A SIDDAMURTHY JAYARAMI REDDY (D) BY LRS.

v.

GODI JAYA RAMI REDDY & ANR.

(Civil Appeal No. 2916 of 2005)

APRIL 1, 2011

B

[AFTAB ALAM AND R.M. LODHA, JJ.]

WILL:

C *Construction of will – Defeasance clause in the will – Effect of – Testator bequeathing all his properties to his grand-daughter by a will – Further clause in the will that if his daughter did not take a son in adoption and if that son did not marry his grand-daughter, then he intended to give 1/3* D *share in the property to his daughter and son-in-law together – Held: The will must be read and construed as a whole to gather the intention of the testator and the endeavor of the court must be to give effect to each and every disposition – In ordinary circumstances, ordinary words must bear their* E *ordinary construction and every disposition of the testator contained in will should be given effect to, as far as possible consistent with the testator's desire – The legacy vested in the grand-daughter, albeit, defeasibly to the extent of 1/3 share upon happening of any of the events mentioned in the will – The clause in the will is not a repugnant condition that* F *invalidates the will, but a defeasance provision – Hindu Wills Act, 1870 – s.2 – Inian Succession Act, 1865 – Indian Succession Act, 1925 – ss. 57(a), (b), 147 and 74 to 111.*

WILL

G

Will in favour of minor – Obligation cast upon the guardian/executor – Failure to perform the obligation – Effect of – Explained.

One 'BS' who had his dependents and other

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relations, namely, his wife 'S', daughter 'P', son-in-law 'RR', widowed daughter-in-law, grand-daughter 'LX' (daughter of predeceased son) and a widowed sister, executed a will on 21.5.1920 bequeathing all his movable and immoveable properties to his grand- daughter 'LX'. As 'LX' was a minor, the testator appointed his son-in-law (RR) as executor of the will. As 'P' and 'RR' had no issue, the testator expressed his desire in the will that 'P' would take a son in adoption with the consent of her husband 'RR' and that his grand -daughter 'LX' be married to such adopted son of 'P'. It was further provided in the will that 'RR' and 'LX' would look after all the other female members in the family; that in case his daughter 'P' did not take any boy in adoption or if the boy so adopted did not accept to marry 'LX', then 1/3 share of the property would go to 'P' and her husband 'RR' and 2/3 to 'LX'. After few years of death of 'BS', 'P' wanted to adopt a boy namely 'GVR' but 'RR' did not agree and left the village and his wife 'P', and settled in a different village where he performed a second marriage out of which two sons 'JR' and 'SR' were born. In due course "LX' married 'GVR' and a son 'GJR' was born to them. Soon thereafter 'GVR' died and with the passage of time 'RR' and 'P' also died. 'LX', the legatee, also died in 1971.

In 1980, the two sons of 'RR' born out of the second marriage filed a suit for partition claiming 1/3 share in the property bequeathed by 'SB' as also for rent and profits. The suit was contested by the defendants stating that after 'RR' abandoned 'P' and his rights to the property, 'P' bequeathed her share in the property to 'LX' in 1953. The trial court passed a preliminary decree in favour of the plaintiffs. On appeal by the defendants, the High Court held that 'RR' failed to discharge both the obligations – in maintaining the dependants of the testator and in acting as the executor – and, therefore, he could not claim any property under the will; and that the will executed by

A 'P' in 1953 was genuine. The High Court allowed the appeal and dismissed the suit. Aggrieved, the plaintiffs filed the appeal.

Dismissing the appeal, the Court

B HELD: 1.1. By the Hindu Wills Act, 1870, statutory provisions were made to regulate the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay. Inter alia, by virtue of s. 2 thereof certain provisions of the C Indian Succession Act, 1865 were made applicable to all such wills and codicils. Clauses (a) and (b) of s.57 of the Indian Succession Act, 1925 are *pari materia* to clauses (a) and (b) of s. 2 of the 1870 Act. [Para 21-22] [191-E; 193-D]

D 1.2. In the instant case, the will dated 21.5.1920 is admittedly a muffussil will as it has not been executed within the local limits of ordinary original civil jurisdiction of the High Court of Judicature at Madras. Clause (a) of s. 57 of the Indian Succession Act, 1925 is apparently not E attracted. Since the subject will is not covered by any of the clauses of s. 57, Part VI of the 1925 Act is not applicable thereto. Further, the parties were *ad idem* that s.. 141 of the 1925 Act, as it is, has also no application at all. Although the statutory provisions concerning F construction of wills from ss. 74 to 111 of the 1925 Act do not apply but the general principles incorporated therein would surely be relevant for construction of the subject will. [Para 23-25] [193-F-H; 194-B-C]

