APPELLATE CIVIL.

Before Gosain, J.

HAZARA SINGH AND OTHERS,—*Plaintiffs-Appellants.*

versus

BANTA SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 126 of 1953

1958

April, 9th

Indian Succession Act (XXXIX of 1925)—Section 63—Whether has retrospective operation—Sections 119 and 120—Will providing that after the deaths of A and B., C.

(1) A.I.R. 1955 S.C. 19 (23).

will get the entire property—Interest bequeathed to C.—Whether vested interest—C dying during the life-time of A and B—C's heirs, whether entitled to the property after the deaths of A and B—Construction of the will—Legatees not given right of alienation—Legatees, whether become full owners of the property bequeathed to them or only get a life estate.

Held, that section 63 of the Indian Succession Act has no retrospective operation and cannot affect the validity of the wills executed before it came into operation.

Held, that illustration (i) of section 120 of the Indian Succession Act does not apply to a case where the event mentioned is only "the death of a certain person". Death is an event which must in every case happen and is, therefore, an event which is certain. Death of a person under a certain age is, however, not certain and must always be regarded as an uncertain event. Where, therefore, the will provided that after the deaths of A and B, C will be the owner and possessor of the share allotted to them, C's interest in the property bequeathed to him was a vested one which, on his death, devolved on his heirs. Even if C dies during the life-time of A and B, his heirs will inherit the property on the deaths of A and B.

Held, that where the will provided that "legatees will not be entitled to alienate the property in any way except for the payment of the share of the debt of the testator and that they will remain in possession of the property till their lives, only for the purpose of getting maintenance from the same", the will conferred only a life estate on them and they did not become absolute owners of the property bequeathed to them.

Second appeal from the decree of Shri Shamsher Bahadur, District Judge, Jullundur, dated 29th December, 1952, affirming that of Shri Radha Kishan, Sub-Judge, 1st Class, Jullundur, dated 30th October, 1950, dismissing the plaintiffs' suit with costs.

Claim:—For possession of land measuring 80 kls. 16 mls.

Claim in appeal:—For reversal of the decree of both the Courts below.

F. C. MITAL, for Appellants.
S. D. BAHRI, for Respondents.

JUDGMENT

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GOSAIN, J.—The facts giving rise to this second appeal are as under: The property in dispute belonged to one Hukmi who died on the 17th October, 1923, leaving a widow Mst. Tabi, and a widow of his pre-deceased son Mst. Chandar Kaur. On the 6th June, 1911, Hukmi had made a will, Exhibit P. 15, by virtue of which he bequeathed one-third of his estate to his brother-in-law Nathu (brother of Mst. Tabi), one-third to Mst. Tabi and the rest one-third to Mst. Chandar Kaur. It was provided in the will that Mst. Tabi and Mst. Chandar Kaur shall not be able to alienate the property in any way and shall keep the property only till their lives and for their maintenance. After the death of Mst. Tabi and Mst. Chandar Kaur their share was also to go to Nathu. On the 13th February, 1925, the entire property was mutated in the name of Mst. Tabi and Mst. Chandar Kaur, but on a suit brought by Nathu for possession of his one-third share a decree was passed in his favour on the 21st April, 1925, with the result that one-third of Hukmi's property went over to Nathu, one-third to Mst. Tabi and one-third to Mst. Chandar Kaur. On the 6th August, 1926, the present plaintiffs excepting Bhulla and Kehar Singh, brought a suit for usual declaration challenging the validity of the will. The said suit was dismissed by the trial Court and the decree of the trial Court was confirmed by the District Judge and also by the Lahore High Court. Some time between 1931 and 1934 Nathu died and his brother Jangi inherited him so far as one-third share of Hukmi's property was concerned. On the 10th November, 1934, Mst. Tabi died and her share was mutated in the name

of Jangi by means of muatation Exhibit P. 7 attested on the 18th August, 1935. On the 28th August, 1945, the present plaintiffs filed a suit for possession of this one-third share left by Mst. Tabi. On the 3rd May, 1948, the suit was dismissed by the trial Court but in appeal the plaintiffs were permitted to withdraw the suit with leave to bring a fresh suit. On the 2nd June, 1944, Mst. Chandar Kaur also died and on the 18th February, 1948, the present plaintiffs brought another suit for possession of the property left by her. On the 29th March, 1949, this suit was also withdrawn with leave to bring a fresh suit. In July, 1949, the present suit was brought for possession of the entire land left by Hukmi on the allegations that the property held by Hukmi was ancestral, that Hukmi could not have made a will in respect of the said property, that the alleged will made by him had never in fact been made, that the alleged will gave absolute estate to Mst. Tabi and Mst. Chandar Kaur, and on their death the plaintiffs were the proper heirs *qua* that property, that they were collaterals of Hukmi deceased and were entitled to succeed to the entire property left by him. The suit was contested by Jangi, real brother of Nathu, who claimed to be the successor-in-interest of Nathu. The defendant did not admit the ancestral nature of the property and pleaded that Hukmi had executed a valid will in favour of Nathu and others. Several other pleas were also raised by him which are not very much relevant for the purpose of decision of this appeal. The trial Court framed as many as 10 issues in the case and after recording its findings on them dismissed the plaintiffs' suit with costs. In appeal before the District Judge, the findings of the trial Court only on the following points were assailed:—

