REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3571 OF 2008
(Arising out of SLP (C) No.16514 of 2007)

Shyamal Kanti Guha (D)
Through LRs & ors. ... Appellants

Versus

Meena Bose ... Respondent

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Interpretation of a Will executed by one Hillol Kanti Guha is in question in this appeal which arises out of a judgment and order dated 13.11.2006 passed by a Division Bench of the Calcutta High Court in First Appeal No. 155 of 2002 affirming a judgment and order dated 24.5.2001 passed by Civil Judge Senior Division, Alipore in Title Suit No. 57 of 2000. The properties in suit belonged to the testator. The parties hereto are a

brother, sister and the heirs and legal representatives of the testator. A suit for partition was filed by Meena, the sister of the testator for declaration of title in respect of 50% of the property in question and for partition. The right, title and interest of the parties to the suit indisputably arise for the Will in question.

The said Will was executed by Hillol Kanti Guha on 3.4.1985. Hillol Kanti Guha was a bachelor. He had two brothers; Shyamal Kanti Guha and Ujjal Kanti Guha and one sister Smt. Meena Bose, the original plaintiff. He was owner of a dwelling house No. 5/1A, Moore Avenue, Calcutta-40. He had also a bank account as well as shares in the Company.

Shyamal Kanti Guha died during the pendency of the appeal in the High Court. His heirs and legal representatives had been brought on record in his place.

For the sake of convenience, we heretobelow re-produce the relevant clauses of the Will, being:

> "6. Subject as aforesaid, I give, bequeath and devise my 50% dwelling house of No. 5/1A, Moor Avenue, Calcutta to my brother Sri Shyamal Kanti Guha and 50% to my sister Mrs. Meena Bose and after her demise the said brother is entitled to occupy the said premises absolutely.
> 7. I give, bequest and devise, my fixed deposit A/c in my Bank or banks to my brother Mr. Shyamal Kanti

Guha 50% and to my other brother Mr. Ujjal Kanti Guha 25% and also to my nephew Sri Jaydeep Basu 25% in total account absolutely.
8. I also give bequeath and devise my company's shares in my any company to my brother Mr. Shyamal Kanti Guha 50% and to my sister Meena Basu 25% and also to my other brother Mr. Ujjal Kanti Guha.
9. I also give, bequest and devise my Bank Deposit in the Allahabad Bank to my brother Mr. Shyamal Kanti Guha 50% and to my other brother Mr. Ujjal Kanti Guha 25% and to my sister Mrs. Meena Bose 25%.
10. If any of my brothers or sister or both of them die during my life time then in such case the heirs of the deceased brothers or sister shall get their respective shares of the deceased absolutely as per above terms.
11. Subject as aforesaid, I give, bequeath and devise the rest and residue of my estate to my brother and sisters and nephews absolutely."

Construing the Will and in particularly clauses (10) and (11) thereof, both the courts held that bequeath in favour of the respondent - plaintiff was absolute and thus the suit should be decreed.

3. Mr. Dushyant Dave, learned Senior Counsel appearing on behalf of the appellant in support of this appeal contends that in view of the well-settled principles of law, a Will must be read in its entirety and so read there cannot be any doubt whatsoever that the intention of the testator was to confer only a life interest upon the plaintiff - respondent. It was urged that

the very fact that in the event of the death of the sister, Shyamal Kanti Guha, the appellant's predecessor-in-title was to occupy the said premises absolutely and furthermore in view of the fact that clause (10) applies only in the event that both the brothers or the sister died during his life time, the question of the sister's acquiring a permanent interest in the suit property did not and could not arise. In support of the said contention, strong reliance were placed on Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer [(1953) SCR 232], Ramachandra Shenoy & anr. v. Mrs. Hilda Brite & ors. [(1964) 2 SCR 722], Navneet Lal alias Rangi v. Gokul & ors. [(1976) 1 SCC 630].

4. Mr. Dharmendra Kumar Sinha, learned counsel appearing on behalf of the respondent, however, submits that the words 'give, bequeath and devise' on the one hand and that the word 'occupy' on the other, ought to be assigned different meanings and so done the bequeath under the Will in terms of the plaintiff must be held to be absolute.

Although construction of clause (6) of the Will is in question, indisputably the said clause for the purpose of ascertaining the intention of the testator must be interpreted having regard to other terms of the said Will. A bare perusal of the entire Will goes to show that the testator was aware of

the nature of the bequest. He wanted to give much more to his brother Shyamal Kanti Guha than others.

