

ENGLAND AND WALES / JUDGMENT

Patel v Patel [2025] EWHC 560 (Ch) (12 March 2025)

[2025] EWHC 560 (Ch)

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2025] EWHC 560 (Ch) Case No: PT-2025-000120 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST (ChD) Royal Courts of Justice Rolls Building, Fetter Lane, London, EC4A 1NL 12 March 2025 B e f o r e : HHJ PAUL MATTHEWS (sitting as a Judge of the High Court)

Between: ANILKUMAR PATEL Claimant

- and - JAYABEN PATEL Defendant

James Poole (instructed by Rollasons Solicitors LLP) for the Claimant Rosalind Young (instructed by Advocate) for the Defendant Hearing date: 11 March 2025

HTML VERSION OF JUDGMENT

Crown Copyright © This judgment was handed down remotely at 12:30 pm on 12 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. HHJ Paul Matthews :

Introduction

This is my judgment on a Part 8 claim by claim form issued on 4 February 2025. The claim concerns the funeral arrangements for the late Bhikhubhai Rambhai Patel ("the deceased"), who died on 30 December 2024, and whose body since then has remained in the mortuary of the University Hospitals of Coventry and Warwickshire NHS Trust (which was the second defendant to this claim). The deceased was a widower, his wife Parvatiben having predeceased him on 4 February 2024. He had made a will dated 22 December 1993. This does not give any directions as to funeral arrangements. In the events that have happened, this will appoints the claimant and the first defendant, who are the deceased's surviving son and daughter respectively, to be

executors and trustees of the will, and leaves the residue of his estate to them in equal shares absolutely. Unfortunately, the claimant and the first defendant are unable to agree on the funeral arrangements should be made for the deceased. The claimant wishes his father's body to be cremated and his ashes scattered in England. The first defendant says that her father's body should be taken back to India, and buried. By this claim, the claimant asks the court to exercise its inherent jurisdiction to make orders in respect of the funeral arrangements for the deceased's body. The orders sought are, first, that the second defendant should release the deceased's body into the custody of the claimant or his nominated representatives (such as funeral directors), that the body of the deceased be cremated and the ashes scattered in accordance with Hindu funeral rites, such further orders as the court considers appropriate or necessary, and provision for the costs of the claim. I make clear at once that this is not an application under section 50 of the Administration of Justice Act 1985 for the removal of a personal representative. Procedure On the same day as issuing the claim, the claimant issued an application for directions for this claim to be brought to a disposal hearing on an expedited basis. The matter came before Rajah J in the Applications Court on 6 February 2025, when he gave such directions. They included the final hearing of this claim to take place in a three-day window commencing 11 March 2025, with a hearing time estimate of one day. Oral evidence was to be given by the claimant and the first defendant only. There was no direction for expert evidence. The claimant (who lives in Canada) was given permission to give evidence via video link, but otherwise the hearing was to take place in person. The judge also dismissed the claim as against the second defendant with no order as to costs. Evidence by way of witness statements was given by the claimant (two witness statements, one of 4 February 2025 and the other of 5 March 2025), the claimant's wife (dated 5 March 2025), and two of the three brothers of the deceased, Harivadanbhai and Khandubhai (both 10 February 2025). The third brother, Maganbhai Patel, provided a letter (4 February 2025), taking a similar line to his brothers. This was turned into a witness statement supported by a statement of truth on 7 March 2025. All those witnesses support the claimant's position. The first defendant provided a witness statement, dated 2 March 2025, supported by a statement of truth. She also provided a short statement from someone called Meera Bhanot in the form of an email (dated 27 February 2025), which also contains a statement of truth. Ms Bhanot appears to be the director of a company willing to undertake the repatriation body and the making of funeral arrangements in India. Both the claimant and the first defendant (but no other witnesses) were cross-examined. They both gave oral evidence in measured and rational terms. I find that neither attempted to mislead the court, but indeed did their best to assist. I find that each told me the truth as each saw it. However it is clear that they have different perspectives on the matters raised by this claim. I bear in mind in particular that the claimant lives in Canada, whilst the first defendant was the carer of her parents during the last years. This gives her a particular standpoint. It is also the case that people do make mistakes or misremember what has happened. Memories are more fallible, and innocent confabulation more common, than perhaps we realise. In addition to this, it is possible that the deceased said different things on different occasions, or different things to different people. Facts found I find that the deceased was an intelligent, well read and independent-minded man. He was also a devout Hindu. When his daughter Nayaben married outside the faith, he cut her off, and indeed left her out of his will. She unfortunately died in

