

(1961) 10 KL CK 0029
In the High Court Of Kerala
Case No : A.S. No. 99 of 1956 (K)

P. Krishna Bhatta	Vs	APPELLANT
Narayana Bhatta and Others		RESPONDENT

Date of Decision : 07-10-1961

Acts Referred:

Succession Act, 1925 — Section 82, 88

Citation : AIR 1962 Ker 322 : (1962) 1 KLJ 149

Hon'ble Judges : M.S. Menon, Acting C.J.; T.K. Joseph, J

Bench : Division Bench

Advocate : T.S. Venkiteswara Iyer, C.S. Ananthakrishna Iyer and R.C. Plappilly, for the Appellant; C.K. Vishwanatha Iyer and N.M. Venkatachalam, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiff in O.S. No. 242 of 1952 of the court of the Subordinate Judge of South Kanara Is the appellant before us. He and the 3rd defendant are the sons of one Venkataramana Bhatta who is now no more, by his first wife Laxmi. Venkataramana Bhatta had another wife, Hon" namma, and a son by her, Shankernarayana.
2. Venkataramana Bhatta is the son of one Ramaya Bhatta and his wife Santamma. Ramaya Bhatta executed a registered will, Ext. A-1 dated 1-2-1916, and died thereafter. According to the plaintiff and the 3rd defendant they obtain o by the will absolute rights in the property of which redemption is sought in the suit.
3. According to the 1st and 2nd defendants they did not do so. Their contention has been accepted by the court below and the suit dismissed with costs.
4. The relevant clauses of Ext. A-1 --it is agreed --are Clauses (6), (7) and (8). They read as follows:--

"(6) After my death my wife, Santamma and my son, Venkataramana Bhatta, will take possession of the property and the movables and enjoy them as they like, effect im-provements thereupon and pay the assessment thereof and if the said debt has not been discharged, pay the rent and discharge the debt and thereafter enjoy the property on absolute right.

(7) After Santamma and Venkataramana in case his second wife, Honnamma, bears a son, she and her children should enjoy the property from generation to generation.

(8) Only in case Honnamma has no sons, Govinda and another, the minor sons of Venkataramana Bhatta by his first wife will enjoy the property absolutely."

The translation extracted above is taken from the judgment under appeal. It was agreed that the translation was accurate and that we may proceed on that basis.

5. According to counsel for the appellant the testator had no power to give the direction in Clause (7) in view of the "absolute" character of the disposition in Clause (6). Reading the will as a whole and applying the normal rules of construction applicable to such instruments we take the view, as the lower court has done, that the contention is not justified.

6. The proper rule of construction is that all the parts of a will should be construed in relation to each other and so as, if possible, to form one consistent whole, and if any of the parts are absolutely irreconcilable, the latter must prevail (Jarman on Wills, 8th Edition, page 2069). Chapter VI of the Indian Succession Act, 1925, consisting of Sections 74 and 111 deals with the construction of wills. Section 82 provides that the meaning of any clause in a will should be collected from the entire instrument, and that all its parts should be construed with reference to each other, and Section 88 that where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

7. Ker in his book on Wills, Probate and Administration says:

"If the first disposition is absolute and then a latter disposition appears to cut down the absolute character of that gift both provisions are read and applied together." (Page 174)

Kamamurthi in his Law of Wills summarises the rules of construction applicable to testamentary instruments when the provisions thereof are repugnant or contradictory as follows :

"The first absolute grant takes effect when it is perfectly clear, on reading a will as a whole, that the testator intended to confer an absolute estate on the first taker. In such a case the bequest of the same property as an absolute grant to another is void for repugnancy, on the ground that there cannot be successive absolute grants in respect of the same property. En this connection the distinction between a defeasance clause and repugnant one, which is sometimes

a nice one, must be constantly kept in view. Where the intention of the donor or testator is to maintain an absolute estate conferred on the donee but he adds some restrictions in derogations of the incidents of such absolute ownership, the clause is a repugnant one and is therefore void. If however the intention expressed, or to be necessarily implied, is to extinguish the absolute estate on the happening of a contingency and where the effect of the termination of the said absolute estate would not be the violation of any rule of law, the clause is a defeasance clause and would operate according to its tenor". (Page 170)

"One circumstance that generally cuts down an absolute estate to a life interest is the presence of a gift over in unmistakable terms, which is not a mere gift by way of defeasance".

(Page 173).

"In certain circumstances the absolute estate is cut down to a life estate with power of alienation."

(Page 174).

8. In the light of what is stated above we must hold that when Clauses (6) and (7) of the will are read together Clause (6) confers only a life estate and that Clause (7) is valid and operative. No other question was urged before us, and it must follow that this appeal has to be dismissed. We do so. The appellant will pay the costs of the 1st and 2nd respondents (one set only).