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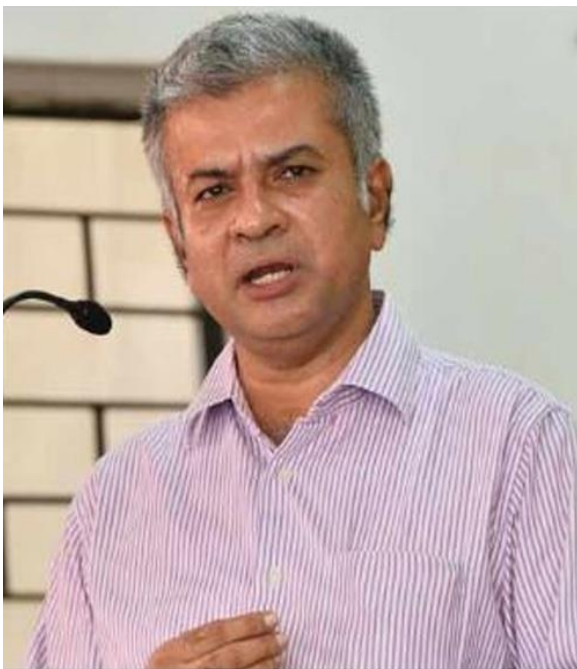
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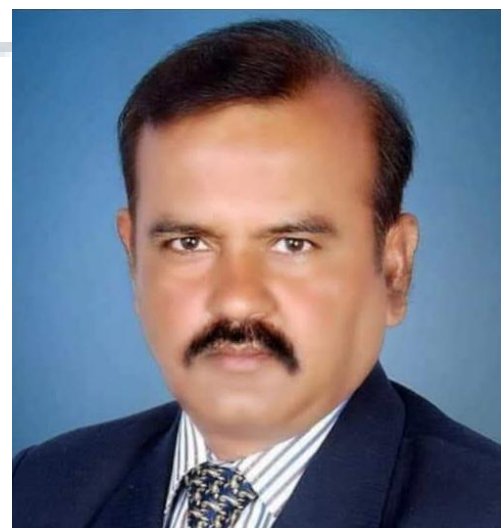
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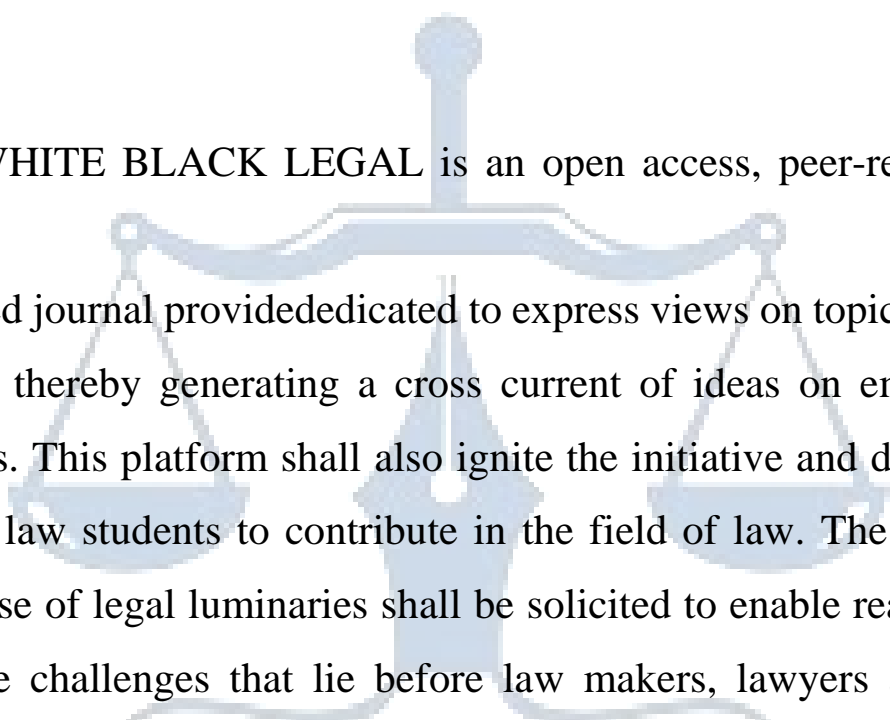


