

PRIVY COUNCIL.*

CHUNILAL PARVATISHANKAR, PLAINTIFF, v. BAI SAMRATH, DEFENDANT.

P. C.^o

1913.

December 3,

10, 19.

1914.

March 17

[On appeal from the High Court of Judicature at Bombay.]

Hindu law—Will—Construction of will—Self-acquired property—Bequest dividing property between testator's two sons with gift over to survivor—Survivorship whether limited to survivorship during testator's life or extending to period after his death—Period of distribution.

= 12 A. L. J. 742

A Hindu resident of Surat in the Presidency of Bombay made a will dated 20th August 1899 by which after appointing his two sons "executors, heirs and owners" of the whole of his property (which was self-acquired) and directing them to divide and take equal shares in it with certain exceptions, gave each of them a half share of his estate not specifically disposed of by the will. By clause 9 he made the following bequest, "I have divided between and given to my two sons the whole of my property as mentioned above. But should either of these two sons die without having had (leaving) any male issue the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the maintenance of his widow and marriage of his minor daughter. But under these circumstances the heirs of my deceased son Surajlal shall not get any right whatever." The testator died on 4th July 1901 leaving him surviving his two sons. The elder son died on 2nd January 1903 leaving a widow and a daughter. In a suit by the surviving son to enforce the provisions of clause 9 of the will, the High Court held that the period of distribution contemplated by the testator was the period of his death at which time half of his estate became vested in each of his sons absolutely, and that clause 9 should be read as if the survivorship there provided was limited to survivorship at the death of the testator.

Held (reversing that decision) that the words of clause 9 were not limited to survivorship during the testator's life, but clearly pointed to survivorship whenever it should occur; and that the surviving son was as such survivor entitled to the estate conveyed by the clause, subject to the obligation imposed upon him of maintaining his brother's widow and daughter.

APPEAL from a judgment and decree (20th July 1910) of the High Court of Bombay, which reversed a judgment and decree (27th August 1908) of the Court of the

^o Present :—Lord Shaw, Lord Moulton, and Mr. Ameer Ali,

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District Judge of Surat, which affirmed with a slight modification a judgment and decree (4th February 1907) of the Court of the Subordinate Judge of Surat.

The litigation which resulted in this appeal concerned the estate of one Parvatishankar Durgashankar, a Hindu resident of Surat, who died on 4th July 1901 leaving property both moveable and immoveable of the value of about Rs. 75,000. He left two sons Chunilal the appellant, and Shambhuprasad the husband of the respondent, and a grandson Dhirajlal the son of a predeceased son Surajlal who had separated from his father many years before and claimed no interest in the estate. By his will dated 10th August 1899 some two years before his death he purported to dispose of the whole of his property, by clause 2 appointing Chunilal and Shambhuprasad "heirs and owners" of it, and by clause 4 directing that they should divide and take in equal shares the whole of his immoveable property, with the exception of his interest in a mortgage on a plot of land which the testator bequeathed to Chunilal. In clause 7 he stated that he had divided his moveable property between his two sons in his life-time and had made over the same to them (this was after his death found not to be the case). Clause 9, the construction of which was the main question for determination in the present appeal, will be found set out in the judgment of the Judicial Committee.

After their father's death the two sons divided the property between them, the elder, Shambhuprasad, by agreement taking two houses in Surat and Chunilal taking the whole of the outstandings with the exception of a debt of Rs. 2,000 due from one Premchand Raichand. Shambhuprasad afterwards sold one of the two houses.

Shambhuprasad died on 2nd January 1903 without male issue, but leaving him surviving his widow Bai

Samrath, the respondent, and a minor daughter; and on 25th September 1903 Chunilal brought the present suit against Bai Samrath in which he claimed a declaration that he was entitled under the 9th clause of the will of Parvatishankar to the property which had formed the share of Shambhuprasad under the said will. He also claimed an injunction against Bai Samrath restraining her from denying his title, but did not ask for possession of the property or any part of it: nor did he claim nor make any reference to the house Shambhuprasad had sold.

