

(1937) 10 MAD CK 0021
In the Madras High Court

Nyapati Narayana Rao

APPELLANT

Vs

Madhavalapu Purushothama Rao

RESPONDENT

Date of Decision : 07-10-1937

Acts Referred:

Citation : AIR 1938 Mad 390(1) : (1938) ILR (Mad) 315 : (1938) 47 LW 104 : (1938) 1 MLJ 45

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The question for decision in this case is whether the will (Ex. H) said to have been executed by one Seshagiri Row on

4th August, 1926, is genuine and valid.

2. Seshagiri Rao had two sons, the plaintiff and the first defendant; defendants 2 and 3 are the sons of the first defendant. Many years ago the

plaintiff had been taken in adoption by Seshagiri Rao's wife's maternal uncle; it happened that in the family of adoption the plaintiff did not get

much property and the evidence establishes that the plaintiff had been pressing his natural father to make some provision for him and that that the

natural father intended to do so. The first defendant on the other hand was educated at his father's expense till he took his B.L. degree, and settled

down to practise at Guntur. The first defendant no doubt became a man with a large family and did not perhaps succeed as well at the profession

as he might have desired and he might be justified in feeling that his father ought to have treated him more liberally than he had done. But the

evidence leaves no doubt in our mind that the first defendant was not altogether in the good graces of his father and that even making allowance for

the first defendant's financial position the plaintiff stood in greater need of help from his father. There is also indisputable evidence that the father was consulting his lawyer friends and relations as to the best manner in which he could effectively carry out his intention to make some provision for the plaintiff. As the father and the first defendant were undoubtedly members of a joint Hindu family and some of the properties which the father proposed to deal with were joint family properties, the father seems to have been advised that unless some arrangement could be effected by agreement with the first defendant, it would be necessary for him to get divided from the first defendant by a notice of intention to become so divided. Ex. C a draft notice prepared with this object in view by P.W. 9 some years before, makes it clear that the father was clearly aware that this was the only alternative open to him, unless it was possible to arrange amicably with, the first defendant to benefit the plaintiff to some extent.

3. [Their Lordships after discussing the evidence and finding that the will was executed by the deceased when he was in a sound disposing state of mind proceeded.]

4. As the deceased was a member of an undivided Hindu family, the question of his right to make a will disposing of his share in the joint family property has next to be considered. To enable him to do so, it is alleged by the plaintiff that he sent a registered notice, Ex. J on 3rd August, 1926.

Having regard to what we have already stated as to the advice that the deceased had been given on this matter, it is not by any means unlikely that this step would have been taken. The preparation of the draft for Ex. J is spoken to by P.W. 20 a witness whom the trial Judge regards as quite

respectable; and the writing and execution of Ex. J is spoken to by P.W. 4 whom the learned Judge has unhesitatingly believed. We therefore see

no reason to doubt the genuineness of Ex. J nor the fact of his having been sent with the knowledge of the deceased. Ex. J is a post card and the

postal seal shows that it was posted at Bezwada on 3rd August, 1926. In the ordinary course it would have been delivered to the first defendant

at Guntur on the 4th, but it so happened for reasons to which we shall presently refer that it was not actually received by the first defendant till the

9th. An argument has accordingly been addressed to us as to whether the mere posting of Ex. J on the 3rd August was sufficient to validate the will

executed on the 4th when in fact the deceased died on the 5th before Ex. J had been received, by the first defendant. To obviate such an argument

it was suggested on behalf of the plaintiff that the first defendant must have become aware of the contents of Ex. J even on the 4th August, and that

he purposely evaded receiving it. We are not satisfied that there is sufficient proof of this or even some justification for the suggestion. Seeing that

this suggestion had been made or might be made, the first defendant applied to the postal department for an exact statement of the reasons for the

delay in the delivery and Ex. III gives the material information. The first defendant resides in one postal division of Guntur whereas the Court is

situate in another postal division. The result was that by the time that this post card was taken to the first defendant's residence on the 4th, he had

left for the Court and on non-delivery at home it was transferred for delivery at the other division but when it was taken to Court on the 5th, the

first defendant is said to have been absent from the Court. On the 6th and 7th he was admittedly in Bezwada after hearing of his father's death and

as the 8th was a Sunday the registered post card was delivered to him only on the 9th.

5. On the above facts it has been argued on behalf of the appellant that as communication to the other coparceners is necessary before a member

of a joint Hindu family can become divided by a declaration of his intention to become so divided, it must be held in this case that the division in

status arose only on the 9th August when the first defendant received Ex. J and as the testator had died on the 5th August, the testament cannot

take effect so far as the joint family property is concerned. We are unable to accede to this contention. It is true that the authorities lay down

generally that the communication of the intention to become divided to other coparceners is necessary, but none of them lays down that the

severance in status does not take place till after such communication has been received by the other coparceners. The anomalous results following

from any such view can easily be shown. It would be unfortunate indeed if the validity of a will should depend upon the accident as to whether a

postman was able to find an addressee on a particular date or at a particular place or not; and it will sometimes be a very difficult task, for the

Court to decide how far the addressee had with some knowledge of what is coming evaded receipt of the notice. An illustration will forcibly

demonstrate the anomalous position. If a person should have a number of coparceners living in a number of places far remote from one another

what is to be the date of division of status when notice had been sent by one of the coparceners to those various other coparceners? It certainly

cannot be that he will become divided from the family on different dates, and here again the uncertainty that may arise from the delay in delivery

due to avoidable or unavoidable causes is a fact to be taken into account. It may be that if the law is authoritatively settled, it is not open to us to

refuse to give effect to it, merely on the ground that it may lead to anomalous consequences; but when the law had not been so stated in any

decision of authority and such a view is not necessitated or justified by the reason of the rule, we see no reason to interpret the reference to

communication"" in the various cases as implying that the severance does not arise until notice has actually been received by the addressee or

addressees.

6. The only reported decision in which the question of the date of severance was discussed is a judgment of Madhavan Nair, J., in *Rama Aiyar v.*

Meenakshi Ammal (1930) 33 L.W. 384. So far as it goes, it is an authority against the appellant's contention, because the learned Judge held that

even if it should be assumed that the receipt of the notice by the other coparceners is material, the severance of status relates back to the date

when the communication was sent. As pointed out by the learned Judge, the principle emphatically stated by the Privy Council that the other

coparceners have no choice or option in the matter clearly indicates that the date of the receipt of the notice by them cannot be material. This

decision of Madhavan Nair, J., was sought to be distinguished by the appellant's learned Counsel on the ground that in that case the testator lived

till after the date of the service of the notice. In view of the basis of the decision we do not see how that can make any difference. It was argued

that if on the 5th the estate passed by survivorship to the first defendant, the receipt of the notice on the 9th cannot divest the first defendant of the

estate so vested in him. The answer is that the issue of the notice is so far as the testator is concerned, sufficient to prevent the operation of the

principle of survivorship. He was certainly justified in expecting that in the ordinary course his notice would have been delivered to the first

defendant on the 4th or at least on the 5th. It is unnecessary for us to say what the legal result would be in a case where a notice is posted in

circumstances when it will be obviously impossible for it to reach the addressee before the testator's death. It may be possible to argue that this is

merely a device to defeat the law, but no such suggestion can be made in the circumstances of this case. The appeal fails and is dismissed with

costs.