

(1926) 08 MAD CK 0002
In the Madras High Court

Manikam Pillai

APPELLANT

Vs

Venkatesa Chetti and Others

RESPONDENT

Date of Decision : 02-08-1926

Acts Referred:

Succession Act, 1925 — Section 111

Citation : AIR 1927 Mad 494

Hon'ble Judges : Deavdoss, J

Bench : Division Bench

Judgement

Deavdoss, J.—One Kuppi Chetti devised by his Will dated 15th May 1907, his moveable property and immovable properties to three

persons subject to the life interest of his wife and his brother's widow. Subramaniam Chetti one of the legatees mortgaged his share of the property

devised to him to the plaintiff under Ex. A on 22nd June 1908. The plaintiff has brought the suit on the mortgage and the contention of the

defendant is, that inasmuch as Subramaniam Chetti died in the lifetime of Meenakshi Ammal, the widow of the testator, the legacy did not vest in

him and the plaintiff could, therefore, have no remedy against the property. The District Munsif decreed the plaintiff's suit; but the Subordinate

Judge of Cuddalore dismissed it. The plaintiff has preferred this second appeal.

2. The only question in this second appeal, is what did the testator mean by the following clause

should any of the aforesaid persons, viz., Subramaniam Chettiar or minor Venkatesam mentioned above die, the survivor shall get the properties of

the deceased and enjoy them with power to sell or gift them away.

3. The District Munsif relying upon Section 111 of the Indian Succession Act,

held, that the clause related to the death of Subramaniam Chetti or of minor Venkatesam Chetti during the lifetime of the testator. The Subordinate Judge held that the period contemplated by the testator was the death of the life-tenants. The learned Advocate-General for the appellants contended that Section 111 is a rule of law which is applicable to all Wills and, therefore, the clause must be taken to refer to the death of Subramaniam Chetti or Venkatesam Chetti during the lifetime of the testator.

4. The Will is the Will of a Hindu living in the mufussil. Neither the Hindu Wills Act nor the Probate and Administration Act apply to this Will. If this will was one governed by the Indian Succession Act, then Section 111 would be applicable. But in the case of a vernacular Will drawn up and

executed in the mufussil, the Court should take care not to apply wholesale the principles of construction which are applicable to the Wills

executed in the Presidency Towns and drawn up by Solicitors or Vakils. In construing a Will of this kind, the intention of the testator should be

gathered from the tenor of the whole Will and artificial rules of construction should not be applied without due regard to the habits, prejudices, and

customs of the people among whom the testator lived and the circumstances under which the Will came to be executed. In the earlier part of the

Will the testator says out that he is 67 years of age, and in a bad state of health and feeble, and then he proceeds to bequeath his property to three

persons, dividing the house into three portions. Then he makes a bequest of the whole of the income of his immovable property to his wife and the

widow of his deceased brother. The clause relating to the life-interest is

After my lifetime 1. Meenakshi Ammal, my wife and 2. Venkata Lakshmiammal, wife of Gurumurthi Chetti, my youngest brother, shall during their

lives get only the incomes derived from the properties mentioned hereunder.

5. He then proceeds to dispose of the moveable properties in the following clause.

After my lifetime and the lifetime of Meenkshi Ammal, my wife, and Venkata lakshmiammal, wife of my younger brother these three persons, viz.,

Subramaniam Chetti minor Venkatesam, and Venkataraman Chett mentioned above, shall take the moveable pro perties, etc., that I possess

divided in three shares.

6. Then follows the clause which is the subject of consideration in this second appeal

should any of the aforesaid persons, viz., Subramaniam Chetti or minor Venkatesam mentioned above die, the survivor shall get the properties of the deceased and enjoy them with power to sell or gift them away.

7. That Meenakshi Ammal and Venkata Lakshmiammal were given a life-interest in the properties cannot be seriously disputed. They were given

the whole of the income of the immovable property during their lives and the whole of the moveable property of the testator. It is only after their

lifetime that the three legatees mentioned above, viz., Subramaniam Chetti, minor Venkatesam and Venkataraman Chetti should enjoy the

immovable properties ""with power to sell or gift them away in whatever manner they liked."" The contention of the appellants is that inasmuch as the

testator directed that the house should be divided in a certain manner and indicated what lands should be taken by each of the legatees, the three

legatees took a vested interest in the property devised to them and the testator could not, therefore, have intended that their interest should be

divested on the happening of an uncertain event. In other words the testator could not have intended that if Subramaniam Chetti or Venkatesam

Chetti died in the lifetime of Meenakshi Ammal or Venkata Lakshmiammal, that the share of either should go to the survivor and that, therefore, the

clause must be taken to refer only to the death of the testator. When a Hindu makes a will under such circumstances as the testator did it is very

unlikely that he would have contemplated the death of any of the legatees during his lifetime. The testator was 67 years of age and in a bad state of

health and he died within a year after the execution of the Will. It is considered inauspicious by Hindus to contemplate the death of a person

considerably younger to one, especially when one is devising property in favour of that person. A man 67 years of age and in a bad state of health

would not have contemplated the death of a minor, like Venkatesam during his own lifetime.

8. In construing the Wills of Hindus sufficient regard must be had to the prejudices, habits and customs prevailing amongst them. As I have said

above if the Will was drawn up by a Solicitor or by a Vakil, no doubt all possible contingencies would have been contemplated but where a

person executes a Will, as in this case, in the mufussil, probably with the help of the village lawyer or karnam he does not contemplate the death of

a minor during his own lifetime, especially when he is very old and infirm and does not expect to live long. There is another consideration which

should not be lost sight of. Hindus do not generally execute Wills till the prospect of death is before them, for, the very idea of executing a Will in

the minds of many people carries with it the prospect of immediate death. Therefore, it is not likely that the testator would have meant by the clause

in question the death of either Subramaniam Chetti or minor Venkatesam in his own lifetime.

