
(1934) 08 MAD CK 0057
In the Madras High Court

Murugesam Pillai

APPELLANT

Vs

Meenakshisundara Ammal

RESPONDENT

Date of Decision : 22-08-1934

Acts Referred:

Citation : AIR 1935 Mad 107(1) : (1934) 40 LW 875

Judgement

1. This appeal arises out of THE petition for the execution of a decree after recognizing the petitioner as the legal representative of the deceased plaintiff. The petitioner-respondent is the mother of the decree-holder who died since the passing of the decree. The prayer in the petition is that the petitioner may be brought on record as the legal representative of her son the plaintiff and that the charged properties may be sold for the realisation of Rupees 15,000 with interest and costs. The facts are those. One Narayana Pillai died on 17th March 1912. The plaintiff-decree-holder was the son by his third wife. Defendant 1 is the son lay the second wife. Defendant 2 is defendant 1's mother. The plaintiff and defendant 1 were both of them minors at the death of their father. Before his death Narayana Pillai made a partition of properties on 26th February 1912, and afterwards made a. will on 15th March 1912 dealing with the property that came to his share in the partition. This will benefited defendant 1 but not the plaintiff. Under the will defendant 3 was constituted the guardian of defendant 1 and defendant 4 was made the guardian of the plaintiff. Narayana Pillai died two days after the date of the will. After his death, while both the plaintiff and defendant 1 were minors, the plaintiff brought a suit for partition of all the family properties on the ground that the will and the partition made by their father were invalid and not binding on him. It was stated in the plaint that there were various outstandings amounting to more than a. lakh of rupees due to the family, many of which the father had transferred unjustly to defendant 1. The suit ended in a compromise decree. Defendant 1 by the time of the decree had become a major while the plaintiff, the decree-holder, was still a minor. It is the construction of a portion of that decree which relates to a pecuniary relief that is involved in the execution petition.

2. decree after affirming the partition and the will made by the father of the parties provided that defendant 1 should pay plaintiff a sum of Rs. 12,000 to which the plaintiff was not entitled either under the partition or under the will. It also stated that a sum of Rupees. 3,000 was payable to the plaintiff by way of mesne profits. This was with reference to the properties allotted to the plaintiff under the partition and which, were in the possession of defendants 1 and 4. These are the two items of the pecuniary relief in the decree with which we are concerned. The passage in the decree around the construction of which controversy has ranged relates to these items and is as follows:

In view of the fact that defendant 1 got much property from his maternal grandrathur Arumugham Pillai, some mediators interested in the plaintiff, among whom were Mogaiyur Subramaniam Pillai and the plaintiff's mother, Meenakshisundara Ammal, requesting him to give the plaintiff some money, whereupon defendant 1 agreed to give plaintiff Rs. 12,000 as a matter of grace and out of love. The plaintiff should recover this Rs. 12,000 and the aforesaid Rs. 3,000 being the mesne profits amount, in all, Rs. 15,000 and interest thereon from this date at 8 annas per cent per mensem by taking proceedings in execution against defendant 1 and against his share of the plaintiff-mentioned properties and against his other properties obtained by him. under the settlement dated 2nd June 1904, after executing a registered receipt in favour of defendant 2 to the effect that every sort of plaintiff's claim for partition or for mesne profits had been settled and satisfied so far as defendant 1 was concerned and giving the receipt to defendant 1 directly or through Court within about six month's after the plaintiff's attaining his majority, i.e., within 31st March 1927 the aforesaid properties should remain charged until the aforesaid amount is recovered. So long as the plaintiff does not execute an acquaintance receipt as aforesaid, in favour of defendant 1, within the aforesaid time, the plaintiff is not entitled to recover the above amount in the aforesaid manner.

3. The plaintiff died on 11th July 1925. It is not disputed that he would have attained his majority on 30th September 1920. On behalf of the appellant the learned Advocate-General argues that having regard to the terms of the decree,

the right to recover Rs. 15,000 is conditional and contingent on the minor attaining majority and on his being in a position to execute a registered release deed" : see ground 3

and as this condition, has become impossible as he died before he attained his majority the right has not become vested and so the petitioner is not entitled to execute the decree. His argument is that the right conferred is personal to the plaintiff as it has been given as a matter of grace and out of love and that it is contingent on his attaining majority and executing a receipt by way of acquaintance. He says that the matter is left beyond doubt as the last sentence in the extract quoted above specifically says,

so long as the plaintiff does not execute an acquaintance receipt as aforesaid in

favour of defendant 1 within the aforesaid time the plaintiff is not entitled to recover the above amount.

