

(1971) 08 KL CK 0018
In the High Court Of Kerala
Case No : A.S. No. 10 of 1971

P.P. Sathya Bhama

APPELLANT

Vs

M.A. John and Another

RESPONDENT

Date of Decision : 02-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 56, Order 21 Rule 58, Order 21 Rule 61, Order 21 Rule 63, Order 21 Rule 83
Succession Act, 1925 — Section 142, 332, 333

Citation : AIR 1972 Ker 152

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J; P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon, P.C. Balakrishna Menon and V.P. Mohan Kumar, for the Appellant; T.L. Viswanatha Iyer and T.N. Subramonia Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Krishnamoorthy Iyer. J.

1. The appeal by the first defendant is against the preliminary decree passed in a suit for partition allowing the plaintiff to recover his one-half share in the plaint property after partition by metes and bounds.

2. The admitted facts are as follows. The plaint property belonged to S. P. Sadanandan who died on 10-7-1948. Ext. B-2 dated 26-3-1948 is the last will and testament executed by him. Therein he appointed his wife Mrs. Suseela Sadanandan. his eldest son E. D. Sadanandan and S. Paramasivan, registered accountant and auditor. Calicut, as executors.

3. In execution of a simple money decree in O. S. 6 of 1957 on the file of the Sub Court, Kozhikode obtained against J. G. Sadanandan, second son of the testator S. P. Sadanandan, his one-half share in the plaint and other properties which he got under Ext. B-2 was attached on 9-12-1961 and in pursuance to E.

A. 309 of 1961. It was proclaimed for sale on 9-10-1962. The sale was being adjourned from time to time at the instance of the judgment-debtor J. G. Sadanandan. On 12-8-1963 J. G. Sadanandan and E. D. Sadanandan, one of the executors in Ext. B-2 filed Ext. A-7 petition under Order XXI, Rule 83. Civil P. C. in the execution court for the issue of necessary certificate to enable them to sell the plaint property for Rs. 25,000/- to the first defendant. The offer received from the latter was also produced in Court which has been marked as Ext. A-8. The execution court allowed the petition and the case was adjourned to 9-10-63 (sic) for the execution of the sale deed. On that day an application for extension of time was made in the execution court by J. G. Sadanandan and E. D. Sadanandan. The execution court allowed a week's time and posted the case to 11-10-1963.

4. Two of the executors in Ext. B-2. Mrs. Suseela Sadanandan and E. D. Sadanandan filed O. P. 231 of 1963 on 5-2-1963 in this Court for obtaining probate of the will. The third executor S. Paramasivan filed a statement that he has relinquished his executorship. The petition was allowed by this Court by order dated 7-10-1963 and Ext. B-3 is the probate of Ext. B-2 issued to Mrs. Suseela Sadanandan and E. D. Sadanandan.

5. On 11-10-1963 the judgment-debtor and E. D. Sadanandan stated in the execution court that they were not pressing Ext. A-7 which was dismissed on 21-10-1963.

6. On 15-10-1963 Mrs. Suseela Sadanandan and E. D. Sadanandan, the executors in Ext. B-2, filed E. A. 1338 of 1963 in E. P. No. 309 of 1961 under Order 21, Rule 56. Civil P. C. in O. S. 6 of 1957 objecting to the attachment of the plaint and other properties on the ground that they belonged to them as executors and that J. G. Sadanandan had no interest in them. The execution court dismissed the claim on 21-10-1963 by Ext. B-10 order. Thereafter the one-half interest of J. G. Sadanandan in the plaint property was sold in court auction on 21-10-1963 and purchased by the plaintiff for Rs. 11,000/-. The sale was confirmed on 25-1-1964 and Ext. A-1 is the sale certificate. The plaintiff was given symbolical delivery of the property evidenced by Ext A-2 dated 23-3-1964.

7. The executors under the will. Mrs. Suseela Sadanandan and E. D. Sadanandan, assigned the plaint property by Ext. B-1 dated 2-12-1963 to the first defendant for Rs. 25,000/-. the price offered by her in Ext. A-8.

8. The first defendant resisted the claim of the plaintiff on the basis of Ext. B-1. The plea of the first defendant was overruled by the trial court and a preliminary decree for partition has been passed in favour of the plaintiff. The first defendant has filed the appeal against the preliminary judgment and decree of the court below.

