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Court : Chennai

Decided On : Oct-01-1891

Reported in : (1898)ILR21Mad105

Judge : Subramania Ayyar and;Davies, JJ.

Appellant : Sridevi

Respondent : Krishnan and ors.

Judgement :

1. In the Court below, the plaintiff claimed the amount of the pension in dispute in his own right under the will left by the late Zamorin in his favour.
2. He also claimed the money on behalf of the Tavazi to which he formerly belonged, and of which he was do. facto manager.
3. In the appeal here, the Advocate-General put forward another ground, namely, Unit apart from the will the plaintiff wat entitled to the money as the nearest heir to the last Zamorin. This new ground, in order to be considered, would require further enquiry, and we cannot therefore permit it to be raised now.
4. As to the second of the grounds on which the suit was based in the lower Court, it is clearly not maintainable, because the certificate granted TO the plaintiff under the Pensions Act permitted him to sue only in his own right and under the will. No leave was given to the Tavazi to sue. Even if it had been otherwise, we would

have held that the plaintiff was not entitled to sue on behalf of the Tavazi as at the date of the plaint he had ceased to belong to it, having become a stani. The fact that he was subsequently allowed to manage the affairs of the Tavazi constituted him only its agent. That would, of course, not give him a right to represent the Tavaze so as to proceed under Section 30 of the Code of Civil Procedure, he not having the same interest as the members of the Tavazi, if they had any.

5. The only remaining point is whether the plaintiff is entitled to the money under the will was impeached on several grounds. It was first contended that the Zamorin was subject to the Marumakattayam law, and it was therefore not competent to him to execute a will even in respect to his separate property. The right to dispose of separate property by testamentary disposition is a right now recognized as vested in every Hindu, and without evidence of custom or usage to the contrary, among Malabar Hindus, there can be no reason for holding that the general rule is inapplicable to them. We should therefore hold that the Zamorin had the power to will away his separate property, which the amount in dispute admittedly was, even though the Zamorin was also a member of an undivided family--to wit, his Kovilagam. In fact, however, he was not that. His will is, therefore, unquestionably not open to objection on the ground stated. It was next contended that the transfer of the pension money made in the will was null and void under Section 12 of the Pensions Act. There is no doubt the pension was a political pension, being an allowance granted by the Government, not in respect of a right, but as a matter of favour to the Zamorin, after his deposition from the Raj, as the engagement between him and the Government clearly shows (vide. 'Logan's Collection of Treaties and Engagement relating to Malabar,' pages 372 to 376). See also *The Secretary of State for India in Council v. Khemchand Jeyechand* I.L.R. Bom. 432 is, therefore, applicable to the case, if the amount bequeathed by the will was money not payable' at the time the will became operative. It is not denied that the day appointed for the payment of the quarterly allowance, of which the plaint amount forms part, had not arrived at the time of the Zamorin's death. The money was not disbursable from the Government treasury until a month or more afterwards. If, therefore, the expression 'payable' in Section 12 means ripe for disbursement, or that payment was demandable, the will was doubtless invalid. It was, however, urged by the Advocate-General that the proper

construction of the word was that the right to the money had accrued, and hence was 'payable,' even though the actual payment of it could not be demanded till a later date. We are unable to accept this construction. We think the word 'payable' is used in its primary sense, namely, deliverable in performance of an obligation; in other words, that actual payment was demandable by the person entitled. We must, therefore, hold that the will was invalid under Section 12 of the Pensions Act. Further, supposing the transfer did not fall under the prohibition in Section 12 of that Act, the case would be governed by Clause (9) of Section 6 of the Transfer of Property Act, which declares that 'political pensions cannot be transferred.' There is no conflict between this Clause and any provision of the Pensions Act, because there is nothing in the latter Act empowering alienation of a political pension in cases in which Section 12 may not be applicable. If such power of transfer existed, it must have been under the general law, and it is expressly taken away by the Transfer of Property Act. It is scarcely necessary to observe that, as the law of testamentary disposition among Hindus has been treated simply as a development of the law of gift inter vivos, the principles applying to the latter, under Section 6 of the Transfer of Property Act, must be held equally applicable to the former; that is to say, that what cannot be given in life cannot be given by will. For these reasons we find that the plaintiff derived no title to the money under the will. It therefore becomes unnecessary to express an opinion whether, if the plaintiff had a right, his action lay against the Zamorin and not against the first defendant as was contended on behalf of the latter.

6. The appeal must accordingly be allowed and in reversal of the lower Court's decree, the plaintiff's suit must be dismissed with costs of first defendant throughout.