GNANAMBAL AMMAL

v.

T. RAJU AYYAR AND OTHERS.

1950

Dec. 21.

[SAIYID FAZL ALI, MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

Hindu law—Will—Construction—General principles—Presumption against intestacy.

The cardinal maxim to be observed by courts in construing a will is to endeavour to ascertain the intentions of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised.

The courts are however entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure 'the court is entitled to put itself into the testator's armchair'.

But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of the language when used by that particular testator in that document. As soon as the construction is settled, the duty of the court is to carry out the intentions as expressed. The court is in no case justified in adding to testamentary dispositions. In all cases it must loyally carry out the will as properly construed, and this duty is

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universal, and is true alike of wills of every nationality and every religion or rank of life.

A presumption against intestacy may be raised if it is justified by the context of the document or the surrounding circumstances; but it can be invoked only when there is undoubted ambiguity in ascertainment of the intentions of the testator. It cannot be that merely with a view to avoiding intestacy you are to do otherwise than construe plain words according to their plain meaning.

A Hindu died leaving a widow, a widowed daughter N, and a married daughter G, after he had made a will giving authority to his widow to adopt a son of G should she beget one, or in the alternative a son of one of his nephews. Para. 4 of the will provided that if his widow adopted G's son all his properties except the village of K and the house at I and other properties disposed of by the will shall pass to the adopted son; and para. 5 provided as follows: "The whole of the village of K and the house at I, my daughter N shall enjoy with life interest and after her the said property shall pass to my daughter G and her children on payment by the latter of Rs. 5,000 to A, the daughter of N." Later on, amongst the provisions which he wished to make if a son of a nephew was adopted, there was a provision which ran as follows: "Para. 13. The village of K shall be enjoyed by N as stated in para. 5." A nephew's son was adopted and he instituted a suit against G after N's death for recovery of the village K contending that under para. 13 of the will there was no disposition of the village after the life interest of N and on her death the village vested in him as the testator's heir:

Held, on a construction of the will as a whole, that the testator did not intend that in the contingency of the adoption of a nephew's son, the village K should pass, on N's death, to the adopted son; on the other hand, the provisions of para. 5 of the will were intended to apply even in the case of such a contingency and the village passed to G on N's death under para. 5 of the will.

Judgment of the High Court of Madras reversed.

Venkatanarasimha v. *Parthasarathy* (41 I.A. 51) and *Re Edward; Jones* v. *Jones* [1906, 1 Ch. 570], referred to.

APPELLATE JURISDICTION: Civil Appeal No. XIII of 1950. Appeal from a judgment and decree of a Division Bench of the Madras High Court (Wadsworth and Rajamannar JJ.) dated 27th November, 1945, in Appeal No. 518 of 1941, reversing the judgment of the Subordinate Judge of Mayuram dated 10th July, 1944, in Original Suit No. 34 of 1943.

B. Somayya (*R. Ramamurti*, with him) for the appellant.

K. S. Krishnaswami Aiyangar (*K. Narasimha Aiyangar*, with him) for respondent No. 1.

1950. December 21. The Judgment of the Court was delivered by

MUKHERJEA J.—This appeal is directed against an appellate judgment of a Division Bench of the Madras High Court dated November 27, 1945, reversing the decision of the Subordinate Judge of Mayuram made in Original Suit No. 34 of 1943.

There is no dispute about the material facts of the case which lie within a short compass and the controversy centers round one point only which turns upon the construction of a will left by one Kothandarama Ayyar to whom the properties in suit admittedly belonged. Kothandarama, who was a Hindu inhabitant of the District of Tanjore and owned considerable properties, died on 25th April 1905, leaving behind him as his near relations his adoptive mother Valu Ammal, his widow Parbati and two daughters Nagammal and Gnanambal, of whom Nagammal, who became a widow during the testator's life time had an infant daughter named Alamelu. Kothandarama executed his last will on 13th March, 1905, and by this will, the genuineness of which is not disputed in the present litigation, he gave an authority to his widow to adopt unto him a son of his second daughter Gnanambal, should she beget one before January, 1908, or in the alternative any of the sons of his two nephews, if the widow so chose.

The suit, out of which the appeal arises, was commenced by Raju Ayyar, who was a son of the testator's nephews and was taken in adoption by the widow in terms of the will; and it was for recovery of possession of certain properties, known as Kothangudi properties which formed part of the testator's estate on the allegation that under the will mentioned above, these properties were given to Nagammal, the widowed daughter of the testator for her life-time, but as there was no disposition of the remaining interest after the death of the life tenant, the properties vested in the

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plaintiff as the adopted son and heir of the deceased on the death of Nagammal which took place on 3rd of January, 1943. Gnanambal, the second daughter of the testator, was the first and main defendant in the suit, and she resisted the plaintiff's claim primarily on the ground that there was no intestacy as regards the suit properties after the termination of the life interest of Nagammal, and that under the terms of the will itself she was entitled to get these properties in absolute right after the death of Nagammal, subject to payment of a sum of Rs. 5,000 to Alamelu, the daughter of Nagammal. Alamelu was made the second defendant in the suit and as she died when the suit was pending in the trial court, her heirs were impleaded as defendants 3 to 9.

