Supreme Court of India
Bhura And Others vs Kashiram on 5 January, 1994
Equivalent citations: AIR 1994 SC 1202, JT 1994 (1) SC 11, 1994 (1) SCALE 17, (1994) 2 SCC 111, 1994 1 SCR 16, 1994 (1) UJ 503 SC
Author: D A Anand
Bench: R Sahai, . A Anand
ORDER DR. A.S. Anand, J.

1. This appeal by special leave is directed against the Judgment and Decree of the High Court of Madhya Pradesh dated 22, August, 1980 made in First Appeal No. 233 of 1977 setting aside the Judgment and Decree of the trial court and decreeing the suit of the plaintiff/respondent.

2. The only controversy between the parties which was contested both before the trial court and the High Court was whether the will Exhibit P-4 conferred only a limited estate or an absolute estate on Sarjabai in so far as the suit property is concerned. The learned District Judge held that the estate which was bequeathed by Pancham to Defendant No. 1 Sarjabai gave her an absolute right thereto and consequently except on the question of adoption, the suit filed by the plaintiff-respondent was dismissed with costs.

BRIEF FACTS

3. Tula Ram was the common ancestor of the parties, He had a son by name Pancham, who died on 6.8.1926. Pancham had 3 wives by name Smt. Punji, Smt. Kaushalya and Smt. Sarupa. Sarjabai, Defendant No. 1 was the daughter of Smt. Punji, while Gopi Chand @ Korat was adopted as a son by Smt. Kaushalya and Pancham. Kashi Ram plaintiff-respondent is the son of the said Gopi Chand, the adopted son of Smt. Kaushalya and Pancham, son of Tula Ram. According to the pleadings of the parties, Pancham executed a will on 16.5.1907 in favour of Sarjabai, whereby he bequeathed certain sir lands and a house to her. Gopi Chand died leaving behind Kashi Ram as his son. On the death of Pancham. Sarjabai, the daughter of Pancham through Smt. Punji, who was in possession of the suit property, as a legatee under the will of Pancham, made a gift of the suit land and the house in favour of Defendant Nos. 2 to 10 (Defendant No. 3 is since dead) on 28.10.1971 as trustees of Gadhekar Tapti Dharamshala, Multai. The plaintiff-respondent thereupon filed a suit claiming that the will dated 16.5.1907 (Ex.P-4) created only a life interest in favour of Sarjabai in the property bequeathed thereunder and, therefore, the transfer made by her through the gift deed dated 28.10.1971 was not binding on him beyond the life time of Sarjabai and that he was entitled to be put in possession of that property, after her death, as an exclusive owner of the said property. The defence of defendants 2 to 9 on the other hand was that the will (Ex.P-4) conferred an absolute estate on Sarjabai and therefore she was competent to alienate the suit property absolutely and the transfer by sale in their favour was valid. The trial court found in favour of defendant 2 to 9 and dismissed the suit. The defendants filed an appeal and at that stage, with the permission of the court, amended their written statements in the High Court and raised an additional plea that the suit land being sir had vested in the State on the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals. Alienated Lands) Act, 1950 (hereinafter the Abolition Act) and, that Malik-Makbuza rights had been conferred on her by virtue of Section 38 of the Act since

she had been in possession of the suit property on the date of the Abolition Act, and therefore the grant in her favour which was independent of the will conferred an absolute heritable and transferable title in her.

4. That the lands in question were sir in nature and were in the possession of Sarjabai at the time of the coming into force of the Abolition Act, and that Gopi Chand was the duly adopted son of Pancham and Kaushalya were not disputed before the High Court. It is in the background of these admitted facts that the controversy as noticed in the earlier part of this judgment is required to be resolved by us as that alone is the question at issue in the case.

5. Learned Counsel for the respondent has produced before us a translated version of the will (Ex.P-4), the correctness of which has not been doubted by the opposite side. It is the construction of the will which will determine the controversy as raised before the courts below and agitated before us.