November 2006, and the first defendant travelled over from Canada (where she was then living) for the funeral. Once back in England with her parents, she never left. From 2007 onwards the deceased was on renal dialysis three times a week. This and other health issues meant that the first defendant essentially became the full-time carer for her father and also for her mother, who had her own medical issues. Most of the facts of this case are not in dispute. I can summarise them as follows. The deceased was born in Gujarat in India in about 1931. He was a Hindu. In 1953 he married Parvatiben, another Hindu. In 1954 he moved to the United Kingdom, where he lived for 70 years, until his death in December last year. He was a lifetime member of the Shree Mandhata Samaj, a community organisation based in Coventry, to which he contributed and whose meetings he attended. He became an engineer, and worked at Courtaulds and GEC in Coventry, until he retired in 1986. When Parvatiben made her will in 2022, she specified that she would like her body to be cremated. When she died in February 2024, her body was indeed cremated, in accordance with her wishes. The claimant organised the funeral, in accordance with Hindu tradition. By contrast, the deceased's will, made some 30 years earlier, does not state any wishes in relation to the disposal of the body. This might reflect a change in the practice of those lawyers who assist clients to make wills. Or it might be that the deceased simply did not wish to express any decision at that time. At the time of his death, the deceased had lived in the UK for about 70 years. All his children had been born and brought up in the UK. He saw to it that his daughters obtained a university education, which was then unusual amongst Hindus. She is He had a UK passport, but not an Indian one. He had last visited India in 2003. Most of his close relatives lived outside India. He did however have a small flat in a residential block. It was suitable for short-term living, and was intended for use by different members of the family at different times. In the last year of his life the claimant assisted the deceased to obtain an electronic visa to visit India as a tourist, for a maximum of 180 days in one year. However, the deceased never made use of it, perhaps because of the difficulties inherent in making arrangements for the continuation of his kidney dialysis treatment during the time that he would be in India. One matter on which I have no direct evidence was the value of the deceased's estate at the time of his death. It was however submitted to me that the court could proceed on the basis that there was a significant value to the deceased's estate. A house in the same road as that owned by the deceased had sold recently for £224,000, the deceased had inherited the estate of his late wife, including her jewellery, he did not live a luxurious lifestyle (particularly considering his need for renal dialysis) and he owned the small flat in India which had been acquired for family use. The dispute The dispute between the parties centres largely (though not exclusively) on what the deceased wanted in relation to the disposal of his body. The claimant says that, after his mother's funeral, his father expressed gratitude to him for arranging it in accordance with her wishes and their religious beliefs. He says that his father told him that he wanted the same Hindu funeral rites to be carried out when he died, including cremation. The first defendant however says that she and her father spoke together in the last months of his life. She says that he often stated that he wanted to go to India and die there. She further says that he told her that if he died in England he wanted his body to be taken to India and buried there. In giving her evidence, the first defendant emphasised that she was concerned only to advocate what her father wished, rather than to express a personal preference. She explained (and I accept) that she had no

personal preference for burial in India. Disputes between surviving relatives of a deceased about the funeral arrangements are a tragedy for all concerned. They cause great sadness, even anguish, they prevent the relatives coming to terms with their grief and moving on with their lives, and they often cost a great deal of money. On top of all that, they need to be resolved as quickly as possible, because, whilst the body remains undisposed of, lives are on hold, and resources (usually public resources) are tied up which could be used to assist others. In *Buchanan v Milton*

