

(1945) 03 MAD CK 0005
In the Madras High Court

S.A.S. Rathnammal

APPELLANT

Vs

M. Arulanandam Pillai and Others

RESPONDENT

Date of Decision : 21-03-1945

Acts Referred:

Succession Act, 1925 — Section 106

Citation : AIR 1946 Mad 12 : (1945) 58 LW 482 : (1945) 2 MLJ 194

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The matters argued in this appeal relate to the construction of a will executed by one vakil, B.S. Susai Pillai in favour of his

widow and foster-daughter, the latter being the plaintiff. One question is whether on the construction of the will, the testator meant to leave the

whole of his property, after the payment of certain legacies, to these two persons or whether he left them merely the property of which he was

possessed at the time of writing the will. The other question is whether a bequest simpliciter to these two persons would be a bequest to them

jointly or severally. The plaintiff's contention was that Susai Pillai bequeathed under this will the whole of his property and that it was a joint

bequest. Both these points were decided against the plaintiff in the lower" appellate Court.

2. The only passages with which we are concerned are found in paragraph 1 of the will, Ex. P-1, It runs:

Without inheriting any ancestral property, I earned all the properties belonging to me as my self-acquisitions. After my lifetime, my wife Thavamani

Ammal and my foster daughter Annal Suvakee Ratnarti (plaintiff) should get those properties and enjoy them.

3. The word "those" in the second sentence means that the testator is referring to the property mentioned in the first sentence. referring to the property mentioned in the sentence.

4. There was a schedule at the end of the will describing the property in the possession of the testator at the time when he drew up the will; but I

cannot attach much significance to it. Such schedules are not uncommonly attached to wills for purpose of facilitating the administration of the

estate by the executor My attention has not been drawn to any cases in which it has been said that the append-ing of a schedule at the end of a will

is an indication that the testator intended to dispose of that property only. So the matter must depend upon whether the first sentence without

inheriting any ancestral property, I earned all the properties belonging to me as my self-acquisition" means that the subject of the will is merely the

property that he had upto that time acquired. The object of that sentence seems to be to indicate that his property was not family property in which

any other member of his family had any claim. One might have thought that such an assertion was unnecessary in a bequest by a Christian; but one

has to remember that the ideas of Christians with regard to their property do not differ materially from those of their Hindu neighbours. I do not

think that this sentence means anything more than that the property of which he was disposing was his own absolute property. It is undoubtedly a

general rule of construction of wills that one should not so construe a will, unless the wording makes it necessary to do so as to lead to an intestacy

with regard to some part of the testator's property. If the plain wording of the will makes that interpretation inevitable, that is another matter but I

do not think that because a testator said that his property is self-acquired, that he thereby intended to limit the operation of his will to the property

acquired upto that date He must have known, especially as he was a vakil, that his will would speak from the date of his death; and sīc ½ If he had

intended to bequeath only the property that he had acquired upto that time, he would undoubtedly have made that clear.

5. In *In re Lloyd v. Hatchet* (1920) 2 Ch, 1, where there was a devise of "all my copyholds now held by me as a customary tenant of the said

manor, or otherwise," this clause was held not to mean that the testator was disposing only of the copyholds that he had at the time of drawing up

his will. It was pointed out that one should interpret the will so as to make it appear that the testator disposed of all the property in his hands, at the

time of his death, unless the words used make it clear that he had not intended to do so; and it was held that even the use of the words "now held

by me" was not sufficient to exclude an intention by the testator to dispose of the property in his possession at the time of his death. In *Alavandar*

Gramani v. Danakoti Amma (1926) 99 I.C. 775, a Bench of this Court considered a question somewhat similar to that which arises in this appeal

and the learned Judge delivering the judgment of the Court said:

The suit will contains no expression equivalent to the word "now," and although it is true that there are no express words indicating that the testator

intended to provide for subsequent acquisitions, it is equally true that the will contains nothing to show that he wished to exclude them from its

operation. The presumption against an intestacy in respect of those properties must, therefore, I think, prevail.

The learned advocate for the respondent has referred to three cases which he contends show that in the circumstances somewhat similar to these

Courts have held that the property bequeathed was that held by the testator at the time of the making of the will. In the first of these cases,

Baikanthanath v. Kashinath (1912) 16 I.C. 553 the will is not set out in the judgment; but one concludes from what is said about the will that it was

a very much more complicated document than that with which we are dealing here; and the learned Judges thought, from a reading of the will that

the terms of the will made it clear that the testator was disposing only of certain property then held by him. That decision affords little assistance in

constraining the terms of Ex. P-1. In the second case, *Mafatlal v. Kannialal* (1915) 17 B.L.R. 705 the property bequeathed was first described in

the will, and the testator then said that he bequeathed "the above mentioned moveable and Immovable property." That being so, there could of

course be no doubt that the testator was disposing of the property just immediately described. The case in which the facts approach to those of

this case most closely is *Piramu Ammal v. Serunatha Ammal* (1924) 86 I.C. 737 an appeal decided by Devadoss, J. That case can however be

distinguished from the present case in one important particular; and that is that the testator there said that he was bequeathing property worth Rs.

