Ramachandra Shenoy And Another vs Mrs. Hilda Brite And Others on 1 April, 1963

Equivalent citations: 1964 AIR 1323, 1964 SCR (2) 722, AIR 1964 SUPREME COURT 1323

Author: N. Rajagopala Ayyangar

Bench: N. Rajagopala Ayyangar, S.K. Das, A.K. Sarkar

PETITIONER:
RAMACHANDRA SHENOY AND ANOTHER

Vs.

RESPONDENT:
MRS. HILDA BRITE AND OTHERS

DATE OF JUDGMENT:
01/04/1963

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
DAS, S.K.
SARKAR, A.K.

CITATION:
1964 AIR 1323 1964 SCR (2) 722
CITATOR INFO :
R 1976 SC 794 (8)
R 1985 SC1359 (5)

ACT:
Will-Construction-"Shall enjoy permanently and with absolute right", "After her life-time," Meaning of-Principles of construction.

HEADNOTE:
Mrs. Mary Magdelene Coelho executed on July 25, 1907, a will, cl. 3 (c) of which provided that "all kinds of movable properties that shall be in my possession and authority at the time of my death, i. e., all kinds of movable properties inclusive of the amounts that shall be got from others and the cash ; all these my eldest daughter Severina Sobina

Coelho, shall, after my death, enjoy and after her life-time, her male children shall enjoy permanently and with absolute right."

Mrs. Coelho died in February, 1946, and in September, 1946, a suit was filed for partition and separate possession by the widow and daughter of Denis-one of the sons of Severina. The contention of plaintiffs was that Severina acquired under the terms of cl. 3 (c) only a life-interest in the property and the remainder in absolute was conferred upon her male issues. The defendants maintained that cl. 3 (c) conferred on Severina an absolute interest in the property as a result of which the entire interest in the property and not merely her life interest passed under the Court auction and consequently the claim for partition must fail. The contention of the defendants was accepted by the trial court and the District judge. However, the High Court held that Severina obtained only a life interest in the property covered by cl. 3 (c).

The appellants came to this Court by special leave. The only point Urged before this Court was that under cl. 3 (c), Severina got an absolute interest in the property and not merely a life interest.

Held that the only reasonable construction of cl. 3 (c) was that the interest created in favour of Severina was merely a life interest and the remainder in absolute was conferred

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on her male, children. The use of the words "after her lifetime" was intended to show that the interest referred to was a life interest.

One of the cardinal principles of. construction of wills is that, to the extent that it is legally possible, effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Moreover, each will has to be construed on its own terms and in the setting in which the clauses occur.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 452 of 1959.

Appeal by special leave from the judgment and decree dated August 25, 1959, of the Madras High Court in S. C. No. 2371 of 1950.

S.N. Andley and A. G. Ratnaparkhi, for the appellants. A.V. Viswanatha Sastri, G. Gopalakrishnan and R. Ganapathy Iyer, for respondents Nos. 1 and 19. M.V. Goswami and B. C. Misra, for respondents Nos. 8-14. 1963. April 1. The judgment of the Court was delivered by AYYANGAR J. -This appeal by special leave raisesfor consideration a very short but by no means an easy question regarding the proper construction of a will. The testatrix was an Indian Christian lady of the- Roman Catholic faith-Mrs. Mary Magdelene Coelho. She was a widow and was possessed of considerable

properties in respect of which she had previously executed settlements in favour of her children. The will whose construction falls for determination was executed on July 25, 1907 and related to the properties still remaining with her after these settlements. She had originally four daughters, but by the date of the will only two of them were alive-her eldest Severina Sabina Brito and her second Mary Matilda Coelho. The other members of her family then alive and to whom it is necessary to refer were a grand-daughter- Juli Mary Margaret Fernandez by her deceased 4th daughter and four sons of the eldest daughter Severina. It may be added that the third daughter who died before 1907 left no issue. We might now proceed to the terms of the will. The relevant clause whose interpretation is the subject of debate in this appeal is its cl. 3 (c).