The first court accepted the contention of the defendant No. 1 and dismissed the plaintiff's suit. On appeal to the High Court, the judgment was reversed and the plaintiff's claim was allowed. The defendant No. 1 has now come up appeal to this court.

To appreciate the contentions that have been raised by the parties to this appeal, it would be convenient first of all to refer briefly to the relevant provisions of the will: After cancelling his previous wills, the testator in the third paragraph of his will, gave his widow authority to adopt a son. She was to adopt the son of Gnanambal, if the latter got a son previous to January 1908, or she could adopt any of the sons of the testator's nephews. Paragraph 4 provides that if the first course is followed, that is, if the son of Gnanambal is adopted by the widow, then all the properties, movable and immovable, belonging to the testator excepting the village of Kothangudi, the house at Injigudi and the other properties which were disposed of by the will would go to such adopted son. Paragraph 5, which is material for our present purposes runs as follows :—

"The whole village of Kothangudi and the house at Injigudi, both of Nannilam Taluk, my daughter Nagammal, shall enjoy with life interest and after her the said property shall pass to my daughter Gnanambal and her children on payment by the latter of Rs. 5,000 to Alamelu, Nagammal's daughter."

By the sixth paragraph the Nallathukudi and Pungavur villages together with certain house property at Mayavaram are given to the testator's adoptive mother and wife in equal shares to be enjoyed by both of them during their life-time and after their death they are to pass on to the adopted son. Paragraph 7 gives a small house absolutely to Nagammal for her residence and paragraph 8 makes certain provisions for management of the properties. In paragraph 9 direction is given to collect the money due on the insurance policy on the life of the testator and to pay off his debts. Paragraph 10 mentions certain charities, the expenses of which are to be defrayed from the income of the Nallathukudi properties. Paragraph 11 then says that in the event of the widow adopting any of the nephew's sons of the testator, such son shall inherit the entire property at Kokkur and also the lands of Nallathukudi after the death of the testator's wife and mother. By paragraph 12, the village of Maruthanthanallur is given to Gnanambal and paragraph 13 provides that "the village of Kothangudi shall be enjoyed by Nagammal as stated in paragraph 5". By paragraphs 15 and 16 the remainder in the house at Mayavaram situated in the east row of Vellalarkovil Street is given to Gnanambal after the death of the testator's wife and mother. Paragraph 18 provides for certain other charities. In paragraph 20 it is stated that if the wife of the testator should die before January, 1908, without making any adoption, then the eldest or any son of Gnanambal would be his adopted son without any formality and inherit all the properties subject to the conditions mentioned in the will. Paragraph 21, which is the penultimate paragraph in the will, further lays down that if all the three contingencies fail and no adoption is taken, the male child or children born to Gnanambal shall inherit as grandsons all the properties of the testator, subject to the conditions specified in the will. These, in brief, are the dispositions made in the will. The plaintiff founds him claim upon paragraph 13 of the will which, according to him, contains the entire disposition so far as the Kothangudi

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property is concerned. That village is given to Nagammal for her life with no disposition of the remaining interest. If the remainder has not been disposed of, there is no doubt that the plaintiff would be entitled to the property as the heir of the testator under the ordinary law of inheritance.

The defendant No. 1, on the other hand, relies on paragraph 5 of the will, which gives the Kothangudi village and the Injigudi house to Nagammal to be enjoyed by her so long as she lives and after her death they are to go to Gnanambal and her children, subject to the payment of a sum of Rs. 5,000 to be paid to Alamelu, the daughter of Nagammal.

The High Court on a construction of the will has found in favour of the plaintiff primarily on the ground that in the contingency which happened in the present case, viz., that the widow took in adoption a nephew's son of the testator, paragraph 5 of the will did not come into operation at all. The disposition as regards Kothangudi property is, therefore, to be found exclusively in paragraph 13 of the will and the actual words employed by the testator in that paragraph do not indicate that apart from Nagammal's taking a life estate in the Kothangudi village the rest of the provisions in regard to this property as laid down in paragraph 5 would also be incorporated into paragraph 13. An obvious difficulty, according to the learned Judges, in accepting the construction sought to be put upon the will by defendant No. 1 is that paragraph 5 speaks both of Kothangudi and Injigudi properties, whereas paragraph 13 does not mention the Injigudi house at all, nor does it purport to give a life interest in the same to Nagammal. It could not be reasonably held on a construction of the will that the intention of the testator was that Gnanambal was to pay Rs. 5,000 to Alamelu for the Kothangudi property alone. The result was that the plaintiff's claim was allowed. It is the propriety of this decision that has been challenged before us in this appeal.