Bai Samrath in her defence to the suit alleged *inter alia* that the property left by Parvatishankar was joint ancestral property over which he had no power of disposition by will; that clause 9 of the will had no operation upon the moveable property stated in the will to have been divided by the testator in his lifetime; and that having regard to the partition which had taken place between his two sons any rights of survivorship must be taken to have been waived. Certain funds in the Post Office Savings Bank were also claimed as being the separate property of Shambhuprasad, and an objection was raised as to the form of the suit.

On these pleadings the Subordinate Judge held that the property of the testator was self-acquired; that Bai Samrath as claiming through Shambhuprasad was estopped from denying the validity of the will which he held to be duly proved; that under clause 9 of the will the sons took only life estates or interests liable to be defeated by the death of either of them without male issue, and that the provisions of that clause were valid and operative upon the whole of the moveable property, as no division of it had in fact taken place in the testator's life-time; and that the rights of survivorship had not been waived or put an end to by the

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partition between the brothers. He also decided that Chunilal having allowed Shambhuprasad to deal with the property as his own, the houses must be treated as belonging to Shambhuprasad. As to the form of suit the Subordinate Judge held that Chunilal was entitled to sue for a declaration of his rights without asking for possession of the property, the prayer for an injunction being a sufficient compliance with the requirements of section 42 of the Specific Relief Act, 1877 ; but that such declaration could only be made in respect of such of the property as came to Shambhuprasad's share at the partition.

Both parties appealed to the Court of the District Judge who modified the decree of the Subordinate Judge by declaring that Chunilal was entitled to the house and property which Shambhuprasad inherited under the will, but otherwise affirmed the lower Court's decree.

From that decision Bai Samrath preferred a second appeal to the High Court, and that Court (Sir BASIL SCOTT, C.J., and BATCHELOR, J.) taking the facts as undisputed and hearing arguments only upon the construction of the will, held that clause 9 was intended to apply only in the event of one of the sons dying without male issue in the life-time of the testator, and on that ground the decree of the District Judge was reversed and the suit dismissed. The material portion of the judgment of the High Court was as follows :—Referring to clause 9 of the will the judgment proceeded :—

“ Now that appears to us to be a provision for the event of the distribution as provided by the previous clauses of the will being impossible in consequence of the death without male issue of one of the devisees. The period of distribution contemplated by the testator is clearly the period of his death, and under these circumstances the event which may interfere with that distribution and give rise to the necessity for other arrangements must be an event occurring prior to his death. This conclusion is strengthened by the last

words of the clause which provide that in the event mentioned in the clause the heirs of his deceased son Surajlal should not get any right whatever. They were not to get any right under the preceding clauses of the will, but if any portion of the testator's property were undisposed of by lapse in consequence of the death of one of his legatees the heirs of his deceased son would be entitled to succeed by inheritance if they were not excluded by the express terms of the will. This is the conclusion which we have arrived at from a discussion of the terms of this clause apart from authority English or Indian.

"It is, however, some satisfaction to find that the conclusion is in accordance with the rule adopted in England expressed by Lord Hatherley in *O'Mahoney v. Burdett*⁽¹⁾, where he says 'where the Court has found upon the face of the will a positive direction to pay over the personalty to the legatee, or to make a distribution among several legatees at a given time, the period of distribution being fixed at which, as it appears from the face of the will, the whole estate was intended to be entirely disposed of and divided, and to pass from the hands of the executors, the Courts have laid hold of that circumstance to say, "We hold this defeasance to be before that period of distribution arrives," holding it to be an unreasonable construction of the testator's will to say that he directed on the one hand that the money shall be absolutely paid and divided and distributed, and put into the hands of those who, having it in their hands, will of course spend it without any further trust, and on the other hand that a subsequent event, namely, a certain person's dying childless after that distribution has taken place, should divest the property, that is to say, make it necessary for the executor to take steps to get back again, and recall that money which he has paid in order to hand it over to those who would take under the executory devise.'"

