Privy Council Appeal No. 67 of 1944

Sellamani Ammal - - - - - - - - *Appellant*

v.

Thillai Ammal and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1946

Present at the Hearing:

LORD SIMONDS
MR. M. R. JAYAKAR
SIR JOHN BEAUMONT

[*Delivered by* LORD SIMONDS]

This appeal which is brought from a judgment and decree of the High Court of Judicature at Madras reversing in part the judgment and decree of the Subordinate Judge of Trichinopoly raises a question of some difficulty arising under the will of Subbaraya Pillai who died on the 28th September, 1916, and will be hereafter called the testator.

Some facts concerning the testator's family must first be given. He was the adopted son of Sabhapathi Pillai of Achalpuram in the Tanjore district and Swarnathammal, his wife, who had no other children. Swarnathammal was the daughter of Kandaswami Pillai who was the son of Thiruvarasu Pillai. The latter was the owner of an estate known as the Kudapalli Estate in the Trichinopoly district. Kandaswami predeceasing his father, upon the death of the latter this estate descended to Swarnathammal who managed it until her death in 1904 or 1905. She was succeeded in the estate by the testator who managed it until his death in 1916. Sabhapathi had in the meantime died having in the year 1884 executed a will which he described as an arrangement of his family affairs. In it he recited that all the acquisitions made by him were made with the moneys belonging to his wife Swarnathammal and gave her a life estate therein.

On the 23rd September, 1916, five days before his death the testator made his will. He had at that time four children, namely, two sons, Nataraja aged 16, and Sabhapathi aged 9, and two unmarried daughters Thillai aged 13 and Swarnathammal aged 7.

By his will the testator appointed his two elder brothers Kuppuswami Pillai and Muthu Pillai as guardians of his family properties and charity properties and the minor children, with directions to keep accounts of the receipts and disbursements. In order to keep a check on the said guardians he appointed as *mel vicharanaikars* (supervisors) M. Sundaram Pillai Avargal and V. A. Arunachalam Chettiar Avargal, and after a direction to pay his debts, and to keep proper accounts, proceeded as follows:

> "The said guardians shall, with the permission of the *mel vicharanaikars* (supervisors) not only perform the marriages of the minor girls, defraying expenses to the extent of rupees two thousand for each girl but shall also give to each girl lands worth rupees five thousand or (rupees five thousand) in cash, and after the family debts are discharged, shall also give to the minor girls with the consent of

the *mel vicharanaikars*, rupees three thousand worth of jewels out of the family funds apart from the jewels which I have made and given to them. Until minor Nataraja Pillai completes his twenty-first year, the guardian and the *mel vicharanaikars* shall act in the aforesaid manner and deliver the properties to the said Nataraja Pillai along with accounts up to the 30th September, 1921. If, at the time when the said Nataraja Pillai takes charge of the properties, the amounts mentioned in this will or any portion thereof remain unpaid to the said girls, he shall pay to each of them the amount due to her. If he fails so to give, each of them shall recover the amount on the liability of the A schedule properties."

The daughter Thillai was married to Ammal on the 1st June, 1919. The expenses of the marriage were met by Nataraja Pillai, who had also given her some jewels. She is a respondent to this appeal.

Nataraja Pillai died on the 24th June, 1919, and was survived by his minor brother Sabhapathi Pillai. On the 18th December, 1919, the Court of Wards was appointed to take up the management of the Kudapalli Estate.

Sabhapathi Pillai attained the age of eighteen years in 1923, and attained the age of twenty-one years in 1926. He died in June, 1929, leaving the appellant as his widow him surviving.

Neither land of the value of Rs.5,000 nor cash of that amount having been paid to Thillai, on the 1st December, 1933, she commenced a suit against the appellant and the Manager Court of Wards Kandapalli Estate Trichinopoly and Swarnathammal claiming a right to the legacy of Rs.5,000 and payment of it with interest. At about the same time her sister Swarnathammal who is the second respondent to this appeal commenced a suit against the same first two defendants and Thillai as third defendant claiming the same relief.

In these suits two substantial questions arose for decision which were intended to be covered by the issues framed in them, viz.:

1. Whether the testator had so blended his own estate with his ancestral estate that it was not in his power to give legacies of Rs.5,000 to his daughters:

2. Whether in any case the suits were barred by limitation, a question that only arose if the first question was answered in the negative.

