Pramod Kumari Bhatia vs Om Prakash Bhatia And Ors on 15 November, 1979

Equivalent citations: 1980 AIR 446, 1980 SCR (2) 53, AIR 1980 SUPREME COURT 446, 1980 ALL. L. J. 163, (1980) 2 SCR 325 (SC), (1980) 2 S C R 53, (1980) SCJ 30, 1980 (1) SCC 412, 1980 REV LR 385, 1980 UJ (SC) 51, (1980) LS 27, (1980) HINDULR 380

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, Ranjit Singh Sarkaria

PETITIONER:
PRAMOD KUMARI BHATIA

Vs.

RESPONDENT:
OM PRAKASH BHATIA AND ORS.

DATE OF JUDGMENT15/11/1979

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SARKARIA, RANJIT SINGH

CITATION:
1980 AIR 446 1980 SCR (2) 53
1980 SCC (1) 412

ACT:
Will-Testamentary Will, construction of-Jurisdiction of the Court in exercising its curial draughtsmanship for the testator to supply the specific words from the Will, explained.

HEADNOTE:
Evidence-Additional evidence reception of by the High Court-Supreme Court cannot interfere with the discretionary power of the High Court, when the application is very much belated.

The testator Pearey Lal Singh Bhatia died on 30-3-1952 leaving behind him a Will dated 8-4-44, a widow Lakshmi Devi being his second wife, a son Om Prakash by Lakshmi Devi, and

the widow and daughters (Manmohini, Raj Kumari and Pramod Kumari respectively) of a predeceased son by a pre-deceased first wife. Manmohini, the daughter-in-law of the testator and her daughter Raj Kumari had left the family house and moved away to Mathura, while Pramod Kumari stayed in with her grand father and was brought by up him. Lakshmi Devi, widow of Pearey Lal Singh died in 1958.

The suit filed by Om Prakash for title to a sum of Rs. 16,490/- lying in deposit with two banks was dismissed by the trial Judge, who on a strict and narrow construction of the will came to the conclusion that Om Prakash was not entitled to succeed under the will and that on the death of Lakshmi Devi the amount had to be divided among Om Prakash, Man Mohini, Raj Kumari and Pramod Kumari. On appeal the High Court of Allahabad held that on a true construction of the will Om Prakash alone was entitled to the amount.

Dismissing the appeal by special leave, the Court,

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HELD : 1. A reading of the whole of the will clearly shows the unambiguous intention of the testator that his son Om Prakash should succeed to his estate after the death of Lakshmi Devi and none else was to be the owner of the properties. [57 A]

The testator noticed the existence of five possible heirs : his wife, Lakshmi Deve, his son Om Prakash, his deceased son Krishna Chandra's widow, Manmohini and Krishna Chandra's daughters, Raj Kumari and Pramod Kumari. He was desirous that Pramod Kumari should be brought up by himself and his wife and that they should also perform her marriage. He was also desirous that a sum of Rs. 2000/- should be set apart for the marriage of Raj Kumari. Apart from that, he did make it clear that Man Mohini, Raj Kumari and Pramod Kumari should have no right or interest in any of his properties under any circumstances. On his death his properties were to go to his wife Lakshmi Devi who was to have a life interest in them. If his wife Lakshmi Devi predeceased him, the properties were to go to his son Om Prakash. [56 F-H]

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2. No doubt, the testator while specifying that Om Prakash was to take the properties in case Lakshmi Devi predeceased the tester, did not specify that Om Prakash should take the properties after the death of Lakshmi Devi in case Lakshmi Devi survived the testator to enjoy the life estate given to her under the will. But this is a case where the testator's intention to give the properties to Om Prakash in case Lakshmi Devi predeceased the testator was so patently and reasonably certain, `no speculation but a compelling conviction', that the Court would be justified in exercising its curial draughtsmanship for the testator and supplying the specific words missing from the will. The Court has undoubted jurisdiction to do so. Therefore necessary words to that effect can and must be read into

will. [57 A-C, 58-C]

William Abbott v. Eliza Middleton, 7 H.L.C. 68 Eden v. Wilson, 4 H.L.C. 284, Re Smith (1947 2 All England Law Reports 708), Re Cory (1955 1 W.L.R. 725 Re. Riley's Will Trusts (1962 I W.L.R. 344); quoted with approval.

3. Supreme Court cannot interfere with the discretion exercised by the High Court in refusing to receive additional evidence for which an application was made after several years. [58 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2577 of 1969.

