
(1926) 04 MAD CK 0033

Madras High Court

Case No: None

Arunchala Udayar

APPELLANT

Vs

Pachayammal and
Others

RESPONDENT

Date of Decision: April 6, 1926

Citation: AIR 1927 Mad 292 : (1927) 25 LW 214

Hon'ble Judges: Devadoss, J

Bench: Division Bench

Judgement

Devadoss, J.

The main question in this appeal is as to the construction of a clause in a settlement deed, Ex. A, dated 6th August 1914. The literal translation of the clause is:

My second daughter"s son Swaminathan on his attaining majority shall enjoy with absolute rights enabling him to make gifts, sell, etc., the house, house-site etc., nanja, punja lands mentioned in Schedule B.

2. Swaminathan died before attaining majority and his father has brought this suit for the recovery of the property settled on him inasmuch as he had a vested interest in the property and that he being the heir of his son is entitled to it. The Subordinate Judge held that Swaminathan had acquired a vested interest in the property and decreed the plaintiff"s suit. On appeal the learned District Judge held that Swaminathan had only a contingent interest and as he died before he came of age the settlement in his favour did not take effect and dismissed the plaintiff"s suit.

3. In construing this clause the tenor of the whole document has to be taken into consideration. In the preamble of the document, the following clause occurs:

I have no male heirs. I had two daughters, namely, Pachayammal and Puval. Of these Puval is dead. She has a minor son aged 13 years named Swaminathan. These two are entitled to get my properties according to law. In order that they may obtain them and live

happily and for my benefit in the other world I have made the following arrangements.

4. Clause 1 is

Pachayammal and her heirs from this day shall enjoy with absolute rights and powers of alienation by gift the nanja and punja lands described in Schedule A.

5. Then the second clause relating to Swaminathan immediately follows Clause 1 in favour of Pachayammal.

6. The third clause provides for the management of some charities.

7. The fifth clause reads as follows:

I have this day delivered the A Schedule properties to Pachayammal. the B Schedule properties to Karuppanna Udayar, Pachayammal's husband and my son-in-law on behalf of the minor Swaminathan and the C Schedule properties for the charities to Pachayammal and Karuppanna Udayar for the minor. They should enjoy the whole of the properties as stated above and Pachayammal and her heirs and Karuppanna Udayar as guardian of minor Swaminathan should give us for our maintenance 10 kalams of paddy and Rs. 20 in cash every year out of the income of the lands after deducting Sirkar kist, etc.

8. From the nature of the document it is clear that the settlor wanted to divide the properties between Pachayammal the surviving daughter and the son of the predeceased daughter. In the case of Pachayammal, possession was handed over from the date of the document and in the case of Swaminathan, the minor grandson possession was postponed till he attained majority.

9. The contention on behalf of the respondent is that Swaminathan was to become entitled to the property settled on him only on his attaining majority and he having died before attaining majority his heir is not entitled to it. In the document itself there is nothing to indicate that the intention of the settlor was that Swaminathan should have a vested interest only on his attaining majority.

10. In this connexion we have to consider what the force of the Tamil word used in the document is. The word used is "anubhavithukollukirathu." The nominative of that is "the minor son." The word means that the minor son shall enjoy (the properties) and not shall become entitled (to it). The word that is commonly used to denote to "inherit" or "become entitled to" "adaikirathu." If the settlor intended that Swaminathan should be entitled to the property only on his attaining majority then the word "anubhavithukollukirathu" would not have been used but the word "adaikirathu" or some other words which would indicate that he was to become entitled to the property on the happening of a certain event, whether majority or anything else would have been used.

11. In construing the clause of a Hindu Will or settlement the Court should not overlook the habits, customs and prejudices of the people and the motives and reasons which influence them in making bequests or settlements. No Hindu would contemplate with equanimity the death of his grandson when he makes a bequest or settlement in his favour. He would be shocked at the very idea of his son or grandson dying without enjoying the property. There is a strong prejudice against the contemplation of the contingency of a beneficiary, whether son or grandson or daughter or grand-daughter dying in the lifetime of the settler or dying before he or she takes the benefit under a settlement. In this case the settler could not have possibly imagined that Swaminathan would die before attaining majority. As the very idea of his son or grandson dying before he gets the benefit under a document is repugnant to Hindu sentiment, no Hindu would ordinarily make a bequest over in case the legatee dies before a certain thing happens. In construing Hindu settlements and Wills we should not apply wholesale all those considerations which would apply to the construction of English Wills or Wills drawn up by attorneys or vakils. Where a settlement is made in the mofussil the document is generally drawn up by a karnam or village lawyer and the idea of a gift failing and the necessity for providing for a gift over in case of such failure very seldom enters into the mind of the settler or the persons who advise him. As I have said above it would be considered very inauspicious to imagine that a legatee might not get the benefit of the legacy and this consideration appeals with greater force to a settlement by a person who wants to, benefit his daughter and grandson.