Clauses 1 and 2 are in the nature of an introduction, contain no disposition but are merely a narration of facts etc. and therefore not material to be set out. The dispositive portion of the will starts with cl. 3. This consists of 3 sub-clauses. Sub clauses (a) and (b) describe certain immovable properties which not having been included in the previous settlements, remained at the disposal of the testatrix and sub-cl. (c) proceeds to effectuate a disposition of these items and of all other movable properties that she might die possessed of. We ought to mention that the original will is in the Canarese language and there has been some dispute as regards the correct translation of this relevant clause. We shall now set out the official translation. which is included in the printed record and refer later to the other translations submitted to us and to the arguments based upon them. Clause 3 (c) which effects the disposition now to be construed reads:

> "3. (c) All kinds of movable properties that shall be in my possession and authority at the time of my death, i.e., all kinds of movable properties inclusive of the amounts that shall be got from others and the cash;-all these my eldest daughter Severina Sobina Coelho, shall after my death, enjoy and after her lifetime, her male children also shall enjoy permanently and with absolute right....."

The rest of it is not very material and is omitted. There are a few other clauses in this will which have been referred to by learned counsel in their arguments before us and also in the Courts below as furnishing aids to the construction of the disposition in cl.3(c). These are the cls. 4 and 5 and they run:

> "4. The bagaitu hithlu land and the house situated therein ..and the buildings, shops, etc. attached thereto:-these my second daughter, Mary Matilda Coelho should enjoy up to her death only; and further, she should not alienate them in any manner by way of gift, sale, mortgage, etc. After the lifetime of the said daughter of mine, viz., Mary Matilda Coelho, the property should be enjoyed by the daughter of my fourth daughter, Mary Margaret, i.e. of juila Mary Margenta Fernandez hereditarily and with permanent right. In the said property, the said julia's father and his heirs have no manner of right whatsoever. "
>
> "5. If the said Julia does not marry or if she has no issues, the said Julia should enjoy the said property up to her death and thereafter this property of mine should be enjoyed by my eldest daughter, Severina Sobina Coelho and after her by her male

descendants with permanent rights".

The short question for decision in the appeal is whether under cl. 3 (c) extracted above the interest which the eldest daughter' Severina took under the bequest was absolute or whether she had merely :a life interest with the absolute remainder vesting in ,her male issues, Before proceeding to deal with this matter, it would be convenient to set out how the question comes before us. This appeal arises out of a suit for partition and separate possession filed in September, 1946 by the widow and daughter of Denis--one of the sons of Mrs. Severina Sabina and relates to the property measuring 1 acre 37 cents with houses and structures thereon which is part of the property covered by cl. 3. We ought to mention that Severina died on February 14, 1946. It is the case of the plaintiffs that Severina acquired under the terms of cl. 3 (c)only a life interest in that property and that the remainder in absolute was conferred upon her male issues. On the other hand, the construction put forward by the contesting defendants who claim under a purchaser in a Court sale in execution of a decree against Severina is, that on a proper interpretation of the clause what was conferred on Severina was an absolute interest in the property as a result of which the interest in the property and not merely her life interest passed under the Court auction, and that consequently the claim for partition had to fail - Both the learned Trial judge as well as the District judge on appeal upheld the construction contended for by the defendants and dismissed the suit. On further appeal to the High Court the learned Single judge reversed this decree and decreed the suit holding that the daughter Severina obtained only a life interest in the property covered by cl. 3. It is the correctness of this construction that is challenged by the contesting defendants-the appellants before us.

Pausing here, we ought to mention that there have been numerous proceedings between the parties before the suit giving rise to the appeal but that it is unnecessary to refer to them and that besides, several of the parties have died during the pendency of the proceedings and their legal representatives have beep added to the record. To these also reference is unnecessary as nothing turns on them. As we stated earlier, the sole point for consideration on which the decision in the appeal turns is whether under cl. 3 (c) Severina, the eldest daughter of the testatrix acquired an absolute interest or was her interest merely limited to one for her life, the absolute remainder being bequeathed to her male issues.

