

(1914) 04 MAD CK 0048
In the Madras High Court

Ratna Chettiar and Others

APPELLANT

Vs

Narayanaswami Chettiar and Others

RESPONDENT

Date of Decision : 03-04-1914

Acts Referred:

Transfer of Property Act, 1882 — Section 26

Citation : 24 Ind. Cas. 796

Hon'ble Judges : Seshagiri Aiyar, J;Ayling, J

Bench : Division Bench

Judgement

1. One Govinda Chetty executed a Will on the 20th December 1877 and died subsequently. It purports to be in favour of his widow and his nephew and son-in-law, Muthu Arunachella Chetty. The latter died in March 1878 : the 2nd defendant is his widow and the 3rd his widowed daughter. On the 13th December 1908, Sangalani Ammal, the widow of Govinda Chetty, executed a Will. She has died since. Plaintiffs are reversioners to the estate of Muthu Arunachella Chetty. They sue for a declaration that Sengalani was not competent to dispose of the plaintiff property by her Will, that Muthu Arunachella Chetty had a vested interest in it at the time of his death and that they are entitled to succeed to the estate after the lifetime of the 2nd and 3rd defendants. The District Judge held that Muthu Arunachella Chetty had no vested interest in the property covered by the Will, and that the discretionary relief of declaration should not be granted in this case, as the plaintiffs can succeed, if at all, only after the death of defendants Nos. 2 and 3. Plaintiffs have appealed. We are unable to--concur with the learned District Judge upon either of the points decided by him.

2. It has been held in all the Courts in India that a remote reversioner can sue for a declaration when the presumptive reversioner is either colluding with the alienee or is not interested in seeking to set aside the unlawful dealings of the widow in possession. Sengalani's Will is partly in favour of the 3rd defendant, and it is clear that neither the 2a : 1 defendant, her mother, nor the third defendant is interested in questioning the disposition made by the deceased.

Following *Chidambara Reddiar v. Nallammal* 5 Ind. Cas. 164 : 33 M. 410 : 7 M.L.T. 44, we hold that plaintiffs are entitled to bring this suit. Further as pointed out by the Judicial Committee of the Privy Council in *Isri Dat Koer v. Hansbutti Koerain* 10 C. 321 : 13 C.L.R. 418 : 10 I.A. 150, a pronouncement on the proper construction of Govinda Chetty's Will may have the effect of preventing further litigation. See also *Monmohan Ghose v. Equitable Coal Co. Ltd.* 24 Ind. Cas. 144 : 18. C.W.N. 596. And it is all the more desirable as the District Judge has given his decision upon the construction to be placed on the Will. We, therefore, hold that the suit is not liable to be dismissed on this ground.

3. The main question for decision is whether Muthu Arunachella Chetty had a vested interest in the property under the Will of Govinda Chetty. There are four principal clauses in the Will. (1) The preamble says that the Will is made in favour of his wife and nephew : (2) it next recites the fact that his nephew Las been living with the testator since birth and says : all my properties, should, after my death, be in the possession of my wife herself and she, herself should be heir to everything : and Muthu Arnuachella Chetty and my wife should live together amicably as of one family." (3) The third clause provides that if the two could not agree and live together amicably my wife should pay Rs. 4,000 (four thousand) and separate him and then my wife should enjoy all the remaining properties with absolute right." (4) Then comes the final provision which directs that if both of them should live together amicably, Muthu Arunachella Chetty himself should enjoy the properties which remain after the death of the said Serigalani Animal." Apart from any question of technicality, it is clear that the testator did intend to give some property to his nephew. In case of disagreement, he is to be cut off with Rs. 4,000 at the option of the widow. If there is no quarrel, he is to be the heir to all the properties remaining at the death of the widow. Mr. Ramachandrier's argument would lead to the conclusion that even though they lived together amicably it is open to Sengalani to deprive Muthn Arunacholla Chetty of all rights in the property by disposing of it during her life-time. This is manifestly against the intention of the testator. The learned Vakil lays stress upon the use of the word remaining as qualifying the property, and contends that the testator gave the widow absolute power to deal with it, as he did not apprehend that she would act ungenerously towards her own son-in-law. We were at first inclined to hold remaining was intended to give powers of absolute disposition to the widow. On further consideration, we have come to the conclusion that that expression only refers to the power of alienation for necessary and binding purposes, which a limited owner has under the Hindu Law. It is significant that in Clause 2 of the Will, the testator refers to the widow only as heir, whereas in Clause 3 he gives her absolute" powers of alienation after having paid off Rs. 4,000 to his nephew. Mr. Ramachandrier argues that the use of the words " as heir" indicates that the testator gave the widow all his property as full owner and quotes *Musammam Surajmani v. Rabi Nath Ojha* 30 A. 84 : 18 M.L.J. 7 : 12 C.W.N. 231 : 10 Bom.L.R. .59 : 6 A.L.J. 67 : Cri.L.J. 131 : 3 M.L.T. 144: 35 I.A. 17. in support of it. The Will in the Allahabad case provided that the

