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Case Study on Inheritance Struggles in Big Corporate Houses in India: The Case of Bharti Shroff's Will

RIDIMA GUPTA[1]

ABSTRACT

Bharti Shroff executed her will in 2012 where she had specified that if her will is challenged Cyril Shroff would disinherit from acquiring any of her assets. Later, in 2014 she executed a codicil and completely disinherited her son Cyril Shroff. The dispute between the brothers arose as the family had entered into a family arrangement in 2001 according to which the assets of Bharti Shroff were to be divided equally between them upon her death. This article examines the validity of No-contest clauses in a will and whether Bharti Shroff could have executed a will despite. The existence of a family arrangement. It is concluded that in-terrorem clauses are invalid as there can exist genuine and probable cause for challenging the will and this cannot be termed as suppression of intention of testator. Additionally, family arrangements cannot be revoked unilaterally unless they have been so decreed by the court. Any subsequent attempt at framing a will cannot be recognized, as family arrangements are legally binding instruments of law.

Georg Friedrich Hegel once claimed that all family resources are to be considered a common property of all members in a family such that no individual has his separate property and his right to a property is defined by the commonality of resources[2]. However, this idea ceases to have any effect in the modern world where properties are inherited not by families but by individuals especially now when an individual has the ability to dispose of his property in any manner, he desires by passing his wealth either to his next generation, distant relatives or even strangers. The idea of preserving the family along with protecting the common resources has weakened over time.

Today, there are numerous family-owned conglomerates in India which have contributed highly to the country's growth ranking India 3rd globally in the number of family owned

[1] Author is a student at Jindal Global Law School, India.

[2] David A Duquette, *Hegal Social and Political Thought*, INTERNET ENCLYPEDIA OF PHILOSOPHY, https://iep.utm.edu/hegelsoc/.

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businesses[3]. However, family squabbles over inheritance of money and estates are as prevalent in India. From the dispute over Priyamvada Birla's willl where she had given her entire wealth to RS Lodha instead of her relatives to the dispute between a father and a son over a billion-dollar textile empire of Raymond has only highlighted that the ancient concepts of preserving and protecting the institution of families originating from kinship, common culture and heritage have been distorted in India. Today, The inheritance of wealth is regarded as more valuable in a capitalistic environment.

One of the most famous inheritance struggles in India has been between the Shroff brothers, Shardul Shroff and Cyril Shroff, over the execution of the will of their mother Bharti Shroff. The family has been pioneers of law having represented big family-owned conglomerates in India yet found themselves entangled in the inheritance dispute over estate of Bharti Shroff in 2014.

The dispute dates to 2001 when A class- partners of Amarchand & Mangaldas & Suresh A. Shroff & Co. entered into a Family Framework Agreement (Hereinafter referred to as "FFA"). The class-A partners included Bharti Shroff, Shardul Shroff, Cyril Shroff their spouses Pallavi Shroff and Vandana Shroff respectively. Under the FFA it was agreed by the parties that upon Bharti Shroff's death her share in the partnership of the firm will devolve equally between the two brothers[4].

In 2012, Bharti Shroff executed her will whereby she appointed Shardul Shroff as the sole executor of the will and laid down provisions for purchase of her shares in both the law firms, Amarchand & Mangaldas & Suresh A. Shroff & Co and Amarchand & Mangaldas & Hiralal Shroff & Co. The will contained an in-terrorem clause whereby if the will is disputed on any of its aspect by Cyril Shroff or any member of his family, then none of the properties in the will can be devolved to Cyril Shroff[5].

However, in 2014, just before her death, Bharti Shroff executed a codicil where she altered her will to the extent that Cyril Shroff was completely disinherited from acquiring any stake in Bharti Shroff's estate. Nevertheless, in 2015, the dispute amongst the brothers ended with the country's top law firm, Amarchand & Mangaldas & Suresh A. Shroff & Co being divided into

[3] Press Trust of India, *India has third highest number of family-owned businesses in the world*, BUSINESS-STANDARD, Sep. 14 2018, https://www.business-standard.com/article/current-affairs/india-has-third-highest-number-of-family-owned-businesses-in-the-world-118091400409_1.html.
[4] Pallavi Saluja, *Bharati Shroff's Will, Shardul Shroff's plaint decoded; Understanding the Shardul v Cyril battle*, BAR AND BENCH, Nov. 20 2014, https://www.barandbench.com/news/bb-exclusive-bharati-shroffs-will-shardul-shroffs-plai-0.
[5] *Id*. at 2.

two halves amid a family settlement agreed to between the parties under a meditation. The Bombay high court thereafter agreed to grant the probate of the will of Mrs. Bharti Shroff and disposed of the suit in consonance with the family settlement[6].

Even though the suit might have been disposed of by the Bombay high court, it has brought into light some important questions in realm of family laws in India. The case involves both, a discussion of the validity of in-terrorem or no contest clauses drafted in a will and the question of whether a family arrangement takes precedence over a subsequently executed will.