[1999] 2 FLR 844 , Hale J (as she then was) said: "I accept entirely that the courts should be slow to entertain proceedings such as these. Modern methods of refrigeration may make them possible but they are certainly unseemly. They delay the proper disposal of the body and the normal processes of grieving, while bringing further grief in themselves." This comment was cited with approval in *Anstey v Mundle*

[2016] EWHC 1073 (Ch) , [3]. Similar comments were made in *Hartshorne v Gardner*

[2008] EWHC 3675 (Ch) , and *Ganoun v Joshi*

[2020] EWHC 2743 (Ch) , [60]. Personal representatives The law is clear as to the right of the deceased's personal representatives to possession of the body for the purposes of the funeral. In *Buchanan v Milton*

[1999] 2 FLR 844 , Hale J said: "There is no right of ownership in a dead body. However, there is a duty at common law to arrange for its proper disposal. This duty falls primarily upon the personal representatives of the deceased (see *Williams v Williams*

(1881) 20 Ch 659 ; *Rees v Hughes*

[1946] KB 517). An executor appointed by will is entitled to obtain possession of the body for that purpose (see *Sharp v Lush*

(1879) 10 Ch 468 at 472; *Dobson v North Tyneside Health Authority*

[1997] 1 WLR 596 at 600 obiter), even before there has been a grant of Probate. Where there is no executor that same duty falls upon the administrators of the estate, but they may not be able to obtain an injunction for delivery of the body before the grant of letters of administration (see *Dobson*)." Section 116 But that right of the personal representatives is subject to the power of the court under section 116 of the Senior Courts Act 1981. This provides as follows: "(1) If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who but for this section would in accordance with probate rules have been entitled to the grant the court may in its discretion appoint as administrator such person as it thinks expedient.

- (2) Any grant of administration under this section may be limited in any way the court thinks fit". This section has been applied in many cases, including *Buchanan v Milton and Ganoun v Joshi*, cited above. In the latter case, Robin Vos, sitting as a deputy judge of the Chancery Division of the High Court, said: "31. The normal rule is that the deceased's executors or administrators have both a right and a duty to make arrangements for the proper disposal of the deceased's body (*Buchanan v Milton*

[1999] 2 FLR 844 [at 845-846])

32. There is no doubt that, in accordance with Rule 22 of the Non-Contentious Probate Rules, Ms Joshi as the deceased's widow is the person who has the right to be appointed as administrator of the deceased's estate.
33. However, as will be apparent, Section 116 gives the court a discretion to appoint some other person if, by reason of any special circumstances, it is necessary or expedient to do so. The court must therefore decide whether, as a result of the existence of any special circumstances, it is necessary or expedient to appoint Mrs Ganoun as administrator rather than Ms Joshi.
34. Previous decisions have broken down the test in section 116 into two stages. The first is to decide whether there are any special circumstances. If so, the second stage is to decide whether it is necessary or expedient to appoint some person as administrator other than the person who would normally be entitled (see for example *Oldham MBC v Makin* [at 71]).
35. In my view this two stage approach is hard to justify. What the court must determine is whether it is necessary or expedient to appoint an administrator as a result of the existence of special circumstances. The special circumstances are therefore only relevant to the question as to whether it is necessary or expedient to appoint a particular person as administrator. They are not some separate pre-condition to the ability of the court to exercise its discretion in the first place.
36. The identification of the special circumstances and the decision whether it is necessary or expedient to depart from the usual order of priority is therefore a single process. The factors which the court should consider in deciding whether it is necessary or expedient to appoint a different administrator are the special circumstances which have been identified and not any other factors which might exist." In the present case, both the claimant and the defendant have been appointed as executors of the will of the deceased. *Prima facie*, therefore, the decision as to the funeral arrangements is one for them acting together. But they cannot agree. The wishes of one have no automatic priority over the wishes of the other. In principle, I would hold that the inability of the parties to agree on the performance of such an important and urgent duty as the proper disposal of the deceased's body was a "special circumstances" within section 116, justifying a limited intervention in the administration of the estate by appointing some person to make the necessary decisions in relation to the funeral. However, as to who that person should be, in *Anstey v Mundle*

