

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.111 OF 2023
WITH
CIVIL APPLICATION NO.999 OF 2017**

Rameshchandra Khandelwal	Badriprasad	Applicant/ ... Appellant
V/s.		
Rajuladevi and Ors.	Dwarkaprasad Khandelwal	... Respondents

Mr.Ruchir Tolat a/w. Rushil Mehta for the
Applicant/Appellant.

Mr. Satyavan N. Vaishnav a/w Ms. Napur J. Mukherjee
i/by M/s. N. N. Vaishnawa & Co.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 21, 2023

P.C.:

1. The Appeal is by the original Plaintiff who had filed the Suit seeking a declaration that property transferred in favour of Defendants by late Ramsarup Kishan Gopal was restricted to only the business and not for premises. Further, declaration is sought that Defendant Nos.1 to 8 are trespassers in the Suit premises. Consequential relief of delivery of possession is also sought.

2. Immovable property admeasuring 110 square yards of which Plaintiff's claims to be 50% owner of land. On street No.73-75 known as Ramkrishna Bhuvan situated at Kika Street known as Gulalwadi is the subject matter of Suit property. Undisputedly,

Ramsarup Kishan Gopal was the exclusive owner of the Suit property. According to the Plaintiff, the said property was purchased on behalf of joint family in his capacity as 'Karta'. There is no issue framed in the Suit as regards dispute of ownership of late Ramsarup Kishan Gopal. Both the parties proceeded on the basis that the deceased was exclusive owner of the property. The fact of execution of will is not in dispute. Moreover, the said will has been probated by this Court *vide* judgment and order dated 11th November, 1949. Therefore, interpretation of clauses of will is the only point involved in the Appeal. The trial Court has quoted relevant clauses of will. The said clauses are as under:

“Clause [1] :- My property is as under:-

[a] My house as Shree Ramkrishna Bhuivan situated in Gulalwadi at Bombay.

[b] Two shops one, sweetmeat shop and the other a milk shop belonging to me at Gulalwadi.

[c] Immovable and movable property at Muttra.

[d] cash, outstandings, jewellery etc. at Bombay and Muttra.

[e] And whatever else there may be belonging to me or may come to me.

Clause 2 – I make the following disposition in respect of my above mentioned property.

[a] By this will I bequeath my aforesaid house at Gulalwadi to both the minor sons of Badriprasad Narottamalal, named, Suryakumar and Ramshchandra

in equal shares as owners thereof. The said property shall be administered by Badriprasad Narottamalal so long as [his] younger son Rameshchnadra does not attain the age of 21 years.

[b] I give both the aforesaid shops at Gulalwadi together with the goods and articles, outstanding, debts and claims and the amount standing to my credit, to Dwarkaprasad and Narottamalal as the absolute owner thereof and with regard to the other arrangement-agreement which I have made for conducting the said shops, I declare by this writing that the said arrangement agreement shall stand canceled after my death. I give these shops to Dwarkaprasad on condition that Dwarkaprasad shall set apart Rs.101/- every month for charity and expend the same in charity in my name and utilize the amount or amounts thus set apart for good purposes in my name on Shraddha day every year.”

3. According to the Plaintiff sub-clause (b) of clause 2 creates rights restricted to business in the shops. According to the Defendants sub-clause (b) of clause 2 confers absolute ownership of the shops.

4. Reading of clause (b) quoted above makes intention of testator clear that both the aforesaid shops at Gulalwadi together with the goods and articles, outstanding, debts and claims and the amount standing on testators’ credit, which have been bequeathed

in favour of the Dwarkaprasad Narottamalal as absolute owner thereof.

5. Since, clause in the will is crystal clear, oral evidence contradictory terms of document would be inadmissible. Therefore, in my opinion sub-clause (b) of clause 2 needs to be interpreted as conferring absolute ownership of Dwarkaprasad also. The said clause cannot be interpreted to confer restrict rights to the business in the said shop. Since, the clause in the will is clear, no evidence to contradict terms of will is admissible. Therefore, in my opinion, sub-clause (b) of clause 2 needs to be interpreted as conferring absolute ownership on Dwarkaprasad Narottamlal.

6. No other point is urged than the argument referred above. Therefore, in my opinion, the trial Court was justified in dismissing the Suit. Since, neither question of fact nor question of law arises for consideration, the Appeal is dismissed under Order 41, Rule 11 of the Code of Civil Procedure.

7. The Civil Application is not survived.

(AMIT BORKAR, J.)