

(1910) 04 MAD CK 0012
In the Madras High Court

Muniswami Chetty

APPELLANT

Vs

Maruthammal and Others

RESPONDENT

Date of Decision : 04-04-1910

Acts Referred:

Citation : 7 Ind. Cas. 176(1)

Hon'ble Judges : Arnold White, C.J.;Wallis, J;Miller, J

Bench : Full Bench

Judgement

Arnold White, C.J.—The point I have to consider has been referred to me in the form of an abstract question of law and I must deal with it

in that form. The question is: Is an executor under a Will who has accepted the office of executor and acted as such estopped thereby from setting

up any adverse title to property disposed of by the Will?

2. In my opinion, the principle of the decision in Srinivasa Moorthi v. Venkata Varada Iyengar 29 Ma. 239 : 1 M.L.T. 71 : 13 M.L.J. 238 with

reference to the point in question (see page 280) applies and I would answer the question in the affirmative. I agree with Wallis, J., that the fact that

an executor has not taken out probate (at any rate where the law does not require him to do so) is immaterial.

3. In the case in which this reference has been made it was contended that the executor was entitled to possession of the estate whether the Will

was good or not. Assuming this to be so, I do not think it affects the question of estoppel. As I understand the facts the executor took possession

as executor and not in the exercise of any alleged rights of survivorship. I do not think it is necessary for the party, who in a case of this sort relies

on the estoppel, to prove that he did, or refrained from doing some specific act

by reason of the fact that the executor had accepted the office and acted as such. If an executor accepts the office and acts as executor ""with full knowledge of all the circumstances bearing on his rights."" [See Srinivasa Moorthi v. Venkata Varada Iyeugar 29 M. 239 : 1 M.L.T. 71 : 13 M.L.J. 238], I think he is estopped from subsequently repudiating the Will and setting up an adverse title as against a beneficiary claiming under the Will. It seems to me (although I do not know that I am called upon to express my opinion as to this) that the special rule laid down by Buckley, J., in Anderson in re, Pegler v. Gillatt (1905) 2 Ch. 70 : 74 L.J. Ch. 433 : 92 L.T. 725 : 53 W.B. 510, does not apply to the case of an executor who has accepted office and acted as such and who afterwards claims rights by way of survivorship which if well founded would have entitled him to take possession.