

Narayanasami Gramani Vs. Periathambi Gramani

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Court : Chennai

Decided On : Mar-20-1895

Reported in : (1895)ILR18Mad460

Judge : Best and ;Subramania Ayyar, JJ.

Appellant : Narayanasami Gramani

Respondent : Periathambi Gramani

Judgement :

1. The plaintiff (respondent) is a devisee. The clause of the will under which he claims runs thus: 'One kani punja land in Ambili Mottu Palla punja should be given to Periathambi (plaintiff), my elder sister's son.' The said plot Ambili Mottu Palla punja measures one and a three-quarters kanis. The plaintiff sued for the possession of a particular portion measuring one kani out of the plot in question. The District Munsif decreed the claim. On appeal the District Judge, after rejecting the contention raised by the defendant, that the devise was void for uncertainty, confirmed the decree. He, however, observed in his judgment that the plaintiff cannot be allowed to choose which particular part of the field he shall have, that the field must be divided into two portions, one containing one kani and the other containing the remainder of the field with reference to quality of soil and the plaintiff shall have the portion containing one kani.

2. It is argued before us that the Lower Courts should have dismissed the suit, as the plaintiff had no right to select and ask for a specific portion of the land as he does in the plaint.

3. We think that the District Judge was in error in saying that the plaintiff was not entitled to ask for the particular portion of the land mentioned in the plaint. In a case like the present the devisee has clearly the right to choose. It has been long settled that 'if a man devises two acres out of four acres that lie together, this is a good devise and the devisee shall select' (Jarman on Wills, 5th Edition, page 331). In *Hobson v. Blackburn* 1 My. & K. 571 Leach M.R. held that where a general grant was made of ten acres adjoining or surrounding a house, part of a larger quantity, the choice of such ten acres adjoining or surrounding was in the grantee and that a devise to the like effect was to be considered as a grant. In *Jacques v. Chambers* 2 Coll. 435 Knight Bruce V. C. laid down that where a testator leaves a number of Articles of the same kind to a legatee and dies possessed of a greater number, the legatee and not the executor has the right of selection. The same view was taken in *Tapley v. Eagleton* L.R. 12 Ch. D. 683 where the testator who possessed three leasehold houses in King. Street, bequeathed two houses in that street without mentioning which two houses the legatee should take. Jessel, M. E., held that the legatee was entitled to elect which two he will take.

4. There is thus clear authority for holding that the decree of the Courts below is correct. The appeal fails and is dismissed with costs.