

Gopala Menon

Vs

Sivaraman Nair and Others

Civil Appeal No. 1836 of 1969

(CJI Y. V. Chandrachud, V. D. Tulzapurkar, A. P. Sen JJ)

12.01.1979

JUDGMENT

CHANDRACHUD, C.J. –

1. This appeal by special leave arises out of a suit for partition filed by the appellant in the Court of Subordinate Judge, Palghat. The suit properties belonged originally to Ravunni Nair, the father of appellant and of defendants 1,2,11 and 20. defendants 3 to 10, 12 to 19 and 21 to 28 are members of tavazhi of defendants 2, 11 and 20 respectively. The parties are admittedly governed by the Madras Marumakkattayam Act, 1932.

2. On October 10, 1945 Ravunni Nair executed a Will, Ex. B-8, making certain disposition of his properties, including that in the suit. After his death, his widow Sreedevi Amma, the mother of appellant and defendants 1, 2, 11 and 20 entered into possession of the suit property. On January 15, 1959 she executed a Will, Ex. B-4 bequeathing that property to defendant 1. Her right to so dispose of the property depends upon the nature of the estate conferred upon her under the Will of her husband, Ex. B-8. If she obtained under her husband's Will a limited estate in his property, she will have no right to dispose of that property. On the other hand if, under her husband's Will, she got an absolute estate, she will be entitled to dispose of that property.

3. The trial court and the District Court accepted the appellant's contention that Ravunni Nair by his Will gave a limited estate only to Sreedevi Amma and therefore, she had no right to dispose of that property. In second appeal No. 1039 of 1964, the High Court of Kerala took a different view and dismissed the appellant's suit on the ground that, by his Will, Ravunni Nair had conferred an absolute estate on Sreedevi Amma and she was, therefore, entitled to dispose of that property. This appeal by special leave is directed against the judgment of the High Court.

4. Paragraph 5 of Ravunni Nair's Will, Ex. B-8, contains a recital that the property described therein "shall vest in my wife, Sreedevi Amma, daughter of Moorkkath Madhavi Amma, with power of alienation". We are unable to appreciate how, in the fact of this recital, it is possible to accept the appellant's contention that the testator intended to confer a limited estate only on his wife. The fact that the power of alienation was expressly given to her militates against the appellant's contention that the testator intended to confer upon her a limited interest in his property.

5. Learned counsel for the appellant relies upon Clauses 6 and 7 of the Will in support of his contention that though the power of alienation was given to the widow, the true intention of the testator was to give to the other heirs also a share in the property which was bequeathed to her. It is not possible to accept this contention because, Clauses 6 and 7 of the Will on which counsel relies,

deal with the income of the property and not with the corpus. The corpus has been dealt with in paragraph 5 of the Will under which, by words of unambiguous import, an unrestricted estate is bequeathed of Sreedevi Amma. The Will shows that she was of advanced years and therefore, the testator wanted to make some provisions for the application of the recurring income of the property. Clauses 6 and 7 of the Will deal with the matter. The Will contains a provision for the maintenance and, upkeep of a house which was used by the family as a place of worship. Clauses 6 and 7 provide, inter alia, that defendant 1, Shivaraman should invest the balance of the income and that income should be shared in a certain manner by the heirs as specified in those clauses. The corpus itself was bequeathed absolutely to the wife. If there was any conflict between the different provisions of the Will, it may have become necessary to reconcile the conflicting clauses of the Will, as stated in the decision of this Court in *Navneet Lal alias Rangi v. Gokul* ((1976) 2 SCR 924 : (1976) 1 SCC 630 : AIR 1976 SC 794). But we see no inconsistency between the various provisions of the Will and are in agreement with the High Court that, upon a true construction of the Will, the intention which one can reasonably gather is that the testator wanted to confer an absolute estate upon his wife.

6. It is contended that even assuming that an absolute estate was conferred upon Sreedevi Amma, the testator did not give her the power to dispose of by Will the property which was bequeathed to her. This argument contains a contradiction. If Sreedevi Amma obtained an absolute estate in the property bequeathed to her by her husband, she would be entitled to dispose of that property in any manner she liked and no authorisation by her husband would be necessary, empowering her to dispose of the property by a Will. The absolute and unrestricted power to dispose of property is a necessary incident of an absolute estate. It is implicit, when an absolute estate is conferred, that the grantee is free to deal with and dispose of the property in any manner. Indeed, if an absolute grant is burdened with a restraint on alienation, the grant is good and the condition void.

7. If Ravunni Nair's own Will furnishes any clue, it is this : He commenced the writing of his Will by stating that he was disposing of the property over which he possessed the power of alienation. He had, on his own part, no doubt that an absolute title carried with it the power of make a testamentary disposition. Evidently, after conferring an absolute title on his wife, he saw no reason to provide that she was free to dispose of the property by a Will.

8. Learned counsel for the appellant relied on Section 48 of the Madras Marumakkattayam Act 22 of 1932, and contended that even if the intention of Ravunni Nair was to confer an absolute title on Sreedevi Amma, she would take the property as tavazhi property on behalf of her sons and daughters and not for herself only. Section 48 provides, insofar as relevant, that where a person bequeaths any property to his wife alone, such property shall, unless a contrary intention appears from the Will, be taken as tavazhi property by the wife, her sons and daughters. The answer to the appellant's contention can be sought in the very terms of Section 48. The property will be tavazhi property in the hands of the wife, "unless a contrary intention appears from the Will". Clause 5 of the Will contains an expression of such an intention because it provides in terms that the property shall be taken by Sreedevi Amma as her own property with the power of alienation. It is significant on this aspect of the matter that when the testator wanted to give a share in a part of his property to the other heirs, he made a specific provision to that effect by providing that insofar as surplus income was concerned, his sons and daughters will have an equal share therein. Insofar as the corpus of the property is concerned, he constituted his wife an absolute owner by conferring upon her the power of alienation over the property. Reliance was also placed by the learned counsel on Section 50 of the same Act but that section does not touch upon the point which we are called upon to decide in this appeal. It provides that nothing contained in the Act shall be deemed to affect any

rule of Marumakkattayam law, custom or usage, except to the extent expressly laid down in the Act. There is no competition in the present case between the provisions of the Act and any rule of law, custom or usage. As observed by the High Court, the only controversy in the suit was whether Ravunni Nair had conferred an absolute estate on Sreedevi Amma in respect of the property which was bequeathed to her.

9. For these reasons we are of the opinion that the High Court was right in coming to the conclusion that Sreedevi Amma obtained an absolute interest in the property which was bequeathed to her under her husband's Will. It must follow that she was entitled to dispose of that property by her own Will. Accordingly, we confirm the judgment of the High Court and dismiss the appeal. There will be no order as to costs.

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