(1950) 11 PAT CK 0003

In the Patna High Court

Case No : Letters Patent Appeal No. 15 of 1948

Mrs. J.L. Quadros APPELLANT

Vs

Adeline Teresa Quardros and others RESPONDENT

Date of Decision : 17-11-1950

Acts Referred:
Succession Act, 1925 — Section 301, 302

Citation : (1950) 11 PAT CK 0003

Hon'ble Judges : Reuben, J;Ramaswami, J

Bench : Division Bench

Advocate : R.S. Chatterji and Syed Hasan, for the Appellant; S.S. Asghar Hussain and S.C. Chakravarty for D.R. Guardian, for the Respondent

Judgement

Ramaswami, J.—The question to be decided in this appeal is whether upon the proper construction of a will executed by one Mr. J. A. Quadros on 20-2-1937, the respondent is entitled to a direction from the Court that certain properties should be sold by the executrix & the respondent given her share out of the sale proceeds.

2. It is the admitted case that, on 20-2-1937, Mr. J. A. Quadros executed the will in question. Mrs. Adeline Reid is the third child of the testator & when the will was executed, she was aged fourteen years. She has since married & has now two children, the elder of whom is seven years of age. On her behalf, it is alleged that, Mrs. J. L. Quadros, who was the executrix appointed under the will, has not carried out the direction of the testator that certain properties should be converted into cash & one-eighth of the sum realised by the sale should be paid to each of his children on his or her attaining the age of twenty-one years. The executrix contested the application on the ground, that the Court cannot direct a sale of the properties or distribution of the sale proceeds so long as she was alive. It was maintained that by the will the executrix was given a life interest in all the immovable properties left by the testator & she was given absolute discretion over the sale of the properties. Shearer, J., held upon the construction

of the will that the respondent was entitled to a direction that the mauzas should be sold by the executrix & that she was entitled to a share of the sale proceeds. The learned Judge accordingly allowed the application.

3. The question at issue in this appeal depends upon the construction of the material terms of the will executed by Mr. J. A. Quadros. At the commencement of the will, the testator states:

I give my mother Mrs. Julia L. Quadros a life interest in all my immovable properties including leasehold properties & investments.

There is a direction later on to the following effect:

I also direct that (a) Tauzi No. 59, Mauza Ram-pur Taliqua, (b) Tauzi No. 59/29 Mauza Bhagwan-gama, Rampur Taliqua, (c) Tauzi No. 616, Mauza Bhikanpur, (d) Tauzi No. 4736, Mauza Moinuddin-chuk of which I am the sole proprietor, & also (e) Tauzi No. 4586. Mauza Nagav, Pargannah Colgon & (f) Tauzi No. 796 C, Mauza Lakhraj, Mauza Chicksi, Pargana Phulbari, Thana Paliganj, district Patna of which last two I am an 8 annas & five annas share-holder respectively be sold & the net sale proceeds be invested & form part of my estate along with the other monies & investments mentioned above except the sale proceeds of my share in Touzi No. 796-C Mauza Lakhraj; Mauza Chicksi; Parganah Phulbari; Thana Paliganj, District Patna; which I leave to my mother absolutely. That the remaining 8 annas share in Touzi No. 796-C Mauza Lakhraj, Mauza Chicksi, Pargana Phulbari; Thana Paliganj; District Patna is exclusively the property of my mother Mrs. Julia L. Quadros & the sale proceeds thereof shall be hers absolutely. That Tauzi No. 306-1 Mouzh Dadpur Pakuria Baurgaon be sold, and the sale proceeds thereof, I leave to my mother absolutely. On each of my eight children attaining majority, one-eighth of the sum realised by sale of these six mauzas shall be paid to her or him. The interest accruing from the said sale proceeds during my mother''s life time shall be enjoyed by her exclusively.

