

(1934) 03 MAD CK 0010
In the Madras High Court

Arunachalathammal

APPELLANT

Vs

Esakki Ammal

RESPONDENT

Date of Decision : 20-03-1934

Acts Referred:

Citation : AIR 1934 Mad 552 : 152 Ind. Cas. 341 : (1934) 40 LW 241

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The plaintiff is the daughter of one Shanmukham Pillai by his first wife. The defendant is his second wife. Shanmukham

Pillai seems to have died in or about the end of February or the beginning of March 1925, and on 17th March 1925, the plaintiff presented Ex. A

for registration, claiming that it was the will executed by her deceased father. In the course of April and May several witnesses were examined

before the Registering Officer and the case had been adjourned for further enquiry to 6th June. Before the Registering Officer the defendant was

contending that the will was not genuine and in this she was admittedly supported by P.W. 3, who was the next male reversioner. At this juncture,

the plaintiff and the defendant entered into an agreement, marked Ex. B in the case, dated 5th June 1925. The defendant disputed the genuineness

of Ex. B, but both the Courts below have found it to be genuine. To understand the provisions of Ex. B, it is necessary very briefly to refer to the

terms of the alleged will of Shanmukham Pillai. He seems to have had large outstandings to collect as well as debts to pay and the alleged will

accordingly provided for the collection of outstandings and payment of debts by an agnatic relation, Sudalaimuthu Pillai, whom he appointed

executor. The will also provided that transactions so carried out by the executor should be checked by Subramania Pillai, the plaintiff's husband. It

made certain bequests including one for charity and a provision by way of life interest in a house to the widow. It finally directed that the balance of

cash, which may remain after the various provisions in the will have been carried out, should be taken in equal shares by the plaintiff and by one

Parameswari Ammal, his minor daughter by his second wife, and that Immovable properties shall be purchased in their names out of this amount.

2. As the defendant had been disputing the will, it is nothing strange that the settlement Ex. B does not expressly refer to the will. But the oral

evidence in the case, which has been in substance-accepted by both the lower Courts, leaves no room for doubt as to the origin and purpose of

Ex. B, namely that it was intended to settle the disputes between the step-mother and the stepdaughter with reference to the latter's claims under

Ex. A. Two provisions in Ex. B are however significant : (1) that the plaintiff should admit without dispute the right of the individual No. 2, that is,

the second wife, to collect the outstandings due to the said Shanmukham Pillai, and (2) that the amount of Rs. 850, which is to be paid to the

plaintiff under Ex. B, should be utilized for the purchase of Immovable property in the name of the plaintiff. The first provision has obvious

reference to the clause in the will which vests in another person as executor the right to collect the outstandings. The second provision in effect

carried out the suggestion of the testator that whatever cash should come to the plaintiff should be invested in the purchase of Immovable property.

Ex. B contains a further clause for payment of another sum of Rs. 300 to the plaintiff in certain contingencies; but the claim under this head is not

pressed in second appeal and I need not say more about it.

3. The District Munsif gave a decree to the plaintiff for the sum of Rs. 850 payable to her in the first instance under the terms of Ex. B. The

evidence shows that as contemplated by Ex. B this amount was, in fact, invested in a bank, but when disputes arose between the parties the

amount was withdrawn, by the defendant. The learned Subordinate Judge, after referring to certain features in the evidence, expresses his

agreement with the District Munsif so far as the genuineness of Ex. B is concerned, and he seems substantially to accept the first Court's

conclusion as to its origin and purpose. But he holds that the arrangement is invalid in law as a part of the consideration, for Ex. B is the

relinquishment by the plaintiff of her reversionary right and this is illegal as being merely a transfer of a spes successions.

4. It goes without saying that if the true nature of the transaction is that it is a transfer of a spes successions it is opposed to law. And if that part of

the consideration cannot be separated from the whole transaction, the illegality might make it impossible for the plaintiff to enforce the transaction in

any degree. But in view of the circumstances attending the transaction and the provisions of Exs. A and B considered together, I am unable to

agree with the learned Subordinate Judge that Ex. B is in part a transfer of the reversionary right.

