

KAILVELIKKAL AMBUNHI (DEAD) BY LRS. AND ORS. A

v.

H. GANESH BHANDARY

AUGUST 24, 1995

[KULDIP SINGH AND S. SAGHIR AHMAD, JJ.] B

*Indian Succession Act, 1925 : Section 88.*

*Will—Other Instruments—Rules of interpretation—Difference in—Inconsistent clauses in will—Later shall prevail over earlier.* C

*Legal Maxims :*

*Maxim "cum duo inter se pugnancia reperiuntur in testamento ultimum ratum est"—Meaning of.*

This petition has been filed on the ground that the Kerala High Court has not properly interpreted the will in question. D

Dismissing the petition, this Court

**HELD : 1. The rules of interpretation of a "Will" are different from the rules which govern the interpretation of other documents say, for example, Sale Deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between earlier or the subsequent part or specific clauses inter-se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part. [37-A-B]** E F

*Ramachandra Shenoy and Anr. v. Mrs. Hilda Brite and Ors., AIR (1964) SC 1323; Navneet Lal v. Gokul and Ors., AIR (1976) SC 794 and Ramakrishore Lal and Anr. v. Kamalnarayan, AIR (1963) SC 890, referred to.* G

2. A Will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause H

A is held to prevail over the earlier clause. This is regulated by the well known maxim "cum duo *inter se* pugnancia reperiuntur in testamento ultimum ratum est" which means that if in a Will there are two inconsistent provisions, the latter shall prevail over the earlier. This principle is also contained in Section 88 of the Indian Succession Act, 1925. However, this rule of interpretation can be invoked only if different clauses cannot be reconciled. [37-C-E; 38-A]

*Hammond v. Trehame*, [1938] 3 All England Reports 308 and *Rameshwar v. Balraj*, AIR (1935) PC 187, referred to.

C CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 4597 of 1990.

From the Judgment and Order dated 6.11.89 of the High Court of Kerala in S.A. No. 750/80-G.

D K.V. Viswana than for M.T. George for the Petitioner.

S. Balakrishnan and S. Prasad for the Respondent.

The Judgment of the Court was delivered by

E S. SAGHIR AHMAD, J. The only ground on which the judgment of the High Court is questioned before us is that the will in question was not properly interpreted and that the testator having created an absolute estate in favour of Kannan, son of his direct sister, Vellachi, it was not open to the High Court to rely upon the subsequent recital that Schedule 'A' properties which as per the earlier part of the Will had already been bequeathed in favour of Kannan, shall be possessed and enjoyed as "Tavazhi".

G In interpreting the Will, the High Court has relied upon a number of decisions of this Court including *Ramachandra Shenoy and another v. Mrs. Hilda Brite and others*, AIR (1964) SC 1323, *Navneet Lal v. Gokul and Others*, AIR (1976) SC 794 and *Ramakrishorelal and Another v. Kamalnarayan*, AIR (1963) SC 890 in which the principles of interpretation, as also the principles on the basis of which the true intention of the testator

H can be gathered, have been set out.

The rules of interpretation of the "Will" are different from the rules which govern the interpretation of other documents say, for example, a Sale Deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or the subsequent part or specific clauses *inter se* contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will", the testator can always change his mind and create another interest in place of the bequest already made in the earlier part or on an earlier occasion. Undoubtedly, it is the last Will which prevails.

A Will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause is held to prevail over the earlier clause. This is regulated by the well known maxim "*cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est*" which means that if in a Will there are two inconsistent provisions, the latter shall prevail over the earlier one: *Harmond v. Treharne*, [1938] 3 All England Reports 308).

This principle is also contained in Section 38 of the Indian Succession Act, 1925 which, together with its illustrations, provides as under :

"The last of two inconsistent Clauses prevails - where two Clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

#### Illustrations

- (i) The testator by the first clause of his will leaves his estate of Ramnagar "to A", and by the last clause to his will leaves it "to B and not to A". B will have it.
- (ii) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for benefit of B, the latter disposition will prevail."

A It may, however, be pointed out that this rule of interpretation can be invoked only if different clauses cannot be reconciled. (See : *Rameswar v. Balraj* AIR 1935 PC 187).

B We do not find any infirmity in the judgment passed by the Kerala High Court and the special leave petition which has been heard after notice to the respondent is hereby dismissed.

T.N.A.

Petition dismissed.