1.3. It is well settled that the court must put itself as G far as possible in the position of a person making a will in order to collect the testator's intention from his expressions; because upon that consideration must very much depend the effect to be given to the testator's intention, when ascertained. The will must be read and H construed as a whole to gather the intention of the

testator and the endeavor of the court must be to give effect to each and every disposition. In ordinary circumstances, ordinary words must bear their ordinary construction and every disposition of the testator contained in will should be given effect to, as far as possible, consistent with the testator's desire. [Para 26] [194-D-E]

1.4. In the instant case, the only son of the testator had predeceased him. At the time of execution of the will, he had his wife, widowed sister, widowed daughter-in-law, daughter and minor granddaughter surviving; the only other male member was his son-in-law – 'RR'. He intended to give all his properties to the granddaughter but he was aware that after her marriage, she would join her husband's family. The testator intended that his entire estate remained in the family and did not go out of that and having that in mind, he desired that his daughter adopted a son with the consent of her husband and his granddaughter married the adopted son of his daughter. He expressed in unequivocal terms, "after my demise, my granddaughter 'LX' who is the daughter of my son shall have absolute rights in my entire properties". [Para 27] [194-F-H; 195-A]

1.5. The testator gave two very particular directions in the will that until 'LX' attained the age of majority and attained power to manage the properties: (1) 'RR' shall act as an executor till then and (2) the executor shall look after the female members in the family, namely, his wife, widowed daughter-in-law, daughter 'P', widowed sister and granddaughter 'LX'. 'RR', thus, was obligated to carry out the wishes of the testator by managing his properties and looking after the minor granddaughter 'LX' till she attained majority and also to look after other female members in the family. 'RR' neither continued as a guardian of minor granddaughter 'LX' nor did he look after the testator's wife, widowed daughter-in-law,

A widowed sister and daughter. The female folk were left in lurch with no male member to look after. He took no care or interest in the affairs of the family or properties of the testator and thereby failed to discharge his duties as executor. It can not be said that abandonment was not B voluntary and conscious. [Para 28, 35 and 36] [195-B-C; 197-F-G]

1.6. The testator was clear in his mind that after his death, his granddaughter should have absolute rights in his entire properties. He has said so in so many words C in the will. However, he superadded a condition that, should his daughter 'P' and son-in-law 'RR' not adopt a son or if his daughter and son-in-law adopted a son but that boy did not agree to marry his granddaughter, then 1/3rd share in his properties shall go over to his daughter D 'P' and her husband 'RR'. The bequest to the extent of 1/3rd share in the properties of the testator in favour of 'P' and her husband 'RR' jointly was conditional on happening of an uncertain event. As a matter of fact and in law, immediately after the death of testator in 1920, E what became vested in 'RR' was not legacy but power to manage the properties of the testator as an executor; the legacy vested in 'LX', albeit, defeasibly to the extent of 1/3rd share. The only event on which the legacy to 'LX' to the extent of 1/3rd share was to be defeated was upon F happening of any of the above events. The said clause in the will is not a repugnant condition that invalidates the will but is a defeasance provision. It can not, therefore, be said that on the death of testator in 1920, the legacy came to be vested in 'RR' and once vesting took place, it could not have been divested. [Para 34] [196-F-H; 197-G A-B]

Mt. Rameshwar Kuer & Anr. v. *Shiolal Upadhaya and Ors* AIR 1935 Patna 401 –referred to.

H 1.7. The conditional legacy to 'RR' (to the extent of 1/3rd share jointly with 'P') was not intended to be given

to him if he happened to be instrumental in defeating the testator's wish in not agreeing to the adoption of a son by his (testator's) daughter. Such an intention might not have been declared by the testator in express terms but necessary inference to that effect can safely be drawn by reading the will as a whole. In the circumstances, the legacy to the extent of 1/3rd share cannot be held to have ever vested in 'RR' jointly with 'P' as it was he who defeated the adoption of son by the testator's daughter. As a matter of fact by his conduct, 'RR' rendered himself disentitled to any legacy. [Para 37] [198-B-C]

1.8. Not only that 'RR' did not discharge his obligations under the will of looking after the family and managing the properties as an executor but he was also instrumental in frustrating the adoption of son by the testator's daughter. Much before the defeasance clause came into operation when 'LX' married 'GVR' who could not be adopted as son by 'P', 'RR' had already left the testator's family for good and abandoned the legacy that could have come to him under that clause. [Para 38] [198-D-E]

2.1. The plea of the appellants that RR's family from the second wife and the testator's family was a composite family and the properties were joint family properties of the plaintiffs and the defendants, has not been accepted by the trial court as well as High Court. This Court has no justifiable reason to take a different view on this aspect. [Para 39] [199-F]