widows should remain in possession as owners with proprietary powers." The present Will does not contain similar words. On the other hand it was laid down in *Radha Prosad Mullick v. Ranimoni Dassi* 35 I. A. 118 : 12C.W.N. 729 : 10 Bom. L.K. 004 : 8 Cri.L.J. 48 : 5 A.L.J. 460 : 35 Ca. 896. that Hindu Wills should be construed relative to the notions of Hindus respecting the rights of donees under the Hindu Law : and in a case very similar to the present one it was held that the use of the word malik (owner)" did not confer an absolute estate on the widow : *Motilal Mithalal v. Advocate-General of Bombay* 11 Ind. Cas. 547 : 35 B. 279 : 13 Bom.L.R.471. The two classes of cases are not in conflict as is often supposed. Where the words of a disposition are clear and unambiguous, the sex of the donee will not be a disqualification for acquiring an unqualified estate. But where the words are consistent with the creation of an interest which the law ordinarily gives to females, then the rule of law is that the testator intended to conform to the principles of law by which the parties in the absence of a testamentary disposition are governed. Bearing these principles in mind, we must hold that the words "should be heir" in Clause 2 were not intended to confer an absolute estate on the widow, especially when the testator in Clause 3 does give absolute powers of disposition in certain contingencies. Clause 2 only gives the widow the rights which she is entitled to under the Hindu Law. Mr. Ramachandraier's next contention is that there are no words of gift in favour of Muthu Arunachella Chetty. It must be remembered that words of conveyance which are usually to be found in Wills made in England under legal advice are not to be expected in this country. This Will was made by a layman, and he begins by saying that he is making a Will in favour of his wife and nephew and concludes by constituting the latter heir to all the remaining properties on the death of the widow. We cannot agree that these two clauses read together do not confer rights of property on Muthu Arunachella Chettiar. The Will having been made in a Mofussil station, there are no statutory provisions governing its construction. We think we are justified in referring to the provisions relating to Wills made in Presidency Towns as embodying the principles of justice, equity and good, conscience. The provisions of the Transfer of Property Act do not in terms apply to certain clauses of leases, and yet Courts have been guided by the principles contained in the Act in deciding these cases. The definitions of vested and contingent interests contained in the Transfer of Property Act are the same as those of the Hindu Wills Act. We shall, therefore, refer to the Transfer of Property Act in discussing this question. Section 19 lays down that where on a transfer of property an interest therein is created to take effect on the happening of an event which must happen, such interest is vested. The event contemplated by the testator in the case before us is the death of his widow. It is then that the nephew is to become the owner of the property. The fact that he may be turned out by the payment of Rs. 4,000 does not deprive him of the right to succeed ultimately (vide the last clause of the explanation to Section 19) Mr. Ramachandrier contends that the provision in favour of the nephew is analogous to the power to appoint mentioned in *Surendranath Ghose v. Kala Chand Banerjee* 12 C.W.N : 668. and that as held by the learned Judges in that case, the nephew had only a

contingent interest. The report of that case does not give the provisions of the Will, and the learned Judges, after taking it as conceded that the Will gave only a contingent interest, proceeded to say that that interest cannot be attached in execution. That decision affords no guide for the determination of the question before, Rs. Even if the interest created was contingent at the outset it became a vested interest before the death of Muthu Arunachela Chetty. He had, not quarrelled and the widow had not sent him away by paying him Rs. 4,000 at the moment of his death, the happening of the contingency became impossible and he died possessed of a vested interest (vide the last clause of Section 21 and Section 26 of the Transfer of Property Act). The condition, if any, to the nephew being entitled to a vested interest was fulfilled by his having lived amicably with the widow till his death. For all these reasons, we hold that the plaintiffs are entitled to a declaration that the Will of Sangalani Ammal is not binding on the reversioners. We reverse the decree of the District Judge, but as it was necessary to come to Court in order that the testament may be construed properly, we direct that the costs of all parties here and in the Court below do come out of the estate.