

Madammal and anr. Vs. Devayya

Madammal and anr. Vs. Devayya

SooperKanoon Citation : sooperkanoon.com/809955

Court : Chennai

Decided On : Nov-07-1929

Reported in : AIR1930Mad713

Appellant : Madammal and anr.

Respondent : Devayya

Judgement :

Anantakrishna Ayyar, J.

1. One Devayya Gowda executed a will, Ex. 1, dated 3rd July 1907. He left behind him his widow (Madammal, plaintiff 1) and his daughter-in-law (named Bowrammal, plaintiff 2, in the suit). The plaintiffs' suit was for a permanent injunction restraining the defendant from entering on the plaint properties and for other consequential reliefs. The defendant is the husband of Marammal, the daughter of the deceased son of Devayya Gowda and he claims right to possession, under Ex. 1. The question turns on the construction of Ex. 1. The first Court decided the suit in favour of the plaintiffs adopting substantially the construction put upon it by the plaintiffs. But the lower appellate Court dismissed the suit adopting substantially the construction contended for by the defendant. Hence this second appeal by the plaintiffs.

2. The document is not very happily worded, and I have to make the very best I can out of the same. But having) carefully considered the terms of the document, I

have come to the conclusion that the testator gave the defendant a vested interest in the properties, but the right of possession has been postponed till after the death of the testator's widow and the testator's daughter-in-law (plaintiffs 1 and 2). The testator, after reciting that he had no male heirs, and that he had been maintaining the defendant for the past four or five years, and looking after him as his own son, and after reciting that his granddaughter had been given in marriage to the defendant, proceeded to state as follows.:

As I am now 60 years of age, you and ray granddaughter also should maintain me, my wife Madamma and my daughter-in-law Bowramma, during our lifetime and act up to what we order you to do. After our death you yourselves should perform our obsequies etc., and enjoy all the undermentioned properties belonging to us with absolute rights with power to dispose of them by way of gift sala, etc.

3. The question is whether under the terms of this document the defendant would be entitled to present possession and management of the same as of right, being only under an obligation to maintain the plaintiffs in a fair and proper manner, or whether the will, on a proper construction, supports the contention of the plaintiffs namely, that after the testator's death, his widow and the daughter-in-law should have each a life-interest in the properties and that, though the defendant was to have a vested interest in the property, the defendant should have possession and enjoyment only after the death of those persons.

4. It was argued by the learned advocate for the respondent that in the absence of proper words in the will giving the daughter-in-law a life-estate, the Courts would not be inclined to adopt such a construction. But I am met with some difficulties in accepting the contention urged on behalf of the defendant. If the defendant's contention be accepted, I think I will not be giving proper effect to the words 'engal anumaathiyin paril' Further there are these further words:

After our death, you yourselves should perform our obsequies etc., and enjoy all the undermentioned properties belonging to us with absolute rights.

5. No particular rate of allowance has been specified in the document. According to the defendant's contention, both the widow and the daughter-in-law would be

practically left to the mercy of the defendant. As I said, the document is rather difficult to construe. If possible, one should like to avoid intestacy in the construction of wills. The words in the will in question, in my opinion, give a vested interest in the properties in favour of the defendant but postpones his right to possession till after the death of both the plaintiffs. Such a construction of similar documents has been held to be proper in cases to which my attention was drawn by the learned advocate for the appellants. In *Bilass v. Muni Lal* [191] 33 All. 558, a document with similar terms was construed in the way that I construe the document, Ex. I. That estate for life could be created by 'necessary implication' has been laid down in the case reported in *Srinivasa Seshaaharlu v. Seshamma* [1918] 47 I.C. 758 (of 34 M.L.J.), and also in the English case in *Den v. Tout* 104 E.R. 893. But after all no other document would practically be of any real use to me in construing this particular document. This document has been drafted evidently without any legal advice. Consequently I could not straightaway import into the construction of this document any settled principles of conveyancing. But at the same time I must remember the principles laid down in these cases, and after giving the best construction that I can, I have come to the conclusion that the defendant is not entitled to possession before the death of plaintiffs 1 and 2. Both the lower Courts have found that the plaintiffs are in possession of the properties and that being so, an injunction will be issued restraining the defendant from entering on the properties.

6. There is a statement in the plaint that, even after the death of the plaintiffs, the defendant would not be entitled to the properties. That is not a matter for adjudication in the present suit. In my view, the decree of the lower appellate Court is not sustainable, and I therefore reverse the judgment of the lower appellate Court, and restore that of the first Court with costs here and in the lower appellate Court.