2.2. Importantly, 'RR' during his life time – although he survived for about 19 years after the death of the testator – never claimed any legacy under the subject will. [Para 40] [199-G]

2.3. All in all, on the construction of the will and, in the circumstances, it must be held, and this Court holds that no legacy came to be vested in 'RR' and he did not

A **become entitled to any interest in the estate of the testator and, therefore, the plaintiffs did not acquire any right, title or interest in the properties of the testator. [Para 41] [190-H; 199-A]**

B *(Katreddi) Ramiah and another* v. *Kadiyala Venkata Subbamma and others* **A.I.R. 1926 Madras 434;** *Balmakund* v. *Ramendranath Ghosh* **A.I.R. 1927 Allahabad 497;** *Ratansi D. Morarji* v. *Administrator-General of Madras* **A.I.R. 1928 Madras 1279;** *Bhojraj* v. *Sita Ram and others* **A.I.R. 1936 Privy Council 60;** *Ketaki Ranjan Bhattacharyya and others*
C *v. Kali Prasanna Bhattacharyya and others* **A.I.R. 1956 Tripura 18;** *P. Lakshmi Reddy v. L. Lakshmi Reddy* **(1957) SCR 195;** *AL. PR. Ranganathan Chettiar and another v. Al. PR. AL. Periakaruppan Chettiar and others* **A.I.R. 1957 S.C. 815;** *Darshan Singh and others v. Gujjar Singh (Dead) By*
D *LRs. and others* **(2002) 2 SCC 62;** *Govindammal v. R. Perumal Chettiar and others* **(2006) 11 SCC 600 and** *Govindaraja Pillai and others* v. *Mangalam Pillai and another* **A.I.R. 1933 Madras 80 – cited.**

E

Case Law Reference:

AIR 1935 Patna 401	**referred to**	**para 31**
A.I.R. 1926 Madras 434	**cited**	**para 43**
F **A.I.R. 1927 Allahabad 497**	**cited**	**para 43**
A.I.R. 1928 Madras 1279	**cited**	**para 43**
A.I.R. 1936 Privy Council 60	**cited**	**para 43**
G **A.I.R. 1956 Tripura 18**	**cited**	**para 43**
(1957) SCR 195	**cited**	**para 43**
A.I.R. 1957 S.C. 815	**cited**	**para 43**
(2002) 2 SCC 62	**cited**	**para 43**

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(2006) 11 SCC 600	**cited**	**para 43**	A
A.I.R. 1933 Madras 80	**cited**	**para 43**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2916 of 2005.

B

From the Judgment & Order dated 21.4.2003 of the High Court of Andhra Pradesh at Hyderabad in Appeal No. 397 of 1987.

R. Sundaravaradan, V. Sridhar Reddy, Ch. Leela Sarveswar, Abhijit Sengupta for the Appellants. C

P.S. Narasimha, K. Parameshwar (for Sudha Gupta) for the Respondent.

The Judgment of the Court was delivered by D

R.M. LODHA, J. 1. The controversy in this appeal, by special leave, is concerned with will dated May 21, 1920 executed by Bijivemula Subba Reddy resident of Chennavaran, village Kattera Gandla, Badwel Taluq, Cuddapah District. The question is one of construction upon which the two courts – High Court and trial court – are not in accord and, have taken divergent view. E

2. At the time of execution of the will, Bijivemula Subba Reddy – a Hindu – was aged about 75 years. He had his wife Subbamma, daughter Pitchamma, son-in-law Rami Reddy, widowed sister Chennamma, widowed daughter-in-law and granddaughter Lakshumamma living. His only son Sesa Reddy had died in 1917. The testator was man of sufficient wealth. He had landed property (wet and dry lands and wells) at various places, namely, in Katteragandla, Rampadu, Varikuntla and Thiruvengala Puram. He also owned few houses and plots of lands at different places. He had moveable properties as well in the form of bonds, securities and promissory notes. The will recites, as indeed is the undisputed fact, that the testator, F G H

except one house situate at Kotha Laxmipally village in which he had 1/3rd share, was the absolute owner of the properties specified therein.

3. Pitchamma had no child although she had married 20 years before the execution of the will. The testator desired that his daughter Pitchamma adopted a son with the consent of her husband and his granddaughter Lakshumamma got married to the adopted son of his daughter Pitchamma.

4. The will is written in vernacular (Telugu). The correctness of its English translation annexed with the appeal was disputed by the respondents. The parties were then directed to submit agreed translation of the will which they did and that reads as follows:

"I, Bijivemula Subba Reddy son of Balachennu, resident of Chennavaran village Kattera gandla, Badwel Taluq Cuddapah District, cultivation, this the 21st day of May, 1920, with sound mind, free will executing the will.