5. Intentionally different words like ‘give’, ‘bequeath’ and ‘devise’ had been used in all the relevant clauses, namely, clauses (6) to (11). Even the word ‘absolutely’ has been freely used.

He envisioned two situations. Death of his sister Meena Bose and his own death. Given a plain meaning; whereas clause (6) was to apply in the case of Meena Bose, clause (10) applied if he expired. Clause (10) cannot be read in isolation. It must be read subject to the other terms contained in clauses (6) to (9) as the words ‘as per above terms’ have been used therein.

We have noticed clauses (7), (8) and (9) only for the purpose of showing that he gave something also to Jaydeep Basu, son of his sister Mrs. Meena Bose. The bequeath in favour of another brother Ujjal Kanti Guha was only to take 25% in the Company shares as also Bank deposits in Allahabad Bank. He made a distinction between grant in favour of his sister and the one in favour of his nephew Sri Jaydeep Basu.

6. Keeping in mind the aforementioned backdrop, the Will should be construed. It should be done by a Court indisputably placing itself on the

arm-chair of the testator. The endeavour of the Court should be to give effect to his intention. The intention of the testator can be culled out not only upon reading the Will in its entirety, but also the background facts and circumstances of the case. Genuineness of the Will dated 3.4.1984 is not in question. The fact that the testator was the owner of the properties is also not in question.

7. Before, however, referring to some precedents operating in the field, we may notice the dictionary meaning of the words 'bequeath', 'devise' and 'occupy', which are as under:

> "Bequeath. To give by will; assign as a legacy. This word is properly applied only to personalty, but in a will it avails to transmit real property also; "devise," however is the proper word.
> To leave property by will to a person.
>
> "Devise. (Primarily, a dividing or division) In the law of wills as a noun a gift of real property by will; a disposition by will; an instrument by which lands are conveyed by will, the direction of a testator of sound mind as to the disposition of his property after his death. As a verb to give or dispose of land or hereditaments by will; sometimes as a verb, to draw an instrument. A 'devise' is where a man in his testament giveth or bequeatheth his goods or his lands to another after his deceased. (Terms de la Ley). The word was formerly particularly applied to bequests of land; but is now generally used for the gift of any legacies whatever. (Tomlin)
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> "Occupy. To take possession of, seize, employ, to take possession of and retain or keep. "To occupy" property denotes a physical possession; but "occupy" is a word which in

> one form and another is not infrequently used of an incorporeal hereditament."
> (See Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. 2005)

We may also notice the meaning of the word "subject to".

It means:

> "Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. Homan v. Employers Reinsurance Corporation, 345 Mo. 650, 136 S.W. 2d 289, 302"
>
> (See Black's Law Dictionary, Fifth Edition at page 1278)

8. The Will was a registered one. The said Will was probated by the executors thereof. The suit was filed as the plaintiff found that joint enjoyment and possession of the suit property to be inconvenient. The learned trial judge opined:

> "Considering the above facts and circumstances, I am of the view that the clause-6 does not create any impediment for the plaintiff to get partition of the suit property because clause-10 of the said Will clears the intention of the testator that in case of death of both parties, their heirs will enjoy the possession of the suit house absolutely."

The Division Bench of the High Court also held:

> "We have heard respective contentions of learned counsel for the parties and we have read clause 6 of the Will. In our view, as rightly contended by learned Counsel for the respondent, the expression "occupy the ..... premises absolutely" implies that Shyamal would have the right to occupy the said premises in its entirety had Meena predeceased him. Meena is still alive. A right to occupy is not the right to own the property. The words "give, bequeath and devise" indicate vesting of title in the property absolutely in favour of the persons mentioned in the aforesaid clause. The property had been given to the brother and sister in equal share. However, on the death of Meena, the right of possession was intended to be suspended, as far as the heirs and legal representatives of Meena were concerned, till the death of Shyamal. Had Shyamal been alive, we would have had to examine how far such clause could be valid in the context of Section 119 of the India Succession Act, 1925.
>
> Fortunately or unfortunately, we need not undertake the said exercise in view of the death of Shyamal. We, therefore, cannot accept the contention of Mr. Bhattacharyya. Accordingly, we do not find any reason to interfere with the order, decree and findings of the learned trial judge. However, we merely supplement the reasoning given by the learned trial judge. We do not approve of the reasoning given by the learned trial judge to the extent inconsistent with our reasoning."

