Supreme Court of India
N.Krishnammal vs R. Ekambaram & Ors on 16 April, 1979
Equivalent citations: 1979 AIR 1298, 1979 SCR (3) 700
Author: R S Sarkaria
Bench: Sarkaria, Ranjit Singh

PETITIONER:
N.KRISHNAMMAL

Vs.

RESPONDENT:
R. EKAMBARAM & ORS.

DATE OF JUDGMENT16/04/1979

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
REDDY, O. CHINNAPPA (J)

CITATION:
1979 AIR 1298 1979 SCR (3) 700
1979 SCC (3) 273

ACT:
Hindu Succession Act, 1956-Ss. 8 to 10- Scope of.
Testator's will stated that in case his son died sonless "my heirs shall take the properties" bequeathed to him-Testator's son died without leaving behind a male issue-Expression "my heirs" meaning of-Testator whether created an artificial class of heirs-Term heirs used in a will-How construed-The point of time when heirs should be ascertained.

HEADNOTE:
By a will the testator bequeathed certain properties to each of his three sons. With regard to his third son (NP) the testator provided in Clause 5 of the will that if he had no male issues "my heirs shall take the aforesaid properties" after his life time. NP died in 1957 without any male issue. His widow (plaintiff-appellant) filed a suit for declaration of her title to the properties on the ground that her husband got the same absolutely by way of partition and that she, as his heir, inherited the properties or in the alternative for a declaration of her right to the properties on a true construction of the testator's will. (Defendants 1 and 2 were the sons of the testator's eldest son while defendants 3 to 7 were the daughters and defendant

8 the widowed daughter-in-law of the testator's second son.)

The trial judge of the High Court decreed the plaintiff's suit holding that on the termination of the life interest given to NP who died sonless the properties devolved on the heirs of the testator as if on intestacy, that the plaintiff was entitled to 1/3 share of the properties, and that the remaining 2/3 share should be share by the defendants.

Defendants 1 and 2 appealed to a Division Bench of the High Court, claiming that as the only heirs of the testator they were entitled to get the entire property of NP who had only a life interest in it. Construing cl. 5 of the will, the Division Bench held : (1) that by his will the testator had made his heirs as an "artificial" class of ultimate residuary legatees; (2) that the mandate implicit in the words "if there are no male issues as aforesaid" is that such class of legatees or heirs of the testator would be ascertained and worked out at that point of time when NP died sonless and at no other; (3) that this class of heirs of the testator was to be ascertained on the death of NP on the hypothesis that the testator had been upto the time of NP's death, but according to orthodox Hindu Law prevailing at the time of the testator's death in 1928; (4) that neither Hindu Women's Right to Property Act, 1937, nor the Hindu Succession Act, 1956 was applicable because the testator actually died long before the coming into force of these two enactments and he did not die intestate; (5) that according to Hindu Law prevailing at the time of the testator's death in 1928, respondents 1 and 2 would be the only persons entitled to the property on the death of NP, to the exclusion of the latter's widow, the plaintiff.

701

Allowing the appeal.

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HELD: 1(a) On a proper construction of the will the testator could not be said to have created or carved out an "artificial" class of heirs and made a residuary bequest in their favour. It is well established that the term "heirs" used in a will must be construed in a legal sense and cannot normally be limited to "issues" only. It must mean all persons who are entitled to the property of another under the law of inheritance. [705E-F]

Angurbala Mullick v. Debabrata Mullick, [1951] 2 SCR 1125 at p. 1144; referred to.

(b) The expression "my heirs" used in cl. 5 of the will must be construed as equivalent to "my legal heirs". The words "if there are no male issues my heirs shall take the aforesaid properties" are not words of gift over to any artificial class of heirs. [705G]

2. Construction of clause 5 of the will brings out expressly or by inevitable implication, these instructions of the testator:

(a) In the event of NP's death, without male issue, the

property would devolve on the testator's heir.

(b) Such heirs of the testator would be ascertained according to Hindu Law of intestate succession.

(c) Ascertainment of these "heirs" of the testator, is to be done at the time of NP's death on the hypothesis that the testator lived up to and died a moment after NP's death.

(d) It logically follows from (a), (b) and (c) that these heirs of the testator would be ascertained according to the Hindu Succession Act 1956, which was the law in force on 31-1-57 when NP died sonless and succession opened out. [706 D-F]

3. On the port and scope of cl. 5 of the will, as spelled out above, ascertainment of the testator's heirs on whom the property would devolve on NP's death, is to be done according to ss. 8 to 10 of the Hindu Succession Act. At that point of time, the plaintiff (who would be assumed to be the widow of a "predeceased" son) and the defendants would all be the heirs of the testator, falling in Class I of the Schedule referred to in s. 8, and in accordance with Rules 3 and 4 in Section 10 of the Act, the plaintiff would be entitled to 1/3rd share, in the property, while the remaining 2/3rd share shall go equally to the branches of Ramaswami and Vedivelu. [707 DE]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2085 of 1969.

