PRIVY COUNCIL

Sri Rajah Venkatadri Appa Rao Bahadur Garuand

Vs.

Mahboob Sirfraz Vanth Sri Raja Parthesarathi Appa Rao Bahadur Garu, Zamindar of Bhadrachalam and Pala vancha

P.C.A No. 25 of 1924
(Viscount Finlay, Lord Atkinson, CJ. Sir John Edge and Sir Lawrence Jenkins JJ.)

30.01.1925

JUDGMENT

VISCOUNT FINLAY J.

1.Venkayyamma, the testatrix, was the widow of *Venkata Ramayya Appa Rao,* who had died before 1890. They had one child, a son, *Narayya Appa Rao*, who died on the 4th August, 1895, while he was a minor. He died unmarried and had not made a will. When he died he was the last male owner of the Medur estate. The Court of Wards had taken charge of the Medur estate during his minority and continued to be in charge of it until December, 1895, when Receivers appointed by a Civil Court, having jurisdiction, took possession of it. The estate of Medur continued to be in charge of Receivers, duly appointed, until after 1902. The Receivers acted as officers of the Civil Court, and it was their duty to bring and to defend suits affecting the estate, to collect the rents and profits of the estate, to render accounts to the Civil Courts, to invest balances of money which might be in their hands, and to pay monies received by them into a local branch of the Bank of Madras after deducting necessary and legal expenses. The monies paid into the Bank by the Receivers and the Government promissory notes and other securities in which monies derived from the Medur estate were invested were under the control of the Civil Court for the benefit of those who might be entitled to them.

2. The Medur estate and the Nidadavole estate - with the latter these suits are not concerned - had formed parts of a large zamindari in the Province of Madras, and the families respectively in which they were vested were nearly related. In December, 1890, Rani Papamma Rao, who was the childless widow of the last male owner of the

Nidadavole estate, went through a ceremony of adopting Narayya Appa Rao as a son to her late husband. As will later be seen, it was held by the Board in 1913 that she had not power to make the adoption and that it was invalid. Until that decision of the Board in 1913 it seems to have been generally considered that the adoption was valid. Shortly after Narayya Appa Rao died in August, 1895, disputes arose between Rani Papamma Rao and Venkay yamma as to the right to the possession of the Medur estate. The former claimed a right to the possession as the mother by adoption of Narayya Appa Rao; the latter, alleging that the adoption was invalid, claimed a right to the possession as his natural mother. The Court of Wards in September or October, 1895, passed a resolution to hand over to Rani Papamma Rao the possession of the Medur estate unless restrained by an injunction of a competent Court before the 1st December, 1895, and, thereupon, Venkayyamma instituted on the 21st October, 1895, in the Court of the Subordinate Judge of Ellore Suit No. 35 of 1895 against Rani Papamma Rao and the Col lector of the Kistna District, who was the local agent of the Court of Wards, in which she claimed a declaration that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid, and also claimed to be placed in possession of the Medur estate with all the savings, appurtenances, and c., of the estate.

3. When Venkayyamma died on the 9th March, 1899, her Suit No. 35 of 1895 was still pending in the Courts of Law. In that suit after her death Venkatnarasimha Appa Rao and Rangayya Appa Rao were brought on the record as plaintiffs as being the two surviving uncles of Narayya Appa Rao and the nearest legal reversioner's to the Medur Estate. After their death Yenkatadri Apparao, son of Rangayya Appa Rao and Venkataramayya Appa Rao and Sobhanadri Appa Rao sons of Venkat narasimha Appa Rao were brought on the record of the case. The suit dragged on through several vicissitudes till 1913 when Privy Council decided that the adoption of Narayya Appa Rao was invalid, and that on the death of Venkayyamma Rangayya Appa Rao and Venkat narasimha Appa Rao became entitled as reversioner's to the Medur Estate, and that the whole estate should be divided among their sons per stirpes. Parthasarathi Appa Rao a cousin of Narayya Appa Rao's natural father who had been claiming a third share in the Medur estate was a party to the Privy Council decree the result of which was that he was held not to be entitled to any share of the Medur Estate.

4. On the 30th January, 1899 Venkay yamma made a will which so far as is ma terial was as follows :-

* * *

1. Out of the jewels and other valu ables belonging to me I have already sold a

major portion and spent that amount as the amount borrowed, from my brother Sri Raja Inuganti Raja Gopala Buchi Thammayya Bahadur Garu and from my younger brother Chiranjeevi Sri Raja Inuganti Raja Gopala Venkatrama Chinna Rao for the expenses of the Medur Estate suit and for our maintenance and other expenses.

