
(1935) 04 MAD CK 0049
In the Madras High Court

Bingi Neelamma APPELLANT
Vs
Agadi Mareppa RESPONDENT

Date of Decision : 29-04-1935

Acts Referred:

Evidence Act, 1872 — Section 96, 97

Citation : 163 Ind. Cas. 471 : (1936) 43 LW 742 : (1936) 70 MLJ 128

Hon'ble Judges : Varadachariar, J;Burn, J

Bench : Full Bench

Judgement

Varadachariar, J.—The decision of this appeal turns on the construction of Ex. A, which embodies a settlement entered into, in July, 1924, between the defendant and one Veeranna (sometimes referred to as Eranna). The plaintiff appellant is Veeranna's widow, but she had not married him at the date of Ex. A. His then wife was one Govindamma, who died a few months after Ex. A. Veeranna himself died early in 1927 and plaintiff brought this suit in 1928 claiming benefits under Ex. A.

2. It is admitted that Veeranna was the daughter's son of the defendant and had been brought up from his youth by the defendant and helped by him all along, whereas Govindamma was not in any manner related to the defendant, before her marriage to Veerannah. Ex. A, recites that Veeranna and Govindamma had filed a pauper petition O.P. No. 59 of 1923 against the defendant, claiming that Veeranna was entitled to a share in defendant's properties and that Govindamma had to recover her stridhanam property from the defendant. The disputes were amicably settled by the two persons withdrawing their claims and the defendant making the arrangement under Ex. A.

3. The operative portion of the document runs as follows:

I (Agadi Marappa) have arranged out of my kindness a capital of Rs. 10,000 out of my cash property and declared it as a trust for the sake of your (Veeranna's) help, improvement and benefit according to Dharma. You Veeranna shall have no

right whatever either to receive (draw out) or to make use of (appropriate) or to alienate the (aforesaid) that amount during my (Agadi Marappa's) lifetime; and it is only after my (Agadi Marappa's) lifetime, the said (trust) amount should come to (Chendavalasinadi) you; but for the income (interest) of the said trust amount, I shall, during my lifetime, pay you (Bingi Veeranna) throughout each and every month at the rate of Rs. 50 (rupees fifty) per month. If I, (Agadi Marappa) should fail in this condition (of paying interest every month), you (Bingi Veeranna) shall only be entitled to legally collect the aforesaid entire income (interest); but you shall not be entitled to collect (recover) the aforesaid entire principal trust amount during my lifetime. If perhaps any mishap (crisis) should befall you (bingi Veeranna) during my Agadi Marappa's lifetime, then your wife, your sons and grandsons shall alone become entitled to the said declared trust, interest etc., everything. To attend to (carry out) all affairs relating to the aforesaid trust, I (Agadi Marappa) have appointed myself as and to be the trustee. I hope that by the help rendered to you (Bingi Veeranna) by me (Agadi Marappa) as aforesaid you will thrive (get on) well agreeably to law and regularity and be happy.

4. It will be noted that though there are references to Govindamma in the recital portion of the document and to her abandoning her alleged claim to Stridhanam property, she has not joined in the execution of Ex. A nor is she referred to by name in any of the operative clauses. The reference to Govindamma in the recital portions is quite intelligible, because it is she who put forward the claim for stridhanam and subsequently abandoned it. There can be no possibility of "another wife" being contemplated at all in those portions. Why is there no reference to her by name in the operative clauses? As the learned Subordinate Judge points out, the document, throughout the operative portion, uses the singular "you" as referring to Veeranna, except in one place where it is used in the plural form.

5. The learned Subordinate Judge has held that Veeranna took no "vested" interest in the corpus of Rs. 10,000 during the lifetime of the defendant, that when speaking of "your wife" in Ex. A, the first defendant must have contemplated only the then existing wife Govindamma and that in the events that have happened, the trust fund has resulted to the first defendant himself, for his own benefit. Mr. Somayya, on behalf of the plaintiff - appellant here, has attacked these various steps in the learned Judge's reasoning. Mr. Venkata-ramana Rao (for the respondent) has contended that in any view the plaintiff could have no manner of right and he has strongly relied on the decision of the court of appeal in *In re Coley* (1903) 2 Ch.102 in support of the view that the reference in Ex. A to Veeranna's wife can only refer to the wife then in existence.

