
(1956) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Second Appeal No. 2207 of 1953 in A.S. No. 43 of 1953

Ratnammal

APPELLANT

Vs

Thilaiammal

RESPONDENT

Date of Decision : 10-12-1956

Acts Referred:

Succession Act, 1925 — Section 66

Citation : (1956) 12 AP CK 0002

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : B.V. Ramanarasu, for the Appellant; N. Subrahmanyam and R. Venugopala Reddy, for the Respondent

Judgement

Satyanarayana Raju, J.—This is a second appeal from the judgment of the Subordinate Judge's Court, Chittoor, which affirmed the decision of the District Munsif's Court, Sholinghur.

2. The facts which have given rise to this appeal are briefly these: One Kandaswami was a sapper in the Indian Army. The Plaintiff is the mother of the said Kandaswami while the Defendant is his widow. Kandaswami's whereabouts not having been known for more than 7 years, the Military Authorities intimated the parties that he must be presumed to have died. There is an amount of Rs. 3,050-3-0 belonging to the estate of Kandaswami in deposit with the Military Authorities. The Plaintiff contends that she and the Defendant are entitled to this amount in equal moieties by virtue of the nomination made by the deceased Kandaswami in the kindred roll maintained by the Military Authorities.

3. In O. P. No. 53 of 1949, on the file of the District Court, Chittoor, the Defendant, widow of the deceased Kandaswami applied for a succession certificate making her mother-in-law Plaintiff, herein a party Respondent. The Plaintiff contested the petition, but the District Court eventually passed an order granting the succession certificate to the Defendant alone. The Plaintiff averred that the grant of succession certificate to the Defendant did not confer any right:

on her for recovery of the money in deposit with the Military Authorities.

She therefore, brought the action for a declaration that she was entitled to a half share in the sum of Rs. 3,050-3-0 and for setting aside the order of the District Court dated 8-4-1950 in O. P. No. 53 of 1949. The Defendant contested the suit on various grounds. However, the District Munsif's Court, Sholinghur, relying upon the kindred roll and the fact that Kandaswami had nominated the Plaintiff, his mother, held that the Plaintiff was entitled to a moiety of his estate. On appeal the learned Subordinate Judge, concurred with the view taken by the District Munsif and dismissed the Defendant's appeal. Hence this second appeal.

4. Learned Counsel for the Appellant contended that the kindred roll relied upon by the lower courts could not be treated as a Will and he relied upon the decision of a Division Bench of the Bombay High Court in Bhagubai Tukaram Jogdunde Vs. Appaji Sitaram Charathe, in support of his contention. There it was held by the Division Bench consisting of Macleod, Chief Justice, and Crump, J., that

an entry regarding the disposal of a soldier's estate after his death in a kindred roll kept by Military authorities cannot be construed as a Will.

At page 555 (of ILR Bom.): (at P. 261 of AIR) of the report, Macleod Chief Justice, delivering the judgment on behalf of the Bench, observed as follows:

It is quite clear that the kindred roll, whatever other effect it might have, cannot be treated as a will. At the most it is evidence that Bala made a declaration before the Military Authorities that Bhagu was his heir or was the person to whom his estate should be made over on behalf of the heir. It is not very clear for what purpose the Kindred Roll is prepared except that the Military Authorities wish to know who are the next of kind in case the soldier dies. They want to know to whom the family pension should be paid, and to whom any of the effects of the deceased which may remain in their hands after his death should be handed over.

5. The learned Counsel for the Plaintiff-Respondent sought to distinguish this case by contending that there the learned Judges were dealing with a case where the claim was in respect of a landed property which the soldier had. It is true that the question which fell for consideration by the learned Judges was in regard, to the landed property of a soldier of which the Military Authorities did not have possession. It becomes, therefore, necessary to determine what exactly is the purpose for which a Kindred Roll is prepared in the case of a person serving in the army.

It is not clear for what purpose this roll is prepared except that the authorities concerned wish to know who are the next of kin in case the soldier dies. Neither the Indian Army Act of 1911 nor the recently enacted Army and Air Force (disposal of Private Property) Act (XL of 1950) contain any provisions which make it obligatory on the Military authorities to maintain a kind of roll. Indeed the learned Counsel for the Respondent has not been able to place before me

any statutory basis for the preparation of this document.

If this conclusion, viz., that there is no legal obligation on the part of the Military Authorities to prepare a kindred roll, is correct, it follows that it is a document Prepared by the Military Authorities for enabling them to communicate to the next-of-kin if the soldier happens to die. An entry in a kindred roll, therefore, prepared by the Military Authorities on the basis of the information furnished by the soldier cannot, in my opinion, be construed as a will.

6. Mr. Subrahmanyam, learned Counsel for "the Respondent, relying upon the provisions of " "Section "66 of the Indian Succession Act, contended that the entries made in the Kindred roll must be construed as a "privileged will. The provisions of Section 66, It may be noted, are not made applicable to Hindus. but even if they apply, what is the position?

The material portion of Section 66 of the Indian Succession Act may be set out.

66 (1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged will shall of governed by the following rules.

(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

7. If Kandaswami had been told by the authorities that it was for the purpose of the disposal of his property in the event of his death that the entries contained in the kindred roll were being made then it might be possible to argue that the entries signed by Kandaswami, though not attested, would constitute a "privileged will" within tire meaning of Section 66 of the Indian Succession Act. But of this there is no evidence and therefore, it is impossible to hold that the deceased Kandaswami made known his intentions through the medium of these entries for the disposal of his property after his death.

Nor is there any evidence in the case that apart from the entries contained in the kindred roll the deceased made any oral declaration of his intention for the disposal "of his property in the event of his death. On the above conclusions it follows that the Appellant is entitled to succeed. The decree passed by the lower courts declaring the Plaintiff"s right to a moiety of the amount in deposit; with the Military Authorities will, therefore, stand vacated and this appeal allowed with costs throughout. No leave.