From the Judgment and Decree dated 15-11-68 of the Madras High Court in Criminal Side Appeal No. 45/65.

M. Natesan and Mrs. S. Gopalakrishnan for the Appellants.

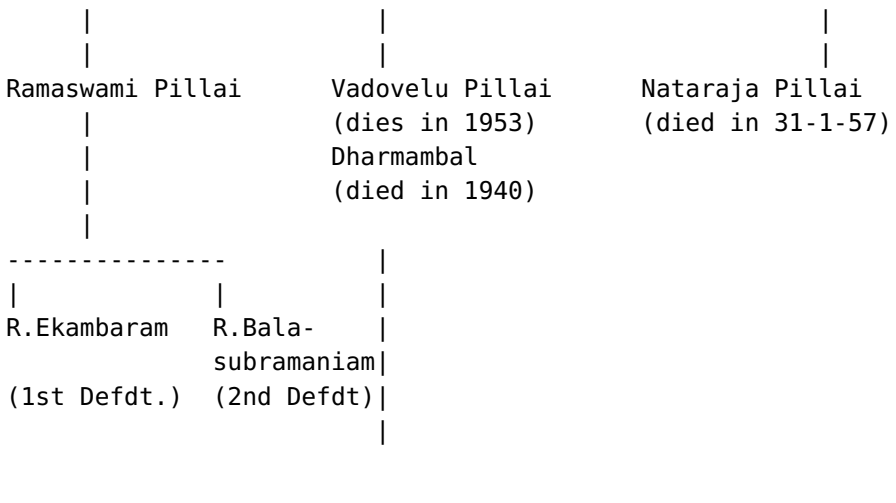
V. S. Desai, P. G. Gokhale and S. R. Agarwala for the Respondents 1-2.

Ex parte for the Respondents 3.8.

The Judgment of the Court was delivered by SARKARIA, J.-This appeal by certificate is directed against an Appellate Judgment and Decree, dated November 15, 1968, of the High Court of Madras.

The facts leading to this appeal are as follows: The following pedigree table will be helpful in understanding the relationships of the parties:

Palaniandi Pillai (died on 19-5-1928) | |



| Rajamani Kamala Padma Sarada Laitha Selvaraj (3rd (4th (5th (6th (7th (died in 1952) Defdt.) Defdt.) Defdt.) Defdt.) Defdt.) =Rajammal (8th Defdt.) Palaniandi Pillai, shown in the above pedigree-table, owned considerable properties. On December 12, 1927, he executed a Will whereby he bequeathed certain properties to each of his three sons. He appointed his sons, Ramaswami Pillai and Vadivelu Pillai, as Executors of his Will. In regard to his third son, Nataraja Pillai, the testator in clause 5 of the Will stated:

> "My third son, Nataraja Pillai, shall take the income accruing from the properties, namely, my cast- stand, house and ground, situate in the Western Row of Mint Street, bearing Municipal Door No. 278, Re-survey No. 600, Collector's Certificate No. 750 and the 5 Godowns, namely, 2 Godowns situate in Varadaraja Mudali Godowns situate in 3rd North Beach Road bearing Municipal Door Nos. 5, 6 and 7 to 9, Re-survey No. 3158 and 3187, Collector's Certificate No. 2550. After his life-time, if he leaves any male issue, they shall take the aforesaid properties, with powers of alienations such as gift, usufructuary mortgage and sale. If there are no male issue as aforesaid, my heirs shall take the aforesaid properties."

Although the Will had not been probated, yet, by mutual arrangements between the first two sons who were named Executors in the Will, and the third son, Nataraja Pillai, the properties were distributed in consonance with the terms of the Will and the Executors conveyed and transferred the same to the respective legatees, and mutual release deeds were, also, executed by the three sons.

Ramaswamy Pillai died in 1954 and Vadivelu Pillai in 1953, Nataraja Pillai died on January 31, 1957, without leaving any issue. His widow, Krishnammal, the appellant herein, filed the suit (C. S. No. 7 of 1959) out of which this appeal has arisen. She claimed-

(a) partition and separate possession of one-third share in the (plaint-schedule) properties left by her husband Palaniandi Pillai, alleging that the properties' were in the possession of the joint family consisting of his sons, or in the alternative, (b) for a declaration of her title and for possession of the properties on the ground that her husband Nataraja Pillai got the same absolutely by way of

partition under the deed, dated July 14, 1928, and she, as his heir, inherited the properties; in the alternative, (c) for a declaration of her rights to the properties on a true construction of the Will of her father- in-law, Palaniandi Pillai, and for possession of the properties.