(1) Proof and interpretation of the will,

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(2) application of the doctrine of *res judicata*,

(3) ancestral nature of the property; and

(4) limitation.

The learned District Judge found that the alleged will had been executed by Hukmi and gave only the life interest to Mst. Tabi and Mst. Chandar Kaur. He also found that on testator's death Nathu got vested interest in the property which devolved on the defendant Jangi. It was found that the decision in the previous suit did not amount to *res judicata* and that the suit was barred by time. On the aforesaid findings the learned District Judge dismissed the appeal with costs. The plaintiffs have now come up to this Court in second appeal.

Mr. F. C. Mital, learned counsel for the appellants has urged before me the following points:—

(1) That the will had not been executed in accordance with the provisions of section 63 of the Indian Succession Act;

(2) that the will gave absolute estate to Mst. Tabi and Mst. Chandar Kaur, and Nathu could not possibly succeed to the property left by them.

(3) that Nathu had only a contigent interest in the property and he himself having predeceased the widow nothing devolved on his heirs;

(4) that the suit should have been held to be within limitation.

The first point has no force because the will in the present case was executed in 1911 when the

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Indian Succession Act was not in force. Section 63 of the Indian Succession Act has no retrospective operation and cannot affect the validity of the wills executed before it came into operation.

As regards the interpretation of the will I am unable to accept the contention of Mr. Mital. The relevant provisions of the will are that "Nathu, Mst. Tabi and Mst. Chandar Kaur will be the owners and possessors of movable and immovable property which may be in existence at the time of my death but Mst. Chandar Kaur and Mst. Tabi shall not have any right of alienation in the movable and immovable property. They will remain in possession of the property till their lives only for the purpose of getting maintenance from the same. After the death of Mst. Chandar Kaur or Mst. Tabi Nathu will be the owner and possessor of the share allotted to them. For the purpose of paying off the debt which may be due from me at the time of my death, Nathu will be able to alienate my property. Whatever debt may be due from me, each of the persons getting my property will be entitled to alienate the property for the purpose of paying the share of my debt in proportion to the share of the property obtained by each of the legatees". The provisions of the will leave no doubt that the testator did not intend to give any absolute estate to the two females but expressly limited the estate to their lives and for the purposes of maintenance only. An express provision was also made in the will that the two females in question will not be entitled to alienate the property in any way except for the payment of share of the debt of the testator. The power of alienantion granted by the will in this case can be exercised otherwise also by a limited owner, i.e., a female holding the property on life interest.

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In support of the interpretation which he put on the will, Mr. Mital relied upon *Ram Gopal* v. *Nand Lal and others* (1), *Rai Bishunath Prasad Singh* v. *Rani Chandika Prasad Kumari and other* (2), *Musammat Surajmani and others* v. *Rabi Nath Ojha and another* (3), *Sesiman Chowdhurain and others* v. *Shib Narain Chowdhury and others* (4), *Mussammat Ram Kaur* v. *Atma Singh and another* (5), *and Nek Muhammad and others* v. *Maya Ram and others* (6). The facts in all these rulings were, however, clearly distinguishable from the facts of the present case. In *Ram Gopal* v. *Nand Lal and others* (1), a *tamliknama* had been executed in favour of one Mst. Meria widow of Chhedi Lal and the relevant words were:—

> "I have.....made a *tamlik* ..... in favour of Mst. Meria aforesaid, widow of Chhedi Lal and made her the owner (*Malik*). If any portion or the whole of the property made a *tamlik* of for the purpose mentioned above passes out of the possession of the Mussammat aforesaid on account of the claim of Nand Lal minor aforesaid, I and my property of every sort shall be responsible and liable for the same."

