appeals have been filed against the common Judgment and decree passed by the Division Bench of the High Court of Bombay, Aurangabad Bench, on 20.9.1993 in FA Nos. 3 and 36 of 1986, whereby the learned Judges in affirming the decision of the Trial Court, have chosen to reject the appeals including the cross-objections.

The only question that arose for consideration was as to the construction to be placed on the Will dated 28.1.1969, executed by late Sitabai wife of Ramchandra Ganesh Mudhalwadkar. Indisputably, she is the absolute owner of the property which was the subject matter of the Will in question. As per the Will, a translated copy of which was furnished and placed on record, the testator made the bequest in the following terms:

"After my death, my husband Shri Ramachandra Ganesh Mudhalwadkar shall be the heir and owner of my property as detailed below. In accordance with this Will (i) Master Anilkumar s/o Narhari aged 12 (ii) Master Arunkumar s/o Narhari aged 9 (iii) Master Shashikant s/o Narhari aged 6, shall be the owners of my property after the death of my husband. Narhar Shamrao Satarkar will be their guardian. My property, the details of which are given below shall be enjoyed by my husband Shri Ramachandra Ganesh Mudhalwadkar and the above named (i) Anilkumar (ii) Arunkumar (iii) Shashikant sons of Narhar Shamrao Satarkar in accordance with this Will. This will is being made for the benefit and enjoyment of the property by my above named husband and minor boys. The said minor boys are the sons of my niece i.e. the sons of the daughter of my brother. I have no issues and there is no likelihood of any, now. These boys and their mother have stayed with me since their childhood. That is why I have the same affection for them as if they are my children. Since I am fond of them, I wish that my property should naturally go to them after my death and the death of my husband. The source of my property which is being given away by this testament is like this. This is my self acquired property. At the time of my marriage, my mother has given me 15 tolas of gold. After my marriage my husband has given me ornaments weighing 20 tolas. Thus 35 tolas of gold is my Stridhan and out of the sale proceeds of gold the said property is purchased.

The relations of my husband have no right to this estate nor there will be any in future. "

The testator died on 20. 5. 1976. Her husband who came into possession of the property under the Will also died on 20. 8. 1976. It appears that the brother of Ramachandra-deceased husband of the testator, came with his children to perform the last rites of deceased Ramachandra and from that time onwards he continued to stay in the property by dislodging the

plaintiffs who were minors, at that time, followed by some criminal complaints etc. It appears that soon thereafter a civil suit No. 689/1976 against the appellant in FA No. 36 of 1996 then a minor and the father of the appellants was filed for an injunction restraining him from interfering with the possession of the properties and for a declaration that he is the absolute owner of the house. The said suit appears to have ended into a compromise, in the teeth of undue pressures and coercion due to some police complaints and that by virtue of the compromise decree passed in the said suit, the respondents continued to hold possession of the property. The appellants filed special civil suit No. 76/ 1989 contending that as per the Will of the deceased Sitabai, referred to above, they had become the owners of the property after the life time of her husband Ramachandra and the compromise decree obtained in the presence of the father of the appellants, was vitiated by undue influence, coercion and misrepresentation and therefore, it does not affect the rights of the appellants to the property under the Will. Claiming that the defendants were in unlawful possession of the suit property the appellants-plaintiffs, claiming to be the real owners and entitled to get possession of the suit property, filed a suit for possession. The suit was hotly contested and the learned trial Judge after trial though sustained the claim that the compromise decree passed in RCS No. 689 of 1976 was vitiated by coercion and misrepresentation and will not stand in the way of the appellant-plaintiffs, construed the Will to mean that the disposition in favour of the plaintiffs was preceded and superseded by the disposition in favour of the deceased Ramachandra the husband of the testator, who according to the learned trial Judge in the light of Section 124, illustration (i) of the Indian Succession Act, 1925, inherited the property as full owner and therefore, the plaintiffs were not entitled to the relief as prayed for.

Aggrieved the appellants herein have filed two separate appeals. Defendants 1 to 3 and 5 to 7 have filed cross-objections challenging the findings regarding the nature and legality of the compromise decree passed in RCS no. 689 of 1976. Those appeals as well as cross-objections came to be dismissed affirming the decision of the learned trial Judge, resulting in the filing of these appeals.

The learned counsel for the appellants reiterating the stand taken in the courts below contended that the Will in question has not been properly construed and the construction made thereof in the light of Section 124, illustration (i), resulted in a grave error of law. The husband of the testator had, according to the learned counsel, got only a life estate and not absolute estate as a full owner and the construction placed on the Will by the courts below, defeats the wishes and intention of the testator, and therefore cannot be sustained.

Per contra, the learned counsel appearing on behalf of the respondents while deriving inspiration from the findings of the courts below contended that the legacy in favour of the plaintiffs will not take effect on the terms of the Will unless the husband of the testator pre-deceased the testator and that at any rate the interest created under the Will in favour of the husband Ramachandra was not only an absolute one but also takes effect immediately after the death of the testator.

