

Jaduram - - - - - Appellant

v.

Ramdassi - - - - - Respondent

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 18TH JULY, 1949

Present at the Hearing :

LORD GREENE
LORD MORTON OF HENRYTON
SIR JOHN BEAUMONT

[*Delivered by* LORD MORTON OF HENRYTON]

This is an appeal from a judgment of the Supreme Court of Fiji dated the 11th October, 1946, on an originating summons in the matter of the estate of Nanhu deceased.

Until his death Nanhu carried on business as a merchant in partnership with his brother Jagannath under the style of Jagannath Nanhu & Co.

Nanhu made his will on the 21st August, 1937, in the following terms:—

“This is the last will and testament of me Nanhu son of Birma of Labasa on the Island of Vanualevu in Fiji Merchant I hereby Revoke all former Wills and other Testamentary writings by me heretofore made And I Declare this to be my last and only Will and Testament. I Appoint my brother Jagannath Son of Birma Merchant who is also my partner to be my sole executor and trustee. I Give Devise and Bequeath unto my said trustee all real and personal property of whatsoever nature and wheresoever situate of or to which I may be entitled or over which I may have a disposing power at the time of my decease absolutely save only with the proviso that he shall, during her lifetime, allow my wife Ramdassi to live in the Dwelling house at Nasea where she and I now live and shall supply her out of my estate with money and goods sufficient to maintain her during her lifetime in the manner in which she has lived with me in my lifetime but having regard always to the state of our business and to any economic conditions which may affect the same and further that he shall himself make a Will leaving the whole of his Estate to me should he predecease me and otherwise to be divided equally between my said wife Ramdassi and Bacheoni the wife of the said Jagannath or, in the event of the death of either, to the survivor of them. Should my said brother Jagannath predecease me I Give Devise and Bequeath the whole of my estate including such property as I shall inherit from the said Jagannath and remain possessed of at the time of my decease to be divided equally between my said wife Ramdassi and Bacheoni the wife of

the said Jagannath And I Direct that if either the said Ramdassi or the said Bacheoni shall predecease me that the whole of my estate shall go to the survivor of them and, in such an event or events, I Appoint the said Ramdassi and the said Bacheoni or the survivor of them, to be my executrices and trustees."

Nanhu died on the 27th May, 1943, and Jagannath proved his will on the 3rd March, 1944. The estate of Nanhu was sworn by Jagannath for the purpose of assessment of death duty thereon at £6,030 17s. 5d. which, according to his Declaration, was the value of Nanhu's half interest and share in the partnership of Jagannath Nanhu & Co.

Jagannath undoubtedly accepted the benefits conferred upon him by Nanhu's will, and therefore became bound to carry out the provisions beginning with the words "save only with the proviso." Between the 3rd March, 1944, and the 17th June, 1946, he took certain steps in regard to the property of Nanhu and in regard to his own property. As their Lordships are concerned only with the construction of Nanhu's will, it is unnecessary to set out these steps in detail. They are all to be found in the agreed statement of facts.

On the 17th June, 1946, Nanhu's widow Ramdassi took out an originating summons to which Jagannath was defendant, raising certain questions as to the construction of Nanhu's will. Bacheoni, the wife of Jagannath, was not made a party to the summons. Thomson, J. gave judgment in the case on the 11th October, 1946, but no formal order was drawn up. He decided the questions of construction partly in favour of Ramdassi and partly in favour of Jagannath, and directed that the costs of both parties, as between solicitor and client, should come out of Nanhu's estate.

Jagannath and Ramdassi each obtained leave to appeal from the said judgment to His Majesty in Council, but Ramdassi abandoned her appeal. Jagannath died on the 25th July, 1947, and his son-in-law Jaduram, as his executor, was substituted as appellant.

The only questions arising on this appeal are as to the effect of the gift to Jagannath of the whole of the testator's estate, and as to the effect of the three provisions which immediately follow that gift.

Turning to the will, their Lordships observe that, after the formal opening, the testator appoints Jagannath to be his sole executor and trustee and gives the whole of his property "unto my said trustee . . . absolutely." This gift is, however, immediately followed by three provisions opening with the words "save only with the proviso."