Both the courts below proceeded on the basis that the word ‘occupy’ would mean physical possession only. ‘Occupy’ sometimes indicates legal possession in the technical sense; at other times mere physical presence at a

place for a substantial period of time. (See Advance Law Lexicon page 3297)

9. Would it not include within its fold the vesting of a property, is the question.

Ordinarily, the word 'occupy' does not denote 'vest'.

In the context of the construction of Will, however, the meaning of the word as defined in dictionary may not be insisted upon. If the construction of the Will as advanced by the learned trial judge as also the High Court, namely, reading of clauses (6) and (10) together is correct then after the death of Shyamal Kanti Guha, his heirs and legal representatives inherited their father's right so far as the dwelling house is concerned. Thus, they have a right to occupy the premises in question after the death of Mrs. Meena Bose. If the intention of the testator was that heirs and legal representatives of Shyamal Kanti Guha would have no right in respect of the 50% of the share of Mrs. Meena Bose, it could have been stated expressly. If clauses (6) and (10) are to be construed together, it would take into account not only the death of Mrs. Meena Bose during the lifetime of Shyamal Kanti Guha but also any of them. Indisputably, the heirs and legal representatives of Shyamal Kanti Guha would have a right to occupy the premises after the death of Mrs. Meena Bose. But, clause (10) would apply

in the event, brothers and sisters or both of them died during the testator's lifetime. The word 'then' plays an important role. It, therefore, does not take into consideration any other contingency. Even if that be so, clause (10) of the Will was to be subject to clause (6) as the words 'as per above terms' have been used. But how then should the intention of the testator be ascertained in respect of his bequeath of the dwelling house in terms of clause (6). He did not intend to give it to a third party. Evidently, the brothers and sister were residing in the said house. They were given equal shares. But the share bequeathed to Meena Bose was given as after her demise, the brother was entitled to occupy the entire premises. The meaning of the word 'occupy' should not be read in isolation. The right to occupy is the subject matter of devise. It must be read with the word 'absolutely'. Right to occupy as a limited owner and a right to occupy absolutely could not have different meanings. The heirs and legal representatives of Shyamal Kanti Guha and Mrs. Meena Bose were to get the interest in the dwelling house absolutely. If the intention of the testator was otherwise, the question of Shyamal Kanti Guha occupying the said premises after the demise of his sister would not have specifically been mentioned.

In the aforementioned situation, we may notice the decision of this Court in Raj Bajrang Bahadur Singh (supra).

In that case, the testator had two sons Bajrang Bahadur and Dhuj Singh. The estate was to vest in the elder son. It is with that view, a Will was executed to bequeath some properties in favour of his younger son in the following terms:

> "2. I have decided after a full consideration that I should execute a Will in favour of Dhuj Singh with respect to the villages detailed below.
> 3. So that after my death Dhuj Singh may remain in possession of those villages as an absolute owner with the reservation that he will have no right of transfer.
> 4. If, God forbid, Dhuj Singh may not be living at the time of my death, his son or whoever may be his male heir or widow may remain in possession of the said villages on payment of the Government revenue as an absolute owner.
> 5. The liability for the land revenue of the said villages will be with Dhuj Singh and his heirs and successors; the estate will have no concern with it.
> 6. Although Dhuj Singh and his heirs are not given the power of transfer, they will exercise all other rights of absolute ownership that is to say, the result is that the proprietor of the estate or my other heirs and successors will not eject Dhuj Singh or his heirs or successors in any way.
> 7. Of course if Dhuj Singh or his heirs become ever heirless then the said villages will not escheat to the Government but will revert and form part of the estate."

Construing the aforementioned terms vis-a-vis, the right of the respondent under the said Will, it was held by this Court that he merely acquired a life interest and not an absolute interest stating:

> "Thus the beneficiaries under the will are Dhuj Singh himself and his heirs in succession and to each such heir or set of heirs the rights of malik are given but without any power of alienation. On the total extinction of this line of heirs the properties affected by the will are to revert to the estate. As it was the intention of the testator that the properties should remain intact till the line of Dhuj Singh was exhausted and each successor was to enjoy and hold the properties without any power of alienation, obviously what the testator wanted was to create a series of life estates one after another, the ultimate reversion being given to the parent estate when there was a complete failure of heirs. To what extent such intention could be given effect to by law is another matter and that we shall consider presently. But it can be said without hesitation that it was not the intention of the testator to confer anything but a life estate upon Dhuj Singh in respect of the properties covered by the will. The clause in the will imposing total restraint on alienation is also a pointer in the same direction. In cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word "malik". We hold, therefore, that the courts below were right in holding that Dhuj Singh had only a life interest in the properties under the terms of his father's will.