Now I am aged about 75 years. My wife Subbamma is living. I had one son by name Sesa Reddy. He died at the age of 24 years, about three years back. He had one wife and one daughter aged about 6 years by name Lakshumma. I have one daughter by name Pitchamma. I have given in marriage to one Rami Reddy adopted son of Siddamurthi Duggi Reddy, Papireddypally village Rampadu Majira., though she married about 20 years back, but she has no issues.

She intended to take a boy in adoption with the consent of her husband.

As I am old I could not [sic] able to run my family. After the death of my son, since 15 years, the above persons are looking after my family and my welfare.

I have also one widow sister by name Chennamma.

She is living with me since 30 years. She is also helping me in all aspects. I intend to give my grand daughter Lakshumamma to the proposed adopted son of my daughter Pitchamma.

In the said event, I intend to give all my belongings, moveable and immovable properties to the said Lachumma and the adopted son of my daughter Pitchamma. But my daughter and her husband so far did not take any steps for getting a boy in adoption. Now as I am sick and suffering from fever and other ailments, I am doubting whether I can perform the above said acts during my life time.

I own lands in Katteragandla Village, Rampadu village, Varikuntla village, and Thiruvengala puram village, both wet and dry lands and also wells. I also own a Midde in Majira. I have one Beeruva in Pancha of my house. I also have household articles, kallamettelu. I also have lands in Papireddypally village of Rampadu Majira, two plots and I have absolute rights in one of the same. I also have one house in Kotha Laxmipally village, of Kathera gandla majira and in that I have 1/3rd share. I also have bonds and securities and promissory notes transactions. As I have the above said moveable and immoveable properties and as I am having absolute rights over the same, none others have any rights whatsoever in the above said properties. Therefore, I intend to execute the will and the same shall come into force after my demise.

The following are the terms of the will.

(1) After my demise, my grand daughter, Lachumamma who is the daughter of my son shall have absolute rights in my entire properties.

(2) As my grand daughter is minor, till she attains the age of majority and attains power to manage the

A above said properties, I hereby appoint my son in law Siddamurthy ramireddy as executor of the will till then.

(3) According to the will of my grand daughter Laxmamma, in case to marry the adopted son of my daughter, it shall be performed.

(4) As I am having my wife Subbamma, Widow daughter in law, Pitchamma, and my widow sister Chennamma, the present guardian, Ramireddy and my grand daughter Laxmumma, after attaining majority, shall look after the above persons. If they do not satisfied (*sic*) with the above arrangements, they shall enjoy my property with limited rights and necessary arrangements shall be made by the guardian and after him and my grand daughter Laxmamma after attaining majority.

(5) In case, as God's grace is not in favour of my aforesaid proposals, namely if my daughter did not take any boy in adoption and if the said boy will not accept to marry my grand daughter Laxmamma, I intend to give my aforesaid properties, 1/3rd share to my daughter Pitchamma and her husband who is also my son in law Ramireddy together. The remaining 2/3rd share is given to my grand daughter Laxmumma.

Accordingly I executed the will and they have the right to partition and they shall enjoy the properties after division with absolute rights during their life time and thereafter their legal heirs"

5. Bijivemula Subba Reddy died within few months of the execution of the will. After few years of death of the testator, Pitchamma wanted to adopt Godi Venkat Reddy as her son but her husband Rami Reddy did not agree to that adoption.

Rami Reddy left the Village Chennavaran, his wife Pitchamma and settled in other village – Pappireddypally. Rami Reddy then married with Subbamma. Out of the wedlock of Rami Reddy and his second wife, two sons were born : (i) Siddamurthy Jayarami Reddy and (ii) Siddamurthy Rami Reddy.

6. Lakshumamma married Godi Venkat Reddy somewhere in 1926 and out of that wedlock one son Godi Jayarami Reddy was born. Unfortunately Godi Venkat Reddy died within three years of marriage. Godi Jayarami Reddy has one son Godi Ramachandra Reddy. Rami Reddy died in 1939; Pitchamma died in 1953 and Lakshumamma died in 1971.

7. In 1980, the two sons of Rami Reddy, born out of wedlock of his second wife Subbamma, filed a suit for partition of the schedule properties – the properties bequeathed by Bijivemula Subba Reddy vide his will dated May 21, 1920 – claiming 1/3rd share therein under that will. They also claimed rent and profits. The case of the plaintiffs was that they and the defendants were members of a composite family and were in joint possession and enjoyment of the properties of Bijivemula Subba Reddy and as per the will they were entitled to 1/3rd share. During the pendency of the suit, one of the sons died and his legal representatives were brought on record. The plaintiffs are the present appellants.