On this appeal

De Gruyther K. C. and *J. M. Parikh* for the appellant contended that the High Court was wrong in its construction of the will. The period of distribution was not the death of the testator. Under the will the two sons took shares in the estate which were liable to be defeated on the death of either of them without leaving male issue; on the happening of that event at any time the survivor was to take the whole estate. The date of the survivorship was not intended to be limited to the case of one of the sons dying without male issue in the life-time of the testator. The testator,

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a man considerably over 70 years of age and paralytic, could never have contemplated the death of one of the sons in his life-time. If that was what he intended he could have said so. But it was not necessary for him to say so, for had Shambhuprasad died in his life-time the testator could have made another will. The construction put by the High Court on the will added the words "during my life" after "should either of these sons die". The appellant's case depends on the natural construction of what the will says in clause 9, and would interpret those words to mean "die at any time". Neither the Succession Act (X of 1865) nor the Hindu Wills Act (XXI of 1870) applies to the present case as they are only in force in the Presidency Towns. The case, therefore, must be decided by the ordinary law as to the construction of wills, taking into consideration the natural wishes of a Hindu testator, whose great desire would be that the property should remain in his own family, an object which the High Court's construction would defeat. Mayne's Hindu Law, 7th edition, page 560, paragraphs 419—421; and *Radha Prasad Mullick v Ranee Mani Dasse*⁽¹⁾. The gift over in clause 9 of the will was, it was submitted, good and the appellant was under it entitled to the share of the testator's property which Shambhuprasad took under the will. Reference was made to *O'Mahoney v. Burdett*⁽²⁾ per Lord Hatherley, L. C., and in which Lord Cairns said "I am unable to find, in any case prior to *Edwards v. Edwards*⁽³⁾, any authority that the words introducing a gift over in case of the death unmarried or without children of a previous taker do not indicate, according to their natural and proper meaning, death unmarried or without children occurring at any time, or that this

(1) (1908) 35 Cal. 896 (902); (2) (1874) L. R. 7 H. L. 388 (398, L. R. 35 I. A. 118 (128). 403).

(3) (1852) 15 Beav. 357.

ordinary and literal meaning is to be departed from otherwise than in consequence of a context which renders a different meaning necessary or proper." *Edwards v. Edwards*⁽¹⁾ and *Ingram v. Soutten*⁽²⁾ were referred to; and on the construction of Hindu wills, Mayne's Hindu Law, 7th edition, page 829, paragraph 614; *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick*⁽³⁾; and *Bhagabati Barmanya v. Kalicharan Singh*⁽⁴⁾ were cited to show the expressions which have been held to create an estate of the kind intended in this will.

Lowndes for the respondent contended that on the true construction of the will Shambhuprasad took, at the death of the testator, an absolute interest in the share of the property bequeathed to him by the will; and that, if clause 9 was intended to apply to the death of either of the sons at any time after the period of distribution of the property, it was bad in law as an attempt to prescribe a special method of devolution of property which was the subject of an absolute gift. Although the Hindu Wills Act did not apply in the mofussil of India, the principle of section 111 of the Succession Act, which was one that under the Hindu Wills Act was applicable to Hindus in the Presidency Towns, should be followed: it should govern the case as a matter of convenience and because the greater part of India is governed by its principle in such matters. That would be a better mode of deciding the case than looking at what the intention of the testator was and how he was influenced by circumstances. To decide the case on some principle like section 111 of the Succession Act was better than to decide it as the Subordinate Judge has done without any such rule, but

(1) (1852) 15 Beav. 357.

(3) (1862) 9 Moo. I. A. 123, 139.

(2) (1874) L. R. 7 H. L. 408.

(4) (1911) 38 Cal. 468, 474; L. R. 38 I. A. 54 (64, 65).