6. In view of the reference made by the learned Subordinate Judge to the evidence now given by the defendant as to his intentions when he executed Ex. A, it is necessary to emphasize the rule that in the interpretation of a document it is the expressed intention of the parties that has to be ascertained by the

court, In the well-known words of Lord Wensleydale. "The question is not what the parties to a deed may have intended to do by entering into that deed but what is the meaning of the words used in that deed". The statement by the defendant, in the box, that he would never have executed the settlement if he had anticipated the possibility of a second wife of Veeranna claiming the benefit of the arrangement or if it had a condition that it should be for the benefit of Veeranna's sons by any other wife, is not admissible at all, as any aid to construction Of Indar Kunwar v. Jaipal Kunwar (1988) 15 I.A. 127 : 1988 ILR 15 Cal. 725 (P.C.) nor is it of much use to him to say that he did not at the time of Ex. A, contemplate the contingency of Govindamma dying and Veeranna taking a second wife. To say the least, he is, in the events that have happened, deeply interested in making out that the trust had failed and the amount of Rs. 10,000 has now become his own property.

7. It is difficult to say that there is in the document, any ambiguity of the kind provided for in Sections 96 and 97 of the Evidence Act. Evidence can be adduced only in respect of facts existing at the time and not directed to intentions of the executant, in relation to unexpected contingencies. It must also be remembered that, even if the court has reason to think that a settlor may have imperfectly understood the words he has used or may have misconceived the effect of conferring the particular kind of estate that the words employed by him are capable of conferring, this would not justify the Court in giving an interpretation to the language other than the ordinary legal meaning. Lalit Mohun Singh Roy v. Chukkun Lal Roy (1908) L.R. 24 IndAp 76 : 1908 ILR 24 Cal. 834 (P.C.).

8. The rule of construction laid down in In re, Coley (1903) 2 Ch.102 is that:

If in a will you find a gift by the testator to the "wife" of a person and that person has at the time a wife living and acknowledged by the testator, the testator prima facie intends to refer to the existing wife and not to any subsequent wife that person may have : unless indeed there may be sufficient context to enable the Court to say that the testator is referring also to a subsequent wife and that the prima facie meaning of the gift is displaced.

9. Per Romer, L.J., at p. 110). Two questions therefore arise for consideration : (i) Is there a gift to the wife here and (ii) if there is one, are there reasons in the present case, for departing from the prima facie meaning of the expression "your wife". To answer these questions, it is necessary to consider at the outset, the nature and extent of the interest taken by Veeranna himself under Ex. A. If he took no interest at all in the corpus during the lifetime of the first defendant or if he took only a life interest, it would follow that the widow and children could claim only under a gift to themselves but if Veeranna obtained a vested interest in the corpus even on the date of Ex. A and that amounted to a heritable interest, it would not be reasonable to hold that the widow or the sons and grandsons take as donees from the settlor. In Coley, In re (1903) 2 Ch.102 there was no gift of the corpus to the husband and the gift even of the income was in terms limited to his life. In that case, therefore, the wife could only claim by way

of gift to herself. Even where the wife takes by way of "gift" a distinction was at one time suggested between instruments whereby an interest is in the first instance" created in favour of a person's wife and those wherein there is first a gift to the husband for life and after his death, to his wife and children see *In re, Lory* (1903) 2 Ch.102 but this distinction may not be countenanced after the decision in *In re, Coley* (1903) 2 Ch.102.

10. The dispositive words in Ex. A, are undoubtedly those whereby the defendant declares that out of kindness, he has arranged a capital of Rs. 10,000 out of his cash property and declared it as a trust for the sake of Veeranna's help, improvement and benefit. There are no words of futurity attached to this gift and the beneficiary being a male, would under these words *prima facie* take a vested heritable interest in the fund. The succeeding clauses in Ex. A, far from contradicting this result, only confirm it. The provision relating to payment of Rs. 50 per mensem to Veeranna during the defendant's lifetime, is very significant, because it is not independent of the gift of Rs. 10,000, (as must be the case if it is a future gift) but expressly states that it represents the income or interest on the sum of Rs. 10,000. Now can there be any question of "interest" unless the right to the principal has accrued? It is well established that even in cases where the dispositive words suggest a contingent interest, the gift to the donee of the interest or income accruing during the interval must be taken to show that the gift is vested and the contingency only refers to possession (*Jarman on Wills* 7th edition page 1379). The present is an *a fortiori* case. Mr. Venkataramana Rao laid stress on the use of the word "Chendavalasinadi" in that clause of Ex. A, which speaks of what is to happen after defendant's death; but in the context, it can well be held to refer to the right to collect the corpus and this construction is supported by the use of the word "vasool" in a similar connection in the succeeding clause. The restriction upon Veeranna's right to draw out or use the corpus immediately, is not inconsistent with a vested interest and the restriction against alienation is, if anything, in favour of it, for if he took no interest in the corpus at all, during defendant's lifetime, there was nothing to alienate and hence no occasion for restraining alienation.