8. The defendants traversed the claim of the plaintiffs and set up the plea that there was a dispute between Pitchamma and her husband Rami Reddy over the adoption of Godi Venkat Reddy; Rami Reddy left the house somewhere in 1924 and settled in Village Pappireddypally. It was averred that Rami Reddy married a second wife and not only abandoned Pitchamma but also abandoned his rights to the property given under the will. Pitchamma then looked after the family in the absence of any male member, managed the properties and got the patta of these properties transferred in the name of Lakshumamma and bequeathed her share in the property by a will in 1953 to Lakshumamma.

A 9. The defendants also set up the plea that Lakshumamma purchased few properties mentioned in the schedule from her own resources in 1955. They gave the details of those properties. They further set up the case that Lakshumamma after executing the will on March 6, 1953 partitioned the B properties between herself and first defendant. By way of additional written statement, the plea of *res judicata* was raised. The defendants are the respondents herein.

10. On the basis of the pleadings of the parties, the trial C court framed diverse issues; the parties let in oral as well as documentary evidence and the trial court heard the counsel for the parties.

11. The trial court in its judgment dated December 22, 1986 negated the plaintiffs' claim that they and the defendants D were members of a composite family and the subject properties were in their joint possession and enjoyment. However, the trial court did hold that under the will dated May 21, 1920 Pitchamma and Rami Reddy got 1/6th share each in the properties of the testator. While concluding so, the trial court E held that there was no condition imposed in the will by the testator that his daughter Pitchamma and son-in-law Rami Reddy must adopt a son and her granddaughter should marry the adopted son of Pitchamma and her husband. It was only a pious wish of Bijivemula Subba Reddy that his daughter F Pitchamma adopted a son with the consent of her husband and that his granddaughter Lakshumamma should marry the adopted son of Pitchamma and her husband. The trial court further held that the plaintiffs were not claiming the property directly as legatees under the will but as legal heirs of Rami Reddy and Pitchamma since will had come into force and was G acted upon after the death of Bijivemula Subba Reddy and, accordingly, Pitchamma and Rami Reddy got 1/6th share each. The trial court also held that the property acquired by Pitchamma by way of bequest under the will was a separate property and after her death, it devolved upon her husband's H

heirs (i.e. plaintiffs) and, thus, plaintiffs were entitled to 1/3rd share in the schedule properties. The trial court negated the plea of adverse possession set up by the defendants and passed a preliminary decree for partition in favour of plaintiffs with regard to their 1/3rd share.

12. The defendants (present respondents) challenged the judgment and decree passed by the trial court in appeal before the High Court. The High Court formulated three points for determination in the appeal viz; (i) whether Rami Reddy failed to comply with the obligations cast on him under the will dated May 21, 1920 executed by Bijivemula Subba Reddy and he abandoned the family and if so, whether his legal heirs (Plaintiffs) could claim his share in the property of the testator; (ii) whether will executed by Pitchamma in 1953 was genuine, true and bona fide and (iii) whether the defendants have acquired rights in the schedule properties by adverse possession.

13. The High Court held that it was obligated upon Rami Reddy under the will to maintain the dependants of the testator and act as an executor of the will. Rami Reddy failed to discharge both obligations - in maintaining the dependants of the testator and in acting - as executor. The High Court, thus, concluded that Rami Reddy could not claim any property under the will. The High Court overturned the finding of the trial court as regards the will executed by Pitchamma and held that the will executed by her in 1953 was genuine and true. As regards plea of adverse possession set up by the defendants—although negated by the trial court—the High Court held that there was ouster of the plaintiffs 60 years back and there was no semblance of any enjoyment of property by the plaintiffs' predecessors-in-title along with the defendants jointly. Consequently, the High Court by its judgment dated April 20, 2003 reversed the judgment and decree of the trial court and allowed the appeal preferred by the defendants.

14. It is from the judgment of the High Court that present appeal by special leave arises.

A 15. Mr. R. Sundaravaradan, learned senior counsel for the appellants argued: The importation of Section 57 and Section 141 of Indian Succession Act, 1925 (for short, 'the 1925 Act') is wholly inappropriate since the present case is concerned with the muffussil will of a Hindu dated May 21, 1920 with regard to B the properties situate outside the city of Madras. The muffussil wills (executed before 1927) do not require the formalities of execution, attestation and revocation to be carried out in the manner required by the 1925 Act. The parties did not join issue about the truthfulness of the will and there was only dispute C about its construction and implementation. Even if it be assumed that Section 141 of the 1925 Act is attracted, the same has been complied with; the attesters were already dead.