- [2016] EWHC 1073 , Jonathan Klein, sitting as a deputy High Court judge, said: "18. ... That section [ie 116] entitles the court to pass over the person who would otherwise be entitled to a grant. I am not asked to do that. I am asked to select, for the purposes of the limited grant, one of the people who would otherwise be entitled to a grant. It is right that, in analogous circumstances, Patten J in *Scotching v Birch*
- [2008] EWHC 844 (Ch) accepted that the section 116 jurisdiction is capable of being engaged, but it is not clear to me that any issue was taken before or by the judge as to the applicability of that section." For what it may be worth, I respectfully agree with the deputy judge. Section 116 does contemplate the appointment of a person different from one who has a right to a grant. The inherent jurisdiction The powers of the executors are also subject to the exercise of the inherent jurisdiction of the court. The extent of this inherent jurisdiction was explored by Sir Geoffrey Vos, C (as he then was), in *Oldham Metropolitan Borough Council v Makin*
- [2018] Ch 543 . This was the case concerning the funeral arrangements to be made in respect of the body of Ian Brady, the notorious "Moors murderer" of the 1960s. After considering relevant authorities, he said: "80. In my judgment, the court does have an inherent jurisdiction to direct how the body of a deceased person should be disposed of. The court will normally, as I have said, be deciding between the competing wishes of different sets of relatives, and will only need to decide who should be responsible for disposal rather than what method of disposal should be employed. I cannot see, however, why the court's inherent jurisdiction over estates is not sufficiently extensive to allow it, in a proper case, to give directions as to the method by which a deceased's body should be disposed of. In my view, it is. Moreover, I am, for the reasons I have given in relation to section 116, prepared to exercise that jurisdiction in this case". There are, therefore, two distinct jurisdictional bases for the intervention of the court. One is the statutory jurisdiction founded on section 116. This permits the appointment of a personal representative who would not otherwise be entitled to such a grant, and this grant may be limited, for example to dealing with the disposal of the deceased's body. That jurisdiction does not apply to the present case, as the claimant is a person who would be entitled to a grant in any event: see *Anstey v Mundle* , cited above. In the current case, therefore, the claimant puts his case on the inherent jurisdiction. In relation to the exercise of that inherent jurisdiction, both sides in the present case referred to the factors that were identified by Sonia Proudman QC, sitting as a deputy High Court judge, in *Hartshorne v Gardner*
- [2008] EWHC B3 (Ch) , and summarised by Jonathan Klein in the *Anstey* case as follows: "25. The factors she identified were: one, the deceased's wishes; two, the reasonable requirements and wishes of the family who are left to grieve; three, the location with which the deceased was most closely connected; and, four, to quote the judgment, 'the most important consideration is that the body be disposed of with all proper respect and decency and if possible without further delay'. I have concluded that in this case those are also the relevant factors which I should consider." Testacy and intestacy? There is perhaps

a question how far these are the appropriate factors to take into account in considering whether or not to exercise the inherent jurisdiction in a case where the deceased has made a will and appointed an executor or executors. This is because one of whose executors' functions is to make the decisions about, and arrangements for, the funeral. However, in a case of intestacy, *ex hypothesi* the deceased has not entrusted anyone with this function. On the other hand, there are authorities for the proposition that a direction given by a testator in a will as to how the deceased's body should be dealt with is unenforceable in law (see for example *Williams v Williams*

(1882) 20 Ch D 659 ; *Re JS (A Child)*

[2017] 4 WLR 1). And the decision by personal representatives as to what kind of funeral should be arranged, and in particular how much should be paid for it, is open to challenge by any interested beneficiary (and, in an appropriate case, creditor): see for example *National Westminster Bank plc v Lucas*

