
(1949) 11 BOM CK 0021
In the Bombay High Court

Tiruchendur Sri Subramaniaswami Temple

APPELLANT

Vs

P. Ramaswami Pillai

RESPONDENT

Date of Decision : 17-11-1949

Acts Referred:

Succession Act, 1925 — Section 114

Citation : (1950) 52 BOMLR 472 : (1942) 55 LW 193

Hon'ble Judges : Simonds, J;Radcliffe, J;Lionel Leach, J;John Beaumont, J;Greene, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Lionel Leach, J.—The appellant is the idol of a Hindu temple at Kasba Tiruchendur in the Province of Madras. The appeal arises out of a suit brought in the name of the idol by the trustee of the temple in the Court of the Subordinate Judge of Tuticorin for a decree for possession of properties which had formed the estate of one Minakshisundaram Pillai, who died on May 21, 1919. The appellant claimed to be entitled to the estate under a will executed by the deceased. The Subordinate Judge construed the will against the appellant and his decision was upheld by the High Court of Madras. The appeal is from the decree of the High Court.

2. The will of the testator is dated May 20, 1919, and reads as follows :

I am now an in-patient in the hospital at Madura, having undergone an operation for carbuncle. As I have suspicions about my surviving, I have bequeathed to my son, Pieha Pillai, the right to all my properties and moneys, etc., and he shall solely enjoy them. If he or his son has no child, the said properties shall pass to Subramaniaswaroi at Tiruchendur.

On the next day the testator added this codicil:

This is written in continuation of the will executed yesterday, the 20th instant. With the money got from my moneys and pro-notes, etc, my elder brothers shall

purchase immovable properties such as lands, etc., in the name of my son.

3. The will and codicil were registered.

4. The testator was a member of a joint Hindu family which became divided in 1880, He entered Government service and rose to the rank of Deputy Collector. He died on May 21, 1919, the day on which he executed the codicil. His son Picha Pillai then entered into possession of the estate and enjoyed it until his death. He died on December 10, 1927, without issue. Thereupon his reversioners took possession of the properties.

5. On November 10, 1932, the appellant instituted the suit out of which the appeal arises. There were 23 defendants. Defendants Nos. 1 to 22 were sued as being in possession of different parts of the estate. The 23rd defendant was alleged to be an alienee of one of the other defendants in respect of a part of the estate. The appellant claimed that on the death of Picha Pillai he became entitled to the entire estate. During the pendency of the suit the appellant entered into written agreements of compromise with defendants Nos. 1, 3, 4, 5, 6, 7, 8, 10 and 11. He settled with the 13th defendant out of Court and abandoned his claim for relief against defendants Nos. 17 to 22, on liberty being given to him to file fresh suits against them.

6. The remaining defendants contested the suit and on the issues framed by him the Subordinate Judge held that the will and codicil were "true and valid"; that Picha Pillai took an absolute estate, notwithstanding the direction that if he or his son had no child the properties should pass to the temple, and that the bequest to the temple was bad as contravening the rule against perpetuities to be found in Section 5 of Madras Act No. 1 of 1914 (re-enacted as Section 114 of the Indian Succession Act, 1925). In accordance with these findings he dismissed the suit against the contesting defendants and also against the 18th defendant and defendants Nos. 17 to 22. As against defendants Nos. 1, 3, 4, 5, 6, 7, 8, 10 and 11 he passed a decree in the terms of the compromise agreements which had been filed in Court; but he did not include therein a direction for partition. The agreements of compromise represented 20/27 shares in the estate.

7. In their appeal to the High Court the appellants joined as respondents only-defendants Nos. 2, 9, 12, 14, 15 and 23.

8. The learned Judges who heard the appeal (Pandurang and Abdur Rahman JJ.) agreed with the trial Court that the bequest to the son was unconditional and therefore conferred upon him an absolute estate. In the circumstances it was not necessary for them to decide whether the direction that the properties should pass to the temple in the event of Picha Pillai dying childless would have been valid had the gift to him not been unconditional. It was urged that the Subordinate Judge had erred in not directing partition of the 20/27 shares. The High Court refused to interfere on the grounds that the appellant had deliberately refrained from making the defendants who had entered into agreements of compromise parties to the appeal and that a belated oral application to add them

after the defect had been pointed out was not deserving of serious attention.

9. For the appellants it is said that the Courts in India had erred in their interpretation of the will and in not granting a decree for partition in respect of the shares acquired under the agreements of compromise.

10. The words "I have bequeathed to my son Picha Pillai the right to all my properties and moneys, etc., and he shall solely enjoy them" are free from ambiguity, and if they stood alone, could only be read as conferring on him an absolute estate. For the appellant it is argued that the words which follow, "If he or his son has no child, the said properties shall pass to Subramaniaswami at Tiru-chendur" are a qualification, and if the will is read as whole, they have the effect of creating a devise in favour of the deity of the temple in the event of Picha Pillai dying childless. Their Lordships are of the opinion that the additional words do not have this effect.

11. Section 95 of the Indian Succession Act says that where property is bequeathed to a person he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him. It follows from what has already been said that their Lordships consider that a restricted interest was not intended here. They agree with the opinion of the High Court that the testator, as an afterthought, wanted to determine the devolution of the property in case his son should die without issue, but not in any way to limit either the character of the estate that was given by the earlier bequest in favour of the son, or to make it conditional and liable to be divested at his death without issue. The testator had only one son and it was natural that he should desire that his estate should devolve upon him unconditionally.

12. The argument that the High Court erred in refusing to give a decree for partition in respect of the properties comprised in the agreements of compromise must also be rejected. The learned Judges have given adequate reasons for their refusal.

13. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The respondents have not appeared before their Lordships' Board, but the appellant must pay such costs as respondents Nos. 1, 4 and 5 have incurred in the appeal.