It is clear from the terms of the deed that there were no restrictions placed on the right of Mst. Meria and she was made the owner (*Malik*). The only argument raised in that case was that an absolute estate to a Hindu female could not be granted except by using express words for the same. This argument was repelled by their

(1) A.I.R. 1951 S.C. 139.
(2) A.I.R. 1933 P.C. 67.
(3) L.R. XXXV I.A. 17.
(4) A.I.R. 1922 P.C. 63.
(5) I.L.R. VIII Lah. 181.
(6) 35 P.W.R. 103.

Lordships of the Supreme Court and it was found that the executant of the document having placed no restrictions on the rights of Mst. Meria, she must be taken to have acquired absolute interest. In *Rai Bishunath Prasad Singh* v. *Rani Chandika Prasad Kumari and others* (1), the will had been made by a Hindu in favour of his daughter-in-law for her support and maintenance. The daughter-in law was to remain absolute owner (*malik mastakil*) of the property under the deed. The terms of the deed are given in second column of page 67 of the report and a perusal of the same shows that no restriction of any type was placed on the rights of the legatee. The contention raised was that the property had been given to her for her support and maintenance and, therefore, it must be assumed that the testator did not intend conferring an absolute estate. Their Lordships of the Privy Council repelled that argument on the ground that the terms of the documents showed that she had been made absolute owner (*Malik mastakil*) and that in absence of any restrictions on her rights she must be held to be an absolute owner. In *Sasiman Chowdhurain and others* v. *Shib Narain Chowdhury and others* (2), the important words of the will were:—

> "I, the declarant, ...gave all the *mouzahs* in entirety or in part, both ancestral and purchased, *thika* properties and all goods "and assets, articles of copper and silver, elephant, oxen, she-buffaloes, and all other properties, to both my first and second wives,..... who after my death will be heirs to all the movable and immovable properties. .....The said Mussammats,

(1) A.I.R. 1933 P.C. 37.
(2) A.I.R. 1922 P.C. 63.

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after my death, shall have, in every way, full power and all proprietary rights over all the moveable and immoveable properties, and they should, under the deed executed by me. pay annually, Rs. 360 to Mussammat Lachhmi Chowdhurain....."

There were no restrictions at all placed on the rights of the legatees and the actual words used in the will show that entire powers of proprietary right were given to them. In *Mussammat Surajmani and others* v. *Nabi Nath Ojha and another*, (1), the will provided that the legatees shall be *malik wa khud ikhtiyar*, that is, owners with proprietary powers. No restrictions at all were placed on the rights of the legatees. In *Mussammat Ram Kaur* v. *Atma Singh and another* (2), the will of a Hindu declared his two sons G. D. and N. D. owners and possessors (*malik wa qabiz*) of his estate after his death, but proceeded to direct that Mst. R. K. (his wife) should during her life have full powers of management, in which neither of her sons (the legatees) should have a right to interfere, to get his share partitioned, alienated or encumbered, it was further declared that nobody should be entitled to call upon Mst. R. K. for an account of her management. In subsequent clauses of the will, the property (milkiyyat) was repeatedly referred to as owned by the two sons, and Mst. R. K. was directed as Manager, to use it, not at will, but for the benefit of herself and the two sons generally. There was nothing in the will to reduce the meaning of the expressions used, viz., "malik wa qabiz" and "*milkiyyat*," to anything less than full and complete ownership. The will was interpreted to mean that G. D. and N. D. were absolute owners

(1) L.R. XXXV I.A. 17.
(2) I.L.R. VIII Lah. 181.

and that the mother at the most was only a manager for a limited time. In *Nek Muhammad and another* v. *Maya Ram and others* (1), the will provided that the legatees will be the owners in equal shares and that they will be entitled to make any type of alienation, temporary or permanent, at any time they chose. The language of the document was interpreted to be comprehensive and one conferring upon the devisees in express terms full power of alienation by sale, mortgage, etc.

Mr. S. D. Bahri, learned counsel for the respondents, contends that the will gives to Mst. Tabi and Mst. Chandar Kaur nothing more than a life estate and that it cannot be interpreted to confer an absolute estate on them. In support of his contention he relies upon *Raj Bajrang Bahadur Sinhg* v. *Thakurain Bakhtraj Kaur* (2), *Mst. Ram Rakhi* v. *Peoples Bank of Nothern India, Ltd. Gujrat*, (3), *Kanhya Lal* v. *Deep Chand* (4), and *Sansar Chand* v. *Mst. Durga Dasi and another* (5). These rulings in my opinion fully support his proposition. In *Raj Bajrang Bahadur Singh* v. *Thakurain Bakhtraj Kaur*, (2), the relevant portions of the will are mentioned at page 9 of the report. Clause (3) of the will provided as under:—

> "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."