[2013] EWHC 770 (Ch) , [13]-[18]. My view accordingly is that, in considering the factors to be applied in exercising this inherent jurisdiction, there is no sufficiently good reason to distinguish between cases of intestacy and cases where there is a will appointing an executor or executors. Relevant caselaw There are in the books a number of cases where two persons with equal priority in making such decisions as these have not been able to agree, and the court has had to intervene. An instructive decision in this respect is the decision of Martin J sitting in the Supreme Court of the Northern Territory of Australia, in *Calma v Sesar*

[1992] NTSC 17. In that case the adult son of estranged parents died following an incident in which he suffered head injuries. The deceased was born in Port Hedland, Western Australia, but died in Darwin, Northern Territory. The plaintiff (the mother) lived in Alice Springs, but wanted to bury her son in Darwin, where she used to live and still had relatives. The first defendant (the father) wished his son's body to be buried in Port Hedland, where his own family was based. The two places are very distant from each other, about 2,400 km by road. The judge approached the matter on an entirely pragmatic basis. He said: "13. The right to possession of a dead body runs with the duty to dispose of it. Each parent in this case had that duty, or at least accepted it, and attempted to carry it into effect, thus claiming that right. Their respective legal claims were subsumed by deep emotion emanating from, and affecting not only them, but other members of the deceased's extended family as well. Questions relating to cultural values and customs interceded. To state that the Court was asked to make a decision taking into account matters relating to burial in a homeland and the profession of the Roman Catholic faith demonstrates just some of the imponderables. Further, issues such as these could take a long time to resolve if they were to be properly tested by evidence in an adversary situation. A legal solution must be found; not one based on competing emotions and the wishes of the living, except in so far as they reflected a legal duty or right. That solution will not embrace the resolution of possibly competing spiritual or cultural values.

14. The conscience of the community would regard fights over the disposal of human remains such as this as unseemly. It requires that the Court resolve the argument in a practical way paying due regard to the need to have a dead body disposed of without unreasonable delay, but with all proper respect and decency.
15. The body of the deceased was in Darwin and proper arrangements had been made for burial here. There was no good reason in law why that should not be done and no good reason in law why the removal of the body from the Territory and burial in Western Australia was to be preferred." In the English case of *Fessi v Whitmore*

[1999] 1 FLR 767, a similar situation arose, though the child in that case was only 12 years old when he died in an accident at the new home recently moved into with his father near Aberystwyth. Previously, he had lived in the Nuneaton area, where the family had lived while the parents were together (and for two years after their separation). In this case the body of the deceased was cremated, and the dispute was over the resting place of his ashes. The father wanted the ashes to be interred near Aberystwyth. The mother wanted them to be interred in Nuneaton. The claim raising the dispute was brought before the court under the then RSC Order 85 rule 2(2)(c). In substance, this is the equivalent of the present-day CPR rule 64.2(a) and PD 64A paragraph 1(1)(b) (dealing with questions as to the rights or interests of persons claiming to be entitled on the intestacy of a deceased person). The judge (HHJ Boggis QC) expressed some doubts as to whether this was a matter appropriate to be dealt with under RSC Order 85. He said (at 769-70): "It does not seem to me necessarily to follow that Ord 85 is designed to cope with problems such as the one presently brought before me, because this is not a case of a difficulty in the administration of an estate. This is a valid dispute between parents as to the final resting-place of the remains of their child. What, in my judgment, I am being asked to do is to adjudicate upon that valid dispute raised between persons having a like entitlement to the remains of Mark and to decide between the two conflicting proposals for the future of his ashes." Accordingly, the judge went on to say (at 770): "It seems to me that, on analysis, the parties are rather in the nature of trustees bringing a dispute to the court and seeking the directions of the court as to the resolution of that dispute, given that there are valid contentions on both sides. It is on that basis that I propose to decide the case. I do not think I am being asked to give directions as to the administration of an estate. I am being asked to decide between the conflicting arguments of equally entitled parents as to the way in which Mark's ashes should be disposed of and I do that on the usual basis that this court is well used to exercising discretion in disputes between trustees and adjudicating on the proper course to follow when no agreement can be reached by the parties concerned." After considering all the circumstances, and the parties' views, the judge decided that the child's ashes should be interred in the Nuneaton area. Another case involving similar facts, this time of an adult son who died in a road traffic accident at the age of 44, was *Hartshorne v Gardner*