16. It was vehemently contended by Mr. R. Sundaravaradan that the property vested in the executor in 1920 on the death D of testator and Section 141 of the 1925 Act, even if applicable, could not divest such vesting in title. Dealing with the expression "take the legacy" in Section 141, it was argued by learned senior counsel that the said expression means taking possession of legacy and not vesting of the legacy. He E submitted that the word "executor" used in the will has been used in loose sense of the term; Rami Reddy was the son-in-law of the testator, he was looking after and managing the lands and, therefore, the legacy bequeathed to him was not because he was to be the executor in strict sense but because he was F the testator's son-in-law and manager.

17. Learned senior counsel submitted that there is no legal evidence of mismanagement, malversation or misappropriation and a vague allegation that the executor has not done his job required no serious consideration. He argued that the marriage G of Rami Reddy with Subbamma was with the consent of Pitchamma and there was nc legal impediment for a Hindu to have a second wife before Hindu Succession Act, 1956 or Bigamy Prevention Act, 1949 especially when Pitchamma was barren and it is indeed a legal requirement based on Shastric H injunction to have progeny so that religious efficacy of satisfying

the souls of forefathers is completed. Learned senior counsel contended that there was no voluntary and conscious abandonment by Rami Reddy and the High Court was in clear error in holding so.

18. Mr. R. Sundaravaradan criticized the findings of the High Court on the plea of adverse possession set up by the defendants and genuineness of the will executed by Pitchamma in 1953 in favour of Lakshumamma.

19. Mr. P.S. Narasimha, learned senior counsel for the respondents, on the other hand, supported the judgment of the High Court.

20. Indian Succession Act, 1865 (for short, 'the 1865 Act') was enacted to provide for intestate and testamentary succession in British India. Section 331 of the 1865 Act, however, excluded its applicability to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist and it further provided that its provisions shall not apply to any will made, or any intestacy occurring, before January 1, 1866.

21. By the Hindu Wills Act, 1870 (for short, 'the 1870 Act'), statutory provisions were made to regulate the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay. Inter alia, Section 2 thereof provided as follows :

"S. 2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive),

A sections one hundred and seventy-nine to one hundred and eighty-nine (both inclusive),

sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

B so much of Parts XXX and XXXI as relates to grants of probate and letters of administration with the will annexed, and

Parts XXXIII to XL (both inclusive), so far as they C relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in section three hundred and thirty-one of the said Act, apply—

D (a) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and E Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits:"

F 22. The 1925 Act which came into force on September 30, 1925 has eleven parts. Part VI has twenty three chapters. Section 57 to Section 191 are covered by Part VI. Section 57 provides thus:

"S.57. Application of certain provisions of Part to a class G of Wills made by Hindus, etc. – The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, H Buddhist, Sikh or Jaina on or after the first day of

September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such Will or codicil."

Clauses (a) and (b) of Section 57 of the 1925 Act are *pari materia* to clauses (a) and (b) of Section 2 of the 1870 Act. Clause (c) is a new provision.

23. As noticed above, present case is concerned with the will executed in 1920. The will is admittedly a muffussil will as it has not been executed within the local limits of ordinary original civil jurisdiction of the High Court of Judicature at Madras. Clause (a) of Section 57 is apparently not attracted. The subject will also does not relate to immoveable properties situate within the local limits or territories as set out in clause (a). In this view of the matter, clause (b) is also not attracted. Clause (c) does not get attracted, as it applies to wills and codicils made on or after January 1, 1927.

24. Since the subject will is not covered by any of the clauses of Section 57, Part VI of the 1925 Act is not applicable thereto. Section 141 which falls in Chapter XIII of Part VI of the 1925 Act that provides – if a legacy is bequeathed to a person who is named an executor of the will, he shall not take the

A legacy, unless he proves the will or otherwise manifests an intention to act as executor — is, thus, not applicable to the subject will. As a matter of fact, both learned senior counsel were *ad idem* that Section 141 of the 1925 Act, as it is, has no application at all.

B

25. We may also state that although the statutory provisions concerning construction of wills from Sections 74 to 111 of the 1925 Act do not apply but the general principles incorporated therein would surely be relevant for construction of the subject will.

C

26. It is well settled that the court must put itself as far as possible in the position of a person making a will in order to collect the testator's intention from his expressions; because upon that consideration must very much depend the effect to D be given to the testator's intention, when ascertained. The will must be read and construed as a whole to gather the intention of the testator and the endeavor of the court must be to give effect to each and every disposition. In ordinary circumstances, ordinary words must bear their ordinary construction and every E disposition of the testator contained in will should be given effect to as far as possible consistent with the testator's desire.