The learned Subordinate Judge answered this first question in the affirmative. He came to the conclusion that the whole of the properties in the possession of the testator at his death, i.e., as well the Kudapalli estate belonging to his mother to which he had succeeded on her death as his ancestral Achalpuram estate, were joint family properties. If so, the legacies in question were not validly given. The learned Judge appears to have thought that the Kudapalli estate from the moment that the testator succeeded to it became part of the joint family property, but further held on this evidence that, even if this was not so, he had so blended the two estates that he had converted the Kudapalli estate into joint family property.

On the second question to which their Lordships will return the learned Judge held that the suits were barred by limitation, 12 years having elapsed since the 30th September, 1921, the date on which Nataraja would have attained the age of 21. He accordingly dismissed the suits.

From this decision the respondent Thillai Ammal appealed to the High Court of Judicature at Madras. During the pendency of the appeal the Court of Wards relinquished the estate. On the 11th March, 1942, the High Court gave judgment allowing the appeal. They were of opinion that the properties in the possession of the testator so far as they came from his mother Swarnathammal were not ancestral or joint family properties and had not been so blended with his ancestral estate as to become the joint family properties of himself and his two sons. Upon the question of limitation also the learned Judges of the High Court allowed the appeal

but they did so only because they did not accept as accurate the official translation of the testator's will. To this matter their Lordships will refer later.

Upon the first question their Lordships are clearly of opinion that the decision of the High Court was right. They do not think it necessary to rehearse the principles of law applicable which have been recently expounded by the Board (see e.g. *Nutbehari Das* v. *Nanilal Das* (1937), II M.L.J. 114) and it appears to them that the High Court has rightly applied these principles to the facts of the present case. Neither from his mode of dealing during his lifetime with the Kudapalli estate (which in their Lordships' opinion was beyond question originally his separate estate) nor from his testamentary disposition can the inference be fairly drawn that the testator waived or surrendered his special right in it as separate property. Their Lordships find in the careful examination by the High Court of all the relevant facts and documents a conclusive refutation of the plea advanced by the present appellant and will not repeat it.

Upon the second question the position is one of serious difficulty. The official translation of the will was accepted without question in the Court of the Subordinate Judge, nor, so far as their Lordships are informed, was it challenged by either of the parties before the High Court. And as their Lordships understand the judgment of the High Court, the learned Judges of that Court would not, if the official translation was correct, have differed on the question of limitation from the Subordinate Judge. They would have held that, twelve years having elapsed after the 30th September, 1921, before the suits were instituted, the claims to legacies of Rs.5,000 were barred. Nor do their Lordships see any sufficient reason for differing from this conclusion. But the High Court have on this point taken a course which cannot be supported. They have formed the opinion that in an important respect the official translation is incorrect and have corrected it by making the words " after the debts of the family are discharged " qualify the payment of the legacies of Rs.5,000. And, having made this correction and having further found as a fact that the debts of the family have not yet been discharged, they have concluded that the legacies have not become payable and that the claims to recover them are not barred. Their Lordships would once more express the view (see 49 I.A. 25 and 57 I.A. 296) that it is not legitimate for the Court to depart from the official translation except upon expert evidence which the parties should have an opportunity of testing. They therefore cannot accept as valid the reason and the only reason given by the High Court for reversing the decision of the Subordinate Judge on this point. At the same time their Lordships cannot ignore the opinion expressed by the experienced Judges of the High Court upon such a matter: they cannot treat as irrecoverable legacies which appear to be recoverable if the translation given by the High Court is correct. There appears therefore to be no other course open to them than to remit the matter to the High Court with directions to give the present appellant the opportunity of challenging by expert evidence the translation of the will which has been substituted for the official translation. If the substituted translation is then accepted, the appellant must fail. If on the other hand the official translation is upheld, there appears to be no doubt that the appellant is entitled to succeed on the question of limitation. In the special circumstances of this case their Lordships do not think that any costs should be awarded and they will humbly advise His Majesty accordingly.

(51764) Wt. 8043—[illegible] 160 [illegible]46 D.L. C. 338

In the Privy Council

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DELIVERED BY LORD SIMONDS

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