9. The learned Judge found that the interest of J. G. Sadanandan over the plaint and other properties which he obtained under Ext. B-2 is attachable for the decree debt in O. S. 6 of 1957 and the plaintiff by virtue of the court auction has

acquired a valid right over half share of J. G. Sadanandan in the plaint property, that in view of Ext. B-10 the first defendant is concluded from claiming any right on the basis of Ext. B-1 over one-half share of the plaint property covered by the court auction, that Ext. A-7 evidences an assent by one of the executors in Ext. B-2 to vest the bequeathed properties to J. G. Sadanandan, that the plaintiff is competent to impeach Ext. B-1 to the extent of his interest in the plaint property and the first defendant is not a bona fide purchaser for value of the plaint property from the executors in Ext. B-2. All the findings were impeached before us by the learned counsel for the appellant.

10. Before examining the contentions raised for the appellant it is necessary to note the terms of Ext. B-2. The plaint property is A schedule Item 2 in Ext. B-2. On 23-6-1948. the date of Ext. B-2, the testator had besides his wife Mrs. Suseela Sadanandan two sons E. D. Sadanandan and J. G. Sadanandan. three daughters Sunanda Sadanandan, Sowmini Chiristable Sadanandan and Thangam Felicia Sadanandan. and a grand-son by a predeceased daughter. On the date of Ext. B-2 J. G. Sadanandan was a minor 17 years old. Among the daughters excepting Sunanda Sadanandan the other two were minors aged 14 and 12. The grandson was only 2 years old. There are 16 items in the A schedule in Ext. B-2. Items 1 to 10 are immovable properties while Items 11 to 16 are shares and securities valued at Rs. 1,60,000/-. B schedule items in Ext. B-2 are amounts due to the testator under deposit of mortgage deeds and Life Insurance Policies. The testator by Ext. B-2 appointed his wife Mrs. Suseela Sadanandan to be the guardian of his minor son J. G. Sadanandan, his two minor daughters and the minor grandson. Over A schedule Item 1 which is a residential bungalow Mrs. Suseela Sadanandan was given a right of residence during her lifetime and subject to the said right it has been bequeathed to his two sons E. D. Sadanandan and J. G. Sadanandan in equal shares for their lives and after them absolutely to their children. The properties comprised in A schedule Items 2 to 16 have been bequeathed absolutely to the two sons in equal shares. Ext. B-2 directed E. D. Sadanandan and J. G. Sadanandan to pay to the testator's three daughters annuity of Rs. 1700/- each. They were also directed to pay each of the daughters Rs. 50,000/- in the shape of Government securities within a period of three years and to pay the grandson Rs. 1,00,000/- in the shape of shares in the Standard Cotton and Silk Weaving Company Ltd., Calicut within one year of the will taking effect. Besides the above, the sons have been directed to pay allowances every month to the testator's sister and brother. A charge has been created over the plaint A schedule properties for all the amounts which the sons have been directed to pay in Ext. B-2. The properties in B schedule have been bequeathed to the three daughters of the testator for their lives in equal shares and to their children absolutely. The residue of the properties movable and immovable have been bequeathed to the two sons in equal shares. After these recitals comes the clause whereby the testator has appointed his wife Mrs. Suseela Sadanandan. elder son E. D. Sadanandan and Paramasivan. Registered Accountant and Auditor. Calicut as executors of the will.

11. Now we shall deal with the first contention whether on the date of attachment in O. S. 6 of 1957 J. G. Sadanandan had any attachable or saleable interest in the plaint and other properties bequeathed to him by Ext. B-2. Counsel for the appellant submitted that he did not have any such interest as it could accrue in favour of J. G. Sadanandan only after the legacies in Ext. B-2 are Paid off and the remainder payable to J. G. Sadanandan has been ascertained. He relied on the decisions in V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, and The Commissioner of Income Tax Vs. The Estate of Late Sri T.P. Ramaswami Pillai, , to support his submission. We are of the view that these decisions are not relevant to decide the question raised before us.