The first two provisions, as to residence and maintenance, are provisions for the benefit of Ramdassi, "during her lifetime," and their Lordships can find no words in any other part of the will which cut down the period to the joint lives of Ramdassi and Jagannath. No other question arises as to the residence provision, but counsel for the appellant contended that the second provision, as to the maintenance of Ramdassi, was too vague and uncertain to be enforced and was void for uncertainty. Their Lordships cannot accept this contention. They think that the words "in the manner in which she has lived with me in my lifetime" refer to the period immediately prior to the testator's death, and that the Court would have no great difficulty in ascertaining, on an inquiry, what amount of money and goods would be sufficient to maintain Ramdassi in that manner. The words which follow, "but having regard, etc.," clearly contemplate that Jagannath will be carrying on the business wherein he was a partner with the testator, and give him the opportunity of proving, if he can, that having regard to the state of that business and to any economic condition affecting it, there should be some reduction in the "money and goods" allowed for the maintenance of Ramdassi. There is evidence that Jagannath ceased to carry on the business on 27th July, 1945, and it is clear that Jagannath could not, after that date, put forward the state of that business as a reason for any reduction in Ramdassi's maintenance.

Next comes the third provision "and further that he shall himself make a will leaving the whole of his Estate to me should he predecease me and otherwise to be divided equally between my said wife Ramdassi and Bacheoni the wife of the said Jagannath or, in the event of the death of either, to the survivor of them."

In their Lordships' view the testator is here laying upon Jagannath the obligation to make a will leaving the whole of his (Jagannath's) property in the manner here laid down. They think it most unlikely that the testator intended this provision to apply to any property which Jagannath might inherit from the testator, for the following reasons: (a) In the phrase "leaving the whole of his estate to me should he predecease me" the words "his estate" clearly refer only to Jagannath's own property, and cannot include any property inherited by Jagannath from the testator. It seems likely that the words "and otherwise to be divided etc.," refer to the same property. (b) It seems most unlikely that by the words "and otherwise etc." the testator was laying upon Jagannath an obligation to leave equally between Ramdassi and Bacheoni a property which was already burdened with the provision as to Ramdassi residing in the dwelling-house during her life and with the provision for the maintenance of Ramdassi during her life "out of my estate." It seems much more likely that the testator, having given his own property to Jagannath subject to these two burdens, is here laying an obligation upon Jagannath as to Jagannath's own property, which is not subject to these burdens, and over which Jagannath has a free power of disposition. (c) Although the latter part of the will, beginning with the words "Should my said brother Jagannath predecease me" never came into operation, it is noteworthy that the testator when giving "the whole of my estate," goes on to say "including such property as I shall inherit from the said Jagannath etc." If the testator had intended the earlier words "and otherwise to be divided etc.," to apply to any property which Jagannath might inherit from him, their Lordships think he would have said so in terms.

The result is that in their Lordships' view Jagannath took the whole of the testator's estate absolutely, subject to the obligation as to residence and maintenance already described and subject also to the obligation, in regard to Jagannath's own estate, expressed in the words "and further that etc." As their Lordships have already held that these words do not refer to the testator's estate, they do not think it right to express any opinion as to the precise nature of the obligation imposed by these words, or as to any remedies which may be available to Ramdassi in the event of any failure to carry out that obligation. These questions could only be properly decided in a suit relating to Jagannath's estate, and Bacheoni would clearly be a necessary party. Their Lordships do not, however, desire in any way to encourage further litigation. On the contrary, they think that the parties would be wise to come to an agreement as to all the matters in issue, without proceeding with the inquiries mentioned hereafter.

Their Lordships observe, from the agreed statement of facts, that Jagannath, prior to his death, made certain arrangements for securing an annuity of £120 to Ramdassi. Any sums already received by Ramdassi either from Jagannath or from the appellant out of the testator's estate, and any sums received or to be received by Ramdassi as a result of these arrangements must be treated as having been paid in or towards the discharge of the obligation imposed by the will as to the maintenance of Ramdassi.

Their Lordships will humbly advise His Majesty that the appeal should be allowed in part, that the judgment of the Supreme Court should be set aside and that an Order should be made on this appeal in the following terms:—

"Declare that upon the true construction of the will of the testator Nanhu and in the events which have happened a trust was created affecting the whole of the testator's residuary estate under which the respondent became and is entitled during her life to live in the testator's dwelling house at Nasea and to be supplied out of the said