In India, intestate succession amongst Hindus is governed by the Hindu Succession Act, 1965. Section 30 of the Hindu Succession Act permits Hindus to have a testamentary disposition of their property under a will in accordance with the Indian Succession Act, 1925. The Indian succession Act defines a will under section 2(h) as 'a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death'. However, framing a will does not ensure that there would not be any inheritance dispute and the will shall be probated without any challenge. Yet, a practice which dominates the western legal jurisprudence has been the concept of no contest wills or the provision of in-terrorem clauses in a will. No contest clauses are those which provide that the bequest under the will to the beneficiary shall be forfeited if any part therein is disputed by such a beneficiary in a court of law or otherwise. This condition is designed to pressurize the beneficiary into accepting the conditions of the will by restricting their scope of challenging the will and ensuring an efficient process of its probation[7]. In-terrorem is a Latin term which translates to 'in fear'. The aim of such a clause is to intimidate and frighten the legatee from digressing from the provisions of the will. The condition enforcing no contest has often found its support on the rationale that disallowing the enforceability of such a clause would lead to the court substituting its own desires and views against a clearly expressed intention of the testator[8]. The courts have often given effect to the provisions of the will as opposed to suppressing the intention of the testator by strictly construing no contest clauses. Another support for the condition rests upon prevention of litigation by barring contestation of will in conformity with the public policy and that no statutory law requires an heir to contest doubtful questions of law[9].

However, there exists numerous contradictory case laws which make authorities deeply disputable and uncertain on the validity of in-terrorem clauses. The advocate of the first

[6] *Id.* at 2.
[7] Robert E. Kuelthau, *Validity of no contest clauses in Wills*, 43 Marquette Law Rev. 529, 1960.
[8] W Harry Jack, *No-Contest or in Terrorem Clauses in Wills- Construction and Enforcement*, 4 SMU L. Rev. 722, 1965
[9] Bradford v. Bradford, 19 Ohio St. 546, 548 (1869)

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rationale have ignored that good faith and probable causes might exist for contesting a will and invalidly assume that the testator has drawn his will in accordance with the provisions of law. Under section 61 of the Indian Succession Act, if a will is caused by coercion, undue influence, fraud or any opportunity which affects the free will of the testator is void. Consequently, a condition of no contest under the garb of enforcing the intention of the testator enables evasion of the law. In South Norwalk Trust Co. v. St. John[10], the Supreme Court of Connecticut stated that a reasonable ground for contestation cannot result in forfeiture of the bequest. Upon the existence of such a condition, there will be no way for the courts to know whether a will on its face was made in conformity with the law. Beneficiaries in most of the cases are terrorized from approaching the court under the fear of forfeiture. They are often struck with the dilemma to contest even if their challenge rests upon undue influence or coercion. Therefore, if such legatees are forced to remain silent then devolution of the property would be in a manner not warranted by the Indian Succession Act.

The other argument fails to exhibit reasonability and precision because judicial determination of a claim must be the preferred public policy over favoring non litigation in cases where there are genuine injuries of legatees disputing the will. The Wisconsin Supreme Court in Will of Keenan[11] propounded how would it not be wrong and against public policy to enable an individual to deprive another from ascertaining his legal rights in a court of law? Especially before any doubts over its validity has not been mitigated. One then might postulate that the "public policy" which so vigorously supports non contestation of wills stems from the inability of courts to determine issues effectively in the presence of backlog of cases. Therefore, rather than strengthening the institution of judiciary and other grievance redressal mechanisms such a reasoning supporting no contest clauses hides behind the veil of enforcing public policy.

Another important aspect of the concept was propounded by judge Miller in his dissenting opinion in Barry v. American Security and Trust Company[12]. He said, usually the one who seeks to hire a council to contest the will is not persuaded by his forfeiture since he is a man of means, it is "the poor, the timid, the children, women, and incompetents", who will be restrained; those whose right to contest a will, thus public policy should be most concerned in protecting.

This view is particularly verifiable in the Indian context where the society exists in a dominant form of patriarchy. A women's right to property has always been greatly influenced by the

[10] 92 Conn. 168,101 at 961,963 (1917).
[11] 188 Wis.163,205 N.W 1001 (1925).
[12]135 F. 2d 470 (D.C. Cir. 1943)

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socially constructed gender hierarchy. Females are subjected to male dominance in areas of property as they are considered inferior women therefore not capable of acquiring a property. Likewise, before the Hindu Succession Act was amended in 2005, Hindu men did not recognize the right of a female to become a coparcener in a Hindu undivided Family. Therefore, often a provision such as the non-contest clause can be used to thwart the rights of women to hold property by staunch Hindu men and the courts would not even know it on its face value.

