Madhuri Ghosh & Anr vs Debobroto Dutta & Anr on 9 November, 2016

Equivalent citations: 2017 (1) ALJ 610, 2016 (10) SCC 805, (2017) 169 ALLINDCAS 100 (SC), (2017) 134 REVDEC 606, (2017) 1 ANDHLD 206, (2017) 120 ALL LR 272, (2017) 123 CUT LT 583, (2017) 1 JCR 120 (SC), (2016) 12 SCALE 235, (2016) 3 UC 2104, (2017) 2 MAH LJ 503, (2017) 2 MPLJ 81, (2017) 3 CALLT 82, (2016) 3 ALL RENTCAS 866, (2017) 1 RECCIVR 543, (2016) 4 CURCC 217, (2017) 1 HINDULR 639, (2017) 1 CIVILCOURTC 498, AIR 2017 SC (CIVIL) 1677, AIR 2016 SUPREME COURT 5242, (2017) 1 CLR 57 (SC)

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Bench: Rohinton Fali Nariman, R.K. Agrawal

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10742 of 2016
(Arising out of SLP(C)No.4994 of 2014)

Madhuri Ghosh & Anr. ...Appellants

VS.

Debobroto Dutta & Anr. ...Respondents

J U D G M E N T

R.F.Nariman, J.

1. Leave granted.

2. The present appeal arises out of a judgment dated 5th July, 2013 passed by the High Court of Allahabad in which a second appeal has been allowed reinstating the trial Court decree, in which a certain Will has been construed to confer only a life interest on the plaintiffs.

3. The brief facts necessary to decide this appeal are as follows.

4. By a registered Will dated 21st January, 2000, one Ajit Kumar Ghosh bequeathed House No.77, Ram Bagh, Allahabad to his wife and elder daughter jointly. He went on to state in the aforesaid Will that after the death of his wife and his elder daughter, various other lineal descendants would become owners of specified parts of the immovable property, namely, House No.77. Since the bone of contention revolves around the correct construction of this Will, paragraphs 2 and 4 of the Will are set out herein:

> "2. That house no.77, Ram Bagh, Allahabad was inherited by me from my mother Smt. Subodh Bala Ghose vide registered Will dated 27.2.83 and I am the absolute owner of said immovable property. So long as I am alive I shall be the exclusive owner of the said property and after my death my said house no.77, Ram Bagh, Allahabad shall vest on my wife Smt. Madhuri Ghose and my elder daughter Sunanda Ghose jointly. After the death of my wife Smt. Madhuri Ghose my daughter Km. Sunanda Ghose shall become the exclusive owner of the said house property no.77, Ram Bagh, Allahabad. In case Km. Sunanda Ghose predeceases my wife Smt. Madhuri Ghose, then Smt. Madhuri Ghose shall become the exclusive owner of the said house property No.77, Ram Bagh, Allahabad. The ownership of my Ambassadar Car No.UPD 2575 shall pass on to my wife Smt. Madhuri Ghose.
>
> 4. That after the death of my wife Smt. Madhuri Ghose and my daughter Km.

Sunanda Gosh, my grandson Indranil Chaudhary son of Amit Chaudhary R/o AE- 232, Sector Salt Lake City Calcutta shall become the owner of the ground floor of house no.77, Ram Bagh, Allahabad and he shall be exclusive owner of the said portion and my grand daughter Km. Mohana Chaudhary d/o Amit Chaudhary r/o AE-232, Sector Salt Lake City Calcutta shall become the exclusive owner of second floor of house No.77, Ram Bagh, Allahabad and my grand son Devopriyo Dutta s/o Devobrito Dutto r/o 77, Ram Bagh, Allahabad shall become the owner of Ist floor of house no.77, Ram Bagh, Allahabad and none else shall have any right or title on the said house."

5. Shri Ajit Kumar Ghosh died on 18th June, 2001. His widow and elder daughter filed Suit No.747/2001 before the Additional Civil Judge, Senior Division, Allahabad on 8th October, 2001, in which it was claimed that the plaintiffs be declared as joint owners of one half of house no.77 by virtue of the Will dated 21st January, 2000. Paragraph 1 of the plaint expressly stated that the mother-in-law of plaintiff No.1 had bequeathed house no.77 jointly to her son and daughter-in-law i.e. plaintiff No.1, and that therefore the relief claimed against the defendants, who are other family members, would be confined to a declaration of the other half of the property which was the subject matter of the bequest. This position was not disputed by the defendants, and hence the parties went to trial basically on two issues - (I) whether a subsequent Will propounded by the defendants dated 4th June, 2001 superseded the Will dated 21st January, 2000 and must, therefore, be given effect and (II) if not, what is the correct construction of the Will dated 21st January, 2000. Suffice it to say that it has concurrently been found by the learned Additional Civil Judge and the Additional District Judge in first appeal, that the Will dated 4th June, 2001 was not proved. The only question, therefore, which survived was the correct construction of the registered Will dated 21st January, 2000.