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **SYED MOHAMMAD RAZA AND ORS. v.** **MUHAMMAD ABBAS BANDI BIBI**

AUTHORED BY - SAMIYA CHOUDHARY

## **INTRODUCTION**

The case revolves around the alienation or transfer of property between the Muslim family governed under their own personal law. The alienation is purported to be made under family arrangements, which will ensue different procedures. The case deals with various concepts surrounding the transfer of property, for instance, that of life interests and restrictions imposed on the alienation, which can be absolute and partial and thereby void and valid. Presently we have the Transfer of Property Act, 1882 which governs the property matters in the country and the provision pertaining to restrictions on alienation is dealt with under Section 10<sup>1</sup> of the act. According to the above-mentioned provisions, where a property is transferred subject to a limitation or a condition absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or the limitation so imposed is void except in the case of lease where the condition is for the benefit of the lessor or those claiming under him. Provided that the property may be transferred to or for the benefit of women (not being a Hindu or Muhammadan or Buddhist) so that she shall not have the power during her marriage to transfer or charge the same or her beneficial interest therein. Thus, the section simply lays down where the property is transferred subject to a condition absolutely restraining the transferee from parting with his interest in the property; the condition and not the transfer is void. The condition imposed can be prior or subsequent to the transfer. The concept pertaining to absolute and partial restrictions comes into play. The former implies the restrictions are considered to be void under Section 10 of the Act, while the latter is valid because it is the restriction that is imposed on the power of alienation, but the transferee is substantially free to alienate property in a wide variety of ways. For instance, where a condition that the transferee shall not transfer the property to any member of a particular. The restrictions so imposed, whether it is absolute or partial, depend on the real effect of the condition, i.e., if the effect is absolute, it is void. Since the transferee, in this case, is a woman, the limitation imposed on her was considered to be valid considering the concept of Partial and absolute

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<sup>1</sup> The Transfer of Property Act, 1882, S. 10.

restraints of the transfer of property. As a result, the current issue centers on the idea of partial restriction. Additionally, there are exceptions to the act's requirements for family arrangements; for example, it won't apply to leases, family settlements, or partitions. Therefore, it is essential to examine the case's underlying legal concepts and principles in order to fully comprehend it.

- In the case, the appellant is Syed Mohammad Raza, and the Respondent is Musammat Abbas Bandi Bibi. The Judges include Blanesburgh, Tomlin, Lancelot Sanderson, George Lowndes, and Dinshah Mullah JJ.

### **FACTS OF THE CASE**

- The facts of the case are that in 1868, a woman named Sughra Bibi was about to be the second wife of Afzal Hussain, the cousin of Sughra Bibi. They belonged to a Muslim family and were governed by their personal laws. Sughra Bibi brought the present action against Afzal Hussain in connection to immovable property. She claimed her share of that property, which was in his name. The litigation ended with a compromise between them, and a decree thereby was passed in the suit in the year 1870. The said compromise was in the following terms-
- Whereas between the parties to the above-mentioned case in which a share is claimed, an amicable settlement has been arrived at to the effect that the plaintiff's marriage by way of nikah with the defendant may be performed in the next month, accordingly in view of the marriage settlement there no longer exists any dispute regarding the share and in so much as the defendant's first wife is alive, it has been settled that both wives should in accordance with this agreement, in their capacity as wives be declared as permanent owner, i.e. Malik Mustagil and their names be entered into public records as the owner of the immovable property. The compromise deed further provided that, the two women or wives in whose names the property is about to get transferred shall not have the power to transfer the property to a stranger, and the ownership of the property shall devolve onto their legal heirs while the management and control of the property will be in the hand of their husband, i.e. with Mr. Afzal Hussain. Also, if the husband didn't perform his duties, the wives can have the remedy only that the management be controlled or be in the hands of the government through a court of law, and if on the basis of this compromise agreement, the defendant refuses to marry Sughra Bibi i.e. the plaintiff, the ownership will remain in her hands.

- After the said agreement has been made in writing, the plaintiff and the defendant were duly married. The defendant died in the year 1872 childless. His first wife also died in the year 1871. Now, Sughra Bibi was left and she took her share in the property and sold it before her death, i.e. before 1914. This sale was in contravention to the compromise deed that was executed between her and her husband. Nevertheless, her transferees remained in the possession of the property for about 12 years.
- The said appeal was filed for the case where the respondents, who are the children of the sister of Mr. Afzal Hussain, claimed a 2/3<sup>rd</sup> share of her property from the transferees of Sughra Bibi, who are appellants in the present case<sup>2</sup>.

### **CONTENTIONS OF THE RESPONDENTS**

They contended that Sughra Bibi had only the life estate under the compromise deed without the power of alienation, and on her death, i.e., in the year 1914, the half share was passed to her heirs. The remaining part of the share will pass to other heirs who are also the relatives of Sughra Bibi. They also contended that the use of the word Malik which was further discussed by the court, doesn't necessarily imply full ownership. Having read the compromise deed in entirety, it can be said that the two wives were only having the life interest with the vested interest in their legal heirs<sup>3</sup>.

