
(1912) 11 MAD CK 0036
In the Madras High Court

Narayana Aiyar and Another

APPELLANT

Vs

Anai Aiyar alias Mahadeva Aiyar

RESPONDENT

Date of Decision : 11-11-1912

Acts Referred:

Citation : 17 Ind. Cas. 754 : (1912) 23 MLJ 649

Judgement

1. The question in this case relates to the construction of a will made by a Hindu lady. It was apparently not drafted by any professional lawyer and its terms are not happily expressed. The suit was instituted by her two minor great grandsons (sons of her grandson) whom she undoubtedly intended to benefit by the dispositions contained in the will, for rent due on a rental instrument executed by the defendant for a piece of land which he had usufructually mortgaged to the testatrix. No letters of administration with the will annexed were taken out by any one and the suit is instituted by the plaintiffs as beneficiaries under the will. It has been dismissed by the Lower Court on the ground that the plaintiffs obtained no rights under the will until the attainment of the age of majority by both of them. The substantial question for decision is whether this construction of the will is right. Its terms are as follows:- * * * * After my death (1) Minor Narayana Ayyan, aged 3 years and (2) Venkatarama Ayyan aged 1 year, my great grandsons and sons of the eldest wife of Muthurama Ayyan, the adopted son of Muthusamy Ayyan, my son, these two after the two above mentioned minors have become majors shall take in equal portions the principal Rs. 1,000 and the balance of interest due, deducting the interest paid towards the documents as long as I live. If one of them die while the other is a minor, the other who survives shall take after the

said minors have become majors without any objection the principal and interest that may be due after my death as above mentioned. Nobody has

right to demand the said amounts either at the time of the minority of the said minors or at the time when one has become major.

2. As I have given up by means of this will the said amounts to be taken by the two minors after they have become majors at their pleasure, as

mentioned above the said Muthuramayyan the father of the said minors and the adopted grandson of mine has no right after my death either to the

said amount or to its interest, Thus I have executed this will with firmness * * *

3. It will be observed that the interest on the two mortgages bequeathed under the will accruing subsequent to the death of the testatrix until both

the legatees should attain age is to be taken by them. Their father is expressly disinherited by the testatrix. No intermediate estate is created in

favour of any one else till the minor legatees attain age.

4. These facts are indications that the amount was intended to vest in the legatees immediately on the death of the testatrix. The absence of any gift

over in case of the minors dying without attaining majority is also an indication against the construction that the vesting should be postponed until

their majority the presumption being that the testatrix did not intend to die intestate. On the whole we are of opinion that the expression in the will

that the legatees should take the principal and the interest accruing (after the testatrix's death) on the younger attaining majority, refers only to the

time when they were to take possession of the legacy and that the gift was intended to take effect immediately. We do not think that the donor

intended to keep her estate in abeyance until both her great grand children should attain majority. We do not consider it necessary to refer to

English cases as to vesting of legacies which are of highly technical character and cannot be applied without much caution to conveyances executed

without professional aid in this country. The vesting of legacies charged upon real estate is governed in England by rules derived from the common

Law while the vesting of bequests of personality including chattels real is governed by rules derived from the Civil Law. The respondent's Vakil

relies on *Gordhandas v. Bat Ramcoover* ILR (1901) B. 449, but there were several reasons in that case (See p. 467 and 468) for holding that the

estate was intended to be kept in abeyance for a time. We must hold that the

plaintiffs obtained a vested interest on the death of the testatrix. It is however clear that under the will they are not entitled to obtain possession of the interest on the amounts bequeathed until the younger of them attains majority. The 1st plaintiff became a major-after the institution of the suits but the 2nd plaintiff is still a minor. The will did not appoint any trustee or executor and there is no administrator entitled to receive and keep possession of the interest until the attainment of majority by the 2nd plaintiff. The Subordinate Judge's decree must be reversed. The plaintiffs will have a decree for the amount sued for but the amount when realized from defendant will be kept in court deposit until the second plaintiff attains majority. The plaintiffs may apply to the court for the investment of the money in Government promissory notes. The defendant will pay the plaintiff's costs in both courts.