12. In V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax, a testator appointed some persons as executors who are also to be trustees and directions were given to them for the continuance of the business and payment of maintenance to his mother and to his widow. After providing for payment of certain specific legacies and the administration of some charities the testator left the residue to his three sons as life estate holders with a gift over to the grandsons. The executors obtained probate and continued the business of the testator and carried on the duties of the executors. They were assessed to Income Tax in respect of the estate as an association of persons overruling the plea that they should be assessed as trustees u/s 41 of the Indian Income Tax Act. 1922. In deciding the question their Lordships had to consider whether a residuary legatee acquires any interest in the property before the ascertainment of the residue, Satyanarayana Rao, J., observed:--

"In the residuary estate a life interest is given to the sons who are to take it as tenants-in-common with a remainder over to the grandsons by the sons. The sons under the will are entitled to certain pecuniary legacies and also a life interest in the residue. For the executors to become trustees of the residue the funds which they should hold in trust for the residuary legatees must be constituted and must emerge into existence. It is settled law that until the residuary estate is ascertained the residuary legatees acquire no interest in the property and no fund in their favour comes into existence

* * * *

After the residue is ascertained and the executor assents to the legacy either expressly or impliedly the disposition in the will becomes operative and the beneficiaries have the property vested in them. The assent of the executor before the residue is ascertained would not perfect the title of the residuary legatee as the residue until then does not come into existence".

Viswanatha Sastri, J. in concurring with the view of the other learned Judge observed:--

"The residuary legatee might be interested in the estate subject to the payment

of debts and legacies, but he did not become the proprietor or owner of the residue except when a residue had been ascertained which, on completion of administration, is made over to him by the executors. The question in each case is, has the administration reached a point at which you can infer that the administration has been completed, the residuary estate has been ascertained, the bequest of the residue has been assented to and the residuary estate therefore became vested in trustees, be they the executors themselves or strangers? In other words can it be said that the residuary estate had taken concrete shape and could and should have been handed over by the executors to the persons beneficially entitled but for the fact that the estate is settled in trust and vested in the executors as trustees?"

In *The Commissioner of Income Tax Vs. The Estate of Late Sri T.P. Ramaswami Pillai*, , Ramachandra Tyer. C. J., observed that "in the case of legacy of the residue, there should be an ascertainment of the residue before assent can be given so as to effectuate a vesting in the legatee".

13. The above observations can apply only to a residuary legatee. The properties in A schedule in Ext. B-2 have been bequeathed specifically only to testator's sons. It will be useful to extract the portion in Ext. B-2 dealing with A schedule Items 1 to 16:

"The immovable properties that I own consist of a residential bungalow Item 1 in Schedule A and other properties, besides. My wife Mrs. Suseela Sadanandan will have a right of residence in the said residential bungalow during her lifetime. Subject to her right to residence I bequeath the said residential bungalow to my two sons Ernest Devadas Sadanandan and James Godfred Sadanandan for their lives to be held in equal shares and after the lives of either or both of them their children will hold the same absolutely in their respective shares. I hereby bequeath my other immovable properties Item (ii) to Item (x) in schedule A to my sons absolutely to be held in equal shares. I hereby bequeath the shares and securities specified in Item (xi) to Item (xvi) in schedule A of a value of about Rs. 1,60,000/- absolutely to my two sons to be held in equal shares".

The above constitutes a specific legacy by the testator in favour of his two sons.

14. Section 142 of the Indian Succession Act defines "specific legacy" thus:

"Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific".

In this connection it may be useful to note the Explanation to Section 150 of the Indian Succession Act, which defines demonstrative legacy. The said section and the Explanation read thus:

"150. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be

made, the legacy is said to be demonstrative".

Explanation.-- The distinction between a specific legacy and a demonstrative legacy consists in this, that--

Where specified property is given to the legatee, the legacy is specific;

Where the legacy is directed to be paid out of specified property, it is demonstrative".

In *Robertson v. Broadbent*. (1883) 8 AC 812, their Lordships said a specific legacy is "something which a testator, identifying it by a sufficient description, and manifesting an intention that it should be enjoyed in the state and condition indicated by that description, separates in favour of a particular legatee, from the general mass of his personal estate". It is therefore clear that in respect of A schedule properties in Ext. B-2 there is a specific legacy in favour of E. D. Sadanandan and J. G. Sadanandan. It is thus not possible to contend that J. G. Sadanandan had no attachable or saleable interest in the plaint item to be proceeded against in execution of the decree in O. S. 6 of 1957.