6. Whereas the trial Court found that only a life interest was created in the said property in favour of the widow and the elder daughter, the first appellate Court found that in view of the unequivocal language of the said Will that an absolute interest had been created in favour of the plaintiffs, and therefore, to the extent that the trial Court held that only a life interest had been so created set aside the trial Court. In the second appeal, two substantial question of law were formulated as follows:

> "3. This Court formulated following substantial questions of law, after hearing the parties under Order 41 Rule 11 C.P.C.:
>
> (I) Whether the plaintiffs-respondents acquired absolute rights to the exclusion of the consequences and effect of other clauses of will dated 21.01.2000 in respect of House No.77/116, Rambagh, Allahabad to the extent of share of testator, late Sri Ajit Ghosh or their rights are restricted so as to constitute the life interest?

(II) Whether the defendants-appellants were a mere licensee in respect of their right to reside in the accommodation in question mentioned above and he could have been evicted from the premises in dispute by plaintiffs- appellants relying on the rights they have acquired under the will dated 21.01.2000?"

7. The answer given to the aforesaid two questions was that in fact only a life interest was created by the Will dated 21st January, 2000 in favour of the plaintiffs and that therefore, the second appeal would have to be allowed and the trial Court decree reinstated.

8. Shri Dhruv Mehta, learned senior counsel appearing on behalf of the appellants, contended before us that first and foremost there was no pleading of life interest by the defendants and that therefore, this question ought not to have been raised in the second appeal. He went on to state that it was clear that a Will must first be read as a whole, and if various parts of it appear to conflict with each other, they ought to be harmoniously construed. In the event that this cannot be done, then if there is an absolute bequest in an earlier part of the Will, which cannot be reconciled with a subsequent bequest of the same property in a latter part of the Will, the subsequent portion of the Will will have to be declared as invalid. For this proposition, he cited three judgments of this Court before us. He also argued that it is well settled that if a Will contains one portion which is illegal and another which is legal, and the illegal portion can be severed, then the entire Will need not be rejected, and the legal portion can be enforced. He also argued that in any case Section 14 of the Hindu Succession Act, 1956 would come to the rescue even if a life interest was created in favour of the widow, inasmuch as the deceased had really provided for her share in the said immovable property in lieu of maintenance.

9. Learned counsel appearing on behalf of the respondents argued before us that the Will must be read as a whole and harmoniously construed. He further argued that it was the intention of the testator not only to bequeath the property to the widow and the elder daughter but also to his grand children i.e. the son and the daughter of the second daughter and the son of a nephew who is treated as a grand son. If therefore, the Will is to be looked at as a whole, it is clear that the testator's wish would not be carried out qua the latter beneficiaries, and every effort should be made to see that the

testator's intention is carried out as a whole. He also relied upon the reasoning of the trial Court and the second Appellate Court to say that, in any event, a life interest had been created in favour of the two plaintiffs and that it did not matter that there was no pleading to this effect inasmuch as it was the defendants who raised this plea and not the plaintiffs. He also countered the submission made on Section 14 by stating that the bequest has been made jointly in favour of the widow and the daughter and that therefore such joint bequest could not possibly be in the nature of maintenance to the widow alone.

10. Having heard learned counsel for the parties, the point before us is a narrow one, namely, what is the true construction of paragraph 2 of the Will dated 21st January, 2000, and whether in view of such true construction, paragraph 4 of the said Will can be said to survive.

11. It will be noticed on a reading of paragraph 2 of the said Will that the testator has chosen his language very carefully. He makes it clear that after his death house No.77 shall “vest” on my wife Smt. Madhuri Ghosh and my elder daughter Sunanda Ghosh jointly. With this declaration he goes on to further state that after the death of his wife, the said daughter shall become the “exclusive” owner of the said house No.77 and that if his daughter was to predecease his wife, then his wife shall become the “exclusive” owner. A reading of this paragraph therefore, leaves no manner of doubt that what is granted jointly in favour of the widow and the elder daughter is an absolute right to the property namely, house No.77. There are no words of limitation used in this paragraph and we, therefore, find it very difficult to agree with the High Court in its conclusion that what is bequeathed by paragraph 2 is only a limited interest in favour of the widow and the elder daughter.

12. However, it remains to consider the argument on behalf of the respondent that the Will should be read as a whole and that the testator's intention should be given effect so that the grand children are “not on the road” as is argued by counsel for the respondents. In law the position is that where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same Will to other persons will be of no effect. This is clearly laid down in Ramkishorelal and Another vs. Kamal Narayan 1963 Supp (2) SCR 417 as follows:

> “The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or nontestamentary instruments, that

there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is 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. What is to be done where this happens ? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo). It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

13. This judgment was referred to with approval and followed in Mauleshwar Mani & Ors. vs. Jagdish Prasad & Ors.(2002) 2 SCC 468 as follows:

"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 v. Kamalnarayan 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 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 v. Balraj Kuar it was laid down that where an absolute estate is created by a 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 absolute interest in the property in favour of his wife, any subsequent bequest 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."

14. Needless to add, it is settled law that the fact that clause 4 has been declared by us to be of no effect would not impact the bequest made under clause 2, and the rest of the Will, therefore, would have to be given effect to. In view of the aforesaid, we do not deem it necessary to go into the other questions raised by Shri Dhruv Mehta, learned senior counsel, namely, the absence of pleading and the effect of Section 14 of the Hindu Succession Act, 1956. The appeal is, accordingly allowed and the judgment of the High Court is set aside.

Pending applications, if any, shall also stand disposed of.

.....J. [R.K. AGRAWAL] .....J. [ROHINTON FALI NARIMAN] New Delhi;

November 9, 2016.