CASE NO.:
Appeal (civil) 8814 of 2003

PETITIONER:
M/s. Bay Berry Apartments Pvt. Ltd. & Anr

RESPONDENT:
Shobha & Ors

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. SINHA, J.

V. Papaiah Naidu owned a large number of movable and immovable properties. He had 5 sons, viz, V. Perumala Swamy Naidu, V. Sudarshanam Naidu, V. Balakrishna Naidu, V. Deena Dayalu Naidu, V. Ramakrishna Naidu and 4 daughters, viz., Rukminiyamma, Pushpamma, Hamsaveniyamma and Bhagyalakshmiyamma. He executed a Will on 14.7.1932. The said Will was a registered one. A portion of the properties was bequeathed in favour of defendant No. 1. He was then a minor. The properties bequeathed in his favour were described in Schedule E of the Will. In terms of the said Will, the sons of the testator got life interest. Only, after his death his heirs, legal representatives could inherit the same. On 3.12.1975 the original defendant No.1 and his son executed a deed of sale in favour of defendant No. 2, M. Krishna Reddy. On or about 30th January, 1982, defendant No. 2 disposed of the said property in favour of defendant No. 3. Plaintiffs-Respondents who are the daughters of original defendant No. 1 filed a suit on 30.7.1982 before the City Civil Judge, Bangalore on 30th July, 1982 inter alia praying for the following reliefs.

"(a) declaring that the Plaintiffs are also lawful heirs entitled to the bequests under the Will dated 14.7.1932 executed by their grand-father as lineal heirs of the First Defendant,

(b) and consequently restrain by an order of permanent injunction the defendants, their agents, servants from demolishing, altering, constructing or reconstructing the suit schedule property.

(c) grant cost of the suit; and\005"

The plaintiffs, however, did not implead their brother as a party.

The bungalow which was the subject mater of the suit was demolished by Appellants herein whereupon the plaint was amended praying for a decree of mandatory injunction for restoration of the said property.

The learned Civil Judge in view of the pleadings of the parties framed as many as 12 issues, inter alia, in regard to:
(i) limitation
(ii) non-rejoinder of parties
(iii) adequacy of valuation of the suit and amount of court fees

The City Civil Judge, Bangalore by a judgment dated 6.1.1993 dismissed the suit, inter alia, opining that the suit was barred by limitation

as also for non-joinder of parties. It was also held that the court fees paid was inadequate.

Respondent Nos. 1 and 2 aggrieved by and dissatisfied with the said judgment preferred an appeal before the High Court of Karantaka. The said appeal has been allowed by reason of the impugned judgment.

The central issue in this appeal revolves round construction of expression 'heirs' used in the Will dated 14.7.1932.

Mr. U.U. Lalit, learned senior counsel appearing on behalf of the Appellants would submit that as the Will refers to 'Putra Poutra Parampara', the expression used therein, viz., 'heirs' would only be male lineal descendants and not the female ones. The Will, it was submitted, must be construed upon reading it in its entirety.

According to learned counsel, the expression 'Waristdar' (heirs) should be understood in the context of other expression used therein, viz., children (Mavvarajjay). Whereas while bequeathing the properties in favour of the ladies, it had specifically been mentioned that on the death of the testator the same will pass on to their children, while bequeathing the immovable properties it had clearly been mentioned that they will pass on to 'Waristdar', which must be held to mean only 'sons'. The suit, it was submitted, was also barred by limitation as by reason thereof, the sale deed executed in favour of Appellants by the original defendant No. 2 was questioned and in that view of the matter, the High Court committed an error in not invoking the provisions of Article 49 of the Limitation Act, 1963. The learned counsel would contend that the son of the original defendant No. 1 was deliberately not impleaded as a party in the suit as he had also executed the deed of sale dated 3.12.1975 along with his father, the original defendant No. 1 and as such the same was binding on him.

Appellants, Mr. Lalit would submit, were bona fide purchasers for value and in that view of the matter, the High Court committed a manifest error in granting a decree of injunction.