From the Judgment and Order dated 18-7-1967 of the Allahabad High Court in First Appeal No. 166/60.

M. V. Goswami for the Appellant.

Mohan Behari Lal and Vishnu Mathur for Respondent No.

1. The Judgment of the Court was delivered by CHINNAPPA REDDY, J.-The question in the appeal is about the construction of a will. The facts which are now not in dispute before us are as follows : The testator, Pearey Lal Singh Bhatia died on 30-3-52 leaving behind him a will dated 8-4-1944, a widow Lakshmi Devi being his second wife, a son Om Prakash by Lakshmi Devi and the widow and daughters (Manmohini, Raj Kumari and Pramod Kumari respectively) of a pre-deceased son by a pre-deceased first wife. Manmohini and her daughter Raj Kumari had left the family house and moved away to Mathura while Pramod Kumari stayed on with her grand-father and was brought up by him. Lakshmi Devi, widow of Pearey Lal Singh, died in 1958. We are now concerned with the title to a sum of Rs. 16,490/- lying in deposit with the State Bank of India and the District Cooperative Bank, Bulandshahr. Om Prakash claims the amount under the will dated 8-4-1944. The will, a registered one, was in the following terms:-

> "I, Pyare Lal Singh, son of Babu Ghanshyam Narain Saheb, by caste Kshatriya Bhatia, resident of Mohalla Sheopuri, Bulandshahr, do declare as follows:-
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> "I, the executant, am owner in possession of the property specified as given below in Schedules `A', `B' and `C'. The property given in Schedules `B' and `C' has been purchased by me the executant, with my own funds in the name of my wife Smt. Laksmi Devi and my son Om Prakash. In fact I, the executant, am the owner of it as well. The entire movable and immovable property, owned and possessed by me, is my self, acquired property and is not ancestral property, and I the executant, have all sorts of rights to make transfers in respect thereof. Now I, the executant, am about sixty years of age and I have a wife, Lakshmi Devi, a son, Om Prakash, and two dear

grand-daughters, Raj Kumari and Pramod Kumari, daughters of my first son Krishna Chandra Singh, M.A.,LL.B., who has already died in June, 1932, leaving behind his widowed wife Smt. Man Mohini Devi, besides these two daughters aforesaid. Both the daughters of my deceased son aforesaid, who are my grand-daughters, are still minors. By way of prudence and for future management I, the executant, make a will as under :- That I, the executant, till I am alive, shall remain owner of my entire movable and immovable property, cash etc., which I possess at present or which may be added to it during my life time and which I, the executant, leave behind at the time of my death. After my death, if my wife Smt. Laxmi Devi remains alive, she will become owner of my entire estate with life interest, but she shall have no power to transfer any movable and immovable property. If my wife Smt. Lakshmi Devi predeceases me, then under such circumstances, after my death my son Om Prakash, who has now appeared at the examinations of the X class of the English School and who is 18 years of age, shall become permanent owner in possession of my entire estate and he shall be bound by the conditions laid down in this will. I and my wife shall be duty-bound to maintain and perform marriage etc. of my grand-daughter Pramod Kumari and my son Om Prakash and it will incumbent upon me and my wife to discharge that duty. My second grand-daughter Raj Kumari lives with her mother at Mathura. After the death of her father, she or her mother did not come to me and remained under the guidance of her maternal grand-father and grand-mother. Therefore, it is the duty of the mother of my grand- daughter Rajkumari, who is a teacher in a girl's school in Mathura City, to maintain her and perform her marriage. Even then I lay down for her as well that a sum upto Rs. 2000/- may be given or spent for her marriage. Appropriate expenses are to be incurred over the education and marriage of my second grand-daughter Pramod Kumari and my son Om Prakash, who are living with me and are getting education. My daughter-in-law Smt. Manmohini Devi aforesaid or her daughters aforesaid or my any other relation shall not have any right or share in my any estate under any circumstances. Only the expenses of maintenance, marriage etc. of my both the grand-daughters aforesaid and later on the expenses of their bringing here and sending off shall be met according to custom in accordance with the directions given above. It is also my will that after my death, a sum of about Rs. 20/- per mensem out of the income from rent of shops and houses and other field property may be sent for charitable purposes in the following manner :- I shall continue to do all the charitable acts aforesaid during my life time. After my death, if my wife remains alive, she shall, and after her death my son Om Prakash, may he live long, shall be duty-bound to continue this charitable act. I have strong hopes that my wife Lakshmi Devi and my son Om Prakash shall execute this will of mine in every way and in this way they shall cause benediction to my soul, and that they shall make additions to my estate and shall not allow it to be under charge or to decrease in any way."