In course of the arguments, we have been referred by the learned Counsel on both sides to quite a large

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number of decided authorities, both English and Indian, in support of their respective contentions. It is seldom profitable to compare the words of one will with those of another or to attempt to find out to which of the wills upon which decisions have been given in reported cases, the will before us approximates closely. Cases are helpful only in so far as they purport to lay down certain general principles of construction and at the present day these general principles seem to be fairly well settled.

The cardinal maxim to be observed by courts in construing a will is to endeavour to ascertain the intentions of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. In construing the language of the will as the Privy Council observed in *Venkata Narasimha* v. *Parthasarathy* (1), "the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure 'The court is entitled to put itself into the testator's armchair'.....But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. So soon as the construction is settled, the duty of the court is to carry out the intentions as expressed, and none other. The court is in no case justified in adding to testamentary dispositions.....In all cases it must loyally carry out the will as properly construed, and this duty is universal, and is true alike of wills of every nationality and every religion or rank of life."

A question is sometimes raised as to whether in construing a will the court should lean against

(1) 42 I. A. 51 at p. 70.

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intestacy. The desire to avoid intestacy was considered by the Privy Council in the case referred to above as a rule based on English necessity and English habits of thought which should not necessarily bind an Indian court. It seems that a presumption against intestacy may be raised if it is justified by the context of the document or the surrounding circumstances; but it can be invoked only when there is undoubted ambiguity in acertainment of the intentions of the testator. As Lord Justice Romer observed in *Re Edwards; Jones* v. *Jones* (1), "it cannot be that merely with a view to avoiding intestacy you are to do otherwise than construe plain words according to their plain meaning". It is in the light of the above principles that we should proceed to examine the contents of the will before us.

The present will, which is the last of four testamentary document executed by the testator, appears to have been prepared with a great deal of care and circumspection. The testator had clearly in mind the different situations that might arise in case his widow adopted either Gnanambal's son or a son of one of the nephews of the testator. He envisaged also the possibility of the widow dying without making any adoption at all. Besides the son to be adopted, the only other relations who had natural claims upon the affection and bounty of the testator and for whom he desired to make provisions were his wife, his adoptive mother, the two daughters and the infant grand-daughter. The interests given to his wife, the adoptive mother and the eldest daughter, who were all widows, were for their life-time, except a small house property which was given absolutely for the residence of the eldest daughter. On the other hand, the bequests in favour of Gnanambal, who was a married daughter, and the adopted son of the testator, were absolute in their character. Besides these dispositions, there were certain gifts for charity which were to be met out of the income of the properties given to the wife and the adoptive mother for their lives. One singular feature

(1) [1906] 1 Ch. 570 at p. 574.

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in the will is that the testator took scrupulous care to include in it every item of property that he owned.

There are two provisions in the will relating to Kothangudi property to which the dispute in the present suit relates. One is in paragraph 5 which gives this property along with the house at Injigudi to Nagammal, the remainder being given to the appellant subject to the payment of a sum of Rs. 5,000 to Alamelu, the daughter of Nagammal. The other is in paragraph 13, which merely says that Nagammal was to get it for life as stated in paragraph 5. The view taken by the High Court and which has been pressed for our acceptance here by the learned Counsel for the respondents is that paragraph 5 was meant to be operative only if Gnanambal's son was adopted by the widow. As that was not done, paragraphs 4 to 8 of the will, it is urged, will go out of the picture altogether and it is not permissible to refer to them except to the extent that they were impliedly incorporated in the subsequent paragraphs of the will. We do not think that this is the correct way of reading the document. The testator undoubtedly contemplated different contingencies; but a reading of the whole will does not show that he wanted to make separate and self-contained provisions with regard to each of the contingencies that might arise and that each set of provisions were to be read as exclusive of the other set or sets. That does not appear to be the scheme of the will. The testator's main desire undoubtedly was that his widow should adopt the son of his daughter Gnanambal, and in the first part of his will after making provisions for his two daughters, his wife and adoptive mother and also for certain charities, he left the rest of his properties to the son of Gnanambal that was to be adopted by his widow. In the second part of the will, which is comprised in paragraphs 11 to 16, the testator sets out the modifications which he desires to make in the earlier dispositions in case a son of one of his nephews was adopted by the widow. It was not the intention of the testator that on the happening of the second contingency, all