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as governed by the case of *Sreemutty Soorjeemoney-Dossee v. Denobundoo Mullick*⁽¹⁾, which is clearly distinguishable from the present case. To construe one document by looking at another was condemned by this Board in *Norendra Nath Sircar v. Kamalbasini Dasi*⁽²⁾. Here the period of distribution was the death of the testator. Survivorship at a subsequent date was not intended. The object of the testator was that the family of his eldest son Surajlal should not take any of the property in any event, and that no one person was to take it absolutely. Dhirajlal would have come in and taken the property if one of the sons had died during the life-time of the testator. It was strange that the testator did not provide for the death of both his sons instead of for the death of only one of them. Clause 9 of the will must refer to the survivorship of the testator and not to the survivorship of the sons under it. If the idea was to exclude Dhirajlal there is no provision as to what would happen on the death of both Chunilal and Shambhuprasad. "These circumstances" in clause 9 mean the death of one of them before and not after the testator's death. In the Bombay Presidency the daughter's is a favoured class by the custom of the country. See Mayne's Hindu Law, page 829; and *Lalubhai Bapubhai v. Mankubarbai*⁽³⁾: the daughter is a "gotraj sapinda" and becomes a stock of descent. There is no presumption in Bombay that a Hindu would keep out his daughter or granddaughter from inheritance. The will must be read as a whole and must refer to survivorship of the testator. Clause 9 could not in any event have been intended to apply to the moveable property stated in clause 7 to have been made over by the testator in his life-time to his

⁽¹⁾ (1857) 6 Moo. I. A. 526; and ⁽²⁾ (1896) 23 Cal. 563; L. R. 23 (1862) 9 Moo. I. A. 123. I. A. 18.

⁽³⁾ (1876) 2 Bom. 388.

two sons. It is unreasonable to suppose that the testator expected the property (such as ornaments, cash, shares, furniture and all the other details of his property with which he dealt in the will) should not vest absolutely in the donees. Vesting and distribution are simultaneous. The construction contended for by the appellant would have been proper if clause 9 had dealt with a particular property. If the testator had wanted to tie up the property he would have appointed a trustee, or at least have put a prohibition on its being parted with. What the will gives to the sons was not a life-estate; the testator says nothing about usufruct as he would have done if he had intended to give a life-estate. Then what was the conduct of the parties after the making of the will by the testator. They treated the property as given absolutely. Shambhuprasad sold one house. Chunilal alienated his share. It was submitted that the testator intended his sons to take an absolute estate, and he desired to find a mode of succession to this absolute gift. If the whole property is subject to clause 9, the judgment of Lord Hatherley in *O'Mahoney v. Burdett*⁽¹⁾ was applicable and was relied on for the respondent. The testator gave an absolute estate and then added on a term of devolution which he could not do. Reference was made to *Skinner v. Naunihal Singh*⁽²⁾ and *Surajmani v. Rabi Nath Ojha*⁽³⁾ as to the meaning of "owners and heirs". The latter word the testator uses at the beginning and end of his will, and it is equivalent to "malik" which implies an absolute estate given.

It was also contended that under section 42 of the Specific Relief Act (I of 1877) the appellant was not entitled to sue for a declaration without also suing for the property.

(1) (1874) L. R. 7 H. L. 388, 403.

(2) (1913) 35 All. 211 : L. R. 40 I. A. 105.

(3) (1907) 30 All. 84 : L. R. 35 I. A. 17.

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De Gruyther K.C. in reply :—The will was in Gujarati and written without legal advice. The testator knew nothing about English law or cases, nor the period of distribution and its effect. He did not know whether the property would vest in executors or not. He knew nothing about gifts over, contingent interests, etc. * But he knew the general law of inheritance, and that on his death his sons and grandsons would succeed, and on the death of his sons the surviving brother and grandson. Also that on the death of sons the property would go first to the widow and then to the daughter absolutely. There was no distinction between moveable and immoveable property. A liberal construction should be given to deeds and wills of Hindus, and one not necessarily according to English law. Reference was made to *Hunoomanpersaud Panday v. Mussumat Baboee Munraj Koonweree*⁽¹⁾; *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick*⁽²⁾; *Mussumat Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdhry*⁽³⁾; *Radha Prasad Mullick v. Raneē Mani Dasseē*⁽⁴⁾; *Bhagabati Barmanya v. Kalicharan Singh*⁽⁵⁾; and Mayne's Hindu Law, 7th edition, page 573.

