

Kailvelikkal Ambunh1 (Dead) By Lrs. And ... vs H.Ganesh Bhandary on 24 August, 1995

Equivalent citations: AIR 1995 SUPREME COURT 2491, 1995 (5) SCC 444, 1995 AIR SCW 3667, 1995 AIR SCW 3661, 1995 (7) JT 164, (1995) 2 LANDLR 451, (1995) 3 ALL WC 2013.1, (1995) 3 CIVLJ 841, (1995) 26 ALL LR 458, (1995) 3 CURCC 303, (1995) 2 RAJ LW 128, (1995) 2 BANKCAS 379, (1995) 61 ECR 553, (1995) 60 DLT 530, (1995) 6 JT 299 (SC), 1996 (1) IJR 1, (1996) 1 MAD LW 242, (1996) 1 APLJ 13.1, (1996) 1 MAD LJ 65, 1995 (3) SCC(SUPP) 541, 1995 (2) ALL CJ 982

Bench: Kuldip Singh, S. Saghir Ahmad

CASE NO.:

Special Leave Petition (civil) 4597 of 1990

PETITIONER:

KAILVELIKKAL AMBUNH1 (DEAD) BY LRS. AND ORS.

RESPONDENT:

H.GANESH BHANDARY

DATE OF JUDGMENT: 24/08/1995

BENCH:

KULDIP SINGH & S. SAGHIR AHMAD

JUDGMENT:

JUDGMENT 1995 (3) Suppl. SCR 35 The Judgment of the Court was delivered by S, SAGHIR AHMAD, J. The only ground on which the judgment of the High Court is questioned before us is that the will in question was not properly interpreted and that the testator having created an absolute estate in favour of Kannan, son of his direct sister, Vellachi, it was not open to the High Court to rely upon the subsequent recital that Schedule 'A' properties which as per the earlier part of the Will had already been bequeathed in favour of Kannan, shall be possessed and enjoyed as "Tavazhi", In interpreting the Will, the High Court has relied upon a number of decisions of this Court including Ramachandra Shenoy and another v. Mrs. Hilda Brite and others, AIR (1964) SC 1323, Navneet Lai v. Gokul and Others, AIR (1976) SC 794 and Ramakrishorelal and Another v. Kamal-narayun, AIR (1963) SC 890 in which the principles of interpretation, as also the principles on the basis of which the true intention of the testator can be gathered, have been set out.

The rules of interpretation of the "Will" are different from the rules:

which govern the interpretation of other documents say, for example, a Sale Deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument, by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or the subsequent part or specific clauses inter the contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will", the testator can always change his mind and create another interest in place of the bequest already made in the earlier part or on an earlier occasion. Undoubtedly, it is the last Will which prevails.

A Will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause is held to prevail over the earlier clause. This is regulated by the well known maxim "cum duo inter se pugnancia reperiuntur in testamento ultimum ratum est" which means that if in a Will there are two inconsistent provisions, the latter shall prevail over the earlier Harimond v. Treharne, [1938] 3 All England Reports 308).

This principle is also contained in Section 88 of the Indian Succession Act, 1925 which, together with its illustrations, provides as under :

"The last of two inconsistent Clauses prevails - where two Clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

illustrations

(i) The testator by the first clause of his will leaves .his estate of .Ramnagar "to A", and by the last clause to his will leaves it "to B and not to A". B will have it.

(ii) If a man at the commencement of his will gives his house to A. and at the close of it directs that his house shall be sold and the proceeds invested for benefit of B, the latter disposition will prevail."

It may, however, be pointed out: that this rule of interpretation can be invoked only if different clauses cannot be reconciled. (Sec : Rameswar v, Balraj AIR 1935 PC 187), We do not find any infirmity in the judgment passed by the Kerala High Court and the special leave petition which has been heard after notice -to the respondent is hereby dismissed.

Petition dismissed.