27. The above are the principles consistently followed and, we think, ought to be guided in determining the appeal before us. What then was the intention of this testator? The only son F of the testator had predeceased him. At the time of execution of will, he had his wife, widowed sister, widowed daughter-in-law, daughter and minor granddaughter surviving; the only other male member was his son-in-law – Rami Reddy. He intended to give all his properties to the granddaughter but he was aware G that after her marriage, she would join her husband's family. The testator intended that his entire estate remained in the family and did not go out of that and having that in mind, he desired that his daughter adopted a son with the consent of her husband and his granddaughter married the adopted son of his daughter. H He, therefore, stated, "I intend to give all my belongings,

moveable and immoveable properties to the said Lakshumamma and the adopted son of my daughter Pitchamma". He expressed in unequivocal terms, "after my demise, my granddaughter Lakshumamma who is the daughter of my son shall have absolute rights in my entire properties". A

28. The testator gave two very particular directions in the will that until Lakshumamma attained the age of majority and attained power to manage properties; (one) Rami Reddy shall act as an executor till then and (two) the executor shall look after the female members in the family, namely, his wife Subbamma, widowed daughter-in-law, daughter Pitchamma, widowed sister Chennamma and granddaughter Lakshumamma. Rami Reddy, thus, was obligated to carry out the wishes of the testator by managing his properties and looking after the minor granddaughter Lakshumamma till she attained majority and also look after other female members in the family. B C D

29. The clause, however, upon which the appellants' are claiming the rights in the properties of Rami Reddy is the clause that reads "...if my daughter did not take any boy in adoption and if the said boy will not accept to marry my granddaughter Lakshumamma, I intend to give my aforesaid properties, 1/3rd share to my daughter Pitchamma and her husband, who is also my son-in-law Rami Reddy together. The remaining 2/3rd share is given to my granddaughter Lakshumamma". E

30. Mr. R. Sundaravaradan, senior counsel for the appellants is right in contending that the above clause in the will is not a repugnant condition that invalidates the will but is a defeasance provision. F

31. In *Mt. Rameshwar Kuer & Anr.* v. *Shiolal Upadhaya and Ors.*[1], Courtney-Terrell, C.J., speaking for the Bench, explained the distinction between a repugnant provision and a defeasance provision thus : G

1. A.I.R. 1935 Patna 401 H

A "The distinction between a repugnant provision and a defeasance provision is sometimes subtle, but the general principle of law seems to be that where the intention of the donor is to maintain the absolute estate conferred on the donee but he simply adds some restrictions in derogation
B of the incidents of such absolute ownership, such restrictive clauses would be repugnant to the absolute grant and therefore void; but where the grant of an absolute estate is expressly or impliedly made subject to defeasance on the happening of a contingency and where the effect of
C such defeasance would not be a violation of any rule of law, the original estate is curtailed and the gift over must be taken to be valid and operative."

32. The distinction between a repugnant provision and a defeasance provision explained in *Mt. Rameshwar Kuer1* has
D been followed subsequently. In our view, Patna High Court rightly explains the distinction between a repugnant provision and a defeasance provision.

33. The question, however, upon which the fate of this
E appeal depends is : whether Rami Reddy became entitled to any legacy by virtue of the defeasance clause under the will at all.

34. The testator was clear in his mind that after his death, his granddaughter should have absolute rights in his entire
F properties. He has said so in so many words in the will. However, he superadded a condition that, should his daughter Pitchamma and son-in-law Rami Reddy not adopt a son or if his daughter and son-in-law adopted a son but that boy did not agree to marry his granddaughter, then 1/3rd share in his
G properties shall go over to his daughter Pitchamma and her husband Rami Reddy. The bequest to the extent of 1/3rd share in the properties of the testator in favour of Pitchamma and her husband Rami Reddy jointly was conditional on happening of an uncertain event noted above. As a matter of fact and in law,
H immediately after the death of testator in 1920, what became

vested in Rami Reddy was not legacy but power to manage the properties of the testator as an executor; the legacy vested in Lakshumamma, albeit, defeasibly to the extent of 1/3rd share. The only event on which the legacy to Lakshumamma to the extent of 1/3rd share was to be defeated was upon happening of any of the above events. Mr. R. Sundaravaradan, learned senior counsel, thus, is not right in contending that on the death of testator in 1920, the legacy came to be vested in Rami Reddy and once vesting took place, it could not have been divested.