- [2008] EWHC B3 (Ch) . In that case the long-divorced parents both lived in Worcester. The mother sought a cremation in Worcester. The father wanted a burial in Kington, some 40 miles away, because that was where the deceased had lived for several years before his death, having fallen out with his mother, and moved away. The deputy judge (Sonia Proudman QC, as she then was) was referred to *Calma v Sesar* and *Fessi v Whitmore* , amongst other cases. She said: "9. The most important consideration is that the body be disposed of with all proper respect and decency and, if possible, without further delay. Subject to that overriding consideration, it seems to me that there are two types of factor that are relevant in the present case. First, those that do or might be expected to reflect the wishes of the deceased himself. Secondly, those that reflect the reasonable wishes and requirements of family and friends who are left." The judge took account of all the circumstances, and enquired into what the deceased might have wished in respect of funeral arrangements. She considered the deceased's life in Kington to be an important matter, because that was where his work, his home, his brother, his fiancée and all his friends were based. The only important factor militating in favour of Gloucester was the position of the mother, as an elderly lady who did not drive. The judge concluded however that, "24. ... although this is a weighty factor, the fact that the deceased made his life in Kington for the last eight years of his life and that his fiancée as well as his father and brother wish him to be buried there, accordingly, outweigh the defendant's personal wishes and difficulties." In *Anstey v Mundle*
- [2016] EWHC 1073 (Ch) , a father died leaving three daughters and a niece. The deceased born on 20 October 1935 in Jamaica, but he came to the UK in the 1960s and worked as a transport engineer. He last visited Jamaica in 1998, and died in January 2016. Henderson J ordered that the court should determine to whom letters of administration limited to possession of the body and organising the funeral should be granted under section 116. Two of the daughters said that the deceased should be buried in England. The third daughter and the niece said that his body should be returned to Jamaica for burial. A document was produced, dated 21 July 2014, purporting to be the will of the deceased, which contained the words, "I wish to be buried in Jamaica beside my mother". But the validity of this document as a will was challenged, and the deputy judge (Jonathan Klein, as he then was) held that he could not determine that question in the current proceedings, which were designed simply to decide on the funeral arrangements. In any event, if the question was what were the wishes of the deceased, the court was not restricted to what was in a valid will. Even an invalid will could still be evidence of the deceased's wishes After considering the evidence and hearing the witnesses, the judge concluded that the deceased's wish was indeed to be buried in Jamaica, next to his mother. The judge considered that this was "a particularly weighty factor", and that it was supported by the preponderance of views of members of the extended family. His conclusion was that it would indeed be most proper for the deceased's body to be buried in Jamaica. However, he observed (at [47]) that he did not think "that the court can determine or direct where or how Mr Carty is to be buried. What the court can do is to direct who has the power and duty to bury Mr Carty." In line

with the earlier order of Henderson J, that was a direction under section 116, not under the inherent jurisdiction. The most recent case that I am aware of concerning parents disputing the disposal of their child's remains is *Read v Hoarean*