Therefore, a common ground on which the courts can ensure that desires of the testator are given full effect and a provision which does not oust the supervisory and jurisdiction of courts would be to not recognize no contest or in-terrorem clauses as valid and enforceable except in case where facts and circumstances point to the existence of vexatious litigation instituted without probable cause[13]. Hence, even though Bharti Shroff added a no contest clause to her will prior to enforcing the codicil, it would seek to be ineffective in law, particularly when probable ground for challenging the will on account of a family arrangement exists.

As we have ascertained the considerable disadvantage that would ensue if strict forfeitures are allowed to be enforceable then the will of the testator may be suppressed if it is against public policy. However, when we examine if family arrangements would take precedence over wills, we cannot arrive at a clearly demarcated answer as legal experts and authorities seem to be divided at this point. Would then the court upheld Bharti Shroff's will where she has accused the family of Cyril Shroff of mistreatment and cruelty especially considering the fact and circumstances that led her to disinherit Cyril Shroff?

The courts in India have always followed the Arm Chair Rule. The "Arm Chair Rule" was originally propounded in Boyes v. Cook[14]. The Rules reads thus:

"Arm chair Rule. - In construing the will, the court of construction should determine the facts and circumstances respecting the testator's property and his family and other persons and things as at the date of the will, in order to give effect to the words used in the will when the meaning and applications of his words cannot be ascertained without taking evidence of such facts and circumstances. For this purpose, evidence is received to enable the court to ascertain all the persons and facts known to the testator when he made the will. The court, it has been said, puts itself into the testator's armchair."

[13] W HARRY JACK, *supra* note 8.
[14] 1880 (14 Ch.D. 53).

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On another occasion the Supreme Court has held in King N.O. and Ors. v. De Jager and Ors[15]. "That the testator has freedom of testation. It is her right to dispose of her property as she pleases in a will. She can do what she wishes with her property". A will which then purports to advance the intention of the testator is given effect unless it is contrary to law. Consequently, Indian courts have generally upheld the contents of a will in the highest regard.

Having said that, a family arrangement is where various members of a family come together and agree on devolution of property in a particular manner. A family arrangement for being valid must be executed for the benefit of the family with the aim of securing peace and avoiding litigation, either present or any future dispute between the families. The consideration in such an agreement is ensuring goodwill and amity amongst parties to the agreement as held by the court in M.N. Aryamurthi v. M.L. Subbaraya Setty[16]. The courts have generally leaned towards giving family arrangements a broad interpretation while upholding their validity particularly due to the onset of doctrine of estoppel even in unregistered family arrangements. In Kale v. Dy. Director of Consolidation[17], It was held that 'a family arrangement being binding on the parties to it clearly operates as an estoppel to preclude any of the parties, who have taken advantage under the agreement, from revoking or challenging the same'. Hence, the rule of estoppel would further prevent Shardul Shroff from unsettling the arrangement merely because the arrangement suffers from a legal lacunae or formal defect if he has taken benefit under the arrangement[18].

Under Hindu law, the parties are at a liberty to transfer any of their moveable or immoveable property by virtue of entering into a family settlement. It is a legal and valid mode of transfer. The Supreme Court in Kokilambal v N Raman[19] stated that "such a transfer can either be an absolute visitation of rights or can be contingent upon the happening of a particular event".

Therefore, in the present case of Bharti Shroff's will, one can conclude it was a contingent transfer of property as the settlor Bharti Shroff had vested the property on the happening of a contingency ie: her demise. Consequently, an available option with the settlor can be to approach the court for its revocation if the situation arises. Particularly because under section 246B of Mulla on Hindu Law[20], it has been stated that merely because subsequently one of the parties wanted to resile from it or there was a change in their attention it would not invalidate

[15] MANU/SACC/0004/2021
[16] (1972) 4 SCC 1
[17] (1976) 3 SCC 119
[18] Hassan Industries Pvt Ltd. Vs Kidarsons Industries Pvt Ltd., AIR 2007 SC 18
[19] AIR 2005 SC 2468
[20] DINSHAW FARDUNJI MULLA & SATYAJIT A DESAI, MULLA HINDU LAW (Lexis Nexis 6 Feb. 2018)

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a valid and a binding family arrangement. Bharti Shroff never rescinded the family arrangement thereby her properties ought to have been devolved according to what was agreed in the settlement. Moreover, the words used under Section 30 of Hindu Succession Act are 'A Hindu may dispose of by will any property which is capable of being so (disposed of by him or her). On that account, properties which are not already transferred, whether absolutely or conditionally, under the family arrangement are the reaming assets which can be bequeathed by the testator or settlor under the subject matter of her will.

To conclude, the entire objective of giving effect to family arrangements is to settle any pending or future disputes between members of family. The arrangement acts as an already existing intention of the testator which has to be given effect till the time it was not rescinded. Any subsequent will cannot be regarded as a genuine will of the testator for the simple reasons that it might have been executed under undue influence, coercion etc. Under such circumstances, the family arrangements are documents which are reliable and at a higher evidentiary value. As a result, the family arrangement executed by Bharti Shroff with her sons Cyril Shroff and Shardul Shroff would be upheld.

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