11. There is greater difficulty in determining the quantum of interest that Veeranna took under Ex. A. Mr. Venkataramana Rao contends that it cannot be an "absolute" estate, because (i) in referring to the persons who are to receive the money in the event of Veeranna's death during the defendant's lifetime, the wife is placed before the sons and grandsons and (ii) after the word "grandsons" occurs the word "matram" (only) suggesting that no other heirs were intended to take. The latter point may be easily disposed of. The word "matram" is certainly not stronger than the language of the grant in (1879) ILR 4 23 (Privy Council) which after referring to Santana (or descendants) of the grantee, expressly stated "no other heir of yours shall have right or interest". The Judicial Committee nevertheless held that the grantee took a heritable and absolute estate though it was defeasible in certain events.

12. As to the first point, let us examine the effect and implications of the reference to "wife, sons and grandsons" (Bharya putra poutraluku). This is how the idea of the "family" will present itself to the mind of a Hindu. Suppose these words were not there at all; the family will take Veeranna's interest by the mere reason of the fact that it is a vested interest. Suppose, on the other hand, we assume that these words introduce an "independent gift; it could scarcely be maintained that all three sets of people were intended to take simultaneously but that would be the result of treating the clause as words of "gift" to them. The reference to "sons" of whom none had come into existence at the date of Ex. A, is significant in this connection and the reference to "grandsons" even more so. If they are to take successively, where are the words to restrict the interest of the first two sets of donees to "life" interests? and what reason is there for assuming that even the sons were intended to take only life interests. The proper reading must be that the wife or the sons or the grandsons, as the case may be, should take, if so, what is the violence done, in reading the document as providing for two possible contingencies, one in which Veeranna may have sons or grandsons and another in which he may not have sons or grandsons, and reading the words "wife, sons, grandsons" distributively, according as Veeranna dies issueless or leaves sons. This is certainly much more consistent with Hindu ideas and with the opening words which give to Veeranna a vested interest unlimited in point of duration. If it should be said that this would, in the event of their being sons or grandsons, deprive the widow of all benefit under A, it has to be pointed out that this would in any case be the result if only Veeranna should have survived the defendant, for the corpus would then have undoubtedly become receivable by him and would have devolved on his sons (even by another wife) to the exclusion even of Govindamma. What is there unreasonable in the same result following upon the view that the corpus had vested in Veeranna even during the defendant's lifetime though the right to draw it is postponed. It was said that the withdrawal of the stridhanam claim by Govindamma was part of the consideration for Exhibit A and it must therefore be taken that Govindamma was intended to get some indefeasible benefit under Ex. A. But it is obvious on the terms of Ex. A. that Govindamma could get nothing during Veeranna's lifetime nor if Veeranna happened to survive the defendant.

13. There is accordingly nothing in the later clauses of Ex. A, which detracts from or is inconsistent with the natural legal effect of the declaration of trust in Veeranna's favour in the first sentence of the operative portion of Ex. A. The right to possession of the corpus having been postponed it is quite logical, that, in the event of Veeranna predeceasing the defendant, provision should be made for his widow or the sons and grandsons (as the case may be, according to circumstances) receiving the interest during the defendant's lifetime and the corpus after his death. It is on the other hand unnecessary and inappropriate to read the words relating to the wife, sons and grandsons as introducing an independent gift to them.