On behalf of the appellant, Mr. R.S. Chatterji presented the argument that the will clearly provided that Mrs. J. L. Quadros was to toe granted a life interest in all the immovable properties & it was manifest that the intention of the testator was to make Mrs. J. L. Quadros the ''karta of the family" & give her complete control over the provision for maintenance of the wife & children of Mr. Quadros. It was also contended that the disposition in favour of the children was merely contingent & cannot prevail, over the definite direction in the will that the mother should be given a life interest in all the immovable properties. In my opinion, the argument on behalf of the appellant is not tenable. For it is a primary rule of construction that the intention of the testator must be gathered ''ex-visceribus testamenti'' that all the parts & provisions of a will are to be construed in relation to each other, & so as to form one consistent whole & operate together, & contradictory clauses should if possible be reconciled accordingly as the Court should consider the whole instrument together. In ''Venkatadri Appa Rao v. Parthasarathi Appa Rao'', 52 I A 214, the Judicial Committee referred with approval to the statement of law made by Lord Wensteydale in ''Roddy v. Fitzegerald'', (1858) 6 H L C 823 to the following effect:

These rules are perfectly plain & clear. The first duty of the Court expounding the will is to ascertain what is the meaning of the words used by the testator. It is very often said that the intention of the testator is to be the guide, but that expression is capable of being misunderstood, & may lead to speculation as to what the testator may be supposed to have intended to write, whereas the only & proper inquiry is, what is the meaning of that which he has actually written? That which, he has written is to be construed by every part being taken into consideration according to its grammatical construction & the ordinary acceptation of the words used, with the assistance of such, parol evidence of the surrounding circumstances as is admissible, to place the Court in the position of the testator.

In the present case, there is no material repugnancy between the relevant clauses in the will, namely, (1) that the mother Mrs. Julia L. Quadros is given a life interest in all the immovable properties, & (2) "On each of my eight children attaining majority, one eighth of The sum realised by sale of these six mauzas shall be paid to her or him."

4. Learned Counsel has referred to the subsequent clause that "The interest accruing from the said sale proceeds during my mother''s lifetime shall be enjoyed by her exclusively." But, in my opinion, any possible contradiction between the various clauses may be reconciled: & the real intention of the testator is apparent that the executrix should sell the mauzas & the sale proceeds should be invested, that the interest drawn from the investment should be enjoyed by the mother but that each of the children, on his or her attaining majority, should be paid the capital sum to which he or she is entitled.

5. Even if it be assumed for a moment that the clauses in the will are ambiguous or conflicting the respondent would be entitled to the direction asked for, on the operation of another principle. For it is settled by high authority that in construing a will or settlement which makes a provision for children subject to a prior life interest, the Court must presume in favour of that construction by which the children will take a vested interest at twenty-one or on marriage. The rule is stated thus in Williams on ''Executors'', Edn. 12 p. 805, Vol. II:

In construing a settlement or Will, which makes a provision for children subject to a prior life interest, the Court leans strongly in favour of that construction by which the children will take a vested interest at twenty-one or marriage, whether they survive the tenant for life or not: & if the instrument is incorrectly or ''ambiguously expressed, or if it contains ''conflicting'' & contradictory clauses, so as to leave in a degree uncertain the period at which, or the contingency upon which, the shares am to vest, the rational presumption is that the child acquires a vested & transmissible interest at the period when it is most needed, viz., at twenty-one, if a son, or on marriage or at that age. if a daughter.

In ''Edward Thomas Wakefield v. William Hamilton Maffat'', (1885) 10 A. C. 422: lands were conveyed by a marriage settlement upon trust for husband.& wife successively for life, & after the death of the survivor.

to levy out of the said lands & premises the sum of ?3,000 to be divided to & among all the children of the said intended marriage, save & except such child & children as under the limitations aforesaid shall succeed to the enjoyment of the lands & premises hereby conveyed in equal shares & proportions as tenants in common & not as joint tenants, the share of such child or children as shall be a son or sons to be paid to him or them upon his or their respectively arriving at the full age of twenty-one years, & the share or shares of such of them as shall be daughters to be paid upon their respectively arriving at their full age of twenty-one years, or day or days of marriage, whichever shall first happen: Provided always that such marriage during minority shall be had by & with the consent & approbation of the parents or the survivor of them: with interest for the same by way of maintenance at the rate of ?6 by the hundred to be computed from the day of the death of the survivor of the parents; with benefit of survivorship to the survivors or survivor of such children if any of such children shall die before his, her or their share or shares shall become payable unmarried & without leaving issue as aforesaid, it being the true intent & meaning of these presents that none of the children of the said intended marriage, who under the limitations herein contained shall become entitled to an estate in possession in any part of the lands & premises hereby conveyed shall be entitled to any part of the said sum.