2. Out of the minor jewels that are re maining with me at present the jewels set with diamonds and pearls shall be divided into three shares and out of those shares one share shall be given to my elder brother Sri Raja Inuganti Buchi Thammaya Garu and two shares to my younger brother Sri Raja Chinna Rao.

* * *

5. The Government promissory notes and cash relating to the Medur estate which have been in the custody of Court till this day as well as the interest accruing thereon till payment of the amount shall be divided into four shares and out of them one share shall be given to my elder brother Buchhi Thammayya Garu and three shares to my younger brother Chinna Rao.

6. Out of the Government promissory notes and cash of the Medur estate which are remaining in deposit in Court and the jewels, etc., the amounts specified here under shall be first expended and only out of the remaining amounts, one share shall as stated in paragraph 5 be paid to my elder brother and three shares to my younger brother.

5. Particulars of the expenses to be incurred:-

1. Rs. 80,000-0-0 to my younger sister-in-law Inuganti Kasthu ramma.

2. Rs. 40,000-0-0 to my elder sister-in-law Inuganti Venkata ramanayamma Garu.

3. Rs. 40,000-0-0 to my younger sister Damera Venkataraja gopala Seethagyamma.

* * *

4. Rs. 2,000-0-0 to Lakkaraju Bapayya

* * *

6. The sole executor appointed by the will did not take upon himself the duties of an executor and died shortly after the testatrix. It was the will of a Hindu of the Province but not of the town of Madras and had not been made by her within the local limit of the ordinary original Civil Jurisdiction of the High Court of Madras and did not relate to immovable property situate within the local limits of the original Civil Jurisdiction.

7. The suits out of which the present appeals arose were filed for the recovery of the

following legacies:-

1. Suit No. 30 of 1916 - Legacies of Inuganti Kasthuramma, Inugan Venkataramanayyamma, China Rao and Bucchi Thammayya.
2. Suit No. 87 of 1916 - Legacies of Damera Venkatarajagopala Seethay yamma.
3. Suit No. 88 of 1916 - Legacy of Lakkaraju Papayya.

8. Venkatadri Appa Rao, Venkataramayya Appa Rao and Sobhanadri Appa Rao were the defendants. In Suit No. 30 of 1916 the Court of Wards was originally made a defendant but was struck off afterwards by the order of the Court. In that suit the plaintiff was Parthasarathi Appa Rao who claimed as the assignee of the legatees mentioned above. In other suits, the respective legatees themselves were the plaintiffs.

Sir John Edge :- These are consolidated appeals from three decrees, dated the 4th April, 1922 of the High Court at Madras, which had reversed three decrees, dated the 22nd April, 1921, of a Division Bench of that Court, by which three decrees, dated the 29th November, 1917 of the Subordinate Judge of Bezwada dis missing original suits numbered 30, 87 and 88 of 1916 had been affirmed. The suits had been instituted in the Court of the Subordinate Judge of Bezwada on the following dates : No. 30 of 1916 on the 26th April, 1916; No. 87 of 1916 on the 6th December, 1916; and No. 88 of 1916 on the 9th December, 1916. It was agreed at the hearing of these appeals that in drawing up the decree of the High Court in original suit No. 30 of 1916, Letters Patent Appeal No. 20 of 1921, then the words "mesne profits" in paragraph 3 of the decree should have been "income" and their Lordships amended that decree by substituting in it for the words "mesne profits" the word "income." There was no question of mesne profits in the case.

9. His Lordship stated the facts of the case and, proceeded.

10. After the death of Venkayyamma, a Sub-Magistrate of Ellore took possession of certain jewellery and other things which had belonged to her as her stridhanam. He handed over the things to the police, who gave them into the possession of Rangayya Appa Rao and Venkatanarasimha Appa Rao, who had no title to them as reversioner's or otherwise, and they took possession of them and claimed them as reversioner's. Thereupon the two brothers of Venkayyamma, who are mentioned in the first and second clauses of her will, brought a suit on the 2nd March, 1902, in the District Court of Godavery against Rangayya Appa Rao and Venkata narasimha Appa Rao for possession of that property. The first plaintiff in that suit having died, his son and heir

was made a plaintiff. Finally a decree for possession of the property claimed was made in favour of the plaintiffs. It is necessary to refer to that suit as one of the contentions of the appellants in this appeal has been that the suit of 1902 having been brought these suits were not maintain able. That contention was founded on misconception. The causes of action were not the same. The suit of 1902 was for the wrongful conversion (trover, it used to be called in England) of goods. The present suits are to obtain payment of legacies, and there is no claim in respect of any of the goods to which the suit of 1902 related.

11. The other contentions of the appellants in this appeal were that (a) Venkay yamma had no disposing power to bequeath the legacies; (b) that Clauses 5 and 6 of the will had been wrongly construed by the High Court, and (c) that the suit was barred by the law of limitation.