The testator, it is seen, noticed the existence of five possible heirs : his wife, Lakshmi Devi, his son Om Praksh, his deceased son Krishna Chandra's widow, Manmohini and Krishna Chandra's daughters, Raj Kumari and Pramod Kumari. He was desirous that Pramod Kumari should be

brought up by himself and his wife and that they should also perform her marriage. He was also desirous that a sum of Rs. 2000/- should be set apart for the marriage of Raj Kumari. Apart from that, he did make it clear that Man Mohini, Raj Kumari and Pramod Kumari should have no right or interest in any of his properties under any circumstances. On his death his properties were to go to his wife Lakshmi Devi who was to have a life interest in them. If his wife Lakshmi Devi predeceased him, the properties were to go to his son Om Prakash. Directions were given for the carrying out of certain charitable objects. His wife Lakshmi Devi and after her death, his son Om Prakash were enjoined to perform the charitable acts. A reading of the whole of the will clearly shows that it was the intention of the testator that his son Om Prakash and none else was to be the ultimate owner of the properties. No doubt, the testator while specifying that Om Prakash was to take the properties in case Lakshmi Devi predeceased the testator, did not specify that Om Prakash should take the properties after the death of Lakshmi Devi in case Lakshmi Devi survived the testator to enjoy the life estates given to her under the will. But this is a case where the testator's intention to give the properties to Om Prakash in case Lakshmi Devi predeceased the testator was so patently and reasonably certain, `no speculation but a compelling conviction', that the court would be justified in exercising its curial draughtsmanship for the testator and supplying the specific words missing from the will. The Court has undoubted jurisdiction to do so.

In William Abbott v. Eliza Middleton(1), the testaor gave an annuity of &2000 to his widow, and set apart, out of his personal property, a sum sufficient to provide for its payment. He directed that, on the death of his widow, the sum so set apart was to go to his son George for his life and on his death to George's children, but he directed, "in case of my son dying before his mother, then and in that case the principal sum to be divided among the children of my daughter". On the date of the will, George was not married. He married subsequent to the will and had a son. He died before the testator. The testator's widow died soon thereafter. A question arose whether George's son was entitled to take the sum after the death of the testator's widow. He could so take if the words "without leaving any child" could be supplied after the word "dying" in the deposition relating to the final gift over. The Lord Chancellor observed, "where there is an uncertainty as to the meaning of any part of a will, the right of a Court of construction even to introduce words, in case of necessity, is clearly stated by Lord St. Leonards, in the passage quoted from Eden v. Wilson(2), and declared the right of George's son to the sum.

Re Smith(3), re Cory(4) and re Riley's Will Trusts(5), are other instructive cases where words have been supplied by Courts because of "so strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed".

In Jarman On Wills, 8th Edn. 592, it is said :-

> "Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context."

As already observed by us, we do not have the slightest doubt in the present case that it was the clear and unambiguous intention of the testator that his son Om Prakash should succeed to his estate after the death of Lakshmi Devi. Necessary words to that effect can and must be read into the will.

The learned trial Judge, on a strict and narrow construction of the will, came to the conclusion that Om Prakash was not entitled to succeed, under the will, on the death of Lakshmi Devi and that the amount had to be divided among Om Prakash, Man Mohini, Raj Kumari and Pramod Kumari. On appeal, the High Court of Allahabad held that on a true construction of the will Om Prakash alone was entitled to the amount. In the view that we have taken, we agree with the conclusion of the High Court.

Before the High Court, Pramod Kumari filed an application for reception of additional evidence. The principal additional evidence sought to be adduced was an alleged letter said to have been written by late Pearey Lal Singh to the bank nominating Pramod Kumari as the person entitled to the amount in deposit with the Bank. The letter itself was not filed along with the application but a request was made to summon the letter from the Bank. The High Court rejected the application. The application to the High Court was made very many years after the suit had been filed, and also quite some years after the appeal had been filed before the High Court, and we do not think that we will be justified in interfering with the discretion exercised by the High Court in refusing to receive additional evidence at that stage. The appeal is therefore dismissed but in the circumstances with no order as to costs.

S.R. Appeal dismissed.