A son attained twenty-one & died in the lifetime of his father. Upon these facts, it was held by the House of Lords, affirming the decision of the Court of Appeal in Ireland, that there being no words indicating a clear intention to make the vesting of children''s shares contingent on their surviving both parents, the rule laid down in ''Emperor v. Rolfe'', (1748-9) 1 Ves. Sen. 208 applied, & the son took a vested interest in his share on attaining twenty-one.

6. In the present case, upon proper construction of the will, it must be held that, upon each of the children attaining majority, one-eighth of the sum realised by the sale of the mauzas should be paid to her or him irrespective of the question whether the executrix was alive or not at the time. The respondent was accordingly entitled to the direction given by the learned Judge of this Court.

7. The argument was also presented on behalf of the appellant that the application was not maintainable under S. 301, Succession Act, on the ground that the administration of the estate concluded & the respondent was really in the position of the trustee. In support of this argument, learned Counsel referred to In the goods of Sarnath Sanyal late of Banaras Madhu Sudan Bagchi Vs. Hrishikesh Sanyal and others . In my opinion, these authorities are not of much assistance to the appellant for they proceed on the assumption that there has been a complete administration of the estate of the deceased in each case & the executor had become ''functus officio.'' But it cannot be held upon circumstances

admitted or proved in the present case, that there has been a complete administration of the estate of Mr. J. A. Quadros. It is importan to notice that there is a specific direction in the will that the executrix should sell the mauza. specified & out of the sale proceeds, shall pay one-eighth share to each of the eight children on their attaining the age of twenty-one years. So long as the direction in the will has not been com plied with, it is not possible to hold that there was a complete administration, of the estate of the testator. The question when the executor become; a trustee must be answered with reference to the circumstances of each particular case. If the administration is complete, if the executor is functus officio'', with regard to any of the assets & retains them in his possession he becomes clothes with the character of a trustee of those assets. For instance, as soon as the executor has assented to a legacy, he becomes a trustee of the subject-matter of the legacy for the legatee. As observed by Lewin.

An executor is regarded in some sense as a trustee, but he cannot, like a trustee, be discharged even by the Court from his ''executorship.'' When the funeral & testamentary expenses, debts, & legacies have been satisfied, & the surplus has been invested upon the trusts of the will, the executor then drops that character & ''becomes a trustee in the proper sense, & may then be discharged from the office like any other trustee.

This passage has been quoted with approval in ''Dhanabakkiyammal v. Thangavelu Mudaliar'', 50 Mad 956. In ''Taran Singh v. Ramratan Tewari'', 31 Cal 89, also the Court observed:

The position & duties of an executor in this country are not very well understood, & considerable confusion exists as to duties of the executor in the administering the estate. The duties of the executor are to administer the estate of the deceased only so far & so long as to enable him to carry out the terms of the will of which he is executor. After the property has ceased to be the estate of the deceased & has become the property of the residuary legatee under the will, the executor as such has no authority to manage the estate on his behalf.

This case was followed in a subsequent decision in ''Sankar Nath v. Biddutlata Devi'', 28 C L J 271.

8. For these reasons, I hold that the respondent is entitled to a direction from the Court under S. 302 of the Act. There appears however, to be a slight mistake in the will, for, upon a careful perusal thereof, it is apparent that each of the children would be entitled to one-eighth of the sum realised by the sale ''not of the six'' but of the five mauzas, namely (1) Tauzi No. 59, Mauza Rampur Taliqua, (2) Tauzi No. 59/29 Mauza Bhagwangama, Rampur Taliqua, (3) Tauzi No. 616, Mauza Bhikanpur, (4) Tauzi No. 4736, Mauza "Maoinuddinchuk & (5) Tauzi No. 4586, Mauza Nagar, Parganah Colgon. In view of the admitted fact that out of the eight children one, namely, Julia Gertrude Quadros, died during the lifetime of the testator, the respondent will be entitled not to one-seventh share as claimed but to one-eighth share of the sale proceeds of the five mauzas which

have been specified. It is necessary that the executrix should sell the five properties specified within a period of six months from this date or within such further time as may be granted on a proper application being made in this behalf to the Court of the D. J., of Bhagalpur.

9. This appeal under the Letters Patent is accordingly dismissed with costs. Hearing fee three gold mohurs.

Reuben, J.

10. I agree.