12. As to the objection that Venkayyamma had no disposing power to bequeath the legacies, that question is involved in the contention that Clauses 5 and 6 of the will have been wrongly construed by the High Court. Their Lordships will consider these two contentions together. On the death of her son Narayya Appa Rao on 4th August, 1895, she became entitled to the Medur estate and its income to hold for her own life, and that income included the interest on investments of all monies received in respect of the Medur estate collected before the death of her son on the 4th August, 1895. To that income she remained entitled until her death on the 9th March, 1899. That income or any part of it she could, while she remained entitled to it, have added as an accretion to the Medur estate if she had wished to do so. There is no evidence to suggest that she had ever added any part of that in come as an accretion to the Medur estate. She was consequently entitled to dispose of it by Will or otherwise.

13. It has been contended on behalf of the appellants that the High Court in the decree of the 4th April, 1922, in Partha sarathi Appa Rao's Letters Patent Appeal mast have misconstrued Clauses 5 and 6 of Venkayyanama's will as to those pro missory notes in those clauses mentioned which represented monies received by the Court of Wards before the 4th August, 1895, in Narayya Appa Rao's lifetime, and included them in the income of the Medur estate mentioned in the 3rd para graph, as amended by their Lordships, of that decree. There was no misconstruction of Clauses 5 and 6 of the will. Ven kayyamma was, after the death of her son on the 4th August, 1895, entitled to hold during her life as part of the Medur estate those promissory notes or other investments which represented monies received by the Court of Wards in respect of the Medur estate income such interest; as might be payable under them, but by her

will she did not bequeath these promissory notes which represented monies which had been received by the Court of Wards before the 4th August, 1895; she only dealt with the promissory notes to which she was absolutely entitled as representing monies which had been received after her son's death by the Court of Wards as the receivers. that is the only reasonable construction of her will and the High Court in the decree of the 4th April, 1922, passed in Letters Patent Appeal No. 20 of 1921, was under no misconception of Yenkayyamma's position or of her rights.

14. There remains to be considered the question of limitation. The Article of the First Schedule of the Indian Limitation Act, 1908, which applies to the suit in which these consolidated appeals have arisen is Article 123, which allows twelve years, calculated from the time "when the legacy or share becomes payable or deliverable" for bringing a suit "for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate." The question as to what the word "payable" means is not without difficulty. It has been contended on the part of the appellants that the legacies sued for became payable at latest twelve months after the death of Venkayyamma, in which case the suits would be barred by limitation. Looking at Article 123 as one of general application to such suits, it appears to their Lordships that a similar interpretation must be given to the words "payable" and "deliverable" as used in the Article and that a share in the property of an intestate would not be "deliverable" until the administrator, to whom letters of administration had been granted, had in his hands the share to be delivered, and similarly, a legacy or share in a legacy does not become "payable" until the executor or other person liable to pay. it has in his hands money with which it could be paid.

15. In the present case no one could have had in his possession or control any fund representing the income of the Medur estate, which Venkayyamma had had a right to enjoy for her own use but had not received, until it had been finally decided by the Board in 1913 that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid, and there was no other fund. It was suggested on behalf of the appellants that the plaintiffs in these suits might have brought suits for these legacies as soon as Venkayyamma had died or within twelve months after her death against her heir, whoever he might then have been, and might have obtained decrees against him for the payment of the legacies when he might be in possession of assets with which the legacies, might have been payable. Without expressing any opinion as to whether such a suit could or could not have been maintained against a Hindu heir who had received no property belonging to Venkayyamma, their Lordships may quote a passage from

the judgment of the Board in *Mt. Basso Kuar v. Lala Dhum Singh)* as to the effect of Article 97 of Act XV of 1877. The passage is as follows :-

> "Barumal might have sued for his debt, but the utmost benefit that could have come to him from such a suit would have been to have it suspended or retained in Court till after the decision of the appeal in the specific performance suit. Dhum Singh's defence would have been that the debt was paid by virtue of the contract, and that defence must have prevailed if the suit were beard while the decree of 1-81 still stood unreversed. It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if be does not, and it would be a lamentable state of the law if it were found that a debtor, who for years has been insisting that his creditor shall take payment in a particular mode, can, when it is decided that be cannot enforce that mode, turn round and say that the lapse of time has relieved him from paying at all.