4,000. In the schedule attached to the will, the property was valued and the total amounted to Rs. 4,000. That strongly indicated that the testator

meant to dispose of the property set out in the schedule and nothing more. In the case now under consideration, we find no limiting expressions

which suggest that the testator meant to dispose of something less than what he had at the time of his death. The appeal must therefore be allowed

with regard to items 8 (a) and 8 (b), the property acquired by the testator after the execution of the will.

6. Because the lower appellate Court held that a bequest simpliciter to two persons was a bequest in severalty, he gave the plaintiff only a half

share in the properties which it held to have been bequeathed, whereas the plaintiff claimed that she was entitled to the whole of the property by

survivorship after her foster-mother's death.

7. Prior to the Privy Council decision in Jogeshwar Narain Deo v. Ramchandra Dutt (1896) 6 M.L.J. 75 : L.R. 23 IndAp 37 : ILR 23 Cal. 670

Courts in India were inclined to apply to all Indian wills the principle of English law that a bequest to two persons simpliciter was a bequest to them

jointly; but in this decision, their Lordships said:

The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided

family.

Despite this case, some Courts in India continued to apply the English principle even to Hindu wills, until in Mussammat Baku Rani v. Thakur

Rajendra Baksh Singh (1896) 6 M.L.J. 75 : L.R. 23 IndAp 37 : ILR 23 Cal. 670 their Lordships of the Privy Council put the matter beyond

doubt. They quoted a passage from Jogeshwar Narain Deo v. Ram Chandra Dutt (1896) 6 M.L.J. 75 : L.R. 23 IndAp 37 : ILR 23 Cal. 670 and

then said:

In their Lordships' opinion this is a clear ruling that the principle of joint tenancy is unknown to Hindu Law except in the case of the joint property

of an undivided Hindu family, governed by the Mitakshara law which under that law passes by survivorship.

It is argued by the learned advocate for the respondents that if that is so with regard to Hindus, who are acquainted with the principle of jointness,

then a fortiori the principle would apply to Christians. The position however

seems to be that since there is no special law in India for Christians, English law has generally been applied to them; and the Indian Succession Act, which governs their wills, follows very closely the principles of English law. One would therefore expect that as far as a bequest by a Christian is concerned, English law would be applied. In *Arakal Joseph Gabriel v. Domingo Inas* (1910) 20 M.L.J.1377 : ILR 34 Mad. 80, the construction of a gift deed by a Christian came up for consideration.

There, the donor made a gift of property to his three children. Two of them died. The question arose whether the survivor was to take the whole of the property or only a third. If the gift was a joint one, then the surviving third child would take the whole of the property. If, on the other hand, it was a gift in severalty, then the surviving child would take only one-third. The learned Judges thought that the illustration to Section 106 indicated that the Legislature intended to apply the English principle that if there was a gift or bequest simply to two persons, then it was a gift or bequest to them jointly. The illustration is:

The legacy is simply to A and B. A dies before the testator. B takes the legacy. B would of course only take the legacy if it was to A and B jointly. The word "jointly" was however not used, the legacy being simply to A and B.

The learned Judges said:

The rule of English law is to presume that the donees are joint tenants. This principle is adopted by the Indian legislature in the illustration to Section 93(now Section 106) of the Succession Act. The illustration no doubt deals with the case of a legacy. But the same principle is applicable to wills as to gifts unless there are special rules justifying a deviation. We must therefore regard the gift in this case as joint.

Later, they dealt with an objection that English law should not be applied in this country and said:

But we see no objection to the application of the English rule in a matter in which the Indian legislature has shown its leaning in its favour.

This case has never been dissented from by this Court or by any other Court. Mr. Sitarama Rao for the appellant relies on *Navroji Manockji Wadia v. Perozbai* I.L.R.(1897)23 Bom. 80 as a decision more directly to the point. There, the learned Judges were construing a will by a Parsi; but it would appear from the argument that they did not interpret correctly the

Privy Council decision in Jogeswar Marain Deo v. Ramchandra Dutt

(1896) 6 M.L.J. 75 : L.R. 23 IndAp 37 : ILR 23 Cal. 670 , which was clarified and explained in the later Privy Council decision in Mst. Baku

Rani v. Thakur Rajendra Baksh Singh (1933) 64 M.L.J. 555 : L.R. 60 LA. 95 : A.A. A.O. No. 66 of 1944 ILR 8 Luck. 121 . Adopting the

principle laid down in Arakal Joseph Gabriel Vs. Domingo Inas (died); his son Inas Guardian and Others, , I must hold that there was a bequest to

the plaintiff and her foster-mother jointly and that the plaintiff is therefore entitled to succeed to the property bequeathed under the will, in so far as

she has asked for it in her plaint.

8. The result is that there will be a decree for the plaintiff with regard to items 1 to 5, 8 (a) and 8 (b). The respondent will pay the costs of the

appellant in this Court. There will be no modification of the order of the lower appellate Court as to costs.