

Raghava Mudaliar Vs. M. Narayanasami Mudaliar

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Court : Chennai

Decided On : Dec-22-1893

Reported in : (1894)4MLJ88

Appellant : Raghava Mudaliar

Respondent : M. Narayanasami Mudaliar

Judgement :

1. On the 8th February 1882 a document described as testamentary was executed in favor of Narayanasami Mudali by Unnamalai Animal the widow of Pachayappa Mudali the adopted son of Kondappa at the date of the execution, and at the time of Unnamalai's death a few days later, there was living one of her two sons who had survived her husband's death. It is found by the District Judge that this son Thoppai by name though not congenitally insane was insane when his father died in 1868 and continued to be so afterwards. It is also found by the District Munsif that Vaithinada the next reversioner entitled to the property of the family after the widow's death, it being assumed that she took a widow's estate, consented to the execution of the document.

2. On these facts two questions arise, viz., first, whether Thoppai on account of his insanity was incapable of possessing the ordinary rights of a member of a, Hindu family, and secondly on the assumption that the first question is answered in the affirmative whether Unnamalai, having a widow's estate only, did effectually convey the property to the plaintiff by the instrument above-mentioned. With

regard to this latter question, it was argued for the defendant that although the widow might with the next reversioner's consent have alienated the property by a conveyance, inter vivos, she could not do so by will and it was contended that the document was in truth what it purported to be, a will. In this contention we think the defendant is right. The document is in substance as well as in name a will and it has been treated as such by the parties throughout this litigation. It was not the widow's intention that the grant should take effect immediately and the whole estate should be at once vested in the grantee. This being so, the case is governed by the decision of the Judicial Committee in *Behari Lai v. Madho Lal Ahir Gayawal* I. L. R 19 C 238 and we must hold that the plaintiff has failed to establish his title. We observe that this point does not seem to have been taken in the courts below and although in the grounds of appeal to the District Judge exception was taken to the finding of the District Munsif with regard to Vaithinada's alleged consent, that ground of appeal does not seem to have been argued. The main point to which the attention of the District Judge was called was the insanity of Thoppai and the question of fact and law connected therewith. On the question of law assuming the facts to be as above-stated we think the District Judge was right in the conclusion at which he arrived. We agree with the opinion of the High Court of Bengal that a consideration of the texts shows that it is not necessary that madness should be congenital to disqualify a person for inheritance, *Bam Sahye Bhukkut v. Lalla Laljee Sahye* I. L. R 8 C 153 No case to the contrary was cited to us in which the point actually arose for decision.

3. In the Bombay case it was blindness and not insanity that was in question and the opinion of the court expressed with regard to madness was clearly influenced by the reading of Narada given in Jagannatha's digest. See *Murarji Gokuldas v. Parvatibai* I. L. R 1 B 182 which reading Professor Jolly has shown to be incorrect, *Tagore Lectures*, 1883, p. 275. Since we are of opinion that the alienation by the widow did not pass a valid title to the plaintiff we must allow the appeal and reverse the decrees of the courts below. But as the defendant has not succeeded on the point mainly relied on in the Lower Court, we leave each party to bear his own costs. The costs of the second appeal must be paid by the plaintiff.

