Kondapalli Vijayaratnam Vs Mandapaka Sudarsana Rao

Court: Bombay High Court

Date of Decision: June 11, 1925

Acts Referred: Majority Act, 1875 â€" Section 2
Registration Act, 1877 â€" Section 17, 40, 41

Citation: (1925) 27 BOMLR 1082

Hon'ble Judges: Sumner, J; Salvesen, J; John Edge, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Salvesen, J.
The circumstances out of which this suit has arisen, so far as they are material to the judgment, may be very shortly stated.

2. One Mandapaka Appanna, a Sudra in the Ganjam district, who was possessed of a considerable amount of property, died in 1906 leaving a

widow and two daughters, the latter being the plaintiffs in the action. When on his death-bed and within an hour or two of his actual death he

executed a document, which purported to be a disposition of his property and at the same time conferred a power of adoption on his widow. This

document was registered as a will at the instance of a legatee It was challenged by the plaintiffs (who tire still in minority) on the ground among

others (1) that it was not genuine and (2) assuming that the signature which it bore to be that of the deceased, that he was incapable at the time of

understanding its contents owing to the illness from which he shortly afterwards died.

3. Both Courts have decided, although with much hesitation, that the will was genuine and on the question whether the deceased was in a fit

condition to dispose of his property, the Subordinate Judge held that he was, and the High Court of Judicature at Madras may be presumed to

have endorsed his judgment, although they have not expressly dealt with this matter in their reasons. Whether it is competent in these circumstances

for their lordships'' Board to entertain an appeal from what may be represented as concurrent judgments on questions of fact it is unnecessary to

consider, for a point of law remains, the decision of which in their lordships'' view is sufficient for the disposal of the appeal.

4. At the time of his death Mandapaka Appanna was admittedly only nineteen years of age and was under guardianship, Act No. IX of 1875

provides, Section 2, that nothing therein contained should affect the capacity of any person to act in the following matters, namely:-Marriage,

Dower, Divorce, Adoption.

5. Section 3 provides as follows :-

Subject as aforesaid, every minor of whose person or property...a guardian...has been or shall be appointed by any Court of Justice, and every

minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in

any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before :

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his

age of eighteen years and not before.

6. It follows, therefore, and indeed is matter of admission, that the document which purported to be a will of Mandapaka Appanua could have no

legal effect as such. On the other hand, as Mandapaka Appanna was over eighteen years of age an authority to adopt, whether oral or in writing,

was within his legal capacity.

7. A power to adopt may be embodied in a will and if the document now under consideration can be treated as such the judgment under appeal

cannot be impugned. ""Will"" is defined by Act X of 1865, as:-

The legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

and by Section 3 of Act X of 1897 :-

''Will '' shall include a codicil and every writing making a voluntary posthumous disposition of property.

8. The learned Judges in the Court below have held that the document in question satisfied these definitions. If the form of the document only is

considered no doubt that would be so, but, having regard to the fact that it was executed by a person who was a minor and incapable of making a

will, their lordships are unable to agree with the decision. The so called will is not a ""legal declaration of the intentions of the testator,"" for it had no

legal effect and was not capable of disposing of any of the estates of the deceased. So far as it purported to deal with his property it was a nullity.

That a document is called a will although it does not operate to any effect as such will not give it the effect of a will for any other purposes. This

was so held in the case of (1921) ILR 44 733 (Privy Council) a case which was not before the learned Judges of the High Court as it was not

decided till after their judgment had been pronounced.

9. It does not follow, however, as the learned Subordinate Judge held that ""a person who is incapable of making a will is incapable of conferring an

authority to adopt by a will though he may be capable of giving an authority to adopt to be exercised after his death."" Their lordships" see no

reason to doubt that a document which purported to be a will but was inoperative as such might nevertheless constitute a valid authority to adopt

Here, however, the respondents are met with a different objection. Act III of 1877 provides, Section 40:-

the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for

registration

and Section 41 provides that an authority to adopt shall be registered in the case of the death of the donor on the registry officer being satisfied

(a) that the authority was executed by the donor,

(b) that the donor is dead, and

(c) that the person presenting the authority is, under e 40, entitled to present the same.

10. In the present case it is not alleged that the donee, who, at the time of the registration of the document as a will, was the only one who could

present it for registration, either did so herself or gave authority for the registration. Act III of 1877, Part 3, Section 17, enacts that all authorities to

adopt a son executed after January 1,1872, shall be registered, and by Section 23, that no document other than a will shall be accepted for

registration unless presented for that purpose to the proper officer within four months from the date of its execution. As the widow, who was the

donee of the authority, failed to register it within this period of four months, the deed which was afterwards executed by her on December 24,

1913, adopting defendant No 1, cannot receive effect. This indeed was not contested by the respondent"s counsel.

11. Their lordships will, therefore, humbly advise His Majesty that this appeal should be allowed and that the plaintiffs are entitled to a declaration,

that the will dated October 1, 1906, alleged to have been executed by the late Mandapaka Appanna is void, and also to a declaration in terms of

the second, third, and fourth heads of their prayer with coats of the suit both in the Courts below and before this Board

12. A. de M.