

(1909) 04 MAD CK 0010
In the Madras High Court

N.R. Authipurnam Pillai

APPELLANT

Vs

N. Appasawmi Pillai

RESPONDENT

Date of Decision : 29-04-1909

Acts Referred:

Citation : (1910) 20 MLJ 99

Judgement

1. The question is whether the plaintiff's father took an absolute estate or an estate of inheritance under the terms of the Will-Exhibit A.

2. By that Will the testator bequeathed the two houses now in suit to his brothers-in-law Ramalinga Pillai and Veerasami Pilla and his adopted son

Kandasawmi Pillai to be enjoyed by them ("Vamsa Paramparyamayi") from generation to generation ("egopithu") which means according to the

plaintiff "harmoniously; " according to the defendants "living jointly ", without any power of gift, mortgage or sale. There is also a gift in absolute

estate of certain other property to his adopted son Kandasawmi Pillai.

3. The contention of the learned pleader for the appellant is that the testator has sufficiently shown his intention to create an estate inheritable

according to law by the use of the words "Vamsa Paramparyamayi" and that the words restricting the power of transfer cannot be given effect to

as being an attempt to take away the power of transfer which the law attaches to the estate already created.

4. It is true, as pointed by Wallis J., that if these words stood alone, they would shew an intention to create an estate of inheritance. But we have to

find the intention of the testator, looking at the whole of the provisions of the will, and it appears to us that the learned Judge is right in holding that

it was not the testator's intention to confer on any one of these donees an estate

of inheritance with reference to one third share of the two houses.

The subsequent clause by which he left certain other property absolutely to one of these three donees by apt words suggests a different intention

on the part of the testator with reference to these two houses. The condition that the three donees and their descendants are to act harmoniously

("egopithu") shows that he intended that the properties should be kept intact without partition the provisions against alienation only confirming this

view of the intention. A joint bequest to three donees, not members of a Joint Hindu family, with such provisions, seems inconsistent with any

intention to grant any one of them an absolute estate in one-third share. It has also to be remembered that though words in terms giving a power of

alienation are not indispensable to create an absolute estate, they are often used. We are of opinion, therefore, that Wallis J is right in holding that

the testator's intention to be gathered from the will was that the estate should be enjoyed by the three devisees and their descendants without

partition or alienation, and that they were not to take as tenants-in-common. We accordingly dismiss this appeal with costs.