

Ram Bharosey And Ors. vs Lachmandas And Ors. on 21 January, 1954

Equivalent citations: AIR1954ALL715, AIR 1954 ALLAHABAD 715

JUDGMENT

Gurtu, J.

1. The main question which arises in this appeal is as to the nature of the estate which passed on to Smt. Gopi under the will of Nanak Chand.
2. It is conceded before me that if Smt. Gopi was given an absolute estate then the plaintiff will be out of court and the suit would have to be dismissed.
3. The will in question, after reciting the testator's interest in the properties bequeathed, states as follows:

"Bad mere Musammat Gopi Malik howe, our usko har ek tarah ka ikhtiyar hoga ki jo chahe so khairat den wa dan waghairah karen. Koi uska Mazahim na howe.....".

The will then makes certain provisions of the testator's sister and her husband.

4. Lastly, the will recites that upon the death of Smt. Gopi, the testator's property would go according to his directions to his two daughters.
5. From the discussion on the subject in Mulla's Hindu Law, 10th Edition (1946) at pages 486 to 489 it appears that a bequest to a woman as 'Malik' imports a full proprietary right, unless there is something in the context to qualify it. It has, therefore, to be considered whether the words "aur usko har ek tarah ka ikhtiyar hoga ki jo chahe so khairat den wa dan waghairah karen. Koi uska mazahim na howe" qualify the import of the word "Malik" and cut down the absolute estate imported by the word. It appears to me that the words quoted above do not expressly refer to the right to alienate. They rather appear to refer only to the making of religious or charitable gifts of income.

It cannot, therefore, be said that the qualifying words used imply a limited power of alienation. If the power of alienation is not cut down by these words, as appears to be the case, then the word "Malik" would carry its full import and confer full proprietary rights on Smt. Gopi. The qualifying words would, thus, not affect the full import of the word 'Malik'.

5a. It is true that the intention of the testator appears to have been that after the death of Smt. Gopi, the daughters would get his estate. However where the dispositive words are clear and they indicate the creation of an absolute estate in the first devisee, all subsequent devisees must fail whatever the intention of the testator may have been. The fact that Smt. Gopi was a female and the testator must have known what kind of estate a Hindu female inherits, has no doubt to be kept in view, but when the word 'Malik' is used without any clear qualifying words showing that the power of alienation has been cut down, there is no reason why the female should not be considered to have been granted full proprietary rights. Accordingly, in my view, Smt. Gopi acquired an absolute estate under the will of her husband, Nanak Chand.

6. In this view of the matter, the appeal is allowed. The decrees of the courts below must be vacated and the plaintiff's suit must be dismissed. Since a question of interpretation of the will was involved in this case I think that this is a fit case in which the parties should bear their own costs throughout and I order accordingly. Leave to appeal allowed to a Division Bench.