[2024] EWHC 3274 (Ch) , a decision of Chief Master Shuman. In that case the deceased was aged 18 when he took his own life. He died unmarried, without children, and without a will. The (estranged) parents were therefore equally entitled to a grant of letters of administration to his estate. Although the parents agreed that their son's body should be cremated, and also agreed where the cremation should take place, there was a dispute as to what should happen to the ashes. The father wished the ashes to be scattered on Dartmoor, on the basis that the deceased had had a close affinity to that place. This was supported by other relatives and friends of the deceased. The mother wanted the ashes to be divided into two halves, so that she could inter her half in her family's grave, with the other half going to the father. The Chief Master referred to section 116 of the 1981 Act, and to a number of the cases which discuss that section. She summarised the case law by saying: "26. What these authorities effectively state is that each case will be very different, they will be highly fact-sensitive, but that in particular the court should consider the overarching principle, which is that there should be a decent and respectful disposal of the body without undue delay. That the court, in addition, should consider the deceased's wishes, the wishes of the deceased's family and friends and the location with which the deceased was mostly connected. Although the court is not constrained to consider only these factors but they are plainly of significance when the court has an issue such as this before it." The Chief Master then went on to consider the evidence. She concluded: "51. So in this case, having considered carefully the evidence of the parties, both in writing and the oral evidence they have given to the court, I am satisfied that it is not known what Theo's wishes were. Theo, whilst having close connections with Caversham, Reading, where he grew up, also had close connections and a feeling of peace when he was at Dartmoor. A cremation should take place at Caversham, as both parties agree. Thereafter his ashes should not be divided but be scattered on Dartmoor, ideally near Hound Tor. The father has indicated that the mother can attend this." Discussion In the present case, the deceased had lived in England for 70 years, having come here as a young man. His children were born and brought up here. When his wife died last year, her body was cremated in accordance with her wishes, and her ashes scattered in England, in accordance with Hindu rites. The preponderance of family views, including those of one of the two executors, is that the deceased's body also should be cremated and the ashes scattered in England, again in accordance with Hindu rites. The only family member that takes a different view is the defendant, who is the other executor. But her view is based on a perception of what the deceased wished for himself, and not on with what she herself wishes for him. As she explained, she has no view about that. But, with the help of Ms Bhanot, she has formulated a plan. Nevertheless, taking the body to India for burial would take longer and involve more uncertainty (because the place of burial is not ascertained at this stage) than cremation in England. It would also be significantly more costly, because

of the need not only to transport the body there, but also for those mourners who are based in England to travel to India (and back). On the other hand, there are some members of the extended family left in India, including one brother (though his view is that the body should be cremated in England). Whether those relatives could or would attend the funeral might well depend upon how far the place of the funeral was from where they lived. India is a big country. As I have previously noted, there was no direction in this matter for expert evidence, and so in particular I did not receive any expert evidence of Hindu religious practice. The parties themselves attempted to assist me, by providing their view of what those practices involved. I also had evidence from the deceased's three brothers. Limiting myself to matters of fact, it is clear that, among Hindus, burial is not the normal practice, and is not known in the part of Gujarat from which the deceased came. The evidence supplied by the first defendant was that, first, although they were not the norm for Hindus, burials did take place in India. Secondly, Ms Bhanot had identified five sites where the body of the deceased could be buried in India. Four of these were in Mumbai and one in Rajkot. All of these sites are however several hours by train or car from Navsari, where the deceased came from. The wishes of the deceased The most important question of difficulty is to ascertain the wishes of the deceased himself. There is evidence from both the claimant, the first defendant and also in the witness statement of Ms Bhanot (which was however not tested in cross-examination) as to what those wishes were. Unfortunately, that evidence is diametrically opposed. It may be that this represents which some misunderstanding or misremembering what the deceased said to each of them, or attributing a meaning to what the deceased said which the deceased did not intend, or even different things that on different occasions by the deceased to each of them. As I have already said, I find that both the claimant and the first defendant were telling the truth as they believed it to be, and neither was attempting to mislead the court. The claimant points to the implausibility of the deceased's having wanted to be buried, when he was a devout Hindu. The first defendant points to his independent personality, and to the fact that burial is not unknown in India. Both are fair points. But there is nothing in writing, and, in all the circumstances, I find that neither of them has satisfied me (to the civil standard of proof, that is, the balance of probabilities) that the wishes of the deceased were what they said they were. That means that I have been unable to ascertain those wishes, and cannot take them into account. Evaluation Even if I had been able to find what those wishes were, they would not be conclusive. That is shown by the (admittedly extreme) facts of *Oldham Metropolitan Borough Council v Makin*, where the judge overrode the clearly expressed wishes of the deceased in relation to his funeral service because of the upset that would be caused to others. Looking at the other factors suggested by the case law, I find that the preponderance of close family opinion is in favour of the body of the deceased being cremated and the ashes scattered in England. Of the close family members, only the first defendant is in favour of burial in India, and then only because that is what she says the deceased himself wanted, rather than because it is her own personal preference. As to the place with which the deceased was most closely connected, there is no doubt in my mind