9. The Will itself affords internal evidence of what the intention of the testator was. After the life-interest of Meenakshi Ammal and Venkata

Lakshmiammal in the immovable property the Will contains this clause

after their lifetime, the said Subramaniam Chetti, minor Venkatesam, and Venkatarama Chetti shall with power to sell or gift them away, enjoy

them in whatever manner they like.

10. There are no words in the original Tamil Will corresponding to the words ""get them."" The clause should, therefore, be read as meaning ""they

shall enjoy them in any manner they like with power to sell or gift them away."" Therefore, so long as Meenakshi Ammal or Venkata Lakshmiammal

live, the three legatees shall not deal with the property in such a way as to affect their life-interest. In the clause in question the power to sell or gift

away is given to the survivor.

The survivor shall get the properties of the deceased and enjoy them with power to sell or gift them away.

11. Can it be said that if Subramaniam Chetti or Venkatesam Chetti died in the lifetime of the testator survivor would have power to sell or give

them away? To put such a construction upon this clause would defeat the very intention of the testator that the immovable property should not be

sold or given away during the lifetime of the two women. In construing Wills, care should be taken to see that the construction placed upon one

portion of the Will is not repugnant to the clear intention appearing in another part.

12. The power given to the survivor to sell or make a gift of the property is a strong circumstance in favour of the contention that the testator

intended by the clause in question that if either Subramaniam Chetti or Venkatesam Chetti should die in the lifetime of Meenakshi Ammal or

Venkata Lakshmiammal, the survivor should take the property absolutely. I must observe here that in the Will the paragraphs are not numbered.

On page 2 of the printed documents the portion referring to the bequest of moveable property ""after my lifetime and the lifetime of Meenakshi

Ammal, etc,"" is shown as a separate paragraph. The figure ""2"" represents the 2nd page of the original Will and not the 2nd paragraph. Therefore,

the portion of the Will relating to bequests should be taken as one paragraph. Construing the clause in question I have no hesitation in holding that it

expresses the intention of the testator that. if either Subramaniam Chetti or Venkatasam Chetti died in the lifetime of either of the two women, the

survivor should take the property of the deceased person absolutely.

13. Great reliance was placed by the learned Advocate-General upon the wellknown case of O" Mahoney v. Burdett [1875] 7 H. L. 388 Nistarini

Debya v. Behari Lal Mokhopadhyaya [1915] 19 O. W. N. 52 and In re Poultney, Poultney v. Poultney [1912] 1 Ch. 245 and also Adams v. Gray

A. I. R. 1925 Mad. 599 The principle of these cases did not apply to the present case. Where the terms of the Will are clear, it is not proper to

rely upon the artificial rules of construction for the purpose of arriving at the intention of the testator. Where the intention of the testator can be

gathered from the Will itself, the Court is not bound to go beyond the four corners of the Will. As observed by Lord Hatherley in O" Mahoney v.

Burdett [1875] 7 H. L. 388.

the Court having always carefully to consider the whole Will, and, it½ having regard to all the various clauses contained in it, to see what is the full

and complete and perfect intention of the testator.

14. In this Will the intention of the testator is clear from the Will itself. In Chunilal Parvatishankar v. Bai Samrath [1914] 38 Bom. 399 a Hindu

resident of Surat, in the Bombay Presidency made a Will directing the executors ""to divide and take equal shares in it with certain exceptions"" and

by Clause 9 of the Will he made the following bequest.

I have divided between and given to my two sons the whole of my property as mentioned above. But should either of these two sons die without

having had (leaving) any male issue, the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the

deceased son who may have (leave) no male issue (behind him) after

undertaking (to defray).... the marriage of his minor daughter.

15. The testator died on the 4th July 1901, and his elder son died on the 2nd January 1903, leaving a widow and a daughter. The Privy Council held

that the words of Clause 9 were not limited to survivorship during the testator's life but clearly pointed to survivorship whenever it should occur;

and that the surviving son was as such survivor entitled to the estate conveyed by the clause, subject to the obligation imposed upon him of maintaining his brother's widow and daughter.

16. But this case is sought to be distinguished by the learned Advocate-General on the ground that inasmuch as provision was made for the widow

and the daughter the testator contemplated the death of either of the sons after his death and, therefore, the case could not apply to the present

case. Lord Shaw in delivering the judgment observed with regard to the contention that the Will of the testator must be construed on the principle

of English decisions governing such a case

It may be that if the words he employs are *voces signatae* they must be so accepted, whatever the suspicion may be as to the testator having had

that particular view of his own language. But in ordinary circumstances ordinary words must bear their ordinary construction, and the whole Will,

that is, the whole of the words employed by the testator, must be looked at together so as to determine his whole intention, and furthermore, it is

not on this principle legitimate to take words which have a general meaning and subject them to limitations which the words do not necessarily

imply.

17. Then his Lordship considers the case of *O' Mahoney v. Burdett* [1875] 7 H. L. 388 and the case of *Edwards v. Edwards* [1852] 15 Beav.

357 and holds that the clause in question does not refer to the death of the legatee in the time of the testator.

18. I have no hesitation in holding that the construction upon the clause by the learned Subordinate Judge is correct and I, therefore, dismiss the

second appeal with costs of Respondents Nos. 1 and 2.