35. It has come in evidence that Pitchamma wanted to adopt Godi Venkat Reddy as her son, but her husband – Rami Reddy – did not agree to that and as a result thereof Godi Venkat Reddy could not be adopted by Pitchamma. On the issue of adoption of Godi Venkat Reddy, a serious dispute ensued between Pitchamma and her husband. Rami Reddy left the family of the testator and the village Chennavaran somewhere in 1924 and went to nearby village Pappireddypally where he married second time. It may be that there was no legal impediment for Rami Reddy to have a second wife before the Hindu Succession Act, 1956 or Bigamy Prevention Act of 1949 when no child was begotten from Pitchamma yet the fact of the matter is that he abandoned the family of the testator. There is no merit in the submission of Mr. R. Sundaravaradan that abandonment was not voluntary and conscious.

36. Rami Reddy neither continued as a guardian of minor granddaughter Lakshumamma nor looked after the testator's wife, widowed daughter-in-law, widowed sister and daughter. The female folk were left in lurch with no male member to look after. He took no care or interest in the affairs of the family or properties of the testator and thereby failed to discharge his duties as executor.

37. In view of the predominant desire that his granddaughter should have his properties and that his

A properties did not go out of the family, the testator desired that his daughter adopted a son with the consent of her husband and his granddaughter married that boy. The conditional legacy to Rami Reddy (to the extent of 1/3rd share jointly with Pitchamma) was not intended to be given to him if he happened B to be instrumental in defeating the testator's wish in not agreeing to the adoption of a son by his (testator's) daughter. Such an intention might not have been declared by the testator in express terms but necessary inference to that effect can safely be drawn by reading the will as a whole. In the C circumstances, the legacy to the extent of 1/3rd share cannot be held to have ever vested in Rami Reddy jointly with Pitchamma as it was he who defeated the adoption of son by the testator's daughter. As a matter of fact by his conduct, Rami Reddy rendered himself disentitled to any legacy.

D 38. Not only that Rami Reddy did not discharge his obligations under the will of looking after the family and managing the properties as an executor but he was also instrumental in frustrating the adoption of son by the testator's daughter. Much before the defeasance clause came into E operation when Lakshumamma married Godi Venkat Reddy who could not be adopted as son by Pitchamma, Rami Reddy had already left the testator's family for good and abandoned the legacy that could have come to him under that clause.

F 39. The plea, of the appellants, that Rami Reddy's family from the second wife and the testator's family was a composite family and the properties were joint family properties of the plaintiffs and the defendants, has not been accepted by the trial court as well as High Court. We have no justifiable reason to G take a different view on this aspect.

40. Importantly, Rami Reddy during his life time – although he survived for about 19 years after the death of the testator – never claimed any legacy under the subject will.

H 41. All in all, on the construction of the will and, in the

circumstances, it must be held, and we hold that no legacy came to be vested in Rami Reddy and he did not become entitled to any interest in the estate of the testator and, therefore, the plaintiffs did not acquire any right, title or interest in the properties of Bijivemula Subba Reddy.

42. In view of the above, the challenge to the findings of the High Court on the plea of adverse possession set up by the defendants and the genuineness of the will executed by Pitchamma in 1953 pale into significance and needs no consideration.

43. In fairness to Mr. R. Sundaravaradan, learned senior counsel for the appellants, it must be stated that he cited the following authorities: *(Katreddi) Ramiah and another* v. *Kadiyala Venkata Subbamma and others* [A.I.R. 1926 Madras 434]; *Balmakund* v. *Ramendranath Ghosh* [A.I.R. 1927 Allahabad 497]; *Ratansi D. Morarji* v. *Administrator-General of Madras* [A.I.R. 1928 Madras 1279]; *Bhojraj* v. *Sita Ram and others* [A.I.R. 1936 Privy Council 60]; *Ketaki Ranjan Bhattacharyya and others* v. *Kali Prasanna Bhattacharyya* and others [A.I.R. 1956 Tripura 18]; *P. Lakshmi Reddy* v. *L. Lakshmi Reddy* [(1957) SCR 195]; *AL. PR. Ranganathan Chettiar and another* v. *Al. PR. AL. Periakaruppan Chettiar and others* [A.I.R. 1957 S.C. 815]; *Darshan Singh and others* v. *Gujjar Singh (Dead) By LRs. and others* [(2002) 2 SCC 62]; *Govindammal* v. *R. Perumal Chettiar and others* [(2006) 11 SCC 600] and *Govindaraja Pillai and others* v. *Mangalam Pillai and another* [A.I.R. 1933 Madras 80]. However, in view of our discussion above, we do not think we need to deal with these authorities in detail.

44. In the result, appeal fails and is dismissed with no order as to costs.

R.P. Appeal dismissed.