

(1944) 01 MAD CK 0013
In the Madras High Court

T.S. Rajam and Another

APPELLANT

Vs

Pankajam Ammal and Another

RESPONDENT

Date of Decision : 19-01-1944

Acts Referred:

Succession Act, 1925 — Section 141

Citation : AIR 1944 Mad 335 : (1944) ILR (Mad) 821 : (1944) 57 LW 194

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises a question of the interpretation of Section 141, Succession Act. Appellant I and his brother, who is not a

party, were executors under the will of their uncle Rama Iyengar, who died on 14th April 1937. The will gives a substantial bequest of land to

appellant 1, describing him as ""my dearest nephew."" The appointment of the two nephews as executors is in a separate clause of the will. The

testator died in Madras. The will was in deposit with an advocate of Madura who is related to the parties. It was in a sealed envelope which was

endorsed with a direction in the case of the death of the testator to deliver the document to Mr. T. S. Rajam, that is, appellant I, and Mr. T. S.

Santanam or to either or survivor. It does not appear that any one knew of the precise contents of the will, though appellant 1 claims that he knew

that he was an executor and he suggests that the widow was also aware of this fact. The funeral was performed by the son-in-law of the testator,

though appellant I alleges that he made a payment of Rs. 50 on the day of the death towards the expenses. The will was got from Madura by

appellant 1 and read by P.W. 3 on 26th April 1937 in the presence of the relatives. The provisions of the will contemplated a prolonged

administration, for the will would not eventually work itself out until certain minor children attained the age of 25.

2. There is some conflict regarding the events after the reading of the will. The evidence of Rao Bahadur K. V. Sesha Aiyengar, who is a maternal

uncle of appellant I and a prominent advocate of this Court, indicates that there was some dissatisfaction on the part of the widow with the

provisions of the will and that very shortly afterwards appellant 1 complained to the witness that he had met with difficulties and obstruction when

he attempted to take an inventory of the assets. We see no reason to doubt the truth of Mr. Sesha Ayyangar's evidence and it seems to us unlikely

that at that time appellant I would have made such a report unless something of the kind had happened. We may take it that on the 27th, the day

after the reading of the will, there was as appellant I states, an attempt to take an inventory, which was abandoned on objection from the widow.

We have it in the evidence of appellant I himself that for three or four days thereafter he was considering what action he should take and then after

considering all the circumstances he decided that he would renounce the executorship and allow letters of administration to be taken out. We also

have it from the evidence of Mr. Sesha Aiyengar that when appellant I consulted him, nothing was said about the effect of Section 141, Succession

Act, and that he himself was unacquainted with that section. We see no reason to disbelieve this evidence either. On 5th June 1937 a formal letter

of renunciation was drafted by Mr. Sesha Ayyangar and it runs in the usual form except that it contains the words "" we do not desire to be

executors in the circumstances that have happened since the reading of the will."" This phrase, seems to refer to the trouble between appellant I and

the widow, though it may also have reference to the fact that there was a substantial suit filed by a Bombay creditor of the estate, which suit was

compromised just before the signing of the letter of renunciation. We think it probable that appellant I renounced the executorship in ignorance of

the provision of law which threatened his legacy and with a desire to avoid family unpleasantness and possibly also with a desire to avoid the

prolonged work in connexion with the estate, he being an active business man. On these facts the question is whether having regard to Section

141, Succession Act, appellant 1 has forfeited his legacy. Section 141 runs as follows:

If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy, unless he proves the will or otherwise

manifests an intention to act as executor,

and the illustration relates to the ease of an executor who carries out the provisions of the will until the time when he dies a few days after the death

of the testator in which circumstances he is held to have manifested an intention to act as executor. For the appellants Mr. T. R. Venkatarama

Sastri has argued that Section 141 must be read in the light of English decisions on the similar, but not identical, rule observed in the English Courts

and that we should read into this section some proviso to the effect that the section shall operate if no contrary intention is expressed in the will,

which would bring it into line with the English practice. We find ourselves unable to add such a proviso to this section however desirable it might be

to qualify the section by words of that kind. The words of the section are very clear. We note that it says ""bequeathed to a person who is named

an executor"" not ""bequeathed to an executor."" It is therefore impossible to contend that the prohibition applies only to cases in which the bequest is

to an executor as such. It clearly extends to any bequest, whatever be the reason for which it is made, provided that the legatee is named an

executor. We are therefore of opinion that nothing in the terms of this will indicating that the testator made this bequest to appellant I not because

he was an executor, but because he was a much loved nephew, can affect the application of the section.

3. The further question is whether in the circumstances recited above it can be said that appellant 1 has otherwise manifested an intention to act as

an executor. There may well be cases in which an executor has clearly shown an intention to act as such but has been prevented by some

happening beyond his control from proving the will. Such cases would clearly fall within the meaning of the last words of this section. But all that

we have in the present case is evidence that the executor, on the day after the will was read, went to the house of the deceased and announced his

intention of taking an inventory and, as soon as objection was raised, he went away and after considering the matter for three or four days, he

decided that he would have nothing more to do with the executorship in order to avoid unpleasantness to the family and possible trouble to himself.

Thereafter a formal renunciation was made. We find it impossible to hold that such an inchoate act, followed practically as part of the same transaction by renunciation of the executorship can be deemed to be a manifestation of an intention to act as an executor. In the result therefore the appeal is dismissed with costs.