that this is England. The deceased left India when he was 23, and made the rest of his long life in England, where his children were born and grew up, and where he and his wife lived until their respective deaths. His last visit to India was in 2003, some 21 years before his death. I do not doubt that he had a great deal of affection for, and attachment to, India as his native country. Who would not? But the place with which he was most closely connected at the time of his death was undoubtedly England. Disposal of the body Although it was said in the *Hartishorne v Gardner* case that the most important factor to take into account was disposal of the body "with all proper respect and decency and if possible without further delay", the fact is that the body of the deceased has now remained undisposed of for almost 3 months after his death. Although a decision in favour of burial of the body in India would be likely to take longer to implement fully than a decision to cremate the body and scatter the ashes in England, in the context of the delays which have already occurred, this cannot be decisive. Again, there will probably be greater cost associated with burial in India than with cremation in England. This is because there is the cost of transporting the body by air to India, coupled with the cost of the inevitable legal and administrative services that are unfortunately necessary in the international transport of human remains. In addition to that, there is the separate cost of transporting members of the family from the UK to India and back for the purposes of the funeral, or alternatively the prospect of UK members of the family not being able to attend the funeral. This has some weight, but, on the assumption that the costs involved are proportionate to the estate of the deceased, also cannot be decisive.

Conclusion

Ultimately, it is a matter of the court's evaluation of the evidence. Having weighed it up, and considered the submissions made to me, in my judgment the right decision is to direct that the body of the deceased be cremated and his ashes scattered here in England, in accordance with the appropriate Hindu rites. In my judgment there is no sufficient justification for directing a burial in India on the facts of this case. I think I should add this. Even if I had found that the deceased's wishes were in favour of burial in India, I would still have reached the same conclusion. This is not only because the body could not be buried in the part of Gujarat that the deceased came from. It is also because, in a case like this the wishes of the wider family have a great weight. Their needs are the needs of the living. It is they who attend the funeral, and must grieve and remember. The funeral gives them both comfort and closure. Added to that, the pull of the country to which there was the greatest connection is strong. The deceased was a citizen of the United Kingdom. This was not his birthplace, but it was his chosen home. The deceased's views, as to how his body be disposed of, as I have said, are not legally enforceable. They are simply a factor to be taken into account. The first defendant is an equal executor with the claimant. I see nothing in the evidence to demonstrate that she will not perform her duty in that respect, even if the order of this court is that the body of her father be cremated in England. The order therefore will be that his body be released to both of the claimant and the first defendant jointly, that the body be cremated and the ashes scattered in England, in accordance

with Hindu rites, and that the claimant and the first defendant shall be jointly responsible for arranging the funeral. Paragraph 3 of the draft order is unnecessary, and will be deleted. I will give liberty to apply in the case of any disagreement between them as to exactly what should happen at the funeral, but I am sure that this will not be needed. I should be grateful to receive a revised minute of order for consideration. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/ew/cases/EWHC/Ch/2025/>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/patel-v-patel-2025-ewhc-560-ch-12-march-2025>

Prepared on 24 October 2026 · Esheria