15. The reliance on Section 332 of the Indian Succession Act will not also help the appellant to contend otherwise. The said provision reads:--

"The assent of the executor or administrator is necessary to complete a legatee's title to his legacy".

16. Under the above provision the assent of the executor or administrator is necessary only to complete a legatee's title to his legacy and not for the acquisition of any title to the same. The title of the legatee is traceable only to the will and the assent is intended only to perfect it and to complete it Even before the assent of the executor the legatee's right in a specific legacy will devolve on his personal representatives.

17. Section 333 of the Indian Succession Act provides that the assent of the executor or administrator will divest his interest as executor or administrator in the property and transfers the subject of the legacy to the legatee. There was considerable discussion at the bar as to the nature of the right of an executor in the properties left behind by a testator and the scope and ambit of the words "as such" in Section 211 of the Indian Succession Act. In view of Section 333 of the Indian Succession Act. it is clear that the assent of the executor is sufficient to divest his interest as executor in the specific bequest and to transfer the same to the legatee. After the assent it ceases to be the property of the testator and the executor is only a trustee for those who are beneficially interested. It is therefore clear from the above discussion that J. G. Sadanandan had sufficient interest in the plaint property to be attached and sold in execution of the decree, in O. S. 6 of 1957.

18. The next point raised by counsel for the appellant was that even if J. G. Sadanandan had an attachable and saleable interest in the plaint property, the

court sale can only be subject to the rights of the executors in Ext. B-2 to administer the estate of the testator. Had it not been for Ext. B-10 the position contended for by the appellant's counsel is correct. This therefore leads us on to a consideration of the legal effect of Ext. B-10. The decree-holder in execution of O. S. 6 of 1957 had attached on 19-12-1961 the half share of J. G. Sadanandan in the plaint schedule and other properties and in pursuance to E, P. 309 of 1961 the properties were proclaimed for sale. The sale was posted for the first time on 9-10-1962 and there were a number of adjournments of the same. Finally the sale was adjourned to 21-10-1963. On 15-10-1963 the executors filed E. A. 1433 of 1963 under Order 21. Rule 58, Civil P. C. objecting to the attachment of the properties proclaimed for sale. It is significant to note that the executors were issued Ext B-3 probate by this Court on 21-10-1963 and it was on that day that Ext. A-7 was dismissed by the execution court on the ground that it was not pressed. The claim petition E. A. 1433 of 1963 was dismissed by the execution court by Ext. B-10 order dated 21st October, 1963. The dismissal of the claim petition was for the reasons that it was unnecessarily and designedly delayed and that the properties belonged to J. G. Sadanandan. In order to know the exact contention raised by the executors in E. A. 1433 of 1963 we called upon the counsel appearing in the case to produce an attested copy of the same. Respondents' counsel has produced the claim petition along with C. M. P. 7741 of 1971. The appellant's counsel has no objection to admit this document in evidence. We therefore allow C. M. P. 7741 of 1971 and mark the petition as Ext. A-9.

19. We shall extract paragraphs 5 and 6 of Ext A-9 which are in the following terms:--

Para 5. "Thus the petitioners are the executors in whom the entire property of the deceased vests and who are charged with the duty of the carrying out the directions of the testator subject to the testamentary jurisdiction of the Honourable High Court which has granted the probate".

Para 6. "The petitioners learn that the properties described in the schedule below have been attached and brought to sale in pursuance of a decree obtained by the first plaintiff against the 2nd respondent who is only a legatee under the aforesaid will of late S. P. Sadanandan. As such, he has no alienable or transferable interest in any of the property of the deceased as no interest vests in him in presently in the properties described in the schedule below or any of the assets of the deceased all of which form the subject-matter of the various bequests and legacies under the will. Since the 2nd respondent has no present interest in the properties and the future interest if any by way of legacy under the will is only contingent upon the properties becoming available after the disbursement of the pecuniary legacies provided under the will, there is no attachable interest over the properties. The prayer for attachment and sale of the properties vested in the executors for debts if any of the legatees under the will is not legal or competent. There is no enforceable claim against the deceased or

the executors and there could be none such as the testator had no debts. The purported proceedings for attachment and sale of the properties of an interest which does not subsist, is illegal particularly as it will dislocate and disturb the administration of the Estate by the petitioners as the executors in pursuance of the probate granted by the Honourable High Court. The Estate has to be administered subject to the jurisdiction and control of the Honourable High Court under its testamentary jurisdiction". (The underlining is ours).