12. The intention of the settler can be gathered from para. 5 of the document. Thereby he hands over A Schedule properties to, his daughter Panchayammal and B Schedule properties are delivered to Karu ppanna Udayar on behalf of the minor. It is, therefore, clear that possession of the properties was handed over to the minor Swaminathan through Karuppanna Udayar. The recital of para. 5:

they should enjoy the whole of the properties as stated above, and Panchayammal and her heirs and Karuppanna Udayar as guardian of minor Swaminathan should give us for our maintenance 10 kalams of paddy and Rs. 20 in cash every year out of the income of the lands left after deducting Sirkar kist, etc.

makes it quite clear that the intention of the settler was to vest the property in the minor. On a careful reading of the document, Ex. A, it is clear to my mind that the settler handed over the property to Karuppanna Udayar on behalf of the minor and Clause 2 refers only to the enjoyment and not to the vesting of the property.

13. I, therefore, hold that Swaminathan took a vested interest in the property in Schedule B as the terms of Ex. A are clear. It is unnecessary to consider in detail all the cases relied on by the appellant and respondent. In *Harris v. Brown* [1901] 28 Cal. 621 a testator by his Will provided

that all his residuary estate shall descend in equal shares to the eldest son to be born to each of the daughters of my late brother who are now alive. The sons of those daughters shall after their birth, remain under the control of the executor until they attain majority at the expiry of 21 years and whenever the eldest son of any of the ladies shall attain majority, the executor will make over his share to him to his satisfaction.

14. By Clause 15 of the Will the testator declared that

until the majority of whoever may be the eldest at the time amongst the sons of my brother's daughters, the estate shall remain in the hands of the executor absolutely and for all purposes.

15. The Privy Council held that the vesting of the estate in the son was not suspended by the direction that the estate should remain in the hands of the executor who should "make over the share" of each on his attaining 21 years. Those words merely pointed to the possession and enjoyment of the shares which had already been vested.

16. In *Kolla Subramaniam Chetti v. Thellanayakulu Subramaniam Chetti* [1882] 4 Mad. 124 a Hindu testator appointed executors to conduct his affairs and directed them to pay during the lifetime of his junior widow a monthly payment for life and after the death of the junior wife the executors were directed to divide the property in equal shares between them and continue to enjoy the same in equal shares. The executors died during the lifetime of the junior wife. It was held that the executors had a vested interest in the property and that their heirs were entitled to the property: See also *Cally Nath Naugh Chowdhry v. Chunder Nath Naugh Chowdhry* [1882] 8 Cal. 378.

17. Mr. Varadachariar for the respondent relies upon *In re Francis, Francis v. Francis* [1905] 2 Ch. 295 as supporting his contention.

18. In that case the:

testator devised two specified free-hold houses to his niece Hilda when she shall attain the age of 25 years.

with similar devises of other free-hold houses to another neice and nephew. Mr. Justice Swinfon Eady held that it was a contingent bequest. That case has no application to the present case as the words in Ex. A cannot be interpreted to mean that minor Swaminathan was to get the property on his attaining majority. In an English Will the words generally used are:

I bequeath or devise such and such a property to so and so on his attaining majority or when he attains 25 years of age.

19. In *In re Francis, Francis v. Francis* [1905] 2 Ch. 295 as observed by the Lord Justice:

there is nothing to control the effect of the words of the contingency.

20. Here as observed already Clause 5 makes it quite clear what the intention of the testator was.

21. Mr. Subramania Iyer raises the contention that Swaminathan was given a portion of the income and, therefore, the settlement came within the exception to Section 21 of the Transfer of Property Act. In the settlement there is no direction for the whole or any portion of the income being given for the maintenances of Swaminathan during his minority and, therefore, it is unnecessary to consider the cases relied upon by him, *Pearson v. Dolman* [1867] 3 Eq. 315 and *In re Holt's Estate, Holding v. Strugnell* [1876] 45 L. J. Ch. 208. Where any portion of the income is given to the legatee no doubt the principle of exception to Section 21 would apply. It is unnecessary in the view I have taken to consider the effect of Ex. 4 and it is not contended for the respondent that the settler had a right to make a fresh settlement.

22. Clause 3 of the Will relates to the management of charities. Swaminathan having died and there being no provision in Ex. A for his heirs conducting the charity the plaintiff is not entitled to succeed so far as the management of the charity properties are concerned.

23. Mr. Varadachariar suggested that in case the appeal is allowed, certain modifications should be made in the decree inasmuch as all the properties mentioned in B Schedule were decreed to the plaintiff by the first Court. The decree of the Subordinate Judge will be restored by omitting such shares of his property as has been excluded in Ex. B. In the result the appeal is allowed and the decree of the District Judge is set aside and that of the Subordinate Judge restored with the modifications mentioned above. The appellant will be entitled to his costs in this Court and in the lower appellate Court.