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the earlier provisions of the will would stand cancelled and the entire dispositions of the testator's property would have to be found within the four corners of paragraphs 11 to 16 of the will. In our opinion, the provisions made for the two daughters, the widow and the adoptive mother as made in paragraphs 5, 6 and 7 of the will and also the provisions for charities and payment of debts contained in paragraphs 9 and 10 were meant to be applicable under all the three contingencies referred to above. This is clear from the fact that provisions of paragraphs 7, 9 and 10 have not been repeated or incorporated in paragraphs 11 to 16, although it cannot be suggested that they were not to take effect on the happening of the second contingency. Again in the third contingency contemplated by the testator, which is described in paragraph 20, it is expressly stated that if no adoption is made, the eldest or any son of Gnanambal would inherit the properties and he shall take the properties subject to the conditions mentioned in the will. The conditions spoken of here undoubtedly refer to the provisions made for the mother, wife and the two daughters of the testator as well as in respect to payment of debts and carrying out of the charities specified in paragraph 10.

The changes that are to take effect on the happening of the second event are in regard to the bequests in favour of the adopted son. Under paragraph 4 of the will, the adopted son was to get all the properties of the testator with the exception of those given to the two daughters, the mother and the wife. Under paragraph 11, if the adoption is of a nephew's son of the testator, the adopted son gets only the Kokkur properties and the reversionary interest in Nallathukudi village after the death of the testator's wife and mother. The village Maruthanthanallur which would go to the adopted son under paragraph 4 is taken away under paragraph 11 and is given to Gnanambal. She is also given the remaining interest in the Mayavaram house which was given to the adopted son under paragraph 6. Subject to the changes thus made, the provisions

of paragraphs 5, 6 and 7 would, in our opinion, still remain operative even if the person adopted was a nephew's son of the testator. No change is made in paragraphs 11 to 16 with regard to the provision in paragraph 5 of the will. In paragraph 13 it is only stated that the village Kothangudi shall be enjoyed by Nagammal as stated in paragraph 5. It may be conceded that this statement by itself does not let in the entire provision of paragraph 5, but that is not material for our present purpose. It is enough that paragraph 5 has not been changed or altered in any way. The statement in paragraph 13 may, after all, be a loose expression which the testator used only for the purpose of emphasising that the Kothangudi village would be enjoyed by Nagammal even if Gnanambal's son was not adopted. This is not by way of making any new disposition, but only to affirm what has been already done. The affirmation of a portion of the provision which is perfectly superfluous cannot exclude the rest. It is somewhat difficult to say why the rest of the provisions in paragraph 5, particularly the benefit that was meant to be given to Alamelu, was not repeated in paragraph 13. It may be that the testator did not consider it necessary or it may be that it was due to inadvertance. It is to be noted here that the testator did not mention anywhere in paragraphs 11 to 16 the small house that was given absolutely to Nagammal under paragraph 7. It was certainly not the intention of the testator that Nagammal would not have that house on the happening of the second contingency. If paragraph 5 itself is held to be applicable—and in our opinion it should be so held—there is no question of adding to or altering any of the words made use of by the testator. It is not a question of making a new will for the testator or inventing a bequest for certain persons simply because the will shows that they were the objects of the testator's affection. The provision is in the will itself and it is only a question of interpretation as to whether it is applicable in the circumstances which have happened in the present case. The position, therefore, seems

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to be that the disposition made in paragraphs 5, 6 and 7, which were in favour of the mother, the wife and the two daughters of the testator were meant to take effect immediately on the testator's death. They were not contingent gifts in the sense of being made dependent upon the adoption of Gnanambal's son by the wife of the testator. Only the reversionary interest in the Mayavaram house, which was to vest in the adopted son under the provision of paragraph 6 after the death of the widow and the mother was taken away from the adopted son and given to Gnanambal in case the person adopted was not her own son. If the whole of paragraph 5 remains operative the Injigudi house must also be deemed to have been given to Nagammal for her life and in fact the evidence is that she enjoyed it so long as she was alive. No difficulty also arises regarding the payment of Rs. 5,000 to Alamelu as has been stated by the High Court in its judgment.

Having regard to the meticulous care with which the testator seems to have attempted to provide for the different contingencies that might arise and the anxiety displayed by him in making an effective disposition of all the properties he owned, it is not probable that he would omit to make any provision regarding the future devolution of the Kothangudi village if he really thought that such direction had to be repeated in the latter part of the will. The omission of the gift of Rs. 5,000 to Alamelu also cannot be explained on any other hypothesis. It is not necessary for the purpose of the present case to invoke any rule of presumption against intestacy, but if the presumption exists at all, it certainly fortifies the conclusion which we have arrived at.

The result is that the appeal is allowed, the judgment and decree of the of the High Court are set aside and those of the Subordinate Judge restored. The appellant will have costs of all the courts.

Appeal allowed.

Agent for the appellant: *M. S. K. Aiyangar.*

Agent for respondent No. 1: *M. S. Krishnamoorthi Sastri.*