Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srinivasa Moorthy v. *Venkatavarada Iyengar and others, from the High Court of Judicature at Madras; delivered the 9th May* 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD ROBSON.
SIR ARTHUR WILSON.

[DELIVERED BY LORD MACNAGHTEN.]

This is an Appeal from the Judgment of the Madras High Court in a Suit for the administration of the trusts of the will of Venkatavarada Iyengar, who died on the 24th of August 1892, domiciled in the State of Mysore. The Judgment under Appeal affirmed in substance the decision of Moore, J., sitting on the original side of the Court.

The Appellant, who was the only son of the deceased, was one of the executors and trustees named in his will and sole residuary legatee. He joined in obtaining probate. He took upon himself the management of the estate and possessed himself of all the assets. For some years he acted in execution of the trusts of the will. Called upon to account and charged with various breaches of trust he now asserts that the will was wholly inoperative and that the entire

estate was joint family property, and that it belongs to him in his individual capacity by right of survivorship.

To such a contention advanced under such circumstances it would be a sufficient answer to say that no person who has accepted the position of trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. But out of respect for the argument of Counsel at the Bar and the elaborate judgments in the Courts in Madras, it will be proper to deal shortly with the facts of the case and the grounds of the decision under Appeal.

The testator was born at Madura in 1834. He was the son of Srinivasa Iyengar, who was Treasurer of the Collector of Madura. In March 1854, after a quarrel with his father, he left the family house and went to Mysore. He maintained himself there by his own exertions. He held various appointments under the Mysore Government, and got together a considerable sum of money in his father's lifetime. His father died in 1864, and a partition was then effected between the testator and the other members of the family. On the partition the testator received as his share a sum of money which, after recouping him for his outlay on account of his father's funeral and on account of other family expenses, amounted to about Rs. 7,000.

The testator continued to improve his fortune after his father's death. His estate when he died was worth about four lakhs of rupees. He left a widow and an only daughter as well as his son surviving him.

The testator's will was dated the 3rd of August 1892. He named as executors his son and four other persons. One of those four persons did not prove the will or intermeddle

with the estate. The other executors were N. T. Venkatavarada Iyengar, the First Respondent, Biligiri Iyengar, an attorney of the Madras High Court (now deceased), and Krishna Iyengar (also now deceased). After stating that he had given certain jewels to his son the testator proceeded to declare his will as follows :—

" I have from time to time written and kept list of these " and of all my other principal ancestral and self-acquired " properties. My son Rajasvi Srinivasa Moorthi (may he " live long), and after him his heirs, shall get all these and " all my other estate, subject to the conditions mentioned " hereunder, and others have no right thereto."

Then followed certain bequests. Provision for the daughter was made in paragraphs 10, 11, and 12, which were to the effect that Rs. 40,000, being four-fifths of the sum for which the testator's life had been insured, should be settled on her and her children. The remainder of the insurance money was to go to the widow for life.

Shortly after the testator's death the Appellant and the three other executors who proved the will obtained probate in the Court of the British Cantonment at Bangalore, and on the 20th of February 1893 they applied to the Madras High Court for probate, limited to the Presidency of Madras.

On the 5th of May 1893 probate was issued to the Appellant and the other three executors, and the usual undertaking was given by them to administer the estate and exhibit an inventory.

On the 4th of May 1894 the Appellant filed a partial inventory showing that Rs. 65,146 had been realised in the Presidency town. The sum of Rs. 50,000 was also received from life policies.

For some time the Appellant made payments to the daughter and the widow as interest on the fund in his hands.

In August 1898 the Appellant wrote to his co-executor Biligiri repudiating his position as trustee, and stating that the will was invalid on the ground that all his father's property was joint family property, and belonged to him as survivor.

In the month of September 1898 he filed an affidavit in the Madras High Court setting up the same case.

In 1899 the daughter brought a suit against the Appellant and his co-executors, but as the leave of the Court had not been obtained in accordance with Section 12 of the Letters Patent for the High Court, the suit was dismissed against the Appellant who was not then within the jurisdiction of the Court. Accounts were directed as against the other executors, but no further steps were taken in that suit.

In August 1901 the Appellants' co-executors brought the present suit against the Appellant alleging various breaches of trust on the part of the Appellant in which they seem to have participated to some extent themselves. They alleged that the assets realised in the Madras Presidency in the hands of the Appellant were more than sufficient to enable them to carry out the trusts of the will, and they asked for the usual accounts, administration of the estate, and removal of the Defendant from the office of trustee. The plaint was afterwards amended by striking out the names of the two Plaintiffs who died pending the suit.

On the 11th of October 1904, Moore, J., delivered judgment, ordering that the surviving Plaintiff and the Defendant should be removed from their office as executors and trustees under the will, and directing the usual accounts to be taken with liberty for all the beneficiaries to come in and prove their claims.

On the 16th of March 1905, Moore, J., made a final decree appointing a receiver and directing

certain payments in accordance with the result of the accounts which had been taken.

The Defendant appealed to the High Court from both Decrees. The High Court dismissed both Appeals with costs, and ordered the Appellant to pay into Court on or before a day named in the Order Rs. 1,15,000, with interest, to answer the amounts found due from him, with directions to the receiver in case of default to raise the required amount out of the estate and to execute the decree as if it were a decree in his favour for that sum.

From this Decree, which is dated the 1st of March 1906, and the other Orders and Decrees made in the suit, the Defendant appealed to His Majesty in Council. The argument of the learned Counsel at the Bar was addressed to (1) the question of jurisdiction, and (2) the question as to the nature of the testator's estate.

The question of jurisdiction is too plain for argument. Both Courts held that the cause of action arose partly within the jurisdiction of the High Court, and although the Judge of First Instance thought himself bound by a decision which had really no application to the case to hold (contrary to his own opinion) that the Defendant was not "dwelling" within the jurisdiction, the High Court not unnaturally thought that inasmuch as he had taken up his abode with his wife and family in a hired house in Madras, meaning to remain there several months, and was actually living there when the suit was instituted, he could not be heard to say that he was not "dwelling" within the jurisdiction of the High Court.

As regards the second question both Courts rejected the Defendant's contention. In the High Court Subrahmania Aiyar, J., with whom the Chief Justice agreed, held that it could not be doubted that "the testator kept his own earnings

" separate from the property that came to him at " the time of the partition," and also that there was no doubt " that the testator left at his death " documents which would clearly show how much " of the assets left by him were his own acquisi- " tion and therefore at his disposal." All the testator's papers came at his death into the hands of the Defendant, and the inference which the learned Judges drew from the evidence in the case was that the material documents were withheld by the Defendant because they would disprove his story. Both Courts took a view of the Defendant's character not altogether favourable. He was a person of some education, with some knowledge of the rights of members of an undivided family, and an astonishing disregard of truth.

Their Lordships see no ground for dissenting from the conclusion at which the learned Judges of the High Court have arrived, and in the result they will humbly advise His Majesty that the Appeal should be dismissed with costs.

In the Privy Council.

SRINIVASA MOORTHY

v.

VENKATAVARADA IYENGAR AND OTHERS.

LONDON :
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.