It is thus clear that the executors had two contentions in the claim petition. One was that J. G. Sadanandan had no attachable or saleable interest in the plaint and other properties which he got by Ext. B-2 before the completion of the administration. The second was that the attachment and court sale would affect the right of administration of the properties vested in the executors and therefore the properties cannot be attached. It is clear from Ext. B-10 that both these contentions were overruled.

20. The right of the executors to administer the estate of the testator has not been reserved in Ext. B-10. In these circumstances, the question is how far in the face of Ext. B-10 it is open to the first defendant to rely on Ext. B-1 to defeat the claims of the plaintiff. We cannot countenance the submission of the appellant that in view of the statement in Ext. B-10 that the decree-holder is prepared to take the risk if it ultimately transpires that the judgment-debtor has no saleable interest in the attached property Ext. B-10 cannot have any legal effect in these proceedings. It is admitted that no suit was instituted by the executors to get rid of Ext. B-10.

21. At this stage it is necessary to extract Order 21. Rules 61 and 63, Civil P. C. Rule 61 reads:--

"Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtors as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim". And Rule 63 reads:--

"Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive".

The legal effect of an order under Order 21, R, 63 has now been finally settled by the Supreme Court in Mangru Mahto and Others Vs. Shri Thakur Taraknathji Tarakeshwar Math and Others, , where their Lordships observed:--

"A claim proceeding under Rule 58 is not a suit or a proceeding analogous to a suit. An order in the claim proceeding does not operate as res iudicata. It is because of Rule 63 that the order becomes conclusive. The effect of Rule 63 is that unless a suit is brought as provided by the rule, the party against whom the

order in the claim proceeding is made or any person claiming through him cannot re-agitate in any other suit or proceeding against the other party or any person claiming through him the question whether the property was or was not liable to attachment and sale in execution of the decree out of which the claim proceeding arose, but the bar of Rule 63 extends no further".

That the first defendant as a person claiming through the executors will be concluded by Ext. B-10 cannot be doubted. In view of the observation in *Kandadai Narasimhachariar Vs. Raghava Padayachi*, which has been quoted with approval by the Supreme Court in the decision referred to that an order on a claim petition filed under Order 21, Rule 58 or a decree in a suit filed under Rule 63 does not extend beyond the execution of the decree which has given rise to those proceedings. Counsel for the appellant contended that Ext. B-10 cannot affect his client in this suit. We cannot agree as the question to be decided now is whether the interest of J. G. Sadanandan in the plaint property is liable to be sold in execution of the decree in O. S. 6 of 1957. Certainly it is. Counsel for the appellant contended that the question of title to the plaint property is foreign to an enquiry under Order 21, Rule 58 or in a suit instituted under Order 21, Rule 63. This is so. But Order 21, Rule 63 says that the person against whom an order under Rule 58 is passed may institute a suit to establish the right which he claims to the property in dispute. The right which the executors claimed in Ext. A-9 to administer the attached property was also not accepted. This is a claim against the right of the judgment-debtor in O. S. 6 of 1957. The executors should therefore have filed a suit to establish their right as executors to deal with the attached properties. So long as it was not done it is not open to them to contend against the validity of the court sale as regards the one-half interest of J. G. Sadanandan in the plaint property. In view of Ext. B-10 it is not possible to hold that the sale is only of an inchoate right of J. G. Sadanandan in the plaint property subject to the right of the executors to administer the same. If the executors had not intervened in the execution proceedings the sale could have been only subject to such right. But once they have intervened and got an adverse order the said order is a bar against them to contend that as against plaintiff they have got a right to deal with the plaint properties in their capacity as executors under Ext. B-2.