### **CONTENTIONS OF THE APPELLANTS**

The appellants in the case contend that the true purpose of the compromise deed was to give the full ownership to the two wives and the restriction so imposed on their power of alienation should be considered as repugnant. They relied on the judgment delivered by Sir Binod Mitter in Raghunath Prasad Singh v Deputy Commissioner AIR 1929 P.C 283<sup>4</sup>. They further contended that by reading the compromise deed, it is expressly provided in the terms of agreement that the two wives will be the Malik Mustaqil, i.e. the permanent owners of that immovable Property. Moreover their names were to be entered into public record. They contended that from this, it is very clear that the draftsman of the document was quite competent to put a life estate into direct words if that had been the intention of the parties and if only life estate was intended by parties, the restriction imposed would not have been confined

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<sup>2</sup> Syed Mohammad Raza and Ors. v. Abbas Bandi Bibi, 1932 S.C.C. OnLine PC 23.

<sup>3</sup> Mohammad Raza and Ors. v. Abbas Bandi Bibi, M.A.N.U./P.R/0015/1932.

<sup>4</sup> Raghunath Prasad Singh v. Deputy Commissioner, 1929 S.C.C. OnLine PC 283.

to the case of strangers<sup>5</sup>.

### **ISSUES RAISED**

1. Was the restriction placed by the compromise deed dated 19<sup>th</sup> September 1870, upon Sughra Bibi's power of alienation valid and legally enforceable?
2. Whether such a Partial restriction on alienation is so inconsistent with an otherwise absolute estate that it must be regarded as repugnant and merely void?

### **JUDGEMENT**

- The court at the first instance observed that said restriction of Sughra Bibi's power of alienation was invalid and inoperative. The case went to a subordinate judge, whereby, in lieu of other issues involved, the said action was dismissed. The appeal was filed by both parties whereby the appeal of the respondents was accepted, while the appeal of the appellants was dismissed.
- Baza and Pullan JJ heard the appeal. The court discussed the meaning of the word Malik used in the deed and interpreted the personal law under which the parties were governed, i.e. Shia law, and therefore, came to the conclusion that the said restriction is valid and is allowed under their personal law.
- The court observed that the word stranger used in the restriction imposed under the compromise deed means anyone other than the family member and the appellants are strangers for that matter. Thus, the restriction so imposed is considered by the court to be valid as it is partial in nature and not absolute. This is because the said restriction only forbids alienation to strangers only and she was free to transfer it to anyone under the ambit of her family.
- On the second issue involved in this case, the court observed that the case referred by the appellants<sup>6</sup> is of no assistance to this appeal because the restriction imposed in the present case is partial and not absolute. Moreover, the case revolves around family settlement and not gift or any conveyance between the parties.
- The court also referred to Section 3 of Oudh Laws Act, 1876<sup>7</sup> which provides that the courts shall act according to justice, equity and good conscience and TPA, 1882 also

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<sup>5</sup> Supra note 3.

<sup>6</sup> Supra note 4.

<sup>7</sup> Oudh Laws Act, 1876, S.3.

provides for Section 10<sup>8</sup> which doesn't consider partial restriction in the transfer as void. Therefore, in view of this, before the passing of the act as well, considering the facts and circumstances of the case and the principles of justice, equity and good conscience, the court doesn't feel the agreement to contain the absolute restriction and thereby be void. The court interpreted the term Justice equity and good conscience applied in this case to mean English Law if applied to Indian society. So, in England as well, partial restriction is not considered as repugnant,, rather it is considered to be valid, for instance in the case of *In re Macleay 1875*<sup>9</sup> and *Gill v. Pearson 6 East 173*<sup>10</sup>. Also, in *Waghela Rajsanji v. Shekh Masludin*<sup>11</sup> the expression equity, Justice and good conscience was interpreted.

- Hence, Sughra Bibi has no power or authority to transfer any part of the properties to the appellants and upon her death, the legal heirs, i.e. the respondents in the case are entitled to the two-third share in the properties which she claims.

### **RATIO DECIDENDI AND OBITER DICTA OF THE CASE**

The ratio decidendi, i.e., the reasoning upon which the decision of the court is based, is that the partial restrictions on the power of alienation are valid, while the obiter of the case is the discussion of the court for the compromise deed executed between the parties and with regard to the references made by the court of the case in reference to the term Equity, Justice and Good conscience.