14. If the above is the true construction of Ex. A, there is no occasion for the

application of the rule in *In re Coley* (1903) 2 Ch.102 Should the alternative view in favour of reading it as containing a "gift to the wife" herself in certain contingencies, be adopted, the question arises, whether the scheme of the disposition as a whole shows a general intention to benefit Veeranna's family, so as to rebut the prima facie presumption which will restrict the gift to Veeranna's then existing wife. In some of the earlier English cases, this rebutting inference was easily drawn, on the basis of a general intention to benefit the husband's family, particularly when there was a gift to the children as well. In *re Lyne's Trust* (1869) L.R. 8 Eq. 65 was however dissented from in *In re Coley* (1903) 2 Ch.102 but the decision of Chitty, J, in *re Lory* (1891) 7 T.L.R. 419 which practically follows *In re Lyne's Trust* (1869) L.R. 8 Eq. 65 was not noticed in the *In re Coley* (1903) 2 Ch.102. The learned editor of *Jarman on Wills* does not regard the decision in *re Lory* (1891) 7 T.L.R. 419 as overruled by the later case, but thinks that it is supportable on the same ground as the decision of Stirling, J. in *re Drew* (1899) 1 Ch. 336 which though brought to the notice of the Court of appeal has not been disapproved of by the learned Lords Justices. In *In re Coley* (1903) 2 Ch.102 also, there was a gift to such of the children as should attain twenty one, but the Court of Appeal thought that this is no sufficient reason for departing from the prima facie meaning of the word "wife" in the gift to the wife. Referring to this decision, a learned Chancery Judge described the result as "curious" per Romer, J. in *re Hardyman* (1925) 2 Ch.287 . This conflict of opinion in England lends force to Mr. Somayya's contention, that the decision in *In re Coley* (1903) 2 Ch.102 should not in that extreme form be followed in the construction of Hindu Wills Cf the observations cited by the Judicial Committee in 15 CWN 393 (Privy Council) . At all events, it cannot be gainsaid that when a Hindu is making a provision for the benefit of his daughter's son and the latter's wife, sons and grandsons, it is much more reasonable to attribute it to an intention to benefit that daughter's sons, family than to restrict that intention to particular members thereof. And in the present case this conclusion is confirmed by the opening words of the operative portion in Ex. A, namely, that the trust is declared for the sake of Veeranna's help, improvement and benefit according to dharma and by the concluding words, expressing the hope that by the help thus rendered to Veeranna he will "thrive well agreeably to law and regularity and be happy".

15. For these reasons I see no reason to deny to the plaintiff, the benefit of the provisions of Ex. A. No relief by way of declaration or otherwise, in respect of the corpus has been asked for in the appeal and it is therefore unnecessary to deal with that matter now. The plaintiff will be entitled to a decree for payment of Rs. 50 per mensem from January 1927 with interest thereon at 6 per cent per annum from the date of the lower Court's decree. Plaintiff will also be entitled to her costs both here and in the Court below.

16. Objection has been taken by the Respondent to that portion of the lower Court's decree which directs him to pay Rs. 712-7-0 for the Court-fee payable to Government on the plaint. Dealing first with the "amount" of court-fee payable

on the plaint, my learned brother and myself agree that it ought not to be assessed on the sum of Rs. 10,000. The plaintiff does not assert that part of the claim on her own responsibility or put forward that construction of the will as the basis of her claim. She contends that on a certain construction of the will, she is entitled to payment of Rs. 50 per mensem but adds that if the Court holds that she is now entitled to the corpus, there may be a decree for the sum of Rs. 10,000. We think that court-fee should be calculated ad valorem on Rs. 6,000 (ten times the annual amount) u/s 7 Clause (ii) plus Rs. 650 for the arrears claimed, that is, on the aggregate sum of Rs. 6,650. Whether in the event of the Court holding that the plaintiff was entitled to immediate payment of the Rs. 10,000, excess court-fee could be levied, would depend on the applicability of Section 11 of the Court Fees Act to such a case cf. T.S. Ramaswami Aiyar and Another Vs. M.A. Rangaswami Aiyar, .

17. In the view that I take as to the plaintiff's rights under Ex. A, it will follow that the defendant must pay the court-fee calculated on the basis above indicated. But even if the plaintiff should be held not entitled to any benefit under Ex. A, I am still of opinion that the learned Judge was in the circumstances justified in directing the defendant to pay the court-fee payable on the plaint. Though in giving reasons, the learned Subordinate Judge refers to documents of importance being prepared by petty petition-writers and to the possible hardship on the plaintiff if she should be called upon to pay the court-fee, his order is in effect an application of the rule that in suits for the construction of wills and settlements, costs of all parties may be directed to come out of the estate, when the claim is not baseless and the question of construction not free from doubt. The rule is well-established, as will be seen from the direction for costs given by the Judicial Committee in Indar Kunwar v. Jaipal Kunwar (1988) 15 I.A. 127 : 1988 ILR 15 Cal. 725 (P.C.) Kristoromoney Dossee v. Norendro Krishna Bahadoor (1988) L.R. 16 IndAp 29 : ILR 1988 16 Cal. 383 (1889) ILR 17 122 (P.C.) (Privy Council) 18 CWN 873 (Privy Council) The defendant here is in the position of the person in possession of the "Trust fund" and the question of construction is by no means free from difficulty.