The essential principles which should guide the courts in interpretation of Wills, in contrast to the other class or category of documents, have been set out, on a review of the entire case law on the subject, succinctly in the decision of this Court in Navneet Lal @ Rangi v. Gokul and Ors., [1976] 1 SCC 630, as hereunder:

(i) The fundamental rule is to ascertain the intention of the testator from the words used, the surrounding circumstances for the purpose of finding out the intended meaning of the words which have been employed;

(ii) The court, in doing so is entitled to put itself into the armchair of the testator and is bound to bear in mind also other matters than merely

the words used and the probability that the testator had/would have used the words in a particular sense, in order to arrive at a right construction of the Will and ascertain the meaning of the language used;

(iii) The true intention of the testator has to be gathered not by attaching importance to isolated expression but by reading the Will as a whole, with all its provisions and ignoring none of them, as redundant or contradictory, giving such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative;

(iv) 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;

(v) It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will, unless the law prevents effect being given to it. If even there appear to be two repugnant provisions conferring successive interests and the first interest created is valid the subsequent interest cannot take effect, the court will proceed to the farthest extent to avoid repugnancy, so that effect could be given (as far as possible, to every testamentary intention contained in the Will.

After declaring the above position, the term 'Malik' used therein, as in the present case before us, despite the use of language such as-"of my entire estate.....and shall have all the proprietary powers" construed the Will to confer only a mere life estate, the context and surrounding circumstances were relied upon to give effect to the real intention of the testator in giving the property ultimately to the testator's sister's son. The distinction attempted by the High Court to exclude the applicability of the ratio laid down therein is without any rhyme or reason and not based upon any genuine or real difference. The High Court instead of objectively construing the Will, applying the well settled principles in the context and surrounding circumstances disclosed from the Will itself and deducing its conclusion by a rational process of reasoning, first assumes the bequest to be in favour of the husband to be absolute and then attempts to distinguish the decision of this Court in its application to the case on hand as irrelevant considerations.

We have carefully considered the submissions of the learned counsel appearing on either side. On going through the recitals in the Will and construed in the light of the intention openly and firmly expressed in unmistakable terms, by the testator as well as the underlying scheme of disposition made under the Will, as also the reasons which impelled her to bequeath ultimately the properties for the benefit of the minors, the appellants, we are unable to subscribe to the construction placed by the courts below or approve of the same. Though it is stated that after the death of the testator her husband Ramachandra shall be the heir and owner of the property there is an essential rider and limitation indicating that such succession or ownership has to be "as detailed below", meaning thereby further stipulations as are contained in the Will. The said clause in the Will is immediately followed by the provisions that in accordance with the Will the three appellants herein shall be the owners of the property after the death of the husband. The intention of the testator in respect of what has been bequeathed in favour of the husband of the testator is only a limited life interest, is made clear also by the words next following, "My property.....shall be enjoyed by my husband.....and the above named.....three minors. " It is found

further stated in the Will that the same is being made "for the benefit and enjoyment of the property by my above husband and minor boys." Reasons also have been assigned in the Will itself as to why those three minor children have been chosen for being given the ultimate and absolute rights after the

death of her husband. In addition to all this, there is a specific clause which in unmistakeable terms stipulate that "the relations of my husband have no right to this estate nor there will be any in future. "

In the light of the above noticed provisions in the Will, the testament cannot be construed to bequeath the property absolutely in favour of the husband and placing such a construction would amount to not only re-writing the several clauses in the Will but would constitute violence to the language and further defeat the very intention of the testator. Courts have often reiterated the cardinal principle that the intention of the testator should be given the primary importance and construe the words in the background of the intended meaning which the testator himself desired to ascribe to the words used. There are overwhelming intrinsic materials in the document itself which, in our view, necessitate a limited meaning being given to the word 'Malik' in this case also to construe the bequest in favour of the husband to be a life estate only. We are convinced, on going through the recitals in the Will, that the only possible and reasonable construction that could be placed on the Will by giving full effect to the intention of the testator as found expressed in all relevant portion of the Will would be to construe the bequest made in favour of her husband as one for life interest and remainder bequeathed absolutely in favour of the three minors after the life time of her husband.

Strong reliance placed by the learned counsel for the respondents on the decisions of this Court in *Mauleshwar Mani and Ors. v. Jagdish Prasad and Ors.*, [2002] 2 SCC 468 are inappropriate having regard to the vast and radical difference in the language of the document construed therein and the one before us, in this case. The provisions contained in Section 124 will have no relevance to the case on hand and on the very construction of the Will, the claim of the appellants deserves to be upheld.

Consequently, the appeals are allowed, the judgment and decree of the courts below are set aside and the suit filed by the appellants shall stand decreed, as prayed for.

No costs.