The testatrix being an Indian Christian, the rules of law and the principles of construction laid down in the Indian Succession Act X of 1865 which was in force in 1907 govern the interpretation of this will. It should be added that the Act of 1865 has been repealed, but every one of its relevant provisions has been re-enacted in exactly the same terms in the Succession Act of 1925. As, however, the Act of 1865 was the statute in operation at the relevant time we shall refer to its provisions and to that enactment as the Act. We might premise the discussion by stating that we are, in the case before us, concerned not with any special rule of law but only with the rules laid down by the Act' for the construction of wills. Some of these rules are merely the embodiment in statutory form of the ordinary rules governing the construction of all documents whether they are dispositions testamentary or inter vivos or are non-dispositive, rules which would have been applicable even apart from specific provision in the Act., Such, for instance are :

> "69. The meaning of any clause in a Will is to be collected from the entire instrument, and all its arts are to be construed with reference to each other..... "
>
> "72. No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it."
>
> "73. If the same words occur in different part of the same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary."

Next there are a group of provisions with which we are more intimately concerned. Of these reference was made to' and reliance placed only on two sections which we shall proceed to read:

> "82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him."

and "84. Where property is bequeathed to a person, and words arc added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will."

It was this last provision (s. 84) that was very much relied on by learned Counsel for the appellants and in particular to the illustrations appended to it and we shall, therefore, refer to some of these illustrations "(a) A bequest is made-

to A and his children, .

to A and the heirs male of his body, In each of these cases, A takes the whole in- terest which the testator had in the property.,

(b) A bequest is made to A and his brothers.

A and his brothers are jointly entitled to the legacy."

(c) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the desoription of issue of A."

Put shortly', the submission of learned Counsel for the appellants was this : There could be no doubt that by cl. 3

(c) the testatrix intended a bequest to her eldest daughter- Severina-of the properties referred to in cl. (3). The only point in controversy is whether the interest Conveyed to Severina was limited in duration to her life, or whether it was absolute. Under s. 82 of the Act, when a bequest is made the presumption is in favour of its being absolute and the point urged was that there was no contrary

intention manifested to displace this statutory presumption, for if the bequest in her favour was absolute there was no possibility in law of a gift over and any further dispositions of the property would naturally be void. Learned Counsel pointed out that for the purposes of conferring an absolute interest the law did not require any particular form of words to be used. The use of the expression "enjoy" , which is employed in the relevant dispositive clause ever,. if it stood alone, would be sufficient for the purpose. The testatrix, however, not content with that had added the words "shall enjoy permanently and with absolute rights"-to make her intention even more clear. There are, no doubt, words which purport to confer an interest on her male children after her life-time and, no doubt, also it is stated that they shall enjoy "permanently and with absolute right," but if the daughter Severina had been granted an absolute interest in the property by the words "enjoy" and "permanently and with absolute rights" the subsequent disposition must necessarily fail. Learned Counsel further submitted that light was thrown on the absolute disposition in favour of Severina by cl. 3 (c) by contrasting its terms with the vocabulary employed by the testatrix when she intended to create a limited interest for life in cl. 4. In the latter clause, apart from the specific condition that the second daugbter-Matilda Coclho was to enjoy up to her death only, the testatrix had gone further and imposed a condition forbidding alienations. The absence of these features in the disposition in favour of the eldest daughter-Severina-under cl. 3 (c) were clear indications, according to learned Counsel, that the legate therein was intended to be granted an absolute interest. In this connection it was pointed out that the bequest in question fell within the class of dispositions referred to in s. 84 extracted earlier and particularly to the bequest specified in illustration (a) to that section. We might point oat that these submissions were, in fact, the reasoning on the basis of which both the learned trial judge as well as the District judge on appeal upheld the construction put forward by the appellants.