18. As my learned brother takes a different view both on the question of the construction of Ex. A and as to the propriety of directing the defendant to pay the court-fee payable on the plaint, the papers will be placed before His Lordship the Chief Justice for a reference under Clause 36 of the Letters Patent for the decision of the following points:

(i) Whether on the true construction of Ex. A the plaintiff is entitled to claim payment of interest on the sum of Rs. 10,000.

(ii) Whether the case is a fit one for directing the defendant to pay the court-fee payable to Government on the plaint, independently of the result of the suit.

Burn, J.

19. I regret that I am compelled to take a different view of the construction of

the material document Ex. A. The defendant is of course deeply "interested" to show that the plaintiff can get nothing under the document, and that could be a reason for scrutinizing carefully, and even suspiciously anything that he might say with regard to his intentions at the time of execution. Moreover, as my learned brother has pointed out, the defendant's oral evidence as to what he meant to do when he executed the document, is not admissible; his intention must be gathered from the terms of the document itself. Considering the matter from this point of view, I am clearly of opinion that the defendant did not intend to give and did not give, to Viranna any right to the corpus of Rs. 10,000 during the defendant's lifetime. He says "Miave arranged out of my kindness a capital of Rs. 10,000 out of my cash property and declared it as a trust for the sake of your (Bingi Viranna's) help, improvement and benefit according to dharma", and he continues in the same sentence, and as it were without even pausing to take breath, "you, Bingi Viranna, shall have no right whatever either to receive or to make use of or to alienate the aforesaid amount during my life time; and it is only after my lifetime the trust amount should devolve on you; but for the income of the said trust amount I shall during my lifetime pay you Bingi Viranna throughout each and every month at the rate of Rs. 50 per month" I attach no importance to the word "devolve" used by the translator. The Telugu word used has not I think any particular legal significance. But even substituting "come to you" "for devolve upon you" I can only read these words as meaning that the donee was not to have any right to the corpus unless he survived the donor. The donor went on in the very next sentence to emphasize this point in words which to my mind admit of no doubt at all. He says "If I should fail in this condition (of paying interest every month) you Bingi Viranna shall only be entitled to legally collect the aforesaid income (interest) but you shall not be entitled to collect (recover) the principal trust amount during my life-time". I do not know what other words (leaving aside strictly technical legal terms) the donor could have used to indicate that he meant Viranna to have the Rs. 10,000 after his death, and in the meantime to have only the income, or interest on the amount at 6 per cent, per annum, paid monthly. That was the intention of the donor, so far as I am able to gather from the language of the document alone.

20. It follows, in my opinion, that there is no difficulty in disposing of the claim of the plaintiff. The frequent mention of the name of Viranna's wife Govindamma in the early part of the document shows beyond doubt that the donor had only Govindamma in mind wherever he referred to "your wife". There is here I think no context from which it can be inferred that the donor, (when he provided that in the event of Viranna's death during the lifetime of the donor, Viranna's "wife and sons and grand-sons alone shall become entitled to the said declared trust, interest etc") intended to benefit any other woman who might subsequently become Viranna's wife. The principle of the decision in *In re Coley* (1903) 2 Ch.102 is in my opinion strictly applicable. The whole of the first part of the document makes it clear that the donor was thinking only of Govindamma, the then existing wife of Viranna, and I can find nothing in the context to justify an

inference that he meant to benefit any other wife not then in existence.

21. Since Viranna died childless it is not I think necessary to discuss what would have been the position of his children by any other wife than Govindamma. But I see no difficulty in holding that the defendant meant to benefit any children of Viranna and not only such as might be born to him and Govindamma.

22. I would dismiss the appeal with costs.

23. The respondent has filed a memo of cross objections against the decree in so far as it directs him to pay the court-fees on the plaint. The learned Subordinate Judge's conclusion is I think very remarkable. The plaintiff in forma pauperis files a suit on a document which in the opinion of the learned Subordinate Judge entitles her to nothing and yet the defendant is ordered to pay the court-fees which are due from the plaintiff. I can find no justification for this course in the observations which the learned Subordinate Judge has made about what he considers to be the amazing propensity of persons to resort to "petty petition-writers" instead of going to a lawyer. I agree with Mr. Venkataramana Rao that the respondent was in no way to blame for the action of the plaintiff in bringing this suit. I would therefore allow the memorandum of cross-objections with costs.