There were three ways of giving a legacy; and one of them is absolutely subject to defeasance: Jarman on Wills, 6th edition, page 1364; Williams on Executors, 10th edition, 1006 and 1209. The happening of a "gift over" does not prevent estate from vesting. A Hindu is competent to make a gift and a gift over: see *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick*⁽²⁾; *Bhoobun Mohini Debia v. Hurrish Chunder Chowdhry*⁽⁶⁾; *Kristo-*

(1) (1856) 6 Moo. I. A. 393, 411.

(4) (1908) 35 Cal. 896, 902: L. R. 35 I. A. 118, 128.

(2) (1857) 6 Moo. I. A. 526, 550.

(5) (1911) 38 Cal. 468, 474: L. R. 38 I. A. 54 (64, 65).

(3) (1865) 10 Moo. I. A. 279, 308.

(6) (1878) 4 Cal. 23, 27: L. R. 5 I. A. 138 (147).

romoni Dasi v. Narendro Krishna Bahadur⁽¹⁾; and *Lalit Mohun Singh Roy v. Chukkun Lal Roy*⁽²⁾. The proper construction was the ordinary, natural, and grammatical meaning which implies the death of one of the sons "at any time". *O'Mahoney v. Burdett*⁽³⁾ was cited. If that meaning is to be cut down, it could only be done by something in the will to that effect: any general expression of intention would not control the clear meaning. *Gurusami Pillai v. Sivakami Ammal*⁽⁴⁾; and *Lalit Mohun Singh Roy v. Chukkun Lal Roy*⁽²⁾. Under the Hindu Law of the Mayukha a nephew, son of a deceased brother, takes with surviving brothers; *Chandika Bakhsh v. Muna Kunwar*⁽⁵⁾. Events after his death were in the testator's mind. If Chunilal had died after the testator's death leaving a brother and Dhirajlal those two must have shared the property. The words used refer to an event to occur after the testator's death. Reference to Dhirajlal was not necessary. The words are wide enough to include other contingencies and should not control the natural meaning of the clause.

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[*Lowndes* said he abandoned his contention as to section 111 of the Succession Act.] The subsequent conduct of the sons was consistent with their having life-estates. As to the moveable property did the interest in it pass to the sons? The test is who had the benefit of it. The sons did not. The testator had not parted with it; if he had he would have impoverished himself.

(1) (1888) 16 Cal. 383 : L. R. 16 I. A. 29, 39. (3) (1874) L. R. 7 H. L. 388 (403).

(2) (1897) 24 Cal. 834 (849) : L. R. 24 I. A. 76, 90. (4) (1895) 18 Mad. 347 (358) : L. R. 22 I. A. 119, 128.

(5) (1902) 24 All. 273 (280) : L. R. 29 I. A. 70 (74).

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1914, *March 17th* :—The judgment of their Lordships was delivered by

LORD SHAW :—This is an appeal from a decree of the High Court of Judicature at Bombay, dated the 20th July 1910, reversing a decree of the Court of the District Judge, Surat, dated the 27th August 1908, which had affirmed with modifications a decree of the Court of the First Class Subordinate Judge, Surat, dated the 4th February 1907.

