

N. Appacootty Mudali and ors. Vs. Muthukumarappa Mudali and ors.

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Court : Chennai

Decided On : Nov-07-1906

Reported in : (1906)16MLJ558

Appellant : N. Appacootty Mudali and ors.

Respondent : Muthukumarappa Mudali and ors.

Judgement :

1. [Their Lordships differed from Mr. Justice Boddam on the question of the validity of the will propounded, and proceeded as follows Ed.]. As regards the question whether probate of the will should be granted to the petitioners as executors according to the tenor, we are of opinion that they are not entitled to be treated as executors in that sense. The definition of an executor in the Probate and Administration Act, on which Mr. Sivaswamy Aiyar laid stress, merely follows the language used by Blackstone, and cannot be held to warrant an interpretation different from that adopted by a long course of authorities in England and followed here in the decisions to which our attention was drawn on behalf of the caveators by Mr. Sundara Aiyar. No doubt, the mere circumstance that the property is left by the will to trustees, without words referring to them as executors, would not prevent those persons being granted probate as the executors according to the tenor, if among the duties to be discharged by them under the will there are included such duties as executors have to perform. But that should appear from the will. In re Hamilton 17 L.R. Ir. 277 strongly relied on by Mr. Sivaswamy Aiyar is itself a decision supporting this view. No doubt, there, though the trustees were not

expressly appointed as the executors they were held to be executors according to the tenor. But Warren J. in so holding relied upon the words in the will 'first to manage 'the same as they may 'think best from those interested' and went on to observe 'to manage the property they must realize' it and that involves the 'payment and collection of debts before the surplus' can be ascertained and 'disposed off as directed by' the will. For that purpose 'the legatees must have the rights and duties of the executors.' We may also refer to In the Goods of Punchard L.R. 2 P. & D. 269 and In the Goods of Livery L.R. 3 P. and D. 157.

2. Turning now to the provisions of the will here they seem to be strictly confined to the petitioners as well as Gnana Ammal, acting respectively as trustees of the two sets of properties. The language gives them no power whatever to do any of the duties necessarily appertaining to the office of executor. They cannot therefore be treated as executors according to the tenor.

3. We accordingly dismiss the appeal without costs on the ground that the petitioners are not entitled to probate.