

PETITIONER:
S. RAJAGOPAL CHETTIAR

Vs.

RESPONDENT:
HAMASAVENI AMMAL AND ORS.

DATE OF JUDGMENT 23/08/1991

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
RAMASWAMY, K.

CITATION:
1992 AIR 704 1991 SCR (3) 714
1991 SCC (4) 383 JT 1991 (3) 522
1991 SCALE (2) 395

ACT:

Hindu Succession Act, 1956: Section 14(1) Hindu Law--Will-Scope and construction of--Testator bequeathing properties to daughter and after her to her male children--Daughter whether acquiring absolute Estate.

Constitution of India, 1950: Article 136--Appeal by Special Leave--Contention neither raised in Courts below nor in Special Leave Petition--Cannot be raised for first time during the course of arguments in appeal.

HEADNOTE:

'P' executed a will on 22.6.1924. The terms of the will provided that after the death of testator his wife shall enjoy the properties till her lifetime; after her wife's lifetime the properties shall be enjoyed absolutely by his daughter and after her daughter the properties should go to her male children.

A question arose as to whether on the basis of the will the daughter acquired a life estate or an absolute estate. The High Court held that the fact that the testator directed that after her daughter the properties shall go to her male children clearly showed an intention that daughter's interest in the properties was not absolute. Accordingly, the High Court held that the daughter acquired only a life estate in the properties. Hence this appeal against the judgment of the High Court.

Dismissing the appeal, this Court,

HELD: 1. It cannot be held that the testator of the will wanted to give absolute right in the property to his daughter. The intention of the testator to give absolute right in the property to his daughter is negated by a clear mention in the will that after his daughter the property shall ultimately go to her male children. In case the intention of the testator was to give the properties absolutely in favour of his daughter and not merely life interest then there was no question of mentioning that after her it should go to her male children. Accordingly, the view taken by the High Court was correct. [716C-E]

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2. A contention neither raised in any of the courts

below nor before the High Court nor in the petition for special leave cannot be permitted to be raised for the first time before this Court during the course of arguments. [716F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 902 of 1977.

From the Judgment and Order dated 13.7.1976 of the Madras High Court in S.A. No. 1575 of 1973.

K. Ram Kumar and Ms. Janki Ramachandran for the Appellant.

M. Raghuraman for the Respondents-

The Judgment of the Court was delivered by

KASLIWAL, J. This appeal by Special Leave is directed against the Judgment of the High Court of Judicature at Madras dated 29.7.1976. The short controversy in the case is regarding the ambit and scope of a will dated 22.6. 1924. executed by one Padmanabha Chettiar. The construction of the will is in question in the present case. A translation of the will as supplied by the appellant in this Court reads as under:

"On the 2nd day of June, 1924, i.e. Tamil 9th day of Ani of Raktakshi. year, this will executed by me, Padmanabha Chettiar, son of Sami Chettiar, Vysya caste, cultivation, resident of New Street, Sultanpettai, Koppam, Palakkadu Taluq, Kallikottai District, presently at Anaimalai, is to the effect. As I do not have male progeny and I have attained old age, the movable and immovable properties mentioned hereunder in my possession and enjoyment, both ancestral and also self acquired, shall be enjoyed by me absolutely till my life time, after my lifetime my wife Dhana-lakshmi Ammal shall enjoy likewise till her lifetime; after her lifetime as described hereunder A Schedule properties shall be enjoyed absolutely by my daughter and wife of Anaimalai Subramania Chettiar, Rajalakshmi Ammal, and after her it should go to her male children".

The question which arises on the basis of the contents of the above will is whether Rajalakshmi Ammal had acquired a life estate

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under the will or an absolute estate. The High Court took the view that it was one of the cardinal principles of construction of wills that so far as legally possible effect should be given to every disposition contained in the will unless the law prevents such effect being given to it. The High Court held that the fact that the testator directed that after Rajalakshmi Ammal it shall go to her male children clearly showed an intention that Rajalakshmi Ammal's interest in the properties should not be absolute. The High Court thus arrived to the conclusion that Rajalakshmi Ammal should be deemed to have held only a life estate in the properties and after her death, her 'male children got the properties absolutely.

After going through the contents of the will we agree with the view taken by the High Court. We do not agree with the contention of the learned counsel for the appellant raised before us that Padmanabha Chettiar, the testator, of the will wanted to give absolute right in the property to

his wife Dhanalakshmi Ammal and thereafter absolute right in favour of his daughter Rajalakshmi Ammal. The above intention is negated by a clear mention in the will that after Rajalakshmi Ammal the property shall ultimately go to her male children. In case the intention of the testator was to give the properties absolutely in favour of Rajalakshmi and not merely life interest then there was no question of mentioning that after her it should go to her male children.

Learned counsel for the appellant also raised a contention that even if it may be considered that only life interest was given to Rajalakshmi Ammal under the will, such right became absolute under Section 14 (1) of the Hindu Succession Act, 1956. This contention was neither raised in any of the courts below nor before the High Court nor in the petition for special leave and we cannot permit this ground to be raised for the first time before us during the course of arguments. In the result we find no force in this appeal and the same is dismissed with no order as to costs.

T.N.A.
missed.
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Appeal dis-