

Madras High Court

Minor Krishnaswami By ... vs Minor Srinivasan And Ors. on 19 December, 1944

Equivalent citations: (1945) 1 MLJ 220

Author: C Ayyar

JUDGMENT Chandrasekhara Ayyar, J.

1. The minor appellant wanted to come on record as the legal representative of the plaintiff, one Soundaravalli Ammal, who filed the suit for an injunction as regards a party wall between two houses. He claimed to be the legal representative under the two wills, one executed by Soundaravalli Ammal herself and another by her husband Narasimhachari. The lower Courts have held that Soundaravalli Ammal's will has not been proved and that the appellant took no estate under the will of Narasimhachari because the provision in his favour follows after an absolute estate in the property conferred on the wife Soundaravalli Ammal. The minor has preferred this appeal.

2. A preliminary objection is taken that as no appeal has been preferred from the order declaring that the suit has abated as no proper legal representative has come on record within the prescribed time, the second appeal was incompetent. The Code of Civil Procedure does not provide for any appeal against an order declaring that a suit has abated. Further, when a suit is dismissed on the ground that it has abated, the person who wanted to come on the record as the legal representative appears to me to have got a right, in my view, to challenge the dismissal of the suit, urging that the order about abatement could not be sustained as in truth he is the legal representative. The preliminary objection is overruled.

3. Mr. Ramabhadrachari, the learned advocate for the appellant, has contended that under the will, Ex. A, Soundaravalli Ammal gets an estate with full powers of disposition but not an absolute estate in which event alone the subsequent clause providing that the appellant shall take whatever properties that may remain will have to be disregarded. He cited the Privy Council decision in *Nsar Ali Khan Sardar v. Mohamed Ali Khan Sardar Khan Bahadur* (1931) 63 M.L.J. 336: L.R. 59 I.A. 268 and *Thayal Achi v. Kannammal* (1934) 68 M.L.J. 707 as authorities in his favour. The Privy Council decision has nothing to do with the conferment of an estate with a power of appointment or disposition on the non-exercise of which power another person has to take the property. It was cited merely for the purpose of showing that even if there is a clause in the will which speaks of an absolute estate in favour of a person the subsequent clauses must be read with the first clause to find out the dominant intention of the testator and ascertain the true meaning and that if the result of so reading the clauses, together leads one to the conclusion that the first clause using words indicating absolute ownership should be cut down to a life estate, the Court should be prepared to adopt such a construction. With this view there can be no quarrel at all. We have to find out what exactly was the intention of the testator under this will. The Madras decision deals with a case where an estate conferred was read as an estate with powers of appointment. In that case powers of alienation were conferred on the wife but for a particular purpose, namely, for discharging the debts of the husband. The learned Judges lay special stress on the word "enjoy" which was used with reference to the estate which the widow was to take and they say that this word into account along with the next clause which gives anything that may be left I at the time of the widow's death to Nataraja Pillai, they were of the opinion that I what the testator intended was to give his wife a right to enjoy the

properties as absolutely as possible. Her enjoyment comes to an end with her death and if anything remained over without any disposition by her it was to pass to Nataraja Pillai.

4. I am not able to read the will in this case in the manner in which the appellant wants it to be read. The words which confer the estate on Soundaravalli Ammal convey an absolute estate to her with full rights of gift, sale, etc. What is to be taken by the appellant is her properties if she dies without disposing any of them--the Tamil words are making it perfectly clear that the testator was not contemplating a devise of his properties which Soundaravalli Ammal was to enjoy during her lifetime with powers of alienation but was dealing with properties that would belong to her absolutely after his death and providing for their devolution after her death. He had no power to make such a provision, after giving his wife an absolute estate.

5. This is the view taken by both the lower Courts and I agree with it. The second appeal is dismissed with costs.

6. No leave.