

(1915) 10 MAD CK 0019
In the Madras High Court

Kunthalammal

APPELLANT

Vs

P.N.K. Suryaprakasaroja Mudaliar et al

RESPONDENT

Date of Decision : 01-10-1915

Acts Referred:

Citation : AIR 1916 Mad 17 : (1915) ILR (Mad) 1096

Hon'ble Judges : Bakewell, J

Bench : Single Bench

Judgement

1. One Dakahinamurthi Mudaliar was entitled to certain moneys in this Court under decree in Suit No. 45 of 1889. By an order in that suit, dated the 37th March 1893, certain moneys amounting to Rs. 4,056-12-3 were directed to be transferred by the Registrar to the Accountant-General for investment. These moneys represented certain jewels which were found to be part of the inheritance of Dakshinamurthi Mudaliar and not to have passed under the will of his father. At the date of the decree Dakshinamurthi Mudaliar was a minor, but having attained his majority he applied, in February 1904, for payment out of the funds in Court; and it appears from Exhibits H and H-I, the certificate of funds issued by the Accountant-General that his application was confined to the moneys specified in that certificate. Owing to some mistake on the part of the legal advisers of the plaintiff in that suit, the moneys in the hands of the Registrar of the Court were not transferred to the Accountant-General in pursuance of the order of the 27th March 1893 and were lost sight of when the application was made by the plaintiff for payment out to him. This is clearly stated by the present first defendant in an affidavit filed by him in that suit on the 8th of August 1914 (Exhibit C). In paragraphs he abates:

It appears that the said sum of Rs. 4,056-12-3 which appears to have remained in the hands of the Registrar of this Honourable Court was not

known to exist and was consequently overlooked and I have now come to know that the said sum of Rs. 4,056-12-3 is standing to the credit of

this suit." The amount was accordingly paid out of Court to the first defendant who claimed it as the executor of the will of Dakshinamurthi

Mudaliar.

2. This will is dated the 5th December 1905 and the testator died in the same month. The first defendant was appointed executor of the will and

has been administering the estate of the deceased, and this suit is brought by the widow of the deceased, on behalf of herself and the other legatees

under the will, for an account of the administration of the estate, and for its administration under the orders of the Court. The question has arisen as

be whether this sum of Rs. 4,000 and odd passed to the residuary legates under the will. The will follows the form, which is very well known in this

Court, of first stating the property which the testator intends to dispose of and then dividing it up amongst the various beneficiaries. Clause No. 2 of

the will reads as follows: "The house No. 25 in Nattu Pillayar Civil Street and ready money were received (by me) under an order of the High

Court according to my adoptive father's will. Of the amount left after deducting the sum spent therefrom, not only is a certain portion lodged in

fixed deposit in Arbuthnot's House in my name and in the name of my senior elder brother P.N.K. Suryaprakasaroja Mudaliar but the remaining

sum is in shape of secured and unsecured debts and ready money." The testator then proceeds to give various specific and pecuniary legacies, and

in Clause 13 he says: "The sum which may be left after deducting the abovementioned legacies and such other expenses shall be utilised in my

name without defect for pooja once, that is, daily, and repairs and other charities for the temple of Sri Vaideswarar in Poonamallee." Having regard

to the fact that the existence of this sum of Rs. 4,000 and odd was unknown to the testator at the time, and to the statement made by him that he is

dealing with a particular house and the moneys which had been already received by him from the High Court, I think that the words in Clause 13

refer to the residue of the moneys in his hands which have not been already disposed of by him under the will, and that the sum of Rs. 4,000 and

odd is not disposed of by him. I may point out that the residuary clause in the form in which it appears in English wills is practically unknown to the

ordinary testator in Madras and that the rules of construction which have been laid down by English Courts are not applicable,

3. The defendant has also pleaded a release by the plaintiff of all claims against him, but it is clear from the evidence that this document was

executed by the plaintiff when she was a minor. It is also perfectly clear that it was executed under a mutual mistake and for that reason also it is

not binding on the plaintiff.

4. The plaintiff has called for and put in a book purporting to be an account of the first defendant of his administration of the estate. It is not in his

affidavit of documents and I think it is obviously a fraudulent concoction. Certain entries which appear in it have been proved, by the evidence

called by the plaintiff, to be untrue.

5. There will, therefore, be a decree declaring that the sum of Rs. 4,056-12-3 did not pass under the will of the deceased but will go to the plaintiff

as on an intestacy, that the estate must be administered by the Court and that the first defendant must account from the date of the death of the

deceased on the footing of wilful default. The first defendant will pay the costs of the suit up to date. The first defendant is ordered to pay this sum

of Rs. 4,056-12-3 into Court within ten days.

6. Messrs. Branson and Branson, Attorneys for the first defendant.