

*Privy Council Appeal No. 3 of 1922.*

Foolcooverbai - - - - - *Appellant*

*v.*

Rai Saheb Keshrisingh Rajmal - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1922.

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*Present at the Hearing :*

LORD PHILLIMORE.  
LORD CARSON.  
MR. AMEER ALI.  
SIR LAWRENCE JENKINS.  
LORD SALVESEN.

[*Delivered by* LORD CARSON.]

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This suit was brought by the plaintiff, the widow of one Chandmulji, for the determination and declaration of her rights in Chandmulji's estate. Chandmulji was a rich Jain who lived at Rutlam and carried on business there, at Bombay and other places. The property to which he was entitled at his death he held as the last survivor of a joint family. His will, dated the 16th June, 1907, is in the following terms :—

“ I alone am the owner of the immovable [and] movable properties acquired by reverend, the most illustrious Magniramji and Bhutsingji Punamchandji Dipchandji Sobhagnulji Chandmul. If a male issue be born to me, then he shall remain [? shall be] the owner. Should perchance a son be not born to me, then [in that case] my heir is Chiranjiv Keshrising. Should a heir [*i.e.*] a son be born to Chiranjiv Keshrisingji, then he shall be the heir in the future. Should perchance no son be born to Chiranjiv Keshrising and should it be necessary to bring [a son] from [some] other place, then during the lifetime of my wife [a son] from our Gotra shall be brought [adopted] with the consent of my wife. Hereafter, in connection with the adoption of a son Chiranjiv Keshrising's wife shall have no authority.

I appoint Chiranjiv Keshrising [to be] my heir. He shall act under the orders of my wife. At present I have been carrying on the management of the shops belonging to me in the Rutlam Taluka. Chiranjiv Keshrising shall carry on [the management] in that manner. And he shall live at both places [*i.e.*] at Kota and Rutlam for half of the period [at one place and for the other half at the other place]. I have, during my lifetime, authority to make alterations in this testamentary writing. [This is] all. The 16th of June in the Christian year 1907.

“The 5th of Jeth Sud of Sa[mvat] 1964, the day of the week Sunday. The handwriting of Chandmul Bafna himself written at Rutlam.”

The defendant and respondent Keshrising named in the will is an agnate and claims to be a great-grandson of the brother of Chandmulji's great-grandfather. On the same date that the will was executed the respondent signed a writing addressed to the deceased to the following effect :—

“Further, if you appoint me your heir, I will conduct myself towards you and the worshipful and respected Kakiji just as a child [conducts] himself towards [and] obeys the orders of his parents. I will not ever change in [such my] conduct [towards you]. You may rest assured as to [such conduct on] my part. The most worshipful Hamirmalji Saheb has entrusted [or made over] the ownership of the shop [or shops] under him at Kota to you. So you are the owner [thereof]. I will do [all] work relating to the shop [or shops] under you at Kota according to your orders. I will stay for half the time [*i.e.*, half the year] at Kota and for the [other] half at Rutlam. You have made [your] testamentary writing. I will act agreeably to the same in all respects. If, by the Grace of God, any progeny [? son] be born to you, he will be owner of the Rutlam [shop]. There will not be any manner of objection [to the same] on my part. If a son be not born to you, and if you appoint me heir, I will, according to your orders, attend on you and on the respected Kakiji. The son who may be born to me will be heir after me. If perchance a son be not born to me and if it be necessary to take [a boy] in adoption, I will take one in adoption during the lifetime of the worshipful and the respected Kakiji Saheb, according to the directions of the worshipful and respected Kakiji Saheb.”

The said Chandmulji died on the 21st June, 1907, leaving no issue. The contention on behalf of the plaintiff is that under the terms of the will the testator did not dispose of his estate during her lifetime ; that there was therefore an intestacy under which the plaintiff is entitled to a Hindu widow's estate. It was also alleged that having regard to the document executed by the respondent, the property was held in trust for the testator's widow, the plaintiff. This latter contention, however, although raised in the first two reasons set forth in the appellant's case, was not pressed.

The only question to be decided is as to whether on the true construction of the will there was such an intestacy as aforesaid so as to create a widow's estate. Both the Courts before whom the suit has been held decided that the contention of the plaintiff could not prevail and that she took no interest under the will. They, however, determined that she was entitled to the right of maintenance and residence, and ordered that it should be referred to the Commissioner of the Court for taking account to ascertain what provision should be made for the maintenance and residence

of the plaintiff. The right of the plaintiff to such maintenance and residence was admitted by the respondent. Their Lordships are of opinion that the contention of the plaintiff fails and that there is no reason for holding that there was any intestacy during the lifetime of the plaintiff.

The words of the will, "Should perchance a son be not born to me, then in that case my heir is Chiranjiv Keshrishing," and the subsequent words, "I appoint Chiranjiv Keshrishing [to be] my heir," are sufficient words to pass the property from the date of the death of the testator, and although the subsequent terms of the will as to the adoption of a son with the consent of the testator's wife in the event of no son being born to the respondent, and other expressions used, may appear to give an unusual authority to the wife, there is nothing in them to cut down the express terms of the will appointing defendant to be the testator's heir. It was urged that the authority given to the wife in the letter procured from the respondent by the testator shows an intention on the part of the testator to leave his wife in a position of a Hindu widow, and that having regard to this provision in the will, their Lordships ought to assume the testator's intention of desiring his wife to be in the same position as if he had died intestate. Their Lordships are of opinion that such an intention cannot be implied in a case where the testator has made a will in which he has deliberately made no express provision with reference to the plaintiff. As before stated, the testator was a rich man, and the proper implication, if any, to be made is that he was satisfied that the maintenance and residence out of his estate to which his wife is admittedly entitled would be sufficient provision for her. Their Lordships think it unnecessary in this suit to make any declaration as to the extent of the rights of the defendant under the said will, and that it is sufficient to confirm the reference in the order of the 13th January, 1919, for taking accounts to ascertain what provision should be made for the maintenance and residence of the plaintiff herein and the rest of the order following upon this declaration. Subject to this alteration, their Lordships think that the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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v.

RAI SAHEB KESHRSINGH RAJMAL.

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DELIVERED BY LORD CARSON.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.  
1923.