

(1926) 11 MAD CK 0049
In the Madras High Court

Enni Sooranna

APPELLANT

Vs

Varabati Varahalu

RESPONDENT

Date of Decision : 17-11-1926

Acts Referred:

Citation : AIR 1927 Mad 708

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—The 2nd defendant is the appellant before us. He claims to be an illatom son-in-law of one Ramanna. Ramanna died in 1901, leaving two sons, Sanyasi and Appalaswami, and three daughters, Appanna, Nilamma, and Ammanna. Sanyasi died a few months after his father in the year 1902. Appalaswami died in 1918 leaving the plaintiff in this suit, his widow.

2. The 2nd defendant, who is the appellant before us first married Appanna, the eldest daughter of Ramanna, and after she died he married Ammanna, another daughter of Ramanna, who is the third defendant in the suit. Ramanna's widow is the 1st defendant in the suit.

3. The case for the plaintiff is that, on the death of Sanyasi the properties of the family devolved on her husband Appalaswami, and after Appalaswami's death she is solely entitled to them and she sues for the recovery of these properties. The 2nd defendant, on the other hand, contended that he was the illatom son-in-law of Ramanna, that he lived with Ramanna and helped him in the acquisition of the properties, that on the death of Appanna he married her sister Ammanna and continued to live in the family, and that Appalaswami died in 1918, leaving a will, by which, after making certain provisions for the maintenance of his wife and mother, he had bequeathed his share of the property to the 2nd defendant.

4. The Subordinate Judge held against the will, and also against the claim of the 2nd defendant as the illatom son-in-law, and decreed the plaintiff's suit; and hence the appeal by the 2nd defendant. The Subordinate Judge, however,

allowed the 2nd defendant a quarter share in the B schedule properties on the ground that those properties were the joint acquisitions of Appalaswami and the 2nd defendant, that Appalaswami contributed 3/4ths of the purchase money and the 2nd defendant 1/4th of the purchase money and therefore he was entitled to 1/4th of the B schedule properties.

5. Two questions arise in this appeal: (1) Was the 2nd defendant an illatom son-in-law as alleged by him? (2) Is the will Ex. VIII propounded in this suit genuine? (The judgment then discussed the evidence regarding the adoption and proceeded.) If we look at the broad probabilities and the evidence afforded by the conduct of the widow and Appalaswami we think that the illatom case set up by the 2nd defendant is true.

6. The next question is what share the defendant would be entitled to. As regards the share, the 2nd defendant is entitled to 1/3rd share of the properties available for partition; for by the arrangement itself, as pleaded by him, he was to get a share equal with the other sons, at the time when he was taken into the family. There is no authority for the proposition that an illatom son-in-law gets the right of survivorship. When the 2nd defendant was taken into the family there was only one son and another son was born after he became an illatom son-in-law. So the 2nd defendant will get 1/3rd share.

7. It is contended that Ex. I is a family settlement binding on all the parties, under which he is entitled to 1/4th share. There is no evidence that on the date of Ex. I there was any dispute between the members of the family as regards the illatom adoption; it not being denied on the one hand or affirmed on the other. There has been no settlement of disputes. There was no bona fide dispute which was settled. Again it is clear that if there was no illatom adoption, the 1st defendant could not by any act of hers introduce the 2nd defendant and give him the right which Ex. I purported to give him. Her act would be wholly invalid and could not bind her son. It has been held in *Ramishore Kedarnath v. Jainarayan Ramrachapal* [1913] 40 Cal. 966 by their Lordships of the Privy Council that, if on partition a share is given to a stranger, the partition may be impeached by minors interested as disposition of property made without consideration, and that it cannot be supported as a bona fide settlement of a disputed claim. The 2nd defendant will not be entitled to a 1/2 share, but will be entitled to 1/3rd share as stated above.

8. Turning to the will, Ex. VIII, we do not think there is any sufficient reason for disturbing the finding of the Subordinate Judge that the will is not proved to be genuine. In the first place the evidence is that Appalaswami, who was ill for some two or three months, suddenly, the day before he died, wanted to execute a will; that at about 12 o'clock he called for the presence of some witnesses; that he sat up and dictated the whole will, saw it written and signed by all the witnesses at 4 o'clock; and that he died the next morning. The will gives a detailed account of the 2nd defendant being brought into the family and a whole page is devoted to establish the right of the 2nd defendant as an illatom son-in-

law. The will itself came to publicity only a year or more afterwards in connexion with the proceedings for the mutation of names, when notice was sent to the widow of Ramanna, who was affected by the will, The broad probabilities are against the will, and we are not satisfied that the evidence of the witnesses who speak to the will having been executed is entitled to such credit that we could brush aside circumstances of considerable suspicion in this transaction. The will is propounded by a person who gets a very large benefit under it. The law is clear that where a person propounding a will is entitled to large benefit under it the Courts will demand very strict and clear proof as to the genuineness of the will and of the disposing mind of the testator. So far as the signatures of the testator in the present will are concerned we see that they are in a firm hand and the signatures themselves vary on each page. It is hardly likely that a person who had been lying ill for more than two months and who died the next morning would have signed the will in that firm hand. Again, although the witnesses speak to there being only one ink bottle and pen the signatures of the attesting witnesses appear to be in different inks and written with different pens. The signatures of some of the five witnesses seem to have been written with a pale ink, with a sharp nib. In the case of the other two witnesses the ink appears to be a little darker and thicker and the ink of the signature of the last two witnesses corresponds with the ink used for writing the will. The signatures of several of the attesting witnesses seem to have been taken subsequently; and having regard to the several suspicious circumstances, and the fact that the witnesses in support of the will are not disinterested persons, we find no ground to reverse the decision of the Sub-Judge and to accept the evidence that the will was executed by Appalaswami. There is no reason why he should have given his wife and mother only a very small portion of the property and why he should have given the whole of the property to the 2nd defendant. The evidence has been read and commented on by both the vakils for the appellant and the respondent at considerable length, and we are not satisfied that the Subordinate Judge was wrong in not accepting that evidence, and holding that the will was not proved. The claim under the will therefore fails. In the result the decree of the Subordinate Judge is modified by declaring that the 2nd defendant is entitled to 1/3rd of the properties existing on the date of suit, that the will is not genuine and confers no rights, and that the plaintiff, as the widow of Appalaswami, is entitled to 2/3rds of the properties. The parties will be liable to pay the debts of the family in the same shares.

9. As regards costs the 2nd defendant having failed substantially as regards the will and as regards his share, we think the proper order will be to direct the 2nd defendant to pay 2/3rds of the plaintiff's costs here and in the Court below and to bear his own costs.