

S. Rajagopal Chettiar

Vs

Hamasaveni Ammal and others

Civil Appeal No.902 of 1977

(N. M. Kasliwal, K. Ramaswamy JJ)

23.08.1991

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by Special Leave is directed against the Judgment of the High Court of Judicature at Madras dated 29-7-1976. The short controversy in the case is regarding the ambit and scope of a will dated 22-6-1924 executed by one Padmanabha Chettiar. The construction of the will is in question in the present case. A translation of the will as supplied by the appellant in this Court reads as under:

"On the 2nd day of June, 1924, i.e. Tamil 9th day of Ani of Raktakshi year, this will executed by me, Padmanabha Chettiar, son of Sami Chettiar, Vysya caste, cultivation, resident of New Street, Sultanpettai, Koppam, Palakkadu Taluq, Kallikottai District presently at, Aniamalai, is to the effect. As I do not have male progeny and I have attained old age, the movable and immovable properties mentioned hereunder in my possession and enjoyment, both ancestral and also self acquired, shall be enjoyed by me absolutely till my lifetime, after my lifetime my wife Dhanalakshmi Ammal shall enjoy likewise till her lifetime, after her lifetime as described hereunder A Schedule properties shall be enjoyed absolutely by my daughter and wife of Anaimalai Subramania Chettiar, Rajalakshmi Ammal, and after her it should go to her male children".

2. The question which arises on the basis of the contents of the above will is whether Rajalakshmi Ammal had acquired a life estate under the will or an absolute estate. The High Court took the view that it was one of the cardinal principles of construction of wills that so far as legally possible effect should be given to every disposition contained in the will unless the law prevents such effect being given to it. The High Court held that the fact that the testator directed that after Rajalakshmi Ammal it shall go to her male children clearly showed an intention that Rajalakshmi Ammal's interest in the properties should not be absolute. The High Court thus arrived to the conclusion that Rajalakshmi Ammal should be deemed to have held only a life estate in the properties and after her death, her male children got the properties absolutely.

3. After going through the contents of the will we agree with the view taken by the High Court. We do not agree with the contention of the learned counsel for the appellant raised before us that Padmanabha Chettiar, the testator, of the will wanted to give absolute right in the property to his wife Dhanalakshmi Ammal and thereafter absolute right in favour of his daughter Rajalakshmi Ammal. The above intention is negated by a clear mention in the will that after Rajalakshmi

Ammal the property shall ultimately go to her male children. In case the intention of the testator was to give the properties absolutely in favour of Rajalakshmi and not merely life interest then there was no question of mentioning that after her it should go to her male children.

4. Learned counsel for the appellant also raised a contention that even if it may be considered that only life interest was given to Rajalakshmi Ammal under the will, such right became absolute under S. 14(1) of the Hindu Succession Act, 1956. This contention was neither raised in any of the Courts below nor before the High Court nor in the petition for special leave and we cannot permit this ground to be raised for the first time before us during the course of arguments. In the result we find no force in this appeal and the same is dismissed with no order as to costs.

Appeal dismissed.

</html