24. It is necessary however to say that the learned Subordinate Judge was in error in supposing that court-fee should be calculated ad valorem on Rs. 10,000. The plaintiff did not pray for a decree for Rs. 10,000, simpliciter. Her prayers in the plaint were threefold (1) that her rights to the benefits created by the deed of 5th July, 1924, might be established, (2) for the recovery of Rs. 650 being the amount claimed for 13 months at Rs. 50 per mensem, (3) an alternative prayer for (a). Rs. 10,000 if the Court should hold that the corpus is payable now only or (b) for recovery of Rs. 50 per mensem from the defendant during his lifetime if the Court should hold that she is entitled to interest only during the lifetime of the counter-petitioner. This is in effect a suit for a declaration with consequential reliefs. The consequential reliefs claimed are firstly the payment of Rs. 650 being the arrears for 13 months at Rs. 50 per mensem, and, secondly, the payment of a sum of Rs. 50 per mensem by the defendant to the plaintiff during the defendant's life, or alternatively payment of the corpus of Rs. 10,000. The consequential reliefs can be accurately valued. The first is Rs. 650 and the second is Rs. 6,000 (vide Section 7, (ii) of the Court Fees Act). The valuation of the suit is therefore for court-fee Rs. 6,650 and court-fee ad valorem is payable on this amount.

25. The appeal came on for hearing in pursuance of the above order of reference before Madhavan Nair, J. who delivered the following

JUDGMENT

26. The first point referred to me for decision is, "whether, on the true construction of Ex. A, the plaintiff is entitled to claim payment of interest on the sum of Rs. 10,000",

27. To understand correctly the true purport of the document it is necessary to state a few facts. Ex. A is a deed of settlement. It is executed jointly by Agedi Mareppa and Bingi Veeranna. Though it is signed both by Agedi Mareppa and Bingi Veeranna, in substance it is in the nature of a settlement executed by Mareppa in favour of Veeranna. Veeranna, now dead, was the grandson of Mareppa. He was brought up in his youth by Mareppa. He had him married to one Govind-amma, and Veeranna was helping him in his trade. While so, Veeranna and his wife Govindamma instituted a pauper suit on the file of the District Court of Bellary asking for a share in Mareppa's properties and for the return of the stridhanam properties belonging to Govindamma. The suit was settled by the advice of respectable persons, Govindamma and Veeranna giving up all their respective claims to the stridhanam properties and to the properties of Mareppa. It was in these circumstances that the deed of settlement, Ex. A, dated 5th July, 1924, came into existence.

28. After stating the above facts in what may be called its preamble, Ex. A continues as follows:

We agreed that the suit thoughtlessly instituted by you Bingi Veeranna and your wife may be allowed to be dismissed. As you (Bingi Veeranna) wanted my (Agedi Mareppa's) favour alone, I (Agedi Mareppa) have arranged, out of my kindness, a capital of Rs. 10,000 out of my cash property and declared it as a trust, for the sake of your (Bingi Veeranna's) help, improvement and benefit according to dharma (justice) You (Bingi Veeranna) shall have no right whatever either to receive (draw out), or to make use of (appropriate) or to alienate the aforesaid that amount during my (Agedi) Mareppa's, lifetime: and it is only after my (Agedi Mareppa's) lifetime the said (trust) amount should come to you; but, for the income (interest) of the said trust amount, I shall, during my lifetime, pay you throughout each and every month at the rate of Rs. 50 per month. If I (Agedi Mareppa) should fail in this condition (of paying interest every month), you (Bingi Veeranna) shall only be entitled to legally collect (recover) the aforesaid entire income (interest); but you shall not be entitled to collect (recover) the aforesaid entire principal trust amount during my lifetime. If perhaps any mishap (crisis) should befall you (Bingi Veeranna) during my (Agedi Mareppa's) lifetime, then Your wife, your sons and grandsons shall alone become entitled to the said declared trust, interest, etc., everything

29. Generally stated, in this portion of the document Mareppa declares a trust in favour of Veeranna but says that the amount should go to Veeranna only after his death and that during his lifetime he will pay him (that is Veeranna) Rs. 50 per month, and that if it is not so paid Veeranna shall be entitled to recover it but that he shall not have the right to recover the entire principal trust amount during his lifetime. Then comes the last sentence where it is stated:

If perhaps any mishap should befall you (Bingi Veeranna) during my (Agedi Mareppa's) lifetime then your wife, your sons and grandsons shall alone become entitled to the said declared trust, interest, etc., everything.

