

D.S. Sriramiah Setty Vs Smt. D. Kanthamma

Court: Mysore High Court

Date of Decision: Sept. 25, 1970

Acts Referred: Hindu Succession Act, 1956 " Section 15, 16
Succession Act, 1925 " Section 276, 284, 299

Citation: AIR 1971 Kar 148 : (1970) 2 MysLJ 516

Hon'ble Judges: D.M. Chandrashekhar, J

Bench: Single Bench

Advocate: G.V. Ramaiah, for the Appellant; D. Satyanarayana Setty and B.T. Shankar Shetty, for the Respondent

Final Decision: Dismissed

Judgement

D.M. Chandrashekhar, J.

This appeal u/s 299 of the Indian Succession Act, 1925, (hereinafter called the Act) arises out of proceedings

for grant of letters of administration with the will annexed.

2. The appellant herein filed an application u/s 276 of the Act, for grant of letters of administration with the Will annexed, to the estate of one

Rangamma who is stated to have died on 26-12-1967 in Siddlagatta town. He claimed to be the sole legatee under the Will alleged to have been

executed by Rangamma on 13-3-1966.

3. The respondent herein lodged a caveat u/s 284 of the Act, together with an affidavit in which she explained her relationship with the testatrix,

Rangamma.

4. The appellant made an application purporting to be under Order 5, Rule 6 read with Sections 141 and 151 Civil P. C., calling upon the

caveatrix to disclose specifically the nature of the interest she claims in the estate of the testatrix, Rangamma, so that he (the appellant) might file his

objections to the caveat. The caveatrix filed her objections stating that she had not been served with a copy of the application made by the

appellant u/s 276, that the nature of her interest in, and title to the estate of the testatrix could be stated only after seeing the copy of that

application, and that the application calling for particulars was premature.

5. After hearing arguments, the learned District Judge at Kolar, ordered that the caveatrix be made the respondent in the case.

6. Feeling aggrieved by the order of the learned District Judge, the petitioner before the learned District Judge, has come up in this appeal.

7. It is common ground that testatrix's deceased husband, Dontu Venkataswami Shetty, and the caveatrix's deceased husband, Dontu Adappa,

were brothers, that Adappa pre-deceased Venkataswami Shetty, and that the latter died in about the year 1963.

8. The appellant claims to be Dontu Venkataswami Shetty's uncle's son. According to him (the appellant), there are no next of kin of the testatrix the

property left by her was her stridhan property and the immovable property left by her was inherited from her husband.

9. According to the caveatrix, Dontu Venkataswami Shetty and Dontu Adappa were members of a Hindu undivided family, of which the former

was the manager, after the death of Adappa, Venkataswami Shetty continued to be the manager of the joint family till his death and after his

death the testatrix and the caveatrix were jointly in possession and enjoyment of all the properties belonging to that joint family.

10. Mr G. V. Ramaiah, learned counsel for the appellant, contended that the caveat was not maintainable as the caveatrix did not disclose the

nature of her interest in the estate of the testator. It was also contended by Mr, Ramaiah that the caveatrix had no locus standi to maintain the

caveat as she has claimed the property sought to be disposed of by the Will as a member of a Hindu joint family and that such a claim is foreign to

the scope of the proceedings for grant of probate or letters of administration.

11. Mr. Ramaiah relied on several decisions in support of his contention that a caveat cannot be sustained on the mere ground that the property

sought to be disposed of by the Will, is a joint family property. It is sufficient to refer to the following decisions.

12. In *Ochavaram Nanabhai v. Dolatram Jamietram* ILR (1904) 28 Bom 644, the grant of letters of administration was opposed on the ground

that the property dealt with by the testator, was the joint family property which could not have been disposed of by his will. The decision of the trial

Judge. Russel, J., dismissing the caveat holding that the caveator had no interest, was affirmed in appeal by a Bench of the Bombay High Court.

13. Following the above decision, Kania, J., (as he then was) observed thus -- in *Bai Parvatibai Vs. Raghunath Lakshman*,

In my opinion, a testamentary Court dealing with the question of issuing a grant of probate is concerned to see whether the will is duly executed as

required by law by a testator of sound and disposing state of mind. In case of grant of letters of administration, the Court has to see that the person

properly entitled to represent the estate of the deceased according to the Succession Act has come to Court, and is given the grant. It is no part of

the duty of the testamentary Judge to consider the question of title to the property. Section 211, Succession Act expressly provides that the issue

of probate or letters of administration does not vest in the executor or administrator, as the case may be the property which is claimed to belong to

a joint family of which the deceased was a member. In my opinion, a caveat cannot be sustained on the mere ground that the property which is

attempted to be disposed of by the deceased by the will or in respect of which letters of administration are asked for is joint family estate

14. The same view has been taken by the Madras High Court in a number of decisions. In *M. K. Sowbhagiammal v. Komalangi* AIR 1928 Mad

803, Venkata Subba Rao, J., said at page 805:

The Court of Probate does not profess to decide the disputed title to every item of property mentioned in the will.

