

(1933) 08 MAD CK 0014
In the Madras High Court

Panchapikesa Iyer (died) and Others	APPELLANT
Vs	
K.N. Hussain Muhammad Rowther and Another	RESPONDENT

Date of Decision : 22-08-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Citation : (1934) 66 MLJ 209

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

Bench : Full Bench

Judgement

Reilly, J.—One Kawana Nayana Noor Mohamed died in Penang on the 16th October, 1918. In February, 1919, probate of a will,

executed by Noor Mohamed two days before his death, was granted by the Supreme Court of the Straits Settlements at Penang to the

Defendants, who were named in the will as executors. That probate was properly and explicitly confined to "the movable and immovable property

of the deceased in anywise belonging and locally situate within the limits of the said Court". 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 Mohammadan Law and in the shares according to such law. It is my desire that my estate shall follow the Mohammadan Law

and be dealt with accordingly". It appears that the bulk of Noor Mohamed's property was in Penang, but that a part of it consisted of immovable

property in the Tanjore District. In October, 1919, Noor Mohamed'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 the 12th May, 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.

2. 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 Mohamed'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.

3. 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 their allegation in that connection, it amounts to nothing more than that the widow claimed more than what 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 of deception. So far as I can see, in making her exaggerated claim Noor Mohamed's widow was not guilty either of

secrecy or of 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.

4. 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).

5. That is a defect within Clause (c) of S: 13 of the Code of Civil Procedure. Probate of Noor Mohamed'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 Court 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 Mohamed'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.

6. And there is the fourth point, namely, that the widow claimed a third share in her husband's property, 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 Mohamed was a

Sunni of the Hanafi School; and it is not disputed that under the Mohammadan 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 Mohammadan Law applied in British India to Mohammadans of the Hanafi

School, and in that sense it is the law of British India in relation to Noor Mohamed'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.

7. It is not necessary for us to inquire what is the Mohammadan Law in force in 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 Mohamed'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.

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

Burn, J.

9. I agree.