Supreme Court of India
Chinnammal vs Ponnammal on 7 March, 1969
Equivalent citations: 1969 (2) UJ 274 SC
Author: Hegde
Bench: S Sikri, Bachawat, Hegde
JUDGMENT Hegde, J.

1. The only question for decision in this appeal by special leave is whether on a true construction of Exh. B-10, the Will executed by one Veeramuthu Udayar on May 20, 1932, the respondent became entitled to the suit properties. The courts below have taken divergent views as to the interpretation of that Will.

2. Admittedly the suit properties belonged to late Veeramuthu. He bequeathed those properties under Exh. B-10. The said Will was written in Tamil. The Official translation of the same reads as follows:--

"The Will executed on 19th (Nineteen) day of May, 1952 In favour of Chinnarmal, wife of Veeramuthu Udayar, Nathamar, house wife, Cudalur village, Virudhachalam Taluk by Veeramuthu Udayar, adopted son of Sadaya Udayar, Nathamar, Cultivator residing in the Cudalur Village, aforesaid Taluk, is as follows:--

As you are my wife & as I am suffering from gas trouble for the past 6 months and as I am mortal, I have executed this Will whole-heartedly & with good intention so as to take effect after my death. I have three daughters viz., (1) Unnamalai Amrnal, Poonnammal, Dhanabakiammal & one son by name Govindaraju Udayar. After my life time you, the mother of the aforesaid, shall protect them as guardian and shall give in marriage the three individual according to your wish. After my lifetime. you shall enjoy the under mentioned properties and shall deliver possession of the same to my aforesaid minor son, Govindaraju Udayar on his attaining majority. In case my son Govindaraju dies providentially after my lifetime and within your lifetime, you yourself shall take the properties mentioned in the Will absolutely. After my lifetime you shall pay the debts due under the deeds and you yourself shall collect the outstandings payable to me. This Will shall come into force after my lifetime. I have got right either to alter or cancel this Will in my lifetime. The total value of the immoveable properties mentioned in the Will inclusive of the outstandings payable to me is Rs. 150000.

Description of Property.

XX X X X Sd/- (in Tsmil) Neerarauthu Udayar.

Witnesses (Sd/-(in Tamil) Tamil) K. Krishnaswami Udayar."

3. The first appellant is the widow of the testator. The second appellant is her son-in-law, to whom she had assigned her interest in the suit properties. The respondent is the widowed daughter-in-law of the testator. As mentioned earlier the will in question was executed on May 20,1932. Sometime

thereafter the testator died. The only son of the testator appears to have been a minor at the time of his death. That son namely Govindaraju Udayar died in 1954 leaving behind him his widow, the respondent. Govindaraju died after attaining majority. After his death, the respondent sued for the possession of the suit properties on the strength of Exh. B-l0. The trial court dismissed that suit holding that she was not entitled to the suit properties under the will but the first appellate court reversed the decree of the trial court and decreed the suit. In second appeal a learned single judge of the Madras High Court affirmed the judgment of the first appellate court concurring with the view taken by that court that under Exh.B-10, Govindaraju got an absolute estate and that estate devolved on the respondent on his death. The question for our decision is how far the conclusions reached by the first appellate court and the High Court are correct.

4. The rules relating to the interpretation of Wills are fairly well settled. The primary duty of the courts which are called upon to interpret Wills is to find out the intention of the testator and to the extent legally permissible give effect to that intention. The intention of the testator has to be gathered by reading the Will as a whole. As far as possible effect should be given to every clause in the Will as each clause therein is as important as the other. A construction which renders any clause in the Will superfluous should be avoided, if possible. All puts of the Will should be construed in relation to each other. If there are apparent conflicting dispositions, the court should adopt a construction which would reconcile the seemingly conflicting dispositions and which would give full effect to every word used in the document rather than a construction which would have the effect of cutting down the meaning of the words used by the testator; where one of the two reasonable construction would lead to intestacy that should be discarded in favour of a contraction which does not create any such hiatus. The presumption against intestacy may be raised if it is justified by the context of the Will or the surrounding circumstances, but it can be invoked only when there is undoubted ambiguity as to the intentions of the testator. No strained construction should be placed on the Will solely with a view to avoid an intestacy. If the language of the Will is ambiguous the court may take into consideration the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense and many other things which are often summed up in somewhat picturesque language the court is entitled to put itself into the testator's armchair'. See (1)Gnanambal Ammal v. T. Raju Ayyar and Ors.; (2)N.Kasturi v. D. Ponnammal and Ors.; and Pearey Lal v. Rameshwar Das.

5 In construing a Will no doubt the courts Will have to bear in mind the rules relating to construction of Wills but in the very nature of things the interpretation of one Will cannot govern the interpretation of another as no two wills are likely to be worded similarly. Each Will has to be Interpreted on its own language.

6. We shall now proceed to analyse the contents of Exh.B-10. The Will is addressed to Chinnarmal, wife of the testator (the 1st appellant herein). It says that it is executed in her favour. Therein several directions have been given to her. If the testator intended to bequeath all his properties to his son-he had only one son at that time, as is contended on behalf of the respondent, one would have expected him to say so in the Will. The fact that the son was a minor at the time of the execution of the Will is of no significance. During his minority his mother could have been made to act as his guardian Bequests to minors are not uncommon. The preamble to Exh. B-10, is of considerable significance.

