Privy Council Appeal No. 10 *of* 1947

Navaneethakrishna Marudappa Thevar – – *Appellant*

v.

Navaneethakrishna Sivasubramania Hirudalaya Marudappa Pandian – – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH APRIL, 1948

Present at the Hearing :

LORD NORMAND
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* LORD NORMAND]

In this appeal there were submitted to review decisions on five separate questions which had been pronounced at various stages of an Execution Petition by the High Court at Madras. Before the hearing of the appeal ended the parties wisely came to an agreement on four of these questions; it therefore remains to decide one only: and it may be hoped that a decision on that one question may at long last bring into view the end of a litigation which began in 1922, and which has been protracted beyond all reason by a succession of appeals and remands, too tedious to describe. Their Lordships do not pretend to apportion the responsibility for this sorry record of ineptitude, but it is apparent that a properly conceived accounting competently carried out at the beginning of the Execution proceedings would long ago have resulted in a final decision.

The decree on which the Execution proceedings were based is dated 2nd April, 1935, and it was subsequently affirmed by this Board. It finally decided a suit which put in issue, *inter alia*:—(1) the meaning and effect of a will and a testamentary letter or codicil in favour of the appellant, and in particular (2) whether the appellant had under these testamentary writings a right to the arrears of rent of a certain estate which had accrued when the testatrix died and were recovered later. The testatrix held the estate as a Hindu widow and she therefore had a life interest therein with an absolute right to the income. She had in 1901 made over the management of the estate to the Court of Wards at Madras which remained in charge till her death in 1921. She had in 1920 purported to adopt the appellant, but the adoption was found to be invalid in the very suit which is the foundation of the present Execution proceedings. Her will is dated 9th May, 1921. The relevant bequest in the will in favour of the appellant is in these terms:—" I have transferred the property set out in the Second Schedule to my adopted son with absolute rights ". Schedule II of the will is in these terms:—" The entire amount, viz. Rs.89,000 up to date, which the Court of Wards were able to save for me from the Zamin and which remain in the shape of Government pro-note and war bond, and the interest thereon, and the jewels, vessels, lace cloths, etc., and other samans which I may give to my adopted son from time to time ". The testamentary letter which is dated 26th June, 1921, is addressed to

the Secretary of the Government Revenue Department, Madras. After requesting that the Court of Wards should continue to manage the estate on behalf of her minor adopted son, the appellant, it continued:—" If the Honourable Court of Wards is by somehow or other prevented from managing the estate on behalf of my minor adopted son by means of any order of Civil Court, I request that all my moveables, jewels . . . which belong to me solely and which I have left in charge of my adopted son may be allowed to be retained with him for his personal and other use as per my will, dated 9th May, 1921 . . . and that the savings at the hands of the Honourable Court of Wards at my death which is my property under the Hindu Law and to which my adopted son is legally entitled, be handed over to him . . . for his personal and other expenses, including any funeral and ceremonial expenses, and cost of litigation if any." The relevant portion of the Decree of the High Court of 2nd April, 1935, is as follows:—" This day . . . this Court allowing this appeal in part so far as the properties and savings set out in Schedule II of the Will . . . dated 9th May 1921, are concerned, doth . . . order and declare that the appellant is entitled to the said properties and savings in whatever form they might have been existing on the date of the death of (the testatrix) and doth order and decree as follows:—. . . (2) that the 5th Respondent " (i.e., the party claiming against the appellant) " do also hand over to the Appellant the Government promissory notes, war bonds and cash which were in the hands of the Court of Wards at the time of the death of the said (testatrix), excluding the funds of the Devasthanam and after deducting the sum of Rs.3,000 spent for the funeral expenses of the said (testatrix), together with the actual interest on the said Government pro-notes, war bonds and cash earned during the management of the Court of Wards and thereafter during the time the said bonds and moneys were lying in Court deposit under the directions of the District Court, as also the interest on the amount, if any, drawn on behalf of the said 5th Respondent from out of the said savings at the rate of 6 per cent. per annum from the date of such drawing to the date of payment."

The question now to be decided is whether the terms of that decree warrant the appellant's claim in the Execution proceedings to the arrears of rent, and that is a question which depends solely on the construction of the decree itself. It is therefore not competent to modify the terms of the decree by reference to the will and codicil, nor is it relevant to consider the terms of the judgment on which the decree proceeds. But it is apparent from this judgment that for some reason the question of the arrears of rent, though it was properly before the Court for decision, received but small attention. That, however, does not affect the decree. It is not and cannot be disputed that the appellant's claim to the arrears of rent must rest entirely upon the word " cash " in paragraph 2 above recited. The earlier passage, which is introductory to the mandatory part of the decree, is plainly incapable of covering more than what is set out in Schedule II of the will, and the only extension beyond that to be found in paragraph 2 of the mandatory part of the decree, is the word " cash ". Their Lordships are of opinion, especially having regard to the qualifying words " in the hands of the Court of Wards at the time of death of " the testatrix, that the word " cash " cannot reasonably and fairly be construed to include rents which were then in arrear and had not been ingathered. This conclusion accords with that of the High Court. The appeal on this question fails: on the other questions effect will be given to the settlement arrived at by the parties.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed and that the decree of the High Court at Madras appealed against should be affirmed subject to the modification that the appellant shall be found entitled to payment of simple interest on the sum of Rs.17,926:14:1 at the Court rate from time to time prevailing from 4th July, 1921, till payment, and to payment of the sum of Rs.4,841:6:6 without interest, both said payments *primo loco* out of the fund deposited and *quoad excessum* from the respondent. The parties will each bear their costs in this appeal.

(59831) Wt. 8062—31 180 4/48 D.L. G. 338

In the Privy Council

NAVANEETHAKRISHNA MARUDAPPA
THEVAR

v.

NAVANEETHAKRISHNA
SIVASUBRAMANIA HIRUDALAYA
MARUDAPPA PANDIAN

DELIVERED BY LORD NORMAND

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