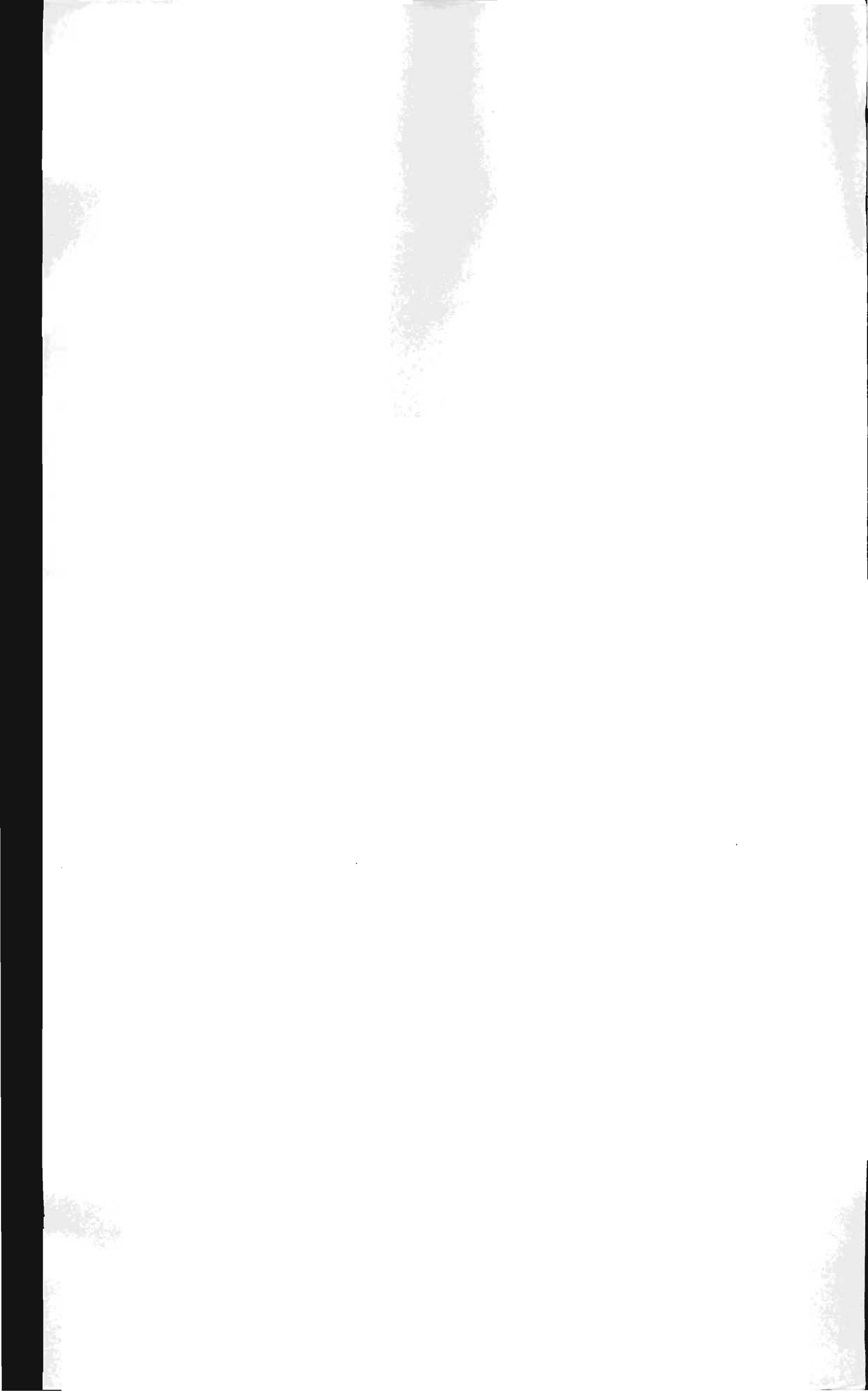
estate with money and goods sufficient to maintain her in the manner in which she lived with the testator immediately before his death regard being had up to but not after the 27th July, 1945 (the date on which the testator's brother Jagannath disposed of the testator's share of the partnership business formerly carried on by the testator and the said Jagannath) to the state of the said business and to any economic conditions which may have affected the same and further declare that any sums already received by the respondent either from the said Jagannath or from the appellant out of the said estate and any sums received or to be received by the respondent under the Charge in her favour mentioned in paragraph 11 of the Statement of Facts herein ought to be taken in satisfaction or part satisfaction of the respondent's rights under the foregoing trust and further declare (without prejudice to the question whether the provision in the said will contained relating to the making by the said Jagannath of a will created any rights enforceable against the said Jagannath or his estate after his death) that subject to the foregoing trust the said Jagannath became on the death of the testator absolutely and beneficially entitled to the whole of the testator's residuary estate.

And it is ordered that the following inquiries be made:—

- (1) An inquiry what sum ought to be allowed to the respondent for her maintenance under the foregoing trust between the death of the testator and the said 27th July, 1945.
- (2) An inquiry what annual sum ought to be allowed to the respondent for her maintenance under the foregoing trust since the said 27th July, 1945, and for the future.

Liberty to apply to the Supreme Court of Fiji.”

As the appeal has succeeded in part and failed in part, the costs of all parties here and in the Supreme Court, as between solicitor and client, will be paid out of Nanhu's estate. If it becomes necessary to proceed with either or both of the inquiries the costs thereof will be in the discretion of the person conducting it or them in Fiji.



In the Privy Council

JADURAM

v.

RAMDASSI

DELIVERED BY LORD MORTON OF HENRYTON