16. In this case no difficulty of applying Article 123 of the First Schedule of the Indian Limitation Act, 1903, arises when the will of Venkayyamma is considered. It was a carefully drawn will bequeathing legacies of, in the aggregate, large sums of money. Venkayyamma had already when she made her will commenced her suit which would determine whether she was entitled to any fund out of which any legacies which she might bequeath could be paid. If the adoption of Narayya Appa Rao by Rani Papamma Rao should be finally held to have been valid. Venkayyamma and her advisers must have known that there was and would be no fund out of which the legacies could be paid. They could not be paid unless it should be finally decided that the adoption was invalid. She stated in her will that she had been very ill for four months and was afraid that she would not survive, and that she had sold the major part of her jewels and other valuables and had spent the amount (obtained by the sale of them) as well as the amount of money which she had borrowed from her two brothers, mentioned in her will, "for the expenses of the Medur estate suit and for our maintenance and other expenses," and in Clause 5 directed that "the Government promissory notes and cash relating to the Medur estate, which have been in the custody of Court till this day, as well as the interest accruing thereon till payment of the amount, shall be divided" in the manner which she directed. and in Clause 6 she directed that "Out of the Government promissory notes and cash of the Medur estate which are remaining in deposit in Court and the jewels, etc. the amounts specified hereunder shall be first expended and only out of the remaining amount, one share, shall as stated in paragraph 5, be paid to my eider brother and three shares to my

younger brother." and then she set out as expenses to be incur red a full and complete list of the legacies to be paid. The only conclusion which on these facts, their Lordships can arrive at is that the testatrix intended that the legacies should be payable and be paid after the final determination of the suit which she had brought for a declaration that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid and to establish her right to the income of the Mednr estate. That litigation was not finally determined until the judgment of the Board was delivered in 1913, and these suits were instituted in 1916 and were within the time allowed by Article 123 of the First Schedule to the Indian Limitation Act, 1908.

17. If any authority were necessary to show that the intention of a testatrix, when not expressly and unambiguously stated in her will, may be inferred by a Court from other facts stated or referred to in her will that legacies bequeathed by the will should not be paid until the conclusion of litigation in which she was engaged when she made her will it may be deduced from the judgment of Lord Justice Turner, L. J. in *Lord v. Lord, 2 Ch. A. 788*.

18. In *Roddy v. Fitzgerald 6 H.L. Cas. 876*. Lord Wens leydale, in referring to the rules for the construction of wills, said

> "These rules are perfectly plain and clear. The first duty of the Court ex pounding the will is to ascertain what is the meaning of the words used by the testator. It is very often said that the intention of the testator is to be the guide, but that expression is capable of being misunderstood, and may lead to a speculation as to what the testator may be supposed to have intended to write, whereas the only and proper inquiry is, what is the meaning of that which he has actually written. that which he has written is to be construed by every part being taken into consideration according to its grammatical construction and the ordinary acceptation of the words used, with the assistance of such parol evidence of the surrounding circumstances as is admissible, to place the Court in the position of the testator." and then Lord Wensleydale referred to other rules to be followed by Courts in construing wills.

19. In *Gordon v. Gordon 5 L.R.E. and I. A. 284*. Lord Cairns, as to the construction of wills, said:-

> "I take the law on this subject to have been expressed with much accuracy and felicity by Lord Cranworth, then whom no Judge more consistently adhered to sound and strict principles of construction in the interpretation of wills. In the

case of *Abbott v. Middleton* before this House Lord Cranworth speaks thus 'Where, by acting on one interpretation of the words used we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most obvious, or the most grammatically accurate. But if the words used are unambiguous, they Cannot be departed from merely because they lead to consequences which we consider capricious, or even harsh and unreasonable."

20. The case of *Lord v. Lord (Supra)* was refer red to by Sir W. S. Schwabe, C. J., and by Coutts Trotter and by Kumaraswami Sastri, JJ., in their learned judgments in the Letters Patent Appeals.

21. It appears from the judgments of the Subordinate Judge of Bezwada of the 29th November, 1917, and from the judgment of Kumaraswami Sastri, J. of the 4th April, 1922, that at different dates between 1903 and 1908 Rangayya Appa Rao, Yen kata Narasimha Appa Rao, and Parthasarathy Appa Rao each obtained on his own application to the High Court one-third of the amount standing to the credit of Suit No. 35 of 1895. They each gave some security. It also appears that after the order of His Majesty in Council of the 19th December, 1913, had been made Venkatadri Appa Rao, Venkata ramayya Appa Rao and Sobhanadri Appa Rao obtained from Parthasarathi Appa Rao the one-third which he had received. For the amounts received by Rangayya Appa Rao and by Venkata Narasimha Appa Rao their sons, as their heirs and legal representatives, are responsible.

22. The decrees of the High Court from which these consolidated appeals have been brought, having been amended as to one of them by substituting" income" for the words "mesne profits'" were the right decrees to make in the appeals under the Letters Patent, and their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

Appeals dismissed.

Cases Referred.

(1889) 11 All 47 : 15 IA 211 : 5 Sar, 260 (PC).