
(1940) 09 MAD CK 0052
In the Madras High Court

T.S. Rajan

APPELLANT

Vs

Mrs. Pankajammal and Another

RESPONDENT

Date of Decision : 13-09-1940

Acts Referred:

Citation : AIR 1941 Mad 194 : (1941) ILR (Mad) 226 : (1940) 52 LW 881 : (1941) 1 MLJ 186

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal arises out of an Order passed by Gentle, J. on an originating summons taken out by the respondents under the provisions of Order 45 of the Rules of the Original Side of this Court. The respondents are the widow and daughter respectively of one V. Rama Ayyangar, who died on the 14th April, 1937, leaving a will dated the 25th April 1936. By his will the testator appointed the appellant and his brother, who are his nephews, to be his executors. To the appellant he left his ancestral properties situate in the village of Tirukurangudi in the Tinnevely District. The executors did not prove the will, although it has been said in these proceedings that they acted as the executors of the will for a period. It is alleged by the appellant that there was friction between the executors and the widow and the daughter as the result of which it was impossible for the executors to carry on with the administration of the estate. The appellant says that in consequence of this friction the respondents themselves applied for letters of administration with a copy of the will annexed and on the advice of friends the executors decided not to oppose the grant. On the 25th June, 1937, while the respondents' application for letters was pending, the executors signed a statement in the following terms:

Now, we, the said T. S. Rajan and T. S. Santhanam, do hereby declare that we have not intermeddled in the property and credits of the said deceased, and will not hereafter intermeddle therein and we do hereby renounce all our right and title to the probate and execution of the said will as we do not desire to be

executors in the circumstances that have happened since the reading of the will. The will is filed herewith.

2. It is the appellant's case that in signing this statement he and his brother did so in order to preserve amity within the family. They were reluctant to renounce their executorships, but they did so as the result of advice that it would facilitate the administration of the estate, though their action was not intended to affect the appellant's legacy.

3. Section 141 of the Indian Succession Act says that if a legacy is bequeathed to a person who is named as executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor. As the result of the renunciation embodied in the statement of the 5th June, 1937 the respondents contended that the appellant has forfeited the legacy of the testator's ancestral properties, and with a view to obtaining the directions of the Court the respondents took out this originating summons. Their right to do so was challenged by the appellant. He raised four grounds of objection, namely : (1) As the legacy comprised lands situate outside the limits of the Madras City the proceedings constituted a suit for land outside the jurisdiction of the Court and therefore the proceedings could not be maintained in this Court; (2) The appellant was not a resident of Madras and therefore an originating summons could not be taken so far as he was concerned; (3) the appellant had manifested an intention to act as executor and having done so his right to the legacy had been established; and (4) the questions in issue could not be decided with finality in summary proceedings and therefore the respondents should be relegated to a suit. The learned Judge decided all these contentions against the appellant.

4. In deciding the first contention, namely, that these proceedings comprised in effect a suit for land, the learned Judge did not consider the decided cases on the question, as they were not quoted to him. There are two decisions of the Calcutta High Court, *Provas Chandra Sinha v. Ashutosh Mukherjee* I.L.R.(1928) Cal. 979, *Sendayal Ramjeedoss v. Official Trustee of Bengal* I.L.R.(1930)Cal. 768 which support the appellant's contention that this is in reality a suit for land, and there is another decision of the same High Court, *Vedubala Debee v. The Official Trustee of Bengal* I.L.R.(1935)Cal. 1062, to the opposite effect.

5. Proceedings pursuant to the issue of a summons under Order 45 constitute a suit. There is a plaint and a written statement. R. 5 of the Order says that the plaint when accepted shall be filed and numbered as an ordinary suit and entered in the register of suits, but after the serial number the letter "O.S.", shall be placed to distinguish it from plaints filed in ordinary-suits. Clause 12 of the Letters Patent only gives the Court jurisdiction in the case of suits "for land" if the property is situated within the jurisdiction of the Court. There has been much controversy in the Courts in India as to what is meant by the words "Suits for land". It is not necessary to refer in detail to the controversy, but it is manifest that here the question whether the present proceedings do constitute a suit for

land within the meaning of the Letters Patent involves a substantial question of law.

6. We consider that the appellant's contention that this matter should not be decided in a summary procedure should prevail. Apart from the important question whether this is a suit for land the Court will have to go closely into the facts in order to decide whether the renunciation signed by the appellant on the 5th June, 1937 deprives him of the legacy. It is not sufficient for the Court to say that the statement signed by the appellant amounts to a renunciation. The appellant must be given an opportunity of calling evidence with a view to proving what transpired before he signed the document, and, when all the surrounding circumstances have been taken into consideration it will be for the Court to decide upon the effect of the document.

7. There is a further factor. The present proceedings will not decide the matter finally. It is admitted that the appellant is in possession of the ancestral properties of the testator, and the Court cannot in these proceedings give the respondents possession should the case be decided in their favour. In *Lewis v. Green* (1905) 2 Ch. D. 340, Warrington, J. had to deal with similar proceedings under Order 54-A, Rule 1 of the English Rules, which says that a person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Warrington, J. pointed out that this rule is only intended to enable the Court to decide a question of construction where the decision, whichever way it may go, will , settle the litigation between the parties. It is certainly doubtful whether the present proceedings will settle the litigation between the parties. Moreover, Order 45, Rule 9 of the Original Side Rules states that the Judge hearing an originating summons may, if it appears to him that the matters in respect of which relief is sought cannot be disposed of in a summary manner, refuse to pass an order on the summons and refer the parties to a suit in the ordinary Courts. We consider that that is what the learned Judge should have done in this case. We are firmly of the opinion that the questions here are of such a nature that they cannot be disposed of in summary proceedings.

8. The appeal will be allowed with the summons dismissed, the respondents being relegated to a regular suit. The costs of these proceedings will be made costs in the suit if one is filed. In order that there shall be no misunderstanding, we wish to emphasise that our judgment is intended to leave open all questions which can properly be raised in a suit. The case is an important one and there will be a certificate for two Counsel.