

Mehtab Singh ultimate devise to his grand-daughter's children by name stating that they shall be owners of the property v. Amrik Singh generation after generation. Both the lower and others Courts have construed the will as giving life estate to Bishan Narain, the widows and I see no reason to differ from their conclusion. Shri F. C. Mital refers us to certain decisions of the Privy Council in which certain wills were construed in a particular way. But it is well established that it is not proper and indeed dangerous to construe one will according to the construction placed on the other wills. Same word in different contexts may have different meaning and significance. The document may show that the executant ascribed a particular meaning to a word which is different from the ordinary meaning or different from the sense in which the same word has been used by some other person. It is, therefore, unnecessary to discuss these decisions. I am of the opinion that Bhagwan Kaur had no right under the 1901 will to give the property to Mehtab Singh by gift or by will or by a device of a consent decree. Therefore, the plaintiff is not entitled to the declaration sought by him and his suit was rightly dismissed by both the lower courts.

For all these reasons I dismiss this appeal with costs.

Chopra, J.

CHOPRA, J.—I agree.

REVISIONAL CRIMINAL

Before Kapur, J.

THE STATE,—Petitioner

versus

AMRU AND ANOTHER,—Accused-Respondents

Criminal Revision Application No. 543 of 1956.

Indian Penal Code (XLV of 1860)—Section 381—Expression, "Shall also be liable to fine"—Meaning of—Whether the imposition of fine mandatory.

1956

Nov., 8th

Held, that the word "Liable" means a future possibility or probability happening of which may or may not actually occur. So interpreted the Magistrate has the

power to impose the sentence of fine but it is discretionary. If the legislature intended that imposition of fine was *mandatory*, it would have used words something like this " and shall be punished with imprisonment to so many years, and to fine ". It is thus not necessary to impose a sentence of fine under section 381 of the Penal Code.

The Kate Heron (1), *Collins v. Collins* (2), and *Chuha v. Crown* (3), referred to.

Petition under section 439 of Cr. P. C., for revision of order of Shri Mehar Singh Chadha, Additional Sessions Judge, Ambala, dated the 31st August, 1955, reversing that of Shri Sukhdev Parshad, Railway Magistrate, 1st Class, Ambala Cantonment, dated the 5th July, 1955, and remanding the case to the Trial Court for decision according to law.

CHETAN DASS, Assistant Advocate-General, for Petitioner.

AMAR SINGH, for Respondent.

JUDGMENT.

KAPUR, J.—This is a rule obtained by the State against an order passed by Mr. Mehar Singh Chadha, Additional Sessions Judge of Ambala, dated 31st August, 1955, remanding the case to the Court after setting aside the conviction and sentence of the respondents. It appears that the learned Judge thought that under section 381, Indian Penal Code, it was mandatory that if a man was convicted he shall be sentenced to imprisonment as also to fine. The State has challenged the view of the learned Additional Sessions Judge on the question of interpretation of the section and submitted that it is not incumbent on the Judge to impose a fine also. Kapur, J.

(1) 14 Fed. Cas. 139.
(2) (1947) 1 A.E.R. 793.
(3) 19 P.R. 1913.

The State
v.
Amru
and others

Kapur, J.

The section under which the opposite party was convicted is 381, Indian Penal Code, which runs as under :—

“Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

The words which have to be interpreted are ‘and shall also be liable to fine’ and they do not mean that it is necessary that a sentence of fine shall also be imposed. The learned Additional Sessions Judge has held that this would be the meaning of the words. Both the State as well as the opposite party submit that this is not a correct interpretation and that it is not a mandatory provision of the law and that all it means is that if the Magistrate wants to impose some fine he may do so if he finds the case to be of that nature.

No Indian case has been quoted before me on the meaning of the words “shall be liable” by either of the parties, but I find that in one American case the words ‘shall be liable’ came up for interpretation—*The Kate Heron*, (1). In that case the definition of the word ‘liable’ as given by Webster’s dictionary was accepted. Webster defines ‘liable’ thus, “obliged in law or equity, subject” and says that it means “something external which may befall us” and the words ‘shall be liable to forfeiture’ as interpreted by the American Court do not affect a present absolute forfeiture but only give “a right to have the vessel forfeited upon due process of law.”

(1) 14 Fed. Cas. 139 at p. 141

Similarly the words 'shall be liable' came up for interpretation in another American case where the words were 'shall be liable to serve as jurors', but in that case also it was held that "shall be liable" only means that he is only likely to be and not must.

The State
v.
Amru
and others
Kapur, J.

In other cases the word 'liable' has been interpreted to mean exposed to a certain contingency or casualty, more or less probable, in other words, a future possibility or probability, happening of which may or may not actually occur.

The word 'liable' is also used in the Rules of the English Courts under R. S. C. Ord. 16, r. 28(1) and it has been interpreted to mean that the jurisdiction is discretionary and not that the order must necessarily be made. See *Collins v. Collins* (1).

Council for the State relied on the Chief Court judgment in *Chuha v. Crown*, (2). In that case under section 302, Indian Penal Code, a man was sentenced to death and also to fine and the sentence of fine was set aside on the ground that there was the usual practice of the Court to avoid the imposition of fine where death sentence was imposed.

From all these cases it appears to me that the word 'liable' means a future possibility or probability, happening of which may or may not actually occur. In other words the Magistrate has the power to impose the sentence of fine but it is discretionary. If the legislature intended that imposition of fine was mandatory it would have used words something like this 'and shall be punished with imprisonment to so many years and to fine.' As the word 'liable' has been used in this section I am of the opinion that the learned Additional Sessions Judge has not correctly interpreted the words of the Section.

(1) (1947) 1. A. E. R. 793
(2) 18 P.R. 1913.

The State
v.
Amru
and others

Kapur, J.

This case was started against the opposite party on the 20th of February, 1955. Respondents were convicted and sentenced to nine months' rigorous imprisonment on the 5th of July, 1955. Their appeal was heard by the learned Additional Sessions Judge and decided on the 31st of August, 1955.

The respondents have been on bail all this time and I have gone through the record to see as to the propriety and legality of their conviction. In my opinion the evidence produced brings guilt home to them, but taking into consideration the period of time this case has been hanging over their heads I think that it is a fit case in which in place of the sentence imposed I would substitute a sentence of imprisonment for the period already undergone and a fine of Rs. 50 each. In default they shall undergo a sentence of three months' further rigorous imprisonment.

APPELLATE CIVIL

Before Bishan Narain, J.

SUBEDAR MAJOR SADHU SINGH,—*Defendant-Appellant*

versus

CHANDA SINGH AND OTHERS,—*Plaintiffs-Respondents*

Regular Second Appeal No. 216 of 1956.

1956

Nov., 16th

Punjab Restitution of Mortgaged Lands Act, 1938 (Punjab Act IV of 1938)—Order of redemption passed by the Special Collector under the Act, without jurisdiction or in excess of it—Limitation for a suit to set aside such order if prescribed—Limitation Act (IX of 1908)—Article 14, applicability of to such suit.

Held, that when the order passed by the Special Collector under the Punjab Restitution of Mortgaged Lands Act is without jurisdiction or in excess of authority it is a nullity and need not be set aside. If the Act or an order of an officer is illegal or ultra vires it does not require to be set aside and Article 14 of the Limitation Act has no application.