Clause (4) provided:—

> "4. If God forbid, Dhuj Singh may not be living at the time of my death, his son

(1) 35 P.W.R. 103.
(2) A.I.R. 1953 S.C. 7.
(3) A.I.R. 1942 Lah. 42.
(4) A.I.R. 1947 Lah. 199.
(5) A.I.R. 1934 All. 93.

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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."

On the interpretation of the will, their Lordships observed in para 13 of the report as under:—

> "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,..... ".

In *Mst. Ram Rakhi* v. *Peoples Bank of Northern India, Ltd., Gujrat* (1), the will made by a Hindu testator divided his property as follows:—

> "On my death my wife, Mst. Mathra Devi, will be an owner and possessor like myself of the entire moveable and immoveable property owned by me. During her life time my children will have no connection with my property whatever, and she will be at liberty to manage it in any manner she likes. My wife, however, shall have no right to

(1) A.I.R. 1942 Lah. 42.

alienate my property without any legal necessity."

It was interpreted by a Division Bench of the Lahore High Court to confer only a life estate on the wife of the testator. The main basis for this interpretation was that the power of alienation had been expressly taken away by the testator and the will provided for the disposition of the property after the death of the legatee.

In *Kanhiya Lal* v. *Deep Chand* (1), it was held by a Division Bench of the Lahore High Court:—

"If a widow is designated as *malik* or permanent *malik* in a will, that by itself is not sufficient to justify a Court construing the will in coming to the conclusion that the intention of the testator was to confer an absolute estate on her, and it would similarly be an incorrect mode of construction to accept such clauses as conferring an absolute estate and then to eliminate one by one all subsequent clauses which indicate the testator's intention to limit the estate conferred upon the widow, and hold that they are void for repugnancy to the earlier clause."

After giving my best consideration to the point and the various rulings cited at the bar, I am definitely of the opinion that the will in the present case conferred only a life estate on Mst. Tabi and Mst. Chander and that on their death the property vested in Nathu.

Mr. Mital next contended that the will must be interpreted as creating contingent interest in Nathu and that on the death of Nathu during the

(1) A.I.R. 1947 Lah. 199.

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life time of the two widows the interest of Nathu must be deemed to have lapsed. I am unable to agree with this contention also. Section 119 of the Indian Succession Act clearly provides as under:—

> "Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest."

Mr. Mital, however, relied upon subsection (1) of section 120 of the Indian Succession Act, which reads as under:—

> "A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens."

Obviously this is not a case where the specified event was uncertain. The will provided that Nathu shall get the entire property after the death of Mst. Tabi and Mst. Chandar Kaur. The deaths of Mst. Tabi and Mst. Chandar Kaur cannot possibly he held to be uncertain events. Death is an event which must in every case happen and it cannot be said that such an event is an uncertain one. Illustration (i) given in this section was read out to me by Mr. Mital and he relied on the same. This illustration reads as under:—

> "A legacy is bequeathed to D. in case A, B and C shall all die under the age of 18.

D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age."

Obviously the event covered by this illustration is the death of A, B and C under the age of 18. The death under a particular age must always be regarded to be an uncertain event and the illustration cannot possibly apply to a case where the event mentioned is only "the death of certain person". In my opinion the case is governed by *Philip Graham Greenwood* v. *Philip Graham Greenwood and others* (1), and it must be held that Nathu's interest in the property bequeathed to him was a vested one which on his death devolved on his brother Jangi defendant.

Mr. Mittal also contended that the plaintiff's suit should be held to be within time. So far as the property of the share of Mst. Tabi and Mst. Chandar Kaur is concerned, the suit cannot obviously be held to be barred by time. Mst. Chandar Kaur died on the 2nd June, 1944, and the present suit was filed in July, 1949. Mst. Tabi died on the 10th November, 1934, but the plaintiffs who are the collaterals had no right to succeed to her in the presence of Mst. Chandar Kaur and they were obviously not entitled to file the present suit till the death of Mst. Chandar Kaur on the 2nd June, 1944. So far as the share of Nathu is concerned the suit must be held to be barred by time. Nathu obtained the decree in his favour on the 21st April, 1925, and got into possession of the property soon after that. The present suit brought in 1949 is much more than 12 years after the accrual of the cause of action.

In view of my findings that the will created only a life estate in favour of Mst. Tabi and Mst.

(1) A.I.R. 1939 P.C. 78.

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Chandar Kaur and that Nathu was the proper heir to them after their death, plaintiffs' suit must evidently fail. I would, therefore, dismiss this appeal and confirm the decree of the lower appellate Court. Plaintiffs' suit will stand dismissed with costs throughout.

B.R.T.