### **ANALYSIS OF THE CASE**

This case is significant for the issues pertaining to the transfer of property, where certain types of limitations or restrictions have been imposed on the power of alienation. Such restrictions can be absolute or partial in nature. The case acts as a precedent to all the subsequent cases involving partial restraint, i.e. if the restraint is partial, it will be enforceable and valid, while if the restraint is absolute in nature, it will be considered to be repugnant and void. Thus, the significance of the case lies in its interpretation of property law and how it shapes the legal principles involved. The judgment delivered by the court in favor of the respondents is absolutely correct with proper reasoning. This is because in order to identify whether a

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<sup>8</sup> Supra note 1.

<sup>9</sup> *In re Macleay 1875*, (1875) 20 Eq. 186.

<sup>10</sup> *Gill v. Pearson*, (1805) 6 East 173.

<sup>11</sup> *Waghela Rajsanji v. Shekh Masludin*, 56 I.A. 372: 30 LW 619 (P.C.).

restriction is absolute or partial in nature, we can determine it through its real effect. If such restriction has an absolute effect, it is void, while if it has a partial effect, it is valid. This means that if it is confined to a particular thing and the transfer has a wide variety of ways for alienation, it is a partial restraint and thereby valid and operative under section 10 of the act. Also, the judgment in favor of the respondents can be substantiated by the fact that such transfer was made by the husband in favor of the wife under a compromise deed which expressly mentions the restriction on alienation to a stranger, and the wife has the power to alienate it under the ambit of her family to anyone. Thus, under a compromise deed, both the parties mutually agree to that compromise, and it is very clear that a compromise is drawn with certain conditions, and hence, the parties are bound by such conditions. Therefore, the respondents are entitled to their share, and the claims of the transferee of Sughra Bibi over the property are not valid. In addition to this, Either a sentimental attachment or the preservation of family esteem and dignity within the community might be used to support the propriety of such a restriction<sup>12</sup>. The principle laid down in this judgment has been used in subsequent cases by the court. For instance, in the case of Gayasi Ram v Shahabuddin<sup>13</sup>, the court relied on this case and gave two-fold test to determine the partial restriction on the alienation, i.e. • If the alienation cannot be taken for all practical purposes, then the transfer shall be deemed to be absolute in nature. • The mere presence of contingencies wherein a transfer can occur does not absolutely dissolve the fact that the transfer is total. Also, the case has been referred in the judgment of K Muniswamy v K Venkataswamy<sup>14</sup>. Moreover, in the case CanBank Financial Services Ltd. V. The Custodian And. Ors<sup>15</sup>, the court referred to this judgment. Also, in the famous case of Zoroastrian Co-operative Housing Society Ltd. V. District Registrar<sup>16</sup>, the court has used the present case for reference in order to come to a conclusion. Therefore, there are many kinds of restraints that can be imposed on alienation, and these are considered to be partial and, therefore, valid. For instance, the doctrine of first refusal, i.e., the transferee has to offer the property to the transferor in case of alienation at the first instance and then, if refused, can sell it to anyone. Such restriction is held to be partial in nature in the case of Debi Dayal v. Ghasita<sup>17</sup>. There can be time-based restraints, i.e., the time frame within which the transfer can

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<sup>12</sup> Rakshit Agarwal, *Re-Examining the Interpretation of Section 10 of the Transfer of Property Act, 1882*, SCC OnLine (December 23, 2022).

<sup>13</sup> Gayasi Ram v Shahabuddin AIR 1935 All 493.

<sup>14</sup> K. Muniswamy v. K. Venkataswamy, AIR 2001 Kant. 246.

<sup>15</sup> CanBank Financial Services Ltd. V. The Custodian And. Ors, 2004, Supp. 4 S.C.R. 60.

<sup>16</sup> Zoroastrian Co-operative Housing Society Ltd. V. District Registrar, Co-op. Societies (Urban) (2005) 5 SCC 632 .

<sup>17</sup> Debi Dayal v. Ghasita, 1929 SCC OnLine All 409.

be considered to be void. The kind of restriction in the present case is related to community-based restriction, where the restriction can be attributed to sentimental attachment or preservation of family esteem or dignity within the community.

## **CONCLUSION**

Therefore, the case is one of the best examples explaining the concept of transfer of property in cases involving restrictions. It places absolute restriction under the head void while it tries to reaffirm that the partial restrictions on the power of alienation are valid and operative. It particularly deals with case that involves family settlement and where the parties are governed by their own personal law, i.e., shia law in this case. Thus, the case involves comprehensive discussions on the legal principles, legal terms, and the role of personal laws in property matters.

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