7. The Will after setting out the names of the children of the testator proceeds to say that after the lifetime of the testator, his Wife shall protect his minor children as their guardian and shall give in marriage the three individuals (evidently referring to his daughters) according to her wish. It further stipulates that on his death his wife shall enjoy the properties detailed in the Will and that she shall pay the debts due under the deeds and collect the outstandings payable to him. From these clauses it is clear that the testator intended that on his death the properties bequeathed under the Will must vest on his wife. She was empowered to 'enjoy' the same which means that she was to collect its income and utilise it as she thought best. She was also entitled to realise the outstandings due to the testator and pay off his debts. The Will does not say that she had been conferred with those powers as the guardian of her minor son. It is plain from the Will that she could exercise those powers in her own right.

8. The clause about which there has been a great deal of controversy in this litigation reads:--

"After my lifetime, you shall enjoy the undermentioned properties and shall deliver possession of the same to my aforesaid minor son, Govindaraju Udayar on his attaining majority. In case my son Govindaraju dies providentially after my lifetime and within your lifetime, you yourself shall take the properties mentioned in the Will absolutely."

Earlier we have seen that on the death of the testator the properties devolved on his wife, though the nature of the estate given to her is not made clear in the Will. We must read the clause extracted above in that context. All that the clause in question provi-

des is that the possession of the properties bequeathed should be made over to Govindaraju on his attaining majority. If that clause had not been followed up with the stipulation that in the event of Govindaraju dying during the lifetime of his mother, the latter shall take the properties bequeathed absolutely it might have be en possible to hold that in accordance with the terms and tenor of the Will, the estate bequeathed vested absolutely in Govindaraju on his attaining majority. But in view of the clauses preceding and succeeding those providing for the making over of the possession of the estate to Govindaraju on his attaining majority, it is reasonable to hold that under the Will a life estate was created in favour of the 1st appellant but that estate was to become absolute if Govindaraju should die during her lifetime. The stipulation in the Will about the making over of possession of the properties to Govindaraju on his attaining majority must be understood as being for the purpose of management. It is true that this interpretation would lead to the conclusion that if the 1st appellant had died during the lifetime of Govindaraju, there would have been a hiatus. The presumption against intestacy is not absolute. If on a fair readi ng of the Will such a conclusion is reasonable then the law must take its course see Gnanambal Ammal v. T. Rajit Ayyar andOrs.(supra). The testator, even if he had foreseen that contingency would not have been perturbed because in that event the property would have devolved on his nearest heir who was no other than his son. From the words used in the Will it is not possible to uphold the contenti-

on of the respondent that bequest under the Will was exclusively in favour of Govindaraju and his mother was merely empowered to act on his behalf during his minority.

9. The alternative contention advanced on behalf of the respondent namely that the estate came to be vested absolutely on Govindaraju on his attaining majority receives no support from the language of the Will. While the Will says that the 1st appellant shall take the estate 'absolutely' on the death of Govindaraju, no such expression is used when dealing with the nature of interest created in favour of Govindaraju. One of the rules of construction of a Will is that every word therein should be given its normal meaning. If the testator intended to give an absolute estate to his son he would have said so particularly when he expressed his intention to convey his estate absolutely to his wife under certain circumstances.

10. Even if we had upheld the contention that on his attaining majority Govindaraju took the estate absolutely, there would have been no justification for holding that the clause providing for the devolution of the property on the 1st appellant is a repugnant clause. At best it is a defeasance provision. The distinction between a repugnant provision and a defeasance provision is fine but none the less real. A gift without words of limitation may be cut down to a life interest if the same property is disposed of at the death of the first taker, see (4)Indira Kant Ghose v. Akhoy Kumar Ghose.

11. On a proper reading of the Will we are persuaded to conclude that the true intention of the testator was to bequeath the properties to his wife, at the same time providing for its management by his son after he attains majority. The estate given to the wife initially was a life estate but it became an absolute estate on the death of his SOD.

12. Mr.Sarjoo Prasad, learned Counsel for the respondent argued that reference to the death of the testator's son found in the Will must be understood as meaning his death during his minority and not thereafter. In this connection he placed reliance on the decision of the Judicial Committee in (5) Tarachurn Chatterji v. Suresh Chunder Mookerji. This Contention is unacceptable as the Will specifically mentions that if he should die after the death of the testator and before the death of the 1st appellant the latter should take the properties absolutely. The language of the Will that the Judicial Committee was called upon to consider is sub-stentially different from that of the Will before us. On this aspect of the case, the decision of the Judicial Committee (6) Chunilal substantially v. Bat Samarath is apposite.

13. For the reasons mentioned above we hold that the decision of the trial court is correct and that of the first appellate court and the High Court are wrong.

In the result this appeal is allowed, the judgment and decree of the High Court and the first appellate court are set aside and that of the trial court restored. But in the circumstances of the case we direct the parties to bear their own costs in all the courts.