30. The contingency contemplated in this last sentence has now happened; Mareppa the settlor is still living but Bingi Veeranna is dead. The question raised for decision is on whom does the interest created in this document now devolve? This question will be easy to answer if Govindamma the wife of Veeranna who was living at the time the document was executed is still alive. But she also is dead. When she died Veeranna married another wife and she is the plaintiff. She now claims that the interest created by Mareppa under this document devolves on her. Is that so or not? - is the question raised for decision in the first point referred to me.

31. It is argued on behalf of the appellant that in the operative portion of the document which I have quoted a vested interest is created by Mareppa in favour of Veeranna, that this vested interest is heritable and that in the last clause "your wife your sons and grandsons" should be understood to mean that the interest after the death of Veeranna would devolve on the family of Veeranna. If so interpreted, "wife" that is referred to in that clause would mean the second wife or the wife living at the time, the term not being necessarily restricted to the wife living at the time of the execution of the document, and the present plaintiff will be entitled to make a claim to the interest created under it. On the respondent's side it is argued that no vested interest is created under the document, that the "wife" contemplated in the last sentence of the operative part is the wife Govindamma who was living at the time of the document and no other, that the circumstances of the case support this construction, that even if a vested interest is created the last clause is in the nature of a defeasance clause and that the present plaintiff will not have any right under it, the wife contemplated being Govindamma as already stated. The question is which view is right.

32. Varadachariar, J., accepted the contention of the appellant. The Subordinate Judge and Burn, J., held that the wife contemplated in the document is Govindamma, the deceased wife, and that therefore the plaintiff has no right to make any claim to the property under Ex. A.

33. The question whether in the earlier operative portion of the document a vested heritable interest is created or not is not easy to decide; but giving it my best attention I am inclined to accept the view of Burn, J., that the interest created by Ex. A, is not a vested interest. No doubt, referring to the capital of Rs. 10,000 the settlor says that he has "declared it as a trust for the sake of your (Bingi Veeranna's) help, improvement and benefit according to dharma". But this part of the document should not be taken by itself; it has to be construed along with what follows where the settlor says that Veeranna shall not alienate the amount during his lifetime and that it is only after his lifetime the said amount would go to him and that till then "you" (meaning Veeranna and his wife) will be entitled to claim only the interest of Rs. 50 per month. What does that indicate? To my mind, taking these sentences together the meaning appears to be this, that though the sum of Rs. 10,000 is devoted to the interest of Veeranna he shall

not have any interest in it during the lifetime of Mareppa, during which period he will have only a right to get the interest of Rs. 50 per month and that his interest in the capital would arise only after the death of Mareppa, that is to say, till the death of Mareppa, Veeranna can have no claim of any kind to the capital of Rs. 10,000. He cannot alienate it or deal with it in any way. The fund remains exclusively the fund of Mareppa with a right in Veeranna to claim the interest of Rs. 50 if that is not regularly paid to him and his wife. If this is the correct interpretation, then the interest created under the document cannot be considered to be a vested interest. Even if it is held that the interest created under Ex. A, is a vested interest, it is argued by the respondent that the last clause creating interest in the wife of Veeranna, his son and grandson, is in the nature of a defeasance clause and that the wife of Veeranna mentioned in it is Govindamma and not the present plaintiff. So the substantial question for consideration is in what way are we to understand the term "your wife" in the expression "your wife, your sons, and grandsons" occurring in the last sentence quoted above, whether the wife referred to therein is Govindamma or any other wife of Veeranna that he may have got himself married to, subsequent to the death of Govindamma.

