YELAMANCHILI SIVA PANCHAKSHAMMA GODAVARU

v.

YALAMANCHILI CHEVA ABHAYI AND ORS.

February 4, 1966.

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH S. M. SIKRI AND V. RAMASWAMI, JJ.]

Will—Construction of—Property whether could be claimed as persona designata *in terms of the will.*

The respondent filed a plaint claiming properties mentioned in Schedules A and B thereof on the ground that he was adopted by the appellant who was widow of L. Apart from adoption the respondent's claim was based on being mentioned as *persona designata* in L's will. The relevant words in the will were : "It has been settled that my wife should take, the second son of my elder brother, ...in adoption, celebrate his marriage, etc., and after he passes his minority she should deliver possession of my other movable and immovable properties that I have .....". The trial court held that the respondent had not been adopted by the appellant nor was he entitled to any rights as *persona designata* in L's will. On appeal the High Court held that while there was no adoption, the respondent was entitled to the property as *persona designata*. The appellant came to this Court. The question presented for determination was whether the High Court was right in holding that upon a true construction of the will Ex.B-1 there was a gift of the property to the plaintiff as *persona designata*.

HELD : The will contained no direct words of disposition in favour of the respondent. There was no expression of devise in favour of the respondent. There was only a direction to the widow to adopt and the gift to the respondent was on condition of being adopted. The respondent's claim as *persona designata* could not therefore be accepted. [448 G-H, 450 A]

Fanindra Deb Raikat v. *Rajeswar Dass*, 12 I.A. 72 relied on.

Nidhoomoni Debya v. *Saroda Pershad Mookerjee*, 3 I.A. 253 distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 752 of 1963.

Appeal from the judgment and decree dated December 16 1958 of the Andhra Pradesh High Court in Appeal Suit No. 284 of 1954.

M. A. Narasayya Chaudhury, *I. Shivamurthy* and *K. R. Sarma*, for the appellant.

W. S. Barlingay and *E. Udayaratnam*, for the respondent.

The Judgment of the Court was delivered by

Ramaswami J. This appeal is brought on behalf of the defendant against the judgment and decree of the High Court of Andhra Pradesh dated December 16, 1958 in A. S. No. 284 of 1954 whereby

A it reversed the judgment and decree of the Court of Subordinate Judge, Vijayawada in O. S. No. 171 of 1950.

In the suit which is the subject-matter of this appeal the plaintiff alleged that he was duly adopted by the defendant—the widow of Lakshmayya—and therefore entitled to properties mentioned in Schs. A & B of the plaint. The plaintiff also asserted that, apart from his right as an adopted son, he was entitled to the properties claimed as a *persona designata* under the will dated November 30, 1946—Ex. B-1 executed by Lakshmayya. The suit was contested by the defendant who alleged that the plaintiff was not adopted as the son of Lakshmayya. The trial court rejected the case of the plaintiff that he was adopted by the widow after the death of Lakshmayya. The trial court further held that the plaintiff was not entitled to any rights under the will as a *persona designata.* The trial court accordingly dismissed the suit. On appeal by the plaintiff the High Court confirmed the finding that no adoption had been made. It, however, held on the construction of the will that the plaintiff was entitled to the properties claimed as a *persona designata.* The High Court allowed the appeal and granted a decree to the plaintiff for possession of the properties subject to certain incidental directions given in the decree.

The question presented for determination in this appeal is whether the High Court was right in holding that upon a true construction of the will—Ex. B-1 there was a gift of the properties to the plaintiff as a *persona designata.*

It is necessary, at this stage, to set out the material provisions of the will Ex. B-1 executed by Lakshmayya :—

> "I have no male or female issue. I have wife, by name Sivapanchakshari, mother by name Basavamma, and elder brother by name Somaiah. For the last 10 days I am suffering from a disease akin to paralysis and fearing that I may not survive, I make the following settlement as set down below to take place after my life.

	A.C.
Land called Mallukunta	1—60
Out of Raksh kunta (?) vadde land	1—25
Out of Maddurivari land	1—05
Out of Pooravarnamvari land	2—60
TOTAL	6—50

> Six acres and (50) fifty cents seri wet land; 10 cents in Kolli Chinna Bapaiah's (back) yard; and 300 yards of house-site towards the west of my house (belonging to my mother-in-law) with a tiled house thereon, have been

settled upon my wife to enjoy as she likes with all rights of gift, mortgage, exchange, sale, etc. A

2. Southern side garden 80 cents (eighty cents of seri wet land) has been settled upon my mother Basavamma to enjoy with all rights of gift, mortgage, exchange, sale, etc.

