

(1995) 08 SC CK 0084

In the Supreme Court Of India

Case No : Spl. Leave Petition (C) No. 4597 of 1990

Kaivelikkal Ambunhi (dead) by LR.s. and others

APPELLANT

Vs

H. Ganesh Bhandary

RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Succession Act, 1925 — Section 88

Citation : AIR 1995 SC 2491 : (1995) 2 CTC 389 : (1995) 7 JT 164 : (1996) 1 LW 242 : (1995) 5 SCALE 23 : (1995) 5 SCC 444 : (1995) 3 SCR 35 Supp

Hon'ble Judges : S. Saghir Ahmad, J;Kuldip Singh Singh, J

Bench : Division Bench

Advocate : K.V. Viswana than for M.T. George, for the Appellant; S Balakrishnan and S. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S. Saghir Ahmad, J.—The only ground on which the judgment of the High Court is questioned before us is that the Will in question was not properly interpreted and that the testator having created an absolute estate in favour of Kannan, son of his direct sister, Vellachi, it was not open to the High Court to rely upon the subsequent recital that Schedule 'A' properties which as per the earlier part of the Will had already been bequeathed in favour of Kannan, shall be possessed and enjoyed as a "Tavazhi".

2. In interpreting the Will, the High Court has relied upon a number of decisions of this Court including Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, , Navneet Lal alias Rangi Vs. Gokul and Others, and Ramkishore Lal Vs. Kamal Narain, in which the principles of interpretation, as also the principles on the basis of which the true intention of the testator can be gathered, have been set out.

3. The rules of interpretation of the "Will" are different from the rules which govern the interpretation of other documents say, for example, a Sale Deed or a

Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or the subsequent part or specific clauses inter-se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will", the testator can always change his mind and create another interest in place of the bequest already made in the earlier part or on an earlier occasion. Undoubtedly, it is the last Will which prevails.

4. A will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause is held to prevail over the earlier clause. This is regulated by the well known maxim "*cum duo inter se pugantia reperiuntur in testament ultimum return est*" which means that if in a Will there are two inconsistent provisions, the latter shall prevail over the earlier (See : *Hammond v. Treharne* 1938 (3) All E R 308.

5. This principle is also contained in Section 88 of the Indian Succession Act, 1925 which, together with its illustrations, provides as under:-

The last of two inconsistent clauses prevails - Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations

(i) The testator by the first clause of his will leaves his estate of Ramnagar "to A", and by the last clause to his will leaves it "to B and not to A". B will have it.

(ii) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for benefit of B, the latter disposition will prevail.

6. It may, however, be pointed out that this rule of interpretation can be invoked only if different clauses cannot be reconciled. (See : AIR 1935 187 (Privy Council) .

7. We do not find any infirmity in the judgment passed by the Kerala High Court and the SLP which has been heard after notice to the respondent, is hereby dismissed.