

(1933) 08 MAD CK 0015
In the Madras High Court

Panchapakesa Iyer and Others

APPELLANT

Vs

K.M. Hussain Muhammad Rowther and Another

RESPONDENT

Date of Decision : 22-08-1933

Acts Referred:

Citation : AIR 1934 Mad 145 : 148 Ind. Cas. 297

Hon'ble Judges : Reilly, J;Burn, J

Bench : Division Bench

Judgement

Reilly, J.—One Kawana Nayana Noor Muhammad died in Penang on October 16, 1918. In February 1919, probate of a will executed by

Noor Muhammad two days before his death, was granted by the Supreme Court of the Straits Settlements at Penang to the defendants, who are

named in the will as executors. That probate was properly and explicitly confined to

the movable land immovable property of the deceased in any wise belonging and locally situate within the limits of the said Court.

2. The will provided for certain legacies and then went on

All the rest and residue of my property which I may die possessed of I direct shall be divided amongst all those persons entitled thereto in

accordance with the Muhammadan Law and in the shares according to such law. It is my desire that my estate shall follow the Muhammadan Law

and may be dealt with accordingly.

3. It appears that the bulk of Noor Muhammad's property was in Penang, but that a part of it consisted of immovable property in the Tanjore

District. In October (1919) Noor Muhammad's widow started proceedings in the Supreme Court at Penang for the administration of her

husband's estate claiming an account against the defendants. The Registrar of the Supreme Court made an inquiry into the assets and liabilities of the estate and after taking into account the immovable property in the Tanjore District as well as the property in Penang he arrived at the conclusion that the balance of assets was a certain amount and that of that amount the widow was entitled, as she claimed, to a third share. The learned Judge of the Supreme Court, who dealt with the matter, confirmed the Registrar's report on May 12, 1921 and made a decree that the defendants should pay to the widow a certain number of dollars. That decree the widow after obtaining part satisfaction assigned to the plaintiff in the present suit; and the plaintiff has brought his suit in the Court of the Subordinate Judge of Tanjore as one on a foreign judgment against the defendants for the balance due from them. The learned Subordinate Judge, who heard the suit, has dismissed it and against his dismissal the plaintiff appeals.

4. A number of objections to the suit were taken by the defendants before the learned Subordinate Judge in order to show that the judgment of the Supreme Court was not one on which a suit could be brought u/s 13 of the Code of Civil Procedure. The learned Subordinate Judge found that four of those objections were valid. He found that the judgment in the Supreme Court had been obtained by Noor Muhammad's widow by fraud. He was of opinion that her claim was founded on a breach of a law in force in British India. He was of opinion that the judgment was founded on an incorrect view of international law and, lastly, that it was founded on a refusal to recognise the law of British India.

5. On the first two of those points I am not able to agree with the learned Subordinate Judge. I see no reason for saying that the widow obtained her judgment in the Supreme Court by fraud. The fraud-alleged is not properly specified by the defendants in their pleadings in the present suit. But, so far as I can understand it their allegation in that connection, it amounts to nothing more than that the widow claimed more than that she was entitled to. Many plaintiffs do that but we cannot always stigmatise their conduct, as fraudulent for that reason alone. It has often been said that it would be unwise to attempt a Comprehensive definition of fraud, which appears in so many-guises; but it can safely be said that all fraud contains

at least an element of secrecy or deception. So far as I can see, in making her exaggerated claim Noor Muhammad's widow was not guilty either

of secrecy or deception. Nor can I agree with the learned Subordinate Judge's view that the widow's claim was founded upon a breach of a law

in force in British India. She made, as the learned Subordinate Judge has found in another part of his judgment a claim which could not be entirely

supported by the law of, British India; but that is a different thing from founding a claim on a breach of the law in British India, for instance a claim

in respect of a contract which is prohibited in British India.

6. There remain the two other points. The learned Subordinate Judge has said.

I am constrained to hold that it (the judgment.) appears on the face of the proceedings to be; founded on an, incorrect view of international law

(because it takes into account the immovable properties in British India.

7. That is a defect within Clause (c) of Section 13, of the Code of Civil Procedure. Probate of Noor Muhammad's will could not be granted, and

did not purport to be granted, by, the Supreme Court at Penang so as to be effective in regard to any immovable property of the testator outside

the Crown. Colony over which that Court has jurisdiction; nor would that Court have jurisdiction to bind, dispose of or distribute immovable

property of the testator in British India. The Registrar of the Supreme Courts in making his inquiry, the result of which was confirmed by the

Supreme Court, appears to have forgotten that rule. He has dealt in his calculations regarding Noor Muhammad's estate with the immovable

property in British India as if it were within the jurisdiction of the Supreme Court and were covered by the probate granted by the Supreme

Court. In doing that I think it is clear that he has adopted an incorrect view of international law in regard to the jurisdiction of a Court of one

country over immovable property. situate in another country--and for this purpose the Crown Colony of the Straits Settlements and British India

must be regarded as separate countries. That mistake is patent on the face--of the proceedings and in that respect there is in my opinion a clear

defect in the judgment of the Supreme Court, which makes it not one on which the plaintiff can sue in a Court in this country.

8. And there is the fourth point, namely, that the widow claimed a third share in her husband's and, as, is explicitly stated in the Registrar's report

which was confirmed by the Supreme, Court, that is what the judgment gave her. Now it is admitted that Noor Muhammad was a Sunni of the

Hanafi School; and it is not disputed that under the Muhammadan Law followed by that school his widow, who had a child was entitled only to

one-eighth of, his property as her share. That is the Muhammadan Law applied in British India to Muhammadans of the Hanafi School, and in that

sense it is the law of British India in relation to Noor Muhammad's immovable property in this country and the rights of succession to it. The

learned Registrar of the Supreme Court was aware, as the record shows, that the defendants disputed the widow's claim to a third share and

contended that her share was only one-eighth; but nevertheless in his report he said:

The testator by his will directed that distribution should follow Muhammadan Law. Plaintiff is his widow and is accordingly entitled to one-third

share in the estate.

9. It is not necessary for us to inquire what is the Muhammadan Law in force iii Penang in regard to the property of those of the Hanafi School.

We are not concerned with that. But I think it is clear that the learned Registrar of the Supreme Court in the inquiry before him refused to recognise

the law of British India applicable to Noor Muhammad's immovable property in this country, and for that reason too the judgment of the Supreme

Court in my opinion is not one on which the plaintiff can successfully sue in this country within the meaning of Section 13 of the Code of Civil

Procedure.

10. In my opinion, therefore, the dismissal of the suit was right and this appeal should be dismissed with costs.

Burn, J.

11. I agree.