It would be seen that in ultimate analysis the question arising on the construction of cl. 3 (c) would be whether the words "shall enjoy permanently and with absolute right"

> apply to the interest of Severina or are they confined to designate exclusively the interest of her male-children who are to take after her life-time. It is with reference to this point that learned Counsel for the appellants disputed the correcsness of the translation of the clause as found in the Paper-book. We were referred to the words in Canarese in the document and it was pointed out that the word enjoy' occurred in the clause only once referring to the interest both of the daughter as well as of her male-children and that the words "permanently with absolute rights" qualified and indicated the nature of the enjoyment by both. We shall be referring to the other translations of the relevant words but by doing so we are not to be understood as disposed to encourage any laxity in or departure from the salutary rule that save in exceptional cases if the correctness of an official translation is disputed by any party steps must be taken to have a retrans- lation made by the officers of the Court on proper application made in time therefore. In the present case.. however, we have permitted learned Counsel to place before us the other translations particularly because the translation now found in the paper-book which we have extracted earlier was, though it was the translation on the record of the High Court, not adopted by the learned judge in the High Court who had a fresh translation made by the Official

translator of the High Court which is found in the judgment now under appeal. Besides this translation in the High Court the learned trial judge had also included in Ms judgment a translation which he had himself made of - the passage. The learned trial judge after setting out the words in the original translated the passage as reading "after me my eldest daughter S. S. Coelho and after her lifetime her male children also with permanent and full rights shall enjoy." The learned Single judge in the High Court accepted the following as the correct translation :

,,All these (properties) shall after me be enjoyed by my eldest daughter Severina Sabina and after her lifetime by her male children too as permanent and absolute hukdars."

It would be seen that there is not much difference between these translations, but that compared with the translation from the Paper -book which we have set out earlier, it is found that the verb "enjoy" occurs only once- not twice-as in the paper book where it occurs first in relation to the daughter and again with respect to the bequest to the daughter's male issue.

Based on these translations learned Counsel submitted that as the word "'enjoy" occurs only once, the nature of that enjoyment indicated by the later words "as permanent and absolute hukdars" must govern both the dispositions-in favour of the daughter and in favour of her male issue. In our opinion this does not necessarily follow. We consider that the translation which was got prepared by the learned judge in the High Court is nearer the original in spirit, for we have been furnished by Mr. Viswanatha Sastri with the original text together with a literal translation of the Canarese words.

If the bequest to Severina was "to enjoy" and the testatrix proceeds to add that after the lifetime of Severina, her male issue were "to have permanent and absolute rights in the same" the very contrast in the phraseology should lead one irresistibly to the conclusion that the nature or quantum of Severina's interest was different from that of those who took after "her lifetime." Learned Counsel, however, laid special stress on the use of the word "too" or "also" occurring towards the end of the clause as pointing to the "enjoyment" of Severina being also "'permanent" with absolute right. We are however unable to read the word as having such a significance and as referring to the nature of Severina's enjoyment as well, and in this conclusion we are supported by the text and the literal translation of the word used. In our opinion, the only relevant words in relation to the bequest to Severina arc that "she shall after my death enjoy,"and the rest of the clause deals with what is to happen after her lifetime. The dominant intention of the testatrix was to confer a permanent and absolute remainder on the male issue of her daughter after the lifetime of the first done and the words used are apt and capable of supporting such a construction. Learned Counsel next relied on the terms of s. 84, his submission being that the male issues of Severina were not 'direct objects of a distinct and independent gift." Applying the terms of s. 84 to the present case, no doubt "'property is bequeathed to a person" viz, the daughter, but the question is whether the words that follow which refer to the male children enjoying "permanently and with absolute rights," for there is no doubt that on any interpretation of the document those words do apply to them, designate them as direct objects of a distinct arid independent gift, or are they added merely to denote the nature of the