Mr. S.N. Bhat, learned counsel appearing on behalf of Plaintiffs-Respondents, on the other hand, would urge that the original defendant No. 1 having died in the year 1998, the suit at the time of its institution was a pre-mature one and thus, the question of its being barred by limitation does not arise. The original defendant No. 1 having died during the pendency of the suit and the brother of the plaintiffs having been impleaded as a party, it was submitted the judgment of the High Court is clearly sustainable and the relief can be moulded. The expression 'heirs' according to the learned counsel would not mean only a male descendant and same would depend upon the law prevailing at the relevant time as also in view of the fact that in terms of the provisions of the Hindu Succession Act, the daughters also became heirs of the defendant No. 1, they would also be beneficiaries along with their brothers.

Mr. K. Swamy, learned counsel appearing on behalf of Respondent No. 3 supported the contention of Mr. Bhat.

The original Will was written in the local language of Karnataka. The executor, V. Papaiah Naidu, was a forward-looking person. He was a man of charitable dispensation. He executed the Will in his anxiety to see that all his sons reside together. Possibly with that view of the matter he bequeathed life interest in favour of his sons. At the time of the execution of Will, he was suffering from paralysis. He was aged only 64. Although, he had recovered to a great extent but evidently he was not sure about his physical condition. He, therefore, appointed his eldest son V. Perumala Swamy Naidu and second son V. Sudarshanam Naidu as executors of the said Will. The relevant provisions of the said Will read as under:

"7) The properties mentioned in Schedule \026 A

have been given to my sons as explained in Schedule B, C, D, E and F. They are entitled to enjoy throughout their lives only the income accrued from the properties given to respective shares and they do not have any right whatsoever, to alienate the properties by way of sale, usufructory mortgage, pledge, etc. After them, their respective properties shall descend to their respective heirs with full title and without any problems.

11) If on account of recovery of arrears due from others, the executors happen to purchase any immovable property, such properties shall also be equally divided among my sons and be enjoyed by them as mentioned in para 8 of this Will. If the executors find it beneficial and useful to sell any immovable property described in Schedule 'A' of this Will, excepting the House No. 23 in Castle Street they can do so. And from the money so got from the sale of the property, the executors should purchase immovable property which will fetch good rent, in the names of those to whose share the properties sold had gone. Until they purchase such new immovable properties the sale amount should be deposited in any of the banks mentioned in this Will and the executors shall purchase new immovable properties from the said money plus interest. My sons should enjoy the respective immovable properties thus purchased subject to the conditions stipulated in para 8 and 9 of this Will.

12) My sons are bound to reside in the House No. 23, Dodda Soolu Castle Street Civil and Military Station in which I am presently residing. My sons do not have any right to alienate the said house through sale, gift, mortgage, etc. After my sons their legal heirs shall share it equally and enjoy the same with full title. My sons should remain as a joint family until the said Ramakrishna Naidu attains the age of 18 years. If anybody goes separate and is a major and married, the executors should keep on paying him a sum of rupees one hundred and fifty every month for his household expenditures till his share of property and immovable properties are handed over to him and should be debited to the rent account of his immovable property."

He not only gave his daughters sufficient ornaments at the time of their marriage as also some immovable properties, he bequeathed some property in favour of his daughters in law as well. The executors were enjoined with a duty to get the other daughters married. The daughters became entitled to enjoy rent obtained from the houses purchased throughout their life, subject, of course to the condition that the same shall not be alienated. The properties given to the legatees including married daughters, married daughters-in-law, the same were to be inherited by their children with full title on their death. He also saw to it that his friend who had five daughters is provided with some amount for each daughter.

From a perusal of the Will, it appears that he had given Rs.25,000/- for some charitable purposes. The executors were asked to pay Rs.10,000/- to Mysore University and from the interest of that amount, arrangements were directed to be made to award scholarship to promote education amongst the girls and boys belonging to the Naidu caste who were then

studying in the colleges of Bangalore.

At the end, he in his Will, stated :

"I bless my sons that they shall lead a happy life harmoniously and enjoy with improving the properties given to them by me along with their heirs and descendents as described in the Will and I pray God for their welfare."

Indisputably, in the year 1932 when the Will was executed the plaintiffs were not the heirs of the propounder. In terms of the law as was existing then, they were not heirs of the testator. They could not have inherited their property further as they were not the heirs of V. Papaiah Naidu.