The sons of Ramaswamy Pillai, respondents 1 and 2 herein, were impleaded as defendants 1 and 2, and the daughters of Vadivelu Pillai, respondents 3 to 7, were defendants 3 to 7. The daughter-in-law of Vadivelu Pillai, respondent 8 herein, was added as 8th defendant.

The findings of the learned trial Judge, material for our purpose, were as follows:

(i) Nataraja Pillai got only a life estate in the properties set out in Schedule I of the Plaint; (ii) the contingent interest in favour of the heirs of Palaniandi Pillai became vested only on the death of Nataraja Pillai,

(iii) it is not open to the plaintiff, Krishnammal, to invoke Section 8 of the Hindu Succession Act, 1956; (iv) on the termination of the life interest given to Nataraja Pillai, the gift over in favour of the male issues could not take effect as he did not leave any male issue, with the consequence, that the properties, in effect, became revested in Palaniandi Pillai, but devolved on his heirs as if on intestacy; (v) Section 111 of the Indian succession Act would be applicable.

In the result, the appellants' suit was decreed and it was held that she was entitled to one-third share and separate possession of the same by partition of the Plaint- Schedule 1 properties, and defendants 3 to 8 were equally entitled to one-third share together with mesne profits relating to their shares in the said properties, while defendants 1 and 2 were entitled to the remaining one-third share.

Aggrieved, defendants 1 and 2 preferred Letters Patent Appeal in the High Court, contending that, according to the terms of the Will of Palaniandi Pillai, they were his only heirs and entitled to get the entire properties in which Nataraja Pillai held only a life interest; and that neither the plaintiff nor defendants 3 to 8 were entitled to any share.

The Appellate Bench of the High Court purporting to proceed mainly on the scope and construction of Clause 5 of the Will of Palaniandi Pillai, held:

(1) By his Will (Ex. P. 2) the testator had made "my heirs", i.e. the testator's heirs as an "artificial" class of ultimate residuary legatees.

(2) This class of legatees or "my heirs" did not acquire a vested interest in the residuary bequest on the death of the testator.

(3) The ultimate bequest in their favour would become vested only in the event of Nataraja dying sonless.

(4) The mandate implicit in the words "if there are no male issues as aforesaid" occurring in Clause 5 of the Will (Ex. P. 2) is that such class of legatees or heirs of the testator would be ascertained and worked out at that point of time when Nataraja died sonless, and at no other.

(5) This class of "my heirs" of the testator would be ascertained with reference to the point of Nataraja's death (without a son) on January 31, 1957, when succession opened out and the bequest became distributable, "on the hypothesis that Palaniandi Pillai had lived up to that time" i.e. January 31, 1957.

(6) Although this class of the heirs of the testator was to be ascertained on January 31, 1957 on the hypothesis that the testator and Nataraja died simultaneously, such ascertainment could not be done either by resorting to the Hindu Women's Rights to Property Act, 1937 or to the Hindu Succession Act, 1956, because Palaniandi Pillai actually died in 1928, long before the coming into force of these two enactments and he did not die intestate.

(7) Such class of heirs of the testator were to be determined according to the orthodox Hindu Law prevailing at the time of the testator's death on May 19, 1928.

(8) Section 111 of the Indian Succession Act was not applicable.

On the above reasoning, the Appellate Bench of the High Court reversing the decree of the learned trial Judge, held that Respondents 1 and 2 herein were the only persons entitled to the entire Schedule 1 property on the death of Nataraja Pillai, to the exclusion of the latter's widow, the plaintiff. Thus the appeal was allowed and the plaintiff's suit dismissed.

After obtaining a certificate under Article 133 of the Constitution from the High Court, the plaintiff, Krishnammal, has come in appeal before this Court.

Controversy in this case hinges around the scope and construction of Clause 5 of the Will (Ex. P-2). In that connection, the first question that arises for consideration is: Did the testator by this Clause create or carve out an "artificial" class of his heirs' and make a residuary bequest in their favour ?

In our opinion, on a proper construction of the Will, the answer to this question must be in the negative.

It is well settled that legal terms such as "heirs", used in a Will must be construed in the legal sense, unless a contrary intention is clearly expressed by the testator. The word "heirs", as pointed out by this Court in Angurbala Mullick v. Debabrata Mullick(1) cannot normally be limited to "issues" only. It must mean all persons who are entitled to the property of another under the law of inheritance.

There is nothing in the language of Clause 5 of the Will which compels the construction that by use of the expression "my heirs" the testator meant something different from his 'heirs under the law.' The expression "my heirs" has therefore to be construed as equivalent to "my legal heirs". Thus considered, the words used in the last two sentences of Clause 5 of the Will are not words of gift over

to any 'artificial' class of heirs. They only indicate that in the event of Nataraja's death without any male issue, further devolution of the estate that had been given to him for life, would be regulated in favour of the testator's heirs ascertained in accordance with Hindu Law of intestate succession. That is to say, the testator did not specify or lay down any line of heirs, deviating from the Hindu Law of intestate succession.