4. The execution of a receipt of acquittance after the attainment of majority having become impossible owing to the death, of the plaintiff before he attained majority, it is argued that the right did not vest in the plaintiff. On the other hand, the respondent argues that the right to recover Rs. 12,000 became a vested right on the date of the decree itself as will appear from the first sentence which says,

whereupon defendant I agreed to give plaintiff Rs. 12,000 as a matter of grace and out of love.

5. It is argued that this shows that the right became complete when the decree was passed and that it is not limited by any contingency. The other provisions in the decree which lay down conditions only relate to the manner of collecting" (vasool) - the amount of Rs. 12,000 and are not conditions annexed to the plaintiff's right to recover the amount. It is pointed out that the date of giving the acquittance receipt is not when plaintiff attains majority, but within about six months after ho attains majority. It is also pointed out that the provision to the effect that a receipt should be given attached to a gift, can never make the gift a contingent one nor the provision a condition precedent. The question is which construction is the right one. If the right to recover is a contingent right and has not vested, the respondent's petition should be dismissed; it should be allowed if the right is a vested right the lower Court held that the right was a vested right and allowed the petition.

6. In support of his argument the learned Advocate-General relied upon various English cases wherein conditions attached to gifts in wills and other documents had been construed by the learned Judges; but in a matter of construction, cases wherein conditions more or less of a similar nature have been construed cannot be of much use, more so where the cases are decisions of English Courts construing English documents. It was pointed out in *Bagavati Barmanja v. Kalicharan Singh* (1911) 38 Cal. 468, by the Privy Council that:

It is no new doctrine that rules established in English Courts for construing English documents are not as such applicable to transactions between natives of this country. Rules of construction are rules designed to assist in ascertaining the intention and the applicability of any such rules depends upon the habits of thought and modes of expression prevalent among those to whose language they are applied....

7. In *Narendranath Sircar v. Kamal Basini Dasi* (1896) 23 Cal. 563 , their Lordships say that:

To construe one will by a reference to expressions of more or less doubtful import to be found in other wills is for the most part an unprofitable exercise.

8. In this connexion see also *Venkata Narasimha v. parthasarathi* (1914) 37 Mad.

199 , where it is stated that the Court will not necessarily apply English rules of construction in interpreting an Indian will. We will now briefly refer to a few of the English cases relied on by the appellant. In *Phipps v. Williams* 58 E.R. 254, property was given in a will to B when he attained 24

on his giving security for the annuities given by the testator and executing deeds to the satisfaction as the trustees.

9. It will be observed that the language in the decree before us with reference to the execution of the receipt is different from the language used in this case and does not sound so "conditional" as in the English case. In the first Court no doubt it was held that the provision relating to the giving of security and execution of the deeds was a condition precedent. But this decision was set aside in appeal in *Ackes v. Phippa* 6 E.R. 1586 see p. 1599. With regard to this condition Lord Brougham said:

I can on no account allow that there is anything like a condition precedent, or indeed, a condition subsequent either, to be found in these words; but it is a direction and provision wholly nugatory and useless, inasmuch as the law would have required the performance of the same thing wholly unconnected with the devisee in taking under the gifts, or his manner of taking, The common direction to give a receipt might as well be called a condition precedent.

10. We think that these observations might well be applied to the condition of executing a receipt in this case. The statement in the decree that the plain-tiff should collect the amount by taking proceedings "after executing a registered receipt" does not in our opinion make the right conveyed in the decree a contingent right. The other cases cited by the learned Advocate-General, such as *Re. Hodge's Trusts* (1873) 28 L.T. 624 and *Dowset v. West* 27 E.R. 117, need not be discussed in detail as they relate to a gift over of property on the failure of the devisee to perform the condition precedent to the vesting of the interest. The rule applicable to such cases cannot be applied in interpreting the decree before us. The English Rule is stated in *Hollinbrake v. Lister* 38 E.R. 193 at p. 196 thus:

Where there is a condition precedent to the vesting of the interest of the devisee, and on his failing to perform the condition, the property is given over, that condition must be complied with strictly. If it is not so complied with, the property vests in the person in whose favour the gift over is made, and this Court cannot interfere to set up the prior gift. The rule is otherwise, where there is no bequest over.... The doctrine therefore of this Court is, that where there is no bequest over, he who derived a benefit under the will, on condition of his executing a release within a specified time, shall not be deprived of that benefit in consequence of his not having executed the release within the prescribed period, if the parties can be placed in the same situation as if the condition had been strictly performed.