The Parliament, however, enacted Hindu Succession Act, 1956. On the date of execution of the Will, the original defendant No. 1 was a minor. He was married later on. He was blessed with a son only in the year 1957. On the date when the deed of sale was executed, i.e. on 3.12.1975, the original defendant No. 1 and his son were majors. He has not questioned the legality of the said deed of sale. The question, however, would arise as to whether the plaintiffs became the heirs of their father having regard to the provisions of the Hindu Succession Act. In law, indisputably, the question is whether they were 'heirs' within the meaning of the said term as expressed in the Will. By reason of the Will, the original defendant No. 1 did not succeed to the interest absolutely. He was given only life interest. Succession under the Will opened only on his death. He died during pendency of the suit in the year 1998. Succession opened only then. In the year 1975, the original defendant No.1 and his son, thus, had no authority to execute any deed of sale. The defendant No.1 could only transfer or alienate the interest he had in the property. Respondent No.3, thus, did not inherit the property although in the deed of sale dated 3.12.1975 it was stipulated that both of them were owners thereof and had perfect title therein.

The suit was a pre-mature one in the sense that the declarations sought for that the plaintiffs were the beneficiaries under the Will could have been granted in their favour only upon demise of their father and not prior thereto.

Now, the principal question is as to what would be the meaning of expression 'heirs'. We have noticed hereinbefore that whereas in relation to the male descendancy the executor had used the expression 'heirs' in regard to the succession of property after their death, which were bequeathed in their favour; the expression 'children' has been used in relation to the inheritance of the property bequeathed in favour of daughters and daughters in law.

The expressions 'children', 'issue' and 'heirs' would ordinarily be not synonymous but sometimes they may carry the same meaning. All the aforementioned terms have to be given their appropriate meanings.

In P. Ramanatha Aiyar's Advanced Law Lexicon at page 2111, it is stated:

"There is doubtless a technical difference in the meaning of the two words "heirs" and "children", and yet in common speech they are often used as synonymous. The technical distinction between the terms is not to be resorted to in the construction of a will, except in nicely balanced cases.

"When the general term "heirs" is used in a will, it will be construed to mean 'child' or 'children', if the context shows that such was the intent of the testator."

Where the words "children" and "heirs" are used in the same instrument in speaking of the same persons, the word "heirs" will be construed to mean "children"; such usage being treated as sufficient evidence of the intention to use the word "heirs" in the sense of "children."."

Heirs may be lineal or collateral. When we say that the Will was a carefully drafted document, evidently, the guarantor thereof was aware of the fact that as thence some of the sons having not been married; the question as to who would be their heirs was uncertain.

If they did not have any issue, the properties in terms of the law as then existing might have passed on to their brothers.

Whether the expression 'heirs' would, thus, mean legal heir, the question specifically came up for consideration in N. Krishnammal vs. R. Ekambaram & sons [(1979) 3 SCR 700 : (1979) 3 SCC 273], wherein it was stated:

"It is well settled that legal terms such as "heirs", used in a Will must be construed in the legal sense, unless a contrary intention is clearly expressed by the testator\005"

Referring to an earlier decision of this Court in Angurbala Mullick vs. Debabrata Mullick [(1951) 2 SCR 1125], this Court opined that the expression 'heirs' cannot normally be limited to issues and it must mean all persons who are entitled to the property held and possessed by/ or under the law of inheritance. In that case, the widow would not have been entitled to inherit the property of her husband as she was not an heir. However, she became an heir by reason of the provisions of the Hindu Succession Act.

Hindu Succession Act was enacted to codify the law relating to intestate succession amongst Hindus. Section 4 of the Act provides that the same has an overriding effect over other laws for the time being in force. Sub-Section (1) of Section 4 reads as under :

"4. Overriding effect of Act.\026 (1) Save as otherwise expressly provided in this Act, \026

(a) any text, rule or interpretation of Hindu Law or any custom or usages as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

A bare perusal of the aforementioned provision, thus, clearly goes to show that the Court must take into consideration the purport and object of the Act.

In Daya Singh (Dead) through Lrs. and Anr. vs. Dhan Kaur [(1974) 1 SCC 700], referring to the decision of the Privy Council in Duni Chand vs. Anar Kali [AIR 1946 PC 173], this Court opined :

"It would be noticed that the Privy Council interpreted the words "dying intestate" as merely meaning "in the case of intestacy of a Hindu male" and said that to place this interpretation on the Act is not to give retrospective effect to its provisions. Those are the

very words found in Section 8. These may be contrasted with the words of Section 6 "where a male Hindu dies after the commencement of this Act." Here the reference is clearly to the time of the death. In Section 8 it is only to the fact of intestacy. The material point of time, as pointed out by the Privy Council, is the date when the succession opens, namely, the death of the widow. It is interesting to note that the Privy Council was interpreting the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 where the two contrasting expressions found in the Hindu Succession Act, 1956 are not found. The case for the interpretation of the words "dying intestate" under the Hindu Succession Act is stronger. The words "where a male Hindu dies after the commencement of this Act" in Section 6 and their absence in Section 8, are extremely significant. Thus two propositions follow: (1) 'Succession opens on the death of the limited owner, and (2) the law then in force would govern the succession."