The only question for determination in the appeal relates to the construction of a will dated the 20th August 1899, made by a Hindu named Parvatishankar Durgashankar. He was a resident of Surat in the Bombay Presidency : and it may be at once stated that it was admitted by both parties at their Lordships' Bar that the Hindu Wills Act, Chapter XXI, of the year 1870, did not apply to this case, which falls to be determined not by the law operative within the territories subject to the Lieutenant-Governor of Bengal or the local limits of the ordinary original civil jurisdiction of the High Courts at Madras and Bombay. It may well be that the sections of that Act upon interpretation would yield the same result as has been arrived at in the present case. But no decision on that topic is given : and the case is treated as one applying in the *mofussil*, and therefore to be dealt with on ordinary legal principles. It must also be stated that the various terms employed in the particular will are special, and that no general rule can be said to be precisely applicable in its construction except that the Court must make its best endeavour to extract the intention of the testator.

Parvatishankar, the testator, died on the 4th July 1901. He left surviving him two sons, Shambhuprasad (who died on the 2nd January 1903, leaving a widow, the respondent in this appeal, and a daughter) and Chunilal, the appellant. A third son of Parvatishankar, Surajlal, had predeceased his father, but had left

one son. Surajlal had separated from his father many years previous to his death; the other sons were in family with him.

The will was executed about two years before the testator's death and it purports to dispose of the whole of his property. By clause 2 he appointed his two sons executors, heirs and owners of the whole. In various other clauses details as to the immoveable property are given, and directions that his sons are to divide and take in equal shares the whole of it with certain exceptions. In clause 7, there is a declaration as follows:—

“As to the moveable property which I possessed, I have during my lifetime divided the same between my two sons, Shambhuprasad and Chunilal, according to my wishes and have made over the same in their possession.”

A certain enumeration with directions is also given as to gold and silver ornaments in his possession. By clause 8 the testator gives each of his said two sons a half of his estate not specifically disposed of by his will.

It is clear up to this point in the will that the one predominant desire of the testator was that his two sons should have his property between them.

It was in the course of the case, however, found in fact that he had not accomplished, or completely accomplished, this desire. And the will accordingly falls to be appealed to as the governing instrument in regard to the distribution.

The question of survivorship as between these two sons was not dealt with until clause 9 of the will was reached, and it is in the following terms:—

“I have divided between and given to my two sons Shambhuprasad and Chunilal the whole of my property as mentioned above. But should either of these two sons die without having had (leaving) any male issue, the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the

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maintenance of his widow and the maintenance and marriage of his minor daughters. But under these circumstances the heirs of my deceased son Surajlal shall not get any right whatever."

Various issues were raised in the case, including whether the estate in question was self-acquired. This was answered in the affirmative, and that answer is not now disputed. As stated, the one question remaining in the case has reference to the construction of clause 9 above quoted. The learned Judges of the High Court of Bombay have held that—

"The period of distribution contemplated by the testator is clearly the period of his death, and under these circumstances the event which may interfere with that distribution and give rise to the necessity for other arrangements must be an event occurring prior to his death."

As already mentioned, Shambhuprasad survived the testator. And the result of the judgment is that one-half of the property now to be disposed of is held to have vested in him *a morte testatoris* and that the whole provision of clause 9 with reference to survivorship falls, in the events which have occurred, to the ground. The effect of the learned Judges' decree is that the clause must be read as if the survivorship there provided for was limited to survivorship as at the testator's death.

Their Lordships are clearly of opinion that this judgment cannot be maintained. There is nothing specifically either English or Indian in the idea that the will of a testator must be construed on that principle which would enable Courts of Law most fully to give effect to the intention expressed by his words. It may be that if the words he employs are *voces signatae* they must be so accepted, whatever the suspicion may be as to the testator having had that particular view of his own language. But in ordinary circumstances ordinary words must bear their ordinary construction, and the whole will, that is, the whole of the words employed by the testator, must be looked at together so as to determine

his whole intention. Furthermore, it is not on this principle legitimate to take words which have a general meaning and subject them to limitations which the words do not necessarily imply. It may be true that there is a body of older cases which would warrant a suggestion that the term employed in this will, namely, "should either of these two sons die without having had (leaving) any male issue" should be limited to such death occurring before the death of the testator himself, but the will does not say that, and it has for many years been a settled principle that words of this class, being in general terms, must receive their full, and not a restricted, meaning.