5. The evidence in the case shows that the draft from which Ex. B was written had been shown to a vakil for approval, and the writer of Ex. B,

that is, P.W. 7, is himself a vakil gumastha. And it would also appear that the plaintiff's husband and P.W. 7, a cousin of the defendant who was

helping her in the registration enquiry, went to the vakil and took his advice as to the best manner in which the settlement could be put through. It

has always been recognized that in dealing with a question of this kind we must look at the substance of the transaction and not at the particular

form adopted or at the particular words employed in the document. Where there are disputes between parties, one setting up a will and the other

denying its genuineness, it will not be consistent with authority to look upon a settlement between the parties as amounting to a transfer of right

asserted by the other. As stated already the provision in Ex. B that the plaintiff should not dispute the defendant's right to collect outstandings has

undoubted reference to the provision in the will and shows that it was the plaintiff's claims based on the will that were being settled under Ex. B.

6. Mr. Ramaswami Ayyar for the respondent strongly relies upon the words which include as consideration for Ex. B, the "reversionary interest

that the individual No. 2 (plaintiff) may get after the lifetime of individual No. 1 (the defendant)." It does not seem to be safe to attach undue

importance to the use of the expression "reversionary interest" in the translation. The language in Tamil is:

Melpadi onnavadhu nabarukku irrandavadhu nabarin ayitsukkuppin kedaikhakkudiya pinbathiyathaikkagavum.

7. These words will equally apply to a right in the nature of a remainder. And under the terms of the will the plaintiff was entitled by way of

remainder after the widow's death to a half share in the house. It is true that the settlement in Ex. B covers the plaintiff's claim by way of remainder

to the house as well as her present claim to a half share in the surplus cash assets and I see nothing wrong in both those rights being settled by a

lump payment of Rs. 850.

8. Even assuming for the sake of argument that the Tamil words, above reproduced, connote a "reversionary" interest in the strict legal sense, that

does not necessarily show that the transaction amounts to transfer of spes successions. As already stated, the widow was disputing the genuineness

of the will and from her point of view the plaintiff's claim, if any, can only be on the footing of the intestacy of her father. And if those who advised

the parties did not wish to commit the defendant to the use of the language that may suggest an admission of the genuineness of the will by the

defendant, it is nothing strange that they used a form of expression which will make the transaction a non-committal one so far as the defendant

was concerned. But as stated already the plaintiff was putting forward her claim on the basis of the will and when the respective claims are settled

by an amicable arrangement, the substance of the transaction must be held to be that the parties settled their disputes without prejudice to their

respective contentions. I respectfully adopt the language of Srinivasa Iyengar, J., in the case in *Kamaraju v. Venkatalakshmipathi* 1925 Mad. 1043

that,

in such cases when the question arises whether the transaction was really a relinquishment of a spes successionis or a bona fide compromise of

disputed rights, the best thing to do would be to look at the substance of the transaction apart altogether from any form which might have been

given to it. If in substance the transaction is found to be only dealing with the spes successlonis, then of course it cannot be recognized and cannot

form the basis of any binding obligation. But if on the other hand the substance of the transaction is found to be a bona fide settlement between the

parties, then in spite of the fact that the same transaction might be represented in one of its aspects as dealing with a apes successionis, it is

nonetheless a real compromise of disputed rights.

9. In this, view I see no reason to hold that Ex. B is invalid or unenforceable. I accordingly set aside the decree of the learned Subordinate Judge and restore the decree of the District Munsif. As to costs the plaintiff will get from the defendant only three-fourths of his Coats in this Court as well as in the lower appellate Court. When the defendant pays the amount into Court as per directions of the decree of the District Munsif, the plaintiff will draw the money only after executing, if the defendants so desires, a document releasing all her rights to her father's property as contemplated by Ex. B.