interest which the first taker-Severina was to obtain? Put in technical language are the words referring to the male children, words of purchase or are they words of limitation indicating the nature of the interest conveyed to the first taker. It would be observed that in illustration (a) to s. 84 the bequest is made to the first taker and his descendants. Where they are the descendants of the first taker, the presumption is that the reference to the persons to take the gift over, is intended to denote the quality of the first taker's estate and not for the purpose of the subsequent takers having independent gifts. Where the subsequent legatees are intended to be themselves direct beneficiaries and they are directed to take along with the first taker the interest of the first taker is cut down to a joint interest in the property so as to enable the subsequently named to partake the legacy. That is illustration (b) to the section. There the second named is a collateral and by the use of the conjunction 'and' a joint interest is presumed to be created in favour of all the legatees. Where the subsequent taker is a descendant of the first taker, as in illustration (a), but the testator does not provide for his taking it along with the first named, it is a case falling under illustration (c)where successive interests are created by the use of the words "after the first taker's death". In such a case even if the second taker were the issue of the first the first taker's interest is for life since by the use of the words "after his or her lifetime' successive interests are intended to be created. In our opinion the case on hand would fall within illustration (c) and the bequest to Severina is only of life interest, this being made clear by the use of the words after her lifetime'.

It was next said that cl. 4 of the will furnished cogent evidence of what might be called the vocabulary of the textatrix which she employed when she intended to create a life interest. This intention it was urged, was manifested in that clause by two provisions, first by providing that the legatee-the second daughter "should enjoy upto her death only" and then as if to emphasise the limited nature of the interest conferred, by expressly prohibiting all alienations by way of gift, sale, mortgage etc. We however see no distinction between the phrase "enjoy up to her death" and a provision which directs an enjoyment by a legatee by a clause which proceeds to make a gift over of the absolute interest "after the death" of the first legatee. Nor do we consider that the emphasis contained in the prohibition against alienation in cl. 4 as of any decisive importance in understanding the phraseology employed by the testatrix in this will. For when one turns to cl. 5 we find there is what without doubt is a life interest in favour of her grand daughter-julia-created by the use of the words "enjoy the property up to her death" without the addition of the prohibition against alienation which is found in cl. 4. It is therefore manifest that expressions 'after the lifetime' and 'after the death' were words understood by the draftsman of the will to indicate that the interest referred to was a terminable one-a life interest and we have these words 'after her lifetime' in cl. 3 (c).

There is also one other consideration which supports the above construction. It was common ground that under cl. 3

(c), the testatrix intended to confer an absolute and permanent interest on the male children of her daughter, though if the contentions urged by the appellants were accepted the legacy in their favour would be void because there could legally be no gift over after an absolute interest in favour of their mother. This is on the principle that where property is given to A absolutely, then whatever remains on A's death must pass to his heirs or under his will and any attempt to sever the incidents from the

absolute interest by prescribing a different destination must fail as being repugnant to the interest created. But the initial question for consideration is whether on a proper construction of the will an absolute interest in favour of Severina is established. It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Ofcourse, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. It is for this reason that where there is a bequest to A even though it be in terms apparently absolute followed by a gift of the same to B absolutely "on" or "'after" or "at" A's death, A is prima facie held to take a life interest and B an interest in remainder, the apparently absolute interest of A being cut down to accommodate the interest created in favour of B. In the present case if, as has to be admitted, the testatrix did intend to confer an absolute interest in the male children of Severina the question is whether effect can or cannot be given to it. If the interest of Severina were held to be absolute no dobut effect could not be given to the said intention. But if there are words in the will which on a reasonable construction would denote that the interest of Severina was not intended to be absolute but was limited to her life only, it would be proper for the Court to adopt such a construction, for that would give' effect to every testamentary disposition contained in the will. It is in that context that the words 'after her lifetime' occurring in cl. 3 (c) assume crucial importance. These words do indicate that the persons designated by the words that follow were to take an interest after her, i. e., in succession and not jointly with her. And unless therefore the words referring to the interest conferred on the male children were held to be words of limitation merely, i. e., as denoting the quality of the interest Severina herself was to take and not words of purchase, the only reasonable construction possible of the clause would be to hold that the interest created in favour of Severina was merely a life interest and that the remainder in absolute was conferred on her male children. This was the interpretation which the learned Single judge of the High Court adopted and we consider the same is correct.

Quite a number of authorities were cited by learned Counsel on either side but in each one of these we find it stated that in the matter of the construction of a will authorities or precedents were of no help as each will has to be construed in its own terms and in the setting in which the clauses occur. We have therefore not thought it necessary to refer to these decisions.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.