10. In Ramachandra Shenoy & anr. v. Mrs. Hilda Brite & ors. [(1964) 2 SCR 722], clause 3(c) of the Will of an Indian Christian Lady - Mrs. Mary Magdelene Coelho fell for consideration. Noticing the provisions of the Indian Succession Act 10 of 1865, this Court held:

> "It was common ground that under clause 3(c) the testatrix intended to confer an absolute and permanent interest on the male children of her daughter, though if the contentions urged by the appellants were accepted the legacy in their favour would be void because there could legally be no gift over after an absolute interest in favour of their mother. This is on the principle that where property is given to A absolutely, then whatever remains of A's death must pass to his heirs or under his will and any attempt to sever the incidents from the absolute interest by prescribing a different destination must fail as being repugnant to the interest created. But the initial question for consideration is whether on a proper construction of the will an absolute interest in favour Severina is established. It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it."

The said principle was reiterated in Navneet Lal alias Rangi v. Gokul & ors. [(1976) 1 SCC 630] in the following words:

> "8. From the earlier decisions of this Court the following principles, inter alia, are well established:

(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. {Ram Gopal v. Nand Lal [1950 SCR 766]}

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair [Venkata Narasimha v. Parthasarathy (1913) 41 Ind App 51 at p. 72] and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense.... But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. [Venkata Narasimha's case (supra) and Gnanambal Ammal v. T. Raju Ayyar (1950 SCR 949, 955)]

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory [Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer (1953 SCR 232, 240]

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting

> down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. [Pearey Lal v. Rameshwar Das (1963 Supp. 2 SCR 834, 839, 842].
>
> (5) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. {Ramachandra Shenoy v. Mrs. Hilda Brite [(1964) 2 SCR 722, 735]}

Recently, this Court in Bajrang Factory Ltd. & Anr. v. University of Calcutta & ors. [(2007) 7 SCALE 496) held:

> "43. With a view to ascertain the intention of the maker of the Will, not only the terms thereof are required to be taken into consideration but all also circumstances attending thereto. The Will as a whole must, thus, be considered for the said purpose and not merely the particular part thereof. As the Will if read in its entirety, can be given effect to, it is imperative that nothing should be read therein to invalidate the same."

Therein the word ‘devise’ was read as ‘desire’. If this Court is to put itself into the testator’s armchair to ascertain his intention from the words used in the Will; it must take into consideration the surrounding circumstances, the position of the testator, his family relationships, and attach importance to isolated expressions so as to give effect to all the clauses in the Will rather than making some of it inoperative.

This Court again in Anil Kak v. Kumari Sharda Raje reported in 2008 (6) SCALE 597 held:

> "The testator’s intention is collected from a consideration of the whole Will and not from a part of it. If two parts of the same Will are wholly irreconcilable, the court of law would not be in a position to come to a finding that the Will dated 4.11.1992 could be given effect to irrespective of the appendices. In construing a Will, no doubt all possible contingencies are required to be taken into consideration. Even if a part is invalid, the entire document need not be invalidated, only if it forms a severable part."

There cannot be any doubt whatsoever that in the event of inconsistency between two parts in the Will, the last shall prevail having regard to Section 88 of the Act, but, once it is possible to give effect to both

the clauses which although apparently appears to be irreconcileable, the court should take recourse thereto.

Section 119 of the Indian Succession Act also speaks about postponement of the date of vesting of legacy when one of the brothers after the death of his sister became entitled to possess a dwelling house absolutely. In our opinion, the testator was of the opinion that the life interested should only be created in favour of his sister Meena Bose. This, however, would not mean as has been contended by Mr. Dave that the suit for partition was not maintainable.

A suit for partition could be maintainable subject, of course, to the declaration that the interest of the respondent - plaintiff is confined to life interest only. To the aforementioned extent only this Appeal succeeds.

11. The appeal is allowed to the aforementioned extent. There shall be no order as to costs.

.....J.
[S.B. Sinha]

.....J.
[Lokeshwar Singh Panta]

New Delhi;
May 14, 2008

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