The leading authority on the subject is, of course, *O'Mahoney v. Burdett*⁽¹⁾, and two sentences of Lord Hatherley's opinion may be here repeated. He refers to the duty of the Courts always to consider carefully the whole will,

"and, having regard to all the various clauses contained in it, to see what is the full and complete and perfect intention of the testator."

He corrects the case of *Edwards v. Edwards*⁽²⁾, and makes the statement of the principle run thus :

"that the period to which the executory devise will be referred will be the period of the death of the first taker, unless there are other circumstances and directions in the will which are inconsistent with that supposition."

If it did not appear presumptuous to say so, one might comment on the case of *O'Mahoney v. Burdett* as one which emerged through a thicket of technical decisions to a ground of plain and pre-eminent good sense. It was also, of course, fortified by authority, and notably by the case of *Allen v. Farthing*⁽³⁾, the fullest report of which was given by Mr. Jarman in his work on "Wills". (6th edition, page 2160.)

⁽¹⁾ (1874) L. R. 7 H. L. 388, 404. ⁽²⁾ (1852) 15 Beav. 357.

⁽³⁾ (1816) 2 Madd. 310.

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But so far from the language employed in the present will leaving any serious ambiguity as to the intention of the testator, their Lordships are of the opposite opinion. In their view the words clearly point to survivorship whenever it should occur. When Shambhuprasad, having, with his brother Chunilal, survived his father, died, leaving a widow and a daughter, the language employed to cover such a situation seems exact and clear.

“Should either of these two sons,” it says, “die without having had (leaving) any male issue, the survivor . . . is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue.”

And, as if this were not sufficient, the will proceeds to lay upon the surviving brother a duty in the event of that survivorship in the following language :

“after undertaking (to defray) the expenses in connection with the maintenance of his widow and the maintenance and marriage of his minor daughters.”

It seems to their Lordships that it would be a strained construction of a will in that form (which manifestly contemplates death occurring at any time—with the receipt of property by way of survivorship—on the one hand, and the duties to be laid upon the survivor at any time, on the other hand) to say that the whole of these provisions fall to the ground, although Shambhuprasad had in point of fact left no male issue, because he did not die in that situation before the testator himself. The testator, in their Lordships' opinion, had clearly in view a much wider and more general provision, and they think that the events which have in fact occurred, *viz.*, the survival of the testator by his two sons and the death of one of these sons leaving a widow and daughter but no male issue, are events to which the will has operative application. They accordingly do not doubt that Chunilal, the surviving son, is, as such survivor, entitled to the estate conveyed by this clause,

and that the correlative obligation resting upon him comes into play.

Their Lordships desire to put on record an admission made by Counsel for the appellant to the effect that he had no knowledge of any property of the deceased testator in possession of the respondent, Shambhuprasad's widow, and that, if the respondent came into possession of such property under arrangements made in the life-time of her husband with his brother the appellant, the present judgment would not be used to disturb such an arrangement.

Their Lordships do not feel themselves able to give effect to the argument presented under section 42 of the Specific Relief Act or to interfere with the judgment of the Subordinate Judge on this question of procedure.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the cause be remitted to the High Court in order that upon provision being made and security being given to its satisfaction for the maintenance of the respondent and for the maintenance and marriage expenses of the minor daughter a declaration and injunction be given in terms of the plaint. In view of the special difficulties in the construction of the will the appellant will pay to the respondent all costs incurred by her before this Board and in the Courts below.

Solicitor for the appellant : *Edward Dalgado.*

Solicitors for the respondent : *T. L. Wilson & Co.*

Appeal allowed.

J. V. W.

1914.

CHUNILAL
PARVATI-
SHANKAR
v.
BAI
SAMRATHI.