

(1914) 04 MAD CK 0011
In the Madras High Court

Krishnamma Boyee

APPELLANT

Vs

Gopal Row and Others

RESPONDENT

Date of Decision : 22-04-1914

Acts Referred:

Citation : AIR 1915 Mad 308 : 24 Ind. Cas. 485

Hon'ble Judges : Bakewell, J

Bench : Single Bench

Judgement

Bakewell, J.—The plaint in this case recites the Will and codicil of D. Nagoji Row, and alleges that under the terms of a bequest of

Immovable property, the plaintiff became entitled thereto upon the death of Radha Boyee the wife, of the testator's son, D. Balaji Row, as her

daughter and heir. The 1st defendant is the son of Radha Boyee, and the 2nd and 3rd defendants are his children, and the remaining defendants are

alleged to claim different portions of the property as assignees and incumbrancers under dispositions made by the first defendant. Evidence has

been adduced that the testator's adopted son Balaji Row had been twice insolvent and with respect to the state of family of the testator.

2. It appears from the wording of the Will and Codicil, and it is in fact admitted by both parties, that these documents were drafted by an English

lawyer and the testator was a Hindu. It is obvious that the draftsman was not a skilled conveyancer, though he had access to English common

forms, and he uses technical terms such as heirs, executors, administrators and representatives, with no clear idea as to their legal significance. The

Will commences with bequests of specific legacies, which are given ""for the sole use and benefit"" or as the absolute property"" of the legatees

(clauses 1 to 5). Clause 6 contains a bequest to the testator's wife of domestic articles now in use in my dwelling-house for her use during her life

and after her death to my daughter-in-law the said Radha Boyee for her use during her life and after death to her heirs, executors, administrators

and representatives.

3. Clause 8, upon which the plaintiff relies, bequeaths to two persons their executors, administrators and representatives"" specified Immovable

properties, To hold the same into the said Kristna Row and Rama Row, their executors, administrators and representatives, (all the said properties

assigned to the said Kristna Row and Rama Row, shall neither be sold, mortgaged nor in any way alienated but shall remain for ever as trust

property) upon trust that they, the said Kristna Row and Rama Row and the survivor of them and the executors, administrators and representatives

of such survivor do"" receive the rents and profits of the properties and pay outgoings and an allowance to the testator's adopted son : and then

follows the provision now in dispute, and the said trustees do and shall pay the balance of the said rents and profits to my said wife Soundari

Boyee during her life and after her death to my aforesaid daughter-in-law the said Radha Boyee during her life and after her death to her heirs,

executors, administrators and representatives."" The clause concludes with a direction that out of the monies so payable the same beneficiaries, who

are described in the same words, shall pay the expenses of feeding a certain number of Brahmins.

4. The Will contains a gift of residue to the testator's wife without any express words as to the extent of her interest, and concludes with ordinary

trustee clauses, including a power of appointment of new trustees and the appointment of executors.

5. The Codicil is dated 23rd April 1875 and recites the Bequest contained in Clause 8, and gives power to the trustees to sell the Immovable

property and invest the proceeds and repeats the Bequest of the balance"" of the income in the identical words of that clause. The plaintiff alleges that

the testator died in September 1880, leaving his wife and daughter-in-law, and two grand-children, the plaintiff and 1st defendant. The plaintiff

claims that she is the heir of her mother Radha Boyee, and as such is included in the description of the beneficiaries who are to take after Radha

Boyee's death. In the first place it is to be noted that in his bequests of specific moveable property the testator states clearly that the beneficiaries are to take an absolute interest, (sic) when he comes to dispose of the property in his dwelling-house and gives successive interest therein, he uses the same words as in Clause 8 : and secondly, in Clause 8, by vesting the property in trustees and prohibiting any disposal of the corpus otherwise than by reinvestment, he contemplates that the trust will continue and the income of the trust property will be received and paid by the trustees for ever. The provision for the maintenance of a charity by the recipients of the net income supports this construction. Clauses 6 and 8 clearly provide that the testator's wife and daughter-in-law shall take only life-interests. I am of opinion that the whole frame of the clause goes to show that the testator intended to tie up his Immovable property so that only the income should be available, and did not intend to dispose of the corpus in favour of any beneficiary [see *Shookmoy Chandra Das v. Monoharri Dassi* 11 C. 684 : 12 I. A. 103. This being so, the words "heirs executors, administrators and representatives" cannot have been intended to denote the quantum, of interest to be taken by any beneficiary in the property, but to describe the persons who are to enjoy the income : to use the English phrase, they are words of purchase and not words of limitation. The words themselves and the words "after her death" have a direct reference to the death of Radha Boyee and indicate that the beneficiaries are to be determined at her death. The words describe all the persons who could take her estate upon her death, testate or intestate, whether they are appointed by her Will or by the Court and the last word "representatives" includes the other three. The question which I have to determine is whether these words sufficiently indicate a class of persons of whom the plaintiff is alleged to be one, or only show the intention of the testator that the income of his property should continue to be paid to Radha Boyee's successors for ever and thus to create a perpetuity.

6. The declaration of the testator which precedes the whole gift of the beneficial interest, that his Immovable properties "shall remain for ever as trust property," clearly indicates his intention to create a perpetuity : and the words now in question describe, as I have already pointed out, not a homogeneous class but all persons who might in any event succeed to Radha Boyee's estate upon her death, and include those who would

succeed upon an intestacy as well as those entitled under her Will. There appears to be no reason to read the word "and" disjunctively, and in fact

the use of the general word "representatives" appears to me to sum up the previous phrases descriptive of special classes of representatives, and to

show that the testator intended to benefit all Radha Boyee's successors of whatsoever description. If the gift were to be construed to be to a class,

the beneficiaries would, according to my construction of the Will, be only entitled to the income of the trust property during their lives, and the trust

would then come to an end, which has clearly not the testator's intention.

7. For these reasons I hold that the words in question were intended to create a perpetual trust in favour of Radha Boyee's representatives and

that the gift is accordingly void [Shookmoy Chandra Das v. Monoharri Dassi 11 C. 684 : 12 I.A. 103 .

8. Whether the property passes under the gift of residue contained in Clause 9, or to the heir of the testator as upon an intestacy, need not now be

determined : in either case the plaintiff has not made out her title thereto.

9. Suit is dismissed with costs of 4, 5, 8, 6 and 20, 18, 19 and 21, 16 and 17, 15, 12, and 13 (8 sets) Counsel.