3. It has been settled that my wife should take, the 2nd son of my elder brother, Yalamanchili Somaiah, in adoption, celebrate his marriage, etc., and after he passes his minority she should deliver possession of my other movable and immovable properties that I have and described here below. During the life-time of my wife, if the adopted son and she live together without any trouble, (she) is to live in my house, and if there is disagreement between the adopted son and my wife, (she) is to live in a room of my house. B C

My wife has been given power over my minor (son's) property, to collect debts due to me and to discharge debts due by me." D

The testator then mentioned two items of debts due to him. He thereafter enumerated the debts due by him which aggregated to Rs. 15,803/- . A description of the land is also given.

The question involved in this appeal is whether the disposition of the properties to the plaintiff is as a *persona designata* or by reason of his fulfilling a particular legal status, namely, the adopted son of the testator. The question in such a case is really one of intention of the testator which must be ascertained from the language of the various clauses of the will and the surrounding circumstances of the execution of the will. As pointed out by the Judicial Committee in *Fanindra Deb Raikat* v. *Rajeswar Dass*(1) : E F

"The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances."

In the present case we are satisfied, on reading the various clauses of the will, that there is no gift to the plaintiff and there was only a direction to the defendant to adopt the plaintiff as the son of Lakshmayya and the intention of the testator was that the plaintiff should take as an adopted son and, therefore, the gift made to the plaintiff was conditional on his being adopted. The reason is that there are no direct words of disposition in favour of the plaintiff. In this connection the language of cl. 3 of the will is G H

(1) 12 I. A. 72.

in contrast with that of cls. 1 and 2 where words of disposition are used with regard to the gifts made to the widow—Sivapanchakshari and to the mother of the testator—Basavamma. Clause 3 of the will does not contain any expression of devise of the property in favour of the plaintiff. Clause 3 only contains a direction that the wife of the testator should take the plaintiff in adoption, celebrate his marriage etc. and "after he passes his minority she should deliver possession of my other movable and immovable properties to him". It is manifest that in the present case there is a direction to the widow to adopt and the gift to the plaintiff is on the condition of his being adopted. It appears to us, upon reading the will as a whole, that the testator had no intention to give the property to the plaintiff irrespective of the adoption to be made by the widow in accordance with the direction. On behalf of the respondents reference was made to the decision of the Judicial Committee in *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee*(1) in which it was held that there was a gift of his property by the testator to a designated person (the words being "I declare that I give my property to Koibullo whom I have adopted"), and this gift was not dependent on the performance of certain ceremonies by his widows. The principle of the decision is not applicable to the present case where the language of the testamentary instrument is materially different. We think the present case is similar to that of *Fanindra Deb Raikat* v. *Rajeswar Dass*(2) where the Judicial Committee held on a true construction of the angikar-patra by which the deceased purported to give his property to the respondent by virtue of his being the adopted son, that the gift did not take effect inasmuch as the adoption was invalid. At page 89 of the Report the Judicial Committee observed :

> "They think the question is whether the mention of him as an adopted son is merely descriptive of the person to take under the gift, or whether the assumed fact of his adoption is not the reason and motive of the gift, and indeed a condition of it. The words are,—'I authorize you by this angikar-patra to offer oblations of water and pinda to me and my ancestors after my death, by virtue of your being my adopted son. Moreover, you shall become the proprietor of all the movable and immovable properties which I own and which I may leave behind; you shall become entitled to my *dena-pawna* (debts and dues), and you and your sons and grandsons shall enjoy them agreeably to the custom of the family.' He is to make the offerings by virtue of being an adopted son, and 'moreover' he is to become the proprietor. This is to be the consequence of the adoption."

(1) 3 I. A. 253. (2) 12 I. A. 72.

For the reasons expressed we hold that the High Court was in error in interpreting the will of Lakshmayya as a gift of the properties made to the plaintiff as a *persona designata*. We are, therefore, of the opinion that the plaintiff is not entitled to the properties on the basis of the will executed by Lakshmayya and the suit of the plaintiff should be dismissed. This appeal is accordingly allowed with costs.

Appeal allowed.