34. On the above point I find no difficulty to arrive at my decision. Under the English rule of construction it is agreed that "your wife" occurring in such an expression in a settlement deed would mean the wife living at the time of the settlement. Mr. Somayya argues that this rule of construction was developed owing to the special conditions of property law prevailing in England, that the English Judges have indicated their opinion that if they were free to decide the question without reference to the previous decisions on the point they would decide that the term "your wife" in such an expression should not be limited to the wife living at the time of the settlement and that therefore the expression "your wife" in the present case should not be interpreted in the light of English decisions. In this connection he invited my attention to the following cases *Boreham v. Bignall* that is, *In re, Coley* (1903) 2 Ch.102 *In re, Lyne's Trust* (1869) L.R. 8 Eq. 65 *Guardians of West Derby Union v. Metropolitan Life Assurance Society* (1897) 1 Ch.335. *In re, Hardyman* (1925) 2 Ch.287 . On the other hand Mr. Venkataramana Rao for the respondent says that the rule of construction referred to is a general rule applicable to all classes of cases and should not be limited in any way to the construction of the expression "your wife" appearing in wills and deeds in England. In this connection he drew my attention specially to *Jarman on Wills* at page 372 (7th Edition) and to *Underhill on Deeds and Settlement* at page 49, where the rule is stated in general terms. I do not pause to decide which view is right, for both parties are agreed that the decision should depend upon the intention of the settlor at the time when he executed the settlement deed and, if this intention is clear, there is no need to rely on any rule of construction to find out the meaning of the disputed expression. As I have said already, I find no difficulty to decide this point because I have no doubt, having regard to the circumstances in which the document was

executed, that the settlor when he used the expression "your wife" contemplated only Govindamma who was then living. It is in this connection that the facts which I have stated at the commencement become very important. Why did the settlor execute this document?. The facts show that it was executed more or less as a sort of consideration for the withdrawal of the suit instituted by Veeranna and his wife Govindamma, for the full abandonment of their claims and for a declaration that neither Veeranna nor his wife had any right whatsoever to Mareppa's properties. We are told in the preamble of the document that Govindamma laid a claim to her Stridhanam properties alleging that they were in the possession of Mareppa. She gave up that claim. Her husband laid a claim to a share of Mareppa's properties. That claim was also abandoned. While so, this document Ex. A, was executed and in it, after mentioning that a trust has been declared and that Veeranna should not alienate the property, the settlor says:

I shall during my lifetime pay you throughout each and every month at the rate of Rs. 50 per month.

35. The word in the Telugu language corresponding to the word "you" denotes both Veeranna and Govindamma and not Veeranna alone; that is to say, in making this arrangement the settlor thinks of Govindamma also; and one reason for this must have been evidently because she gave up her rights to her stridhanam. So though the name of Govindamma appears only in the preamble and not specifically in the operative portion of Ex. A, it is clear to my mind that, reading the document as a whole, Mareppa at the time when he executed it had only Govindamma in his mind when he said "your wife, your sons and grandsons shall alone become entitled to the said declared trust" after his death. For the above reasons, I would hold that Ex. A, did not create a vested interest and under the last operative clause of it which I have quoted the wife that was intended to be benefited by the settlor was Govindamma who was living at the time of the settlement. Even if the document creates a vested heritable interest the last sentence quoted above should be treated as a defeasance clause in which case also I would hold that "your wife" means Govindamma and Govindamma alone. Reading the document as a whole there is nothing to suggest that "your wife" referred to in the latter part of Ex. A, is any other one than Govindamma specifically mentioned in the preamble and earlier portions of the document. On the first point referred to me I agree with the opinion of Burn, J.

36. The second point is whether the case is a fit one for directing the defendant to pay the court-fee payable to the Government independently of the result of the suit. On this point I agree with the opinion of Varadachariar, J., and the Subordinate Judge. Both the learned Judges of this Court agree that the court-fee should be calculated ad valorem on Rs. 6,000 ten times the annual amount claimed u/s 7, Clause (ii) of the Court Fees Act plus Rs. 650 for the arrears claimed, that is on the aggregate a sum of Rs, 6,650. I think for the reasons

mentioned by Varadachariar, J., the learned Subordinate Judge was in the circumstances justified in directing the defendant to pay the court-fee payable on the plaint though he won the case.

37. The appeal and the Memorandum of Objections came on for final disposal after the expression of the above opinion and the Court delivered the following.

JUDGMENT

Varadachariar, J.

38. In accordance with the opinion of Madhavan Nair, J., the appeal and the memorandum of objections are dismissed with costs in both, subject to the modification that for the figure Rs. 712-7-0 stated in the decree of the lower Court as the Court-fee payable on the plaint to the Government and as payable by the defendant to the plaintiff the figure Rs. 517-7-0 will be substituted.