15. His Lordship added that a person disputing the right of a testator to deal with the property as his own cannot be properly regarded as having

interest in the estate of the deceased. His Lordship enunciated the following test to determine whether the caveator has necessary interest: Does the

grant displace any right to which the caveator would otherwise be entitled? If so, he has such an interest: if not he has not.

16. Adopting the above test, his Lordship said: "An heir on intestacy has an interest in impeaching the will; for, but for the will, he would succeed to

the property.

His Lordship added: "A reversionary heir under the Hindu Law has such an interest; for, normally a widow has only a limited estate and the

reversioner is interested in impeaching a will, which professes to enlarge that interest, or, again, which purports to confer upon her a right to make

an adoption." His Lordship summed up by saying that in every case it must be shown that the caveator, but for the will, would be entitled to a right

of which that will deprives him.

17. In *Ramyad Mahton Vs. Ram Bhaju Mahton*, a Bench of the Patna High Court held that where an objector to the petition for grant of letters of

administration claims that he was joint in the property which the testator has left by will, he has no locus standi to object to the granting of letters of

administration.

18. However, Mr. D. Satyanarayana Shetty, learned counsel for the respondent, contended that in order to enable a person to oppose the grant of

probate or letters of administration, it is not necessary that such objector should claim through the testator. Mr. Satyanarayana Shetty sought to

derive support for his contention from the following observations of Devadoss, J., who spoke for the Bench in *Jammi Hanumantha Rao Vs. Aratla*

Latchamma,

If a person is likely to suffer by the grant of the probate of a forged will or an invalid will, he has sufficient interest to enter a caveat".

19. In that case, the caveatrix was the widow of the brother of the testatrix's husband and claimed maintenance from the estate which was sought

to be disposed of by the Will. The above observations in Hanumantha Rao's case AIR 1926 Mad 1183 were considered in Soubhagiammal's

case AIR 1928 Mad 803 and Venkata Subba Rao, J., said that the learned Judges who decided Jammi Hanumantha Rao Vs. Aratla Latchamma,

could not have intended by their dicta to cast a doubt on a long-settled practice sanctioned in a series of judgments of great authority.

20. In Rangamma v. C. Rame Reddy (1965) 2 Mys LJ 105 the caveator contended, inter alia, that the property disposed of by the will passed by

survivorship to the testator's second wife's son. This court held that in an application for grant of letters of administration, the question whether the

testamentary dispositions made in the will in respect of which letters of administration were sought, were not within the competence of the testator,

does not call for adjudication and that the only question which arises for decision in an application for grant of letters of administration is whether

the will propounded was the will made by the testator while he was of a sound disposing state of mind.

20-A. In the light of the aforesaid (decisions, it must be taken as well-settled that a person who claims the property by a paramount title or claims

adversely to the testator or disputes the testator's right to deal with the property sought to be disposed of by the will, has no locus standi to enter a

caveat.

21. Alternatively, it was contended by Mr. Satyanarayana Shetty that the caveatrix was also an intestate heir of deceased Rangamma and hence

she would satisfy the test laid down by Venkata Subba Rao, J. in Soubhagiammal's case AIR 1928 Mad 803 namely, that the grant of letters of

administration would displace the right to which she would Otherwise be entitled.

22. Elaborating his contention that the caveatrix is an intestate heir of Rangamma, the testatrix, Mr. Satyanarayana Shetty referred to Section 15 of

the Hindu Succession Act, 1956. Sub-section (1) of that Section provides, inter alia, that in the absence of sons and daughters (including the

children of predeceased son or daughter) and the husband, the property, of a female Hindu dying intestate shall devolve on the heirs of her

husband according to the rules set out in Section 16. In the Schedule to the Hindu Succession Act. Entry VI of Class II reads "'Father's widow;

brother's widow.

23. Mr. Satyanarayana Shetty submitted that as Rangamma had no issue and as her husband had predeceased her and had no heirs coming under

any of the Entries I to V of Class II of the Schedule to the Hindu Succession Act, the caveatrix who is Rangamma's husband's brother's widow

would be the nearest intestate heir of Rangamma, and that as the caveatrix is an intestate heir, she has sufficient interest to oppose the grant of

letters of administration with the will annexed.

24. As the caveatrix claims to be an intestate heir of the testatrix, Rangamma, she must be held to have sufficient interest to maintain the caveat.

Hence the decision of the learned District Judge that the caveatrix should be made the respondent in the case, should be upheld.

25. In the result, this appeal fails and is dismissed. But in the circumstances of the case, there will be no order as to costs in this appeal.