Privy Council Appeal No. 25 of 1924.

Sri Rajah Venkatadri Appa Rao Bahadur Zamindar Garu and others *Appellants*

v.

Mahboob Sirfraz Vanth Sri Rajah Parthasarathi Appa Rao Bahadur Varu, Zamindar of Bhadrachalam and Palavancha, and others *Respondents*

FROM

The **HIGH COURT OF JUDICATURE AT MADRAS.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 30TH JANUARY, 1925.

Present at the Hearing:

VISCOUNT FINLAY.
LORD ATKINSON.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

These are consolidated appeals from three decrees, dated the 4th April, 1922, of the High Court at Madras, which had reversed three decrees, dated the 22nd April, 1921, of a Division Bench of that Court, by which three decrees, dated the 29th November, 1917, of the Subordinate Judge of Bezwada dismissing original suits numbered 30, 87 and 88 of 1916 had been affirmed. The suits had been instituted in the Court of the Subordinate Judge of Bezwada on the following dates: No. 30 of 1916 on the 26th April, 1916; No. 87 of 1916 on the 6th December, 1916; and No. 88 of 1916 on the 9th December, 1916. It was agreed at the hearing of these appeals that in drawing up the decree of the High Court in original suit No. 30 of 1916, Letters Patent Appeal No. 20 of 1921, that the words "mesne profits" in paragraph 3 of the decree should have been "income" and their Lordships amended that decree by substituting in it for the words "mesne profits" the word "income." There was no question of mesne profits in the case.

In suit No. 30 of 1916 Sri Rajah Parthasarathi Appa Rao Bahadur was the plaintiff, and Sri Rajah Venkatadri Appa Rao Bahadur, Sri Rajah Venkataramayya Appa Rao Bahadur and Sri Rajah Sobhanadri Appa Rao Bahadur and the Court of Wards were defendants. By an order of the Court of the 6th December, 1916, the Court of Wards was discharged from being a defendant, and the second defendant was appointed guardian of the third defendant, who was a minor. The suit was to recover a legacy of Rs. 80,000 bequeathed by Venkayyamma, a widow, by her will of the 30th January, 1899, to her sister-in-law Inuganti Kasturammah, a legacy of Rs. 40,000 bequeathed by the same will to another sister-in-law Inuganti Venkataramanayyamma, and shares of the residue of the testatrix's property which she had bequeathed to her brothers Chinna Rao and Buchi Thammayya. The plaintiff was the assignee of all the above-mentioned legacies, and he claimed them as such assignee. He also claimed interest on those legacies, and other relief.

In suit No. 87 of 1916, Sri Damera Venkata Rajagopala Seet Rayyamma Rao was the plaintiff, and Sri Rajah Meka Venkataradri Appa Rao Bahadur Garu, Sri Rajah Meka Venkataramayya Appa Rao Garu, and Sri Rajah Sobhanadri Appa Rao Bahadur Garu, by his brother and guardian the second defendant, were the defendants The plaintiff claimed to recover a legacy of Rs. 40,000 bequeathed to him by the same Venkayyamma by her will, with interest thereon, and other relief.

In suit No. 88 of 1916, Lakkaraju Bapayya was the plaintiff, and the defendants were the persons who were the defendants in suit No. 30 of 1916 and in suit No. 87 of 1916. The plaint in the suit was filed under section 36 of the Code of Civil Procedure, 1908, and under Order I, Rule 8, and Order VII, Rule 1, of that Code. The plaintiff claimed to recover Rs. 2,000 bequeathed to him by Venkayyamma by her will and interest thereon and a decree, and that for such purposes necessary accounts should be taken and that the property of the testatrix should be administered by the Court, and prayed for other relief.

When it may be necessary later in the judgment to refer to any of the parties to this litigation, they will be referred to by their names without any descriptive addition.

Except the Court of Wards, all the original defendants and the representatives of those who died who have been brought on the record, were nearly related to each other and to Venkataramayya Appa Rao, of whom Venkayyamma was the widow.

To understand how these suits arose and the positions of the parties to them, it is necessary to refer briefly to a litigation which began on the 21st October, 1895, and to some other facts.

The suits in which these consolidated appeals have arisen were instituted in 1916 in the Court of the Subordinate Judge of Bezwada to obtain payment of legacies which Venkayyamma, a Hindu widow, had bequeathed by her will of the 30th January,

1899. She died on the 9th March, 1899. The due execution of the will is admitted, but the suits have been contested by the defendants on several grounds, of which those which are now in the least material are that the testatrix left no property out of which the legacies could be paid; that the will has been incorrectly construed by the High Court at Madras; that the suits or one of them is barred by a previous suit which was brought in 1902; and that the suits were not brought within time. In order to understand those contentions it is necessary to refer at some length to a somewhat complicated history.

Venkayyamma, the testatrix, was the widow of Venkata Ramayya Appa Rao, who had died before 1890. They had one child, a son, Narayya Appa Rao, who died on the 4th August, 1895, while he was a minor. He died unmarried and had not made a will. When he died he was the last male owner of the Medur estate. The Court of Wards had taken charge of the Medur estate during his minority and continued to be in charge of it until December, 1895, when a Receiver, appointed by a Civil Court