The ground is now clear to consider the second question which is pivotal to the whole problem: Whether the heirs of the testator, on whom the estate was to devolve in the event of Nataraja dying sonless, were to be ascertained according to Hindu Law in force at the time of Nataraja's death or according to Hindu Law, prevailing in 1928 when the testator died. This question, also, is one of reaching at the real intent of the testator.

In order to expatiate, the true import of the last two sentences of Clause 5 of the Will (Ex. P 2), the same can be legitimately expanded, parenthesized and elucidated so as to read like this:

> "After Nataraja's life-time, if he leaves any male issue, they shall take the aforesaid properties, with powers of alienation... If Nataraja dies without leaving any male issue, then my heirs, then ascertained according to law of inheritance, shall take the aforesaid properties."

Thus amplified and elucidated, Clause 5 of the Will brings out, expressly or by inevitable implication, the intention and instructions of the testator in regard to the following:

(a) In the event of the termination of the life-estate of Nataraja on his death, without male issue, the property will devolve on "my heirs" i.e. the testator's heirs.

(b) Such heirs of the testator are to be ascertained according to the Hindu Law of intestate succession.

(c) Such ascertainment of the heirs of the testator is to be done on the date of Nataraja's death without male issue, when succession opens out in favour of those heirs, and not with reference to the date of the testator's death. This necessarily implies that "my heirs" of the testator are required to be ascertained on the hypothesis that the testator lived upto and died a moment after Nataraja's death.

If what is spelled out at (a), (b) and (c) be the true construction of Clause 5 of the Will, it logically and inexorably follows therefrom, that ascertainment of the heirs of the testator, on whom the property was intended to devolve in the event of Nataraja dying sonless, was to be made in accordance with Hindu Law of intestate Succession as in force on the date of Nataraja's death, on January 31, 1957, when succession opened out, and not in accordance with the orthodox Hindu Law prevailing in 1928, which on the relevant date, January 31, 1957, stood abrogated and superseded by the Hindu Succession Act. 1956. The conclusion is therefore inescapable that "my heirs" referred to by the testator in Clause 5 of his Will, have to be ascertained in accordance with the Hindu Succession Act, 1956. In so doing, we are only giving effect to the import and construction of the Will of the testator, and no question of giving retrospective operation to the statute is involved.

The learned Judges of the High Court have said that at the time of making the Will, the testator could not predicate that at the time of Nataraja's death without leaving any son, the Hindu Law of Succession would be different from the one prevailing at the time of making the Will or the testator's death. Nevertheless, the testator was definitely contemplating the contingency of Nataraja dying without any male issue, and the necessity of ascertaining the testator's heirs at that point of time for further devolution of the property. It cannot, therefore, be said that ascertainment of the testator's heirs according to the law in force at the time of happening of the contemplated contingency, was wholly beyond the ken of the testator.

In the view we take of the import and scope of Clause 5 of the Will (Ex. P. 2) ascertainment of the heirs of Palaniandi Pillai has to be done on the assumption that he died intestate, a moment after Nataraja Pillai's death, according to Sections 8 to 10 of the Hindu Succession Act.

At that point of time, the plaintiff (who would be assumed to be the widow of a "predeceased" son), and the defendants would all be heirs of the testator, falling in Class I of the Schedule referred to in Section 8. According to Section 9, all the heirs in Class I of the Schedule shall take simultaneously, to the exclusion of all other heirs. The distribution of the property among the plaintiff and defendants will be governed by Rules 3 and 4 in Section 10, which are as under:

> "Rule 3.-The heirs in the branch of each predeceased son or each predeceased daughter of the intestate shall take between them one share." "Rule 4.-The distribution of the share referred to in Rule 3-
>
> (i) among the heirs in the branch of the predeceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of predeceased sons gets the same portion;
>
> (ii) among the heirs in the branch of the predeceased daughter shall be so made that the surviving sons and daughters get equal portions."

In accordance with the aforesaid provisions of the Hindu Succession Act, the plaintiff would be entitled to get 1/3rd share in Schedule I property in which her husband had a life-interest, while the remaining 2/3rd share in the property shall be equally distributed among the two branches of the defendants, the branches of Ramaswami and Vadivelu getting 1/3rd share each.

For the foregoing reasons, we allow this appeal, set aside the judgment of the High Court and pass a preliminary decree for partition and separate possession in favour of the plaintiff with respect to her 1/3rd share in the suit property. In the circumstances of the case, the parties are left to pay and bear their own costs.

P.B.R. Appeal allowed.