Reliance has been placed by Mr. U.U. Lalit on a decision of this Court in Dr. Mahesh Chand Sharma vs. Smt. Raj Kumar Sharma and others [(1996) 8 SCC 128]. In that case, Ram Nath Dewan was the ancestor of the parties. He died in the year 1953 leaving behind his widow and other children. The succession, therefore, opened in 1953, i.e., before coming into force the provisions of Hindu Succession Act, 1956. The property at his hands was self-acquired. He made a will on 10.4.1942 bequeathing a house to his wife Satyawati. She could enjoy the said property during her life time. In the Will it was provided that on her death the property would devolve on his legal heirs. A settlement was arrived at between Satyawati and first defendant therein on 27.1.1955, in terms whereof she surrendered all her right, title and interest in the property in his favour, retaining a mere right of residence in the first floor. In the fact situation obtaining therein and in particular, having regard to terms of the Will and Section 119 of the Indian Succession Act, 1925, it was held :

"We are, therefore, of the opinion that by operation of law, i.e., by virtue of Section 119 of the Indian Succession Act, the bequest to "the legal heirs of the testator" vested in the first defendant \026 he alone being the legal heir of the testator on that date \026 on the date of death of Ram Nath (testator). The vesting of bequest to "the legal heirs of the testator" was not postponed till the death of the interposer, Satyawati. The language of clause (i) of the Will cannot be construed otherwise.

Shri Bhandare then contended that the use of the plural 'heirs' \026 and not the singular 'heir' \026 in clause (i) is indicative of the intention of the testator that he was referring to his legal heirs as may be in existence on the death of Satyawati. In our opinion, this argument is plainly unacceptable. In the year 1942, Ram Nath could not have foreseen the enactment of Hindu Succession Act, 1956 or that in future his daughters would also become his "legal heirs" by some change in law. The language of clause (i) does, no doubt, convey the intention of the testator, viz., immediate bequest (for life) is to Satyawati and the ultimate (absolute) bequest is to his legal heirs after the death of Satyawati. But this clause has to be read, understood and construed in the light of the rule contained in Section 119 of the Indian Succession Act, as explained hereinabove \026 with the necessary consequence, which too has been set out hereinabove."

It was opined that Section 14(1) of the Hindu Succession Act, 1956

would have no application as she was not possessed of the entire property on the date of commencement thereof. However, it was held that she became the absolute owner in respect of the first floor of the house in question. The decision of this Court in N. Krishnammal (supra), in the aforementioned fact situation, was held to be not applicable, stating that it was not a case of contingent bequest.

Plaintiffs who are the daughters of the original defendant No. 1, in law was not entitled to inherit their father's share in the properties but for the provisions of the Hindu Succession Act, which brought statutory change. Admittedly, by reason of Section 8 of the Hindu Succession Act, they became heirs of their father in terms whereof the sister's share is equal to that of the brothers. If they were to be excluded, it would have been said so in the Will.

The decision of this Court in N. Krishnammal (supra) is binding on this Court. The meaning of the expression "heir" in the context of the Hindu Succession Act has been considered therein. The expression "heir" would mean a legal heir. In construing a document, this Court cannot assign any other meaning. A document as is well-known must be construed in its entirety. Although some parts thereof should not be read in isolation, the contents of Clause (7) of the Will are really important. It may be true that in the last part of the Will, the propounder while placing his sons adduced the words 'Putra Poutra'. But the same cannot control the unequivocal expression contained in Clause (7) thereof.

When a document is not uncertain or does not contain an ambiguous expression it should be given its literal meaning. Only when the contents are not clear the question of taking recourse to the application of principles of construction of a document may have to be applied. It is also not a case where there exists any inconsistency between an earlier and later part of the document. What is necessary for true, proper and effective construction of the Will in question is to give effect to the intention of the propounder of the Will. It will bear repetition to state that an embargo was put on his son inheriting the property in absolute terms. Their title was to be limited. They could enjoy the only property during life time.