6. In the will (Ex.P-4) (Annexure-III), Pancham Patel after narrating the description of the property and stating that he was executing the will so that no dispute arises between his adopted son and daughter, Sarjabai after his death, went on to record :

It is, therefore, established that there should not arise any dispute between my adopted son and daughter Sarjabai, after my death, for this purpose. I execute this will, as I am writing below, according to it, they would be entitled to get property, if my daughter Sarjabai bears a child, he would be the heir of the same given property, in case, my daughter bears no child. Gopi Chand of my family or his sons to be born, would be entitled to get this property or whosoever would be his heir. If during my life time, a child is born by any of my wives and he alive till last, the real son would be the owner of 12 anna share of the entire property, leaving the property given to Sarjabai and adopted son Gopichand who would be the owner of the 4 anna share and if a child is not born to me then Gopichand my adopted son in such circumstances would be the owner of the 16 anna property.

(Emphasis ours) We have perused the entire will and we find that even though it is not happily worded it does bring out his intention. It is settled law that the courts must make all efforts to determine the real intention of the testator by reading the will as a whole and giving effect to the intentions of the testator. Construction, which would advance the intention of the testator has to be preferred and as far as possible effect is required to be given to every disposition contained in the will, unless the law prevents such effect being given to it. The recitals in the will (Ex.P-4) go to show that the testator wanted to provide his daughter. Sarjabai interest in the estate but at the same time intended that the property should ultimately be retained in his family for which purpose, he was soon to take Gopichand in adoption and was also hopeful of begetting a natural son through one of his wives. This also becomes evident from the fact that the testator, as a last resort, even intended his brother Nanak Ram to inherit the property after the death of his wives, in the event of his natural born son or the adopted son dying issueless. The bequeath in favour of Sarjabai (as extracted above) clearly speaks of the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of Sarjabai only for her life time and not an

absolute estate. We, therefore, agree with the High Court that under the will Sarjabai did not get more than a life time estate because the language of the will is inconsistent with her having got an absolute right over the land.

7. The limited estate conferred upon Sarjabai by the will (W.P. 4) could not even be enlarged into an absolute estate under the Hindu Succession Act, 1956, even though she was possessed of that property at the time of the coming into force of the Hindu Succession Act, 1956. Section 14(2) of the Act mandates that nothing contained in Sub-section 1 of Section 14 of the Hindu Succession Act, 1956 shall apply to any property acquired by way of gift or under a will or by any other instrument prescribing a restricted right in such property. In view of our finding that the will (Ex.P4) itself prescribed a restricted right of life-estate in the property in favour of Sarjabai, that estate could not be enlarged into an absolute estate in view of the express provisions of the Hindu Succession Act, 1956.

8. The High Court also dealt with and considered the contention raised for the first time before it by the appellant that the conferral of malik-makbuza rights under Section 38 of the Abolition Act upon Sarjabai amounted to a fresh and independent grant to her of the suit land. After referring to various provisions of the Abolition Act, the High Court came to the conclusion, on the facts of this case, that notwithstanding the above provisions, factually Sarjabai had continued to retain possession of the sir land (land in the suit) not under any fresh grant under the provisions of the Abolition Act but since she was already in possession of the said land as a limited owner, under the will (Ex.P4). We are in complete agreement with the reasoning of the High Court on this aspect and need not dwell on it any further.

9. On a true construction of the will, (Ex.P4), and in the established facts and circumstance of the case, we are satisfied that the High Court was right in holding that Sarjabai had only a limited estate in the suit land and, therefore, the alienations made by her in favour of defendant Nos. 2 to 9, were not binding on the appellant, after the death of Sarjabai. The possession of Sarjabai, at the time of the coming into force of the Abolition Act, being only on the basis of the will (Ex.P4), the High Court rightly set aside the judgment and decree of the trial court and directed that since Sarjabai had died that had brought to an end her limited rights, and therefore the transferees, Respondents 2 to 9, should put the plaintiff-appellant in possession of the suit land. We uphold the finding of the High Court. There is, no merit in this appeal which is accordingly dismissed but with no order as to costs.