11. Where there is no gift over the English Courts are in the habit of affording

relief with respect to the failure of the performance of conditions precedent. These English cases relied on by the Advocate-General, as already stated, are not of much use in construing the terms of the decree and therefore need not be further considered. The decision in *Cowasji Edalji Dadachani v. Ratan Bai* 1925 P.C. 27 relied on can be explained on the language of the will. The properties were to be made over to the son upon his reaching majority. The son died an infant. It was held that the interest of the son was contingent upon his reaching majority. The decision in *Rajendralal Ghose v. Mrinalini Dasi* 1922 Cal. 116 also does not help the appellant.

12. The cases cited at the bar have not been much helpful in construing the decree. On examining the terms quoted above carefully we are of opinion that the right to recover the Rs. 15,000 was a vested right. There can be no doubt that the right to recover the Rs. 3,000 the arrears of mesne profits is a vested right. That amount is inseparably mixed up with the amount of Rs. 12,000 in the decree and the whole sum of Rupees 15,000 is dealt with in the same manner by the decree. As the learned Judge says, and as the respondent's counsel insists, this puts the matter beyond any doubt. Defendant 1 was clearly bound to pay the Rs. 3,000. It is very unlikely that this amount was (meant to be the subject of a contingent right, having regard to the fact that, but for the Rs. 12,000 purported to have been given as a gift the compromise simply affirmed the partition and the will. As the two amounts of Rs. 12,000 and Rs. 3,000 were not treated differently we may well presume that the intention of the parties was to confer upon the plaintiff the same right with respect to the Rs. 12,000 as he had with respect to the Rs. 3,000. It was said by the Advocate-General that the statement that defendant 1 agreed to give Rupees 12,000 as a matter of grace and out of love shows that the parties meant that only the deceased plaintiff and no other person should enjoy the gift. The grace and love" referred to can only be considered as motives for making the gift and are not to be construed as conditions. And further, as a matter of fact, there cannot be much truth in the statement, seeing that outstandings worth more than a lakh was claimed by the plaintiff and he was given only Rupees 12,000 on that account. However that may be, this statement as a matter of grace and out of love "does not make the right conferred by the decree a contingent one. The statement in the decree defendant 1 agreed to give plaintiff Rs. 12,000" makes the right given with respect to it a vested right and this right is not hedged in by conditions; that sentence stands by itself and the right conferred is not limited by any contingency whatsoever. Then comes the provision that the amount is to be recovered

by taking proceedings in execution after executing a registered receipt within six months after the plaintiff attained his majority within 31st March 1927.

13. "After giving the receipt" is not in our opinion a condition which makes the right already conferred with respect to this Rs. 12,000 a contingent one. It is in the nature of a common direction to give a receipt when money is paid. The

provision that the receipt is to be given within about six months after the plaintiff's majority, that is within 31st March 1927, shows that the parties had more in mind the date 31st March 1927, no doubt calculated with reference to the plaintiff's attaining his majority. In our opinion this provision also does not make the right conferred by the decree a personal one. The passing of the acquittance receipt is a condition which could be performed equally efficaciously by the plaintiff's successor in interest also. The object of the last provision that if the plaintiff does not execute an acquittance receipt as aforesaid he is not entitled to recover the amount, is only intended to ensure the speedy performance of the condition and can be relieved against as pointed out by the learned Judge. The petitioner will be allowed, to execute the decree only subject to her executing an acquittance receipt. On the whole we think on a perusal of the document that the right to the Rs. 15,000 is a vested one and that after the death of the plaintiff the right accrued to his legal representative, the present petitioner.

14. The next question is whether the plaintiff's application is not barred by limitation, inasmuch as it has been filed more than three years after the death of the plaintiff. The argument is that the vested right accrued to the petitioner on the death of the plaintiff. The terms of the decree, rightly interpreted, show that the plaintiff would be entitled to the money only on his attaining majority and the receipt was to be given within six months after that date. Therefore though in law the right of the plaintiff accrued to the present petitioner, the enforcement of it could not be had till the date when plaintiff would have attained his majority, that is, 30th September 1926. The present petition has been filed within three years from that date. The present case falls in our opinion within Article 182, Clause 7, Limitation Act. It was held in *Kaveri v. Venkatamma* (1891) 14 Mad. 396, under the old Limitation Act, that:

If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the terms of the decree, the requirements of Limitation Act, Schedule 2, Article 179, Clause 6, (corresponding to Art, 182, Clause 7 of the present Limitation Act) arise satisfied.

15. In the result, we confirm the decision of the lower Court and dismiss this appeal with costs.