22. Assuming that Ext. B-10 is not a bar we have to observe that even then the first defendant cannot succeed. The effect of the affidavit in Ext. A-7 filed by E. D. Sadanandan and J. G. Sadanandan is to vest one-half share in the plaint property in J. G. Sadanandan. The properties attached and proclaimed for sale are stated to be the properties belonging to both of them. In Ext. A-7 they have asked for a certificate from the execution court to enable them to effect a private sale of the plaint property for Rs. 25,000/- for discharging the decree debt which is the separate debt of J. G. Sadanandan. In our opinion, the learned Judge rightly assumed that even prior to the date of Ext. A-7 there must have been an assent by the executors in favour of the legatees one of whom was one of the executors. Prior to the date of Ext. A-7, therefore, the executors have been

divested of their interest in the plaint property. The filing of the petition for probate in 1963. 15 years after the death of the testator and the circumstances under which it was filed will clearly show that it was an after-thought to thwart the execution proceedings and the decree-holder to realise the decree debt from the interest of J. G. Sadanandan in the plaint and other properties bequeathed to him under Ext. B-2. The sequence of dates will amply justify our inference. In pursuance to E. P. 309 of 1961 in O. S. 6 of 1957 the court sale was posted to 9-10-1962 and it was being adjourned from time to time. On 12th of August 1963 J. G. Sadanandan and E. D. Sadanandan filed Ext. A-7 petition under Order 21. Rule 83, Civil P. C. in the execution court for the issue of a certificate to the judgment-debtor and E. D. Sadanandan authorising to sell the plaint property for a sum of Rs. 25,000/- and deposit the necessary amount in court for the discharge of the decree. Ext. A-7 is supported by an affidavit filed both by E. D. Sadanandan and J. G. Sadanandan. Along with Ext. A-7. Ext. A-8 offer from the first defendant prospective purchaser agreeing to purchase the plaint property for Rs. 25,000/- was also produced in Court. The application was allowed by the execution court by the order dated 23-9-1963 and the case was adjourned to 9-10-1963 for the execution of the sale deed. Ext. A-6 is the petition dated 8-10-1963 for the execution of the sale deed. The learned Judge granted an extension of time by a week. At this stage the executors filed O. P. 231 of 1963 in this Court for getting probate of the will Ext. B-3 was issued on 21-10-1963. The claim petition was filed only on 15-10-1963 and it was dismissed On 21-10-1963 on which date the Court sale was held. It took fifteen years for the executors to file the petition for probate in this Court, The assent need not be by all the executors but by one of them. It need not express and it can even be implied from the circumstances of the case. We are therefore of the view that since on the date of Ext. A-7 at least there has been a vesting of the plaint property in favour of the two sons of the testator from the date of his death. It appears to us that obviously the executors wanted to arm themselves with Ext. B-3 to file the claim petition which ultimately was not successful.

23. The first defendant had made the offer for purchasing the property for Rs. 25,000/- by Ext. A-8 dated 12-8-1963 which was produced in O. S. 6 of 1957. This letter is addressed to E. D. Sadanandan. It has not been written to E. D. Sadanandan in his capacity as executor under the will. The plaint property and other properties attached in execution of the decree are referred to as the properties of E. D. Sadanandan and the letter requested E. D. Sadanandan. to sell the property after getting permission from the Court. The first defendant thus was aware of the circumstances which were in existence before she took Ext. B-1. In Ext. B-1 the necessity for the receipt of Rs. 25,000/- is stated to be for the vendors to pay the legacies in Ext, B-2. If one would remember at this stage the contents of Ext. B-2 it is clear that the sons alone are directed to pay the annuities and the legacies to the daughters and the grandson. There are no liabilities to be discharged under the will. It is not even suggested that even though Ext. B-2 does not disclose any liabilities there were liabilities of the

testator to be discharged. The circumstances under which Ext. B-2 was executed and the recitals therein amply show that it has been brought about to defeat the claims of the decree-holder in O. S. 6 of 1957.

24. Before parting with this case it is necessary for us to mention one aspect. On a perusal of Ext. B-2, though Mrs. Suseela Sadanandan. E. D. Sadanandan and Paramasivam have been named as executors, it is very doubtful whether by the terms of Ext. B-2 they have got any right to administer A schedule and B schedule properties therein, as the responsibilities to pay the annuities and the amounts bequeathed to the daughters and the grandson have been directed to be discharged only by the two sons. We do not want to pursue this matter as it was not argued before us.

We are, therefore, satisfied that the decision of the learned Judge is correct and has only to be confirmed. We do so and dismiss the appeal with costs.