

(1902) 02 MAD CK 0003

In the Madras High Court

In Re: Lakshiminarayana Ammal

Date of Decision : 14-02-1902

Acts Referred:

English Finance Act, 1894 — Section 9(1)

Citation : (1902) ILR (Mad) 515

Hon'ble Judges : Arnold White, C.J

Bench : Single Bench

Judgement

1. In this case the testatrix by her will exercised a general power of appointment created by the will of her deceased husband. The will of the

testatrix recites that by the will of her deceased husband it was stated that Rs. 7,000 out of his property should be lent out on interest, that the

interest derived from time to time should be added to the principal amount and that the amount so accruing should be paid to those whom the

testatrix might appoint by will. The fund has been paid into Court under an order made in a suit to administer the husband's estate and now stands

invested in Government promissory notes. The will of the testatrix appointed an executor and directed that he should take the "aforesaid amount

after payment of debts and funeral expenses, should pay certain specified amounts to certain specified persons and the residue to A. B.

2. On the death of the husband of the testatrix, his will was proved and probate duty was paid on the principal amount of Rs. 7,000. The executor

appointed by the will of the testatrix now applies for probate of her will, and the question is whether the executor is liable to pay probate duty on

the fund or any part thereof. Under item 11 of the first schedule to the Court Fees Act, the fee payable is a percentage on "the amount or value of

the property in respect of which the grant of probate is made." The form in Schedule III (which was first introduced in the amending Act of 1899)

requires the executor to state on affidavit that he has truly set forth all the property and credits of which the deceased died possessed or was

entitled to at the time of his death and which had come or were likely to come to the hands of the executor.

3. In my opinion the testatrix's power of appointment to the fund is "property" within the meaning of item 11 of the schedule and of the statutory

form of affidavit as to valuation. It seems to me that Section 19C has no application since the grant which is now applied for is clearly not a "like

grant" to that which was obtained in respect of the husband's estate. The two estates are different. There appears to be a conflict of authority upon

the question whether, where a general power of appointment over a fund is exercised by will, the appointed fund passes to the executor, as

executor. For the purposes of Section 9, Sub-section (1), of the English Finance Act, 1894, Buckley, J., has held that it does; see *In re Moore*

[1901] 1 Ch. 691, whilst Kekewich, J., and Byrne, J., have held that it does not, see *In re Treasure* [1900] 2 Ch. 648, *In re Maddock* [1901] 2

Ch. 372 and *In re Power* [1901] 2 Ch. 659. It is not necessary, however, to discuss these decisions since, as it seems to me, the question turns on

whether the general power of appointment which the testatrix enjoyed is "property" in respect of which the grant is applied for. I think it is.

Property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the

party can have" per Langdale, M. B., in *Jones v. Skinner* 5 L.J. Ch. 87. The testatrix took no life interest under the will of her husband, but it is

clear that the power gave her an interest which she can exercise to her own advantage. For instance, she might have contracted debts and made

the creditor one of the appointees.

4. u/s 27 of the English Wills Act, a gift of all a testator's property passes everything over which he has a general power of appointment, and, u/s

78 of the Indian Succession Act, a general bequest of property includes property as to which the testator has a general power of appointment by

will. An enactment which imposes a duty or a penalty must no doubt be construed strictly, but I see no good reason for placing a more restricted

interpretation on the word "property" as used in the schedule to the Court Fees Act than that which the Legislature has declared it shall bear for the

purpose of the construction of a will. With regard to the case of *In the goods of George 6 B.L.R. Appx. 138* to which my attention was called by

Mr. King, all I can say is that I find myself unable to agree with it. In that case the widow took a life estate with a power of appointment by deed

or will among children. Sir Richard Couch was of opinion that the words in the schedule to the Indian enactment if read literally would make the

property over which the power was exercised liable to duty, but he considered the case to be substantially the same as if it had arisen under the

English Act (36 Geo. III, cap. 52, Section 18), and he held that duty was not payable on the authority of *Drake v. The Attorney-General* 10 Cl. &

F. 257. Under the will in question in that case there was a life interest to the testator's daughter with a power of appointment by will among such

persons as the daughter might appoint other than certain persons named in the will. The House of Lords, affirming the Court of Exchequer (see

Constables, &c., of Chorlton v. Walker 10 M. & W. 742, held that, the property appointed by the daughter was not liable to duty. This decision

turned entirely upon the construction of Section 18 of the Act of Geo. III. The enactment which was in force when the case of *In the goods of*

George 6 B.L.R. Appx. 188 was considered by Sir Richard Couch was 23 Vict., cap. XV, Section 4, and this enactment expressly provides that

duty shall be payable in respect of the personal estate which any person disposes of by will under any authority enabling such person to dispose of

the same as he thinks fit.

5. I decide this case upon the short ground that the power of appointment created by the husband is property within the meaning of that word as

used in the Court Bees Act, and I hold that the estate of the testatrix is liable to probate duty in respect thereof.

6. As regards funeral expenses I think Rs. 200 may be allowed free of duty.