We fail to understand as to how in the year 1975 the sale deed could be executed. The original defendant No. 1 knew the implication of Will. He was aware that an embargo had been created in his right to transfer the property to any other person. In view of the injunction contained in the said document he could not have alienated the property. He could only be in enjoyful possession thereof. The original defendant No. 1, therefore, thought that if his son is impleaded as one of the executant of the document; probably the embargo created under the Will would not come in his way. In law, he was not right there. His son also did not inherit the property as he was alive. In terms of Clause (7) of the Will, the question of his son's inheriting the property from the original defendant No.1 did not arise. Mr. Bhat is correct in his submission that the suit was pre-mature as no cause of action for the suit arose for the plaintiffs for obtaining a decree to set aside the deed of sale dated 3.12.1975. The cause of action arose on the death of the original defendant No.1 which took place during pendency of the suit. If the cause of action arose during pendency of the suit and if having regard to the facts and circumstances of this case, the suit keeping in view the subsequent event could not have been dismissed on the ground that it was barred under the law of limitation, we are of the opinion that it would not be proper for us to interfere with the impugned judgment.

An appeal is in continuation of the suit. The appellate court in view of Order VII Rule 7 of the Code of Civil Procedure may take into consideration subsequent events with a view to mould the relief. The High Court, therefore, could not be said to have acted illegally and wholly without jurisdiction in passing the impugned judgment.

In Vithalbhai (P) Ltd. v. Union Bank of India [(2005) 4 SCC 315],

the law is stated in the following terms:

"No amount of waiver or consent can confer jurisdiction on a court which it inherently lacks or where none exists. The filing of a suit when there is cause of action though premature does not raise a jurisdictional question. The claim may be well merited and the court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff should have waited a little more before entering the portals of the court. In such a case the question is one of discretion. In spite of the suit being premature on the date of its institution the court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. Would it serve any purpose, and do the ends of justice compel the plaintiff being thrown out and then driven to the need of filing a fresh suit \027 are pertinent queries to be posed by the court to itself."

The son of the original defendant No.1 was not a party but he is a party before us now. He supports the plaintiffs but then he himself did not challenge the deed of sale. So far as his interest in the property is concerned, the same may be claimed by the appellants herein having regard to the principles contained in Section 41 of the Transfer of Property Act.

It is, therefore, not a case where Articles 59 and 60 of the Schedule appended to the Limitation Act would apply. Reliance placed by Mr. Lalit on Madhukar Vishwanath v. Madhao and Others [(1999) 9 SCC 446] and Prem Singh & Ors. v. Birbal & Ors. [2006 (5) SCALE 191 : (2006) 5 SCC 353], have no application in the instant case. In Prem Singh (supra), it was held :

"When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of law, as it would be a nullity.
Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be."

In Madhukar Vishwanath (supra), the question which arose for consideration was the effect of transfer of a minor's property. The validity of the sale deed was, therefore, in question.

In this case, however, the plaintiffs-respondents could claim their right only after the death of their father, the original defendant no. 1 and not prior thereto.

In Prem Singh (supra), this Court construed the said provisions in the light of a similar contention raised as in Madhukar Vishwanath (supra) that the deed of sale being void, the provisions of Article 59 will have no application. The fact situation prevailing therein was different.

Submission of Mr. Lalit that his clients are bona fide purchasers is not of much significance in this case. If the deed of sale executed by the original defendant No.1 and the Respondent No.3 is void and thus, not binding upon the plaintiffs-respondents, the consequences therefor would ensue. What would be the effect of the sale deed vis-'-vis the Respondent No.3, as we have noticed hereinbefore, would be different having regard to the provisions contained in Section 41 of the Transfer of Property Act. In

the event a partition suit is filed, which property shall be allowed in the share of the Respondent No.3 is not a matter wherewith this Court's attention is required to be engaged. Such question shall appropriately fall for consideration in appropriately constituted suit.

For the reasons aforementioned, we are of the opinion that no case has been made out for exercise of our discretionary jurisdiction under Article 136 of the constitution of India. This appeal is dismissed with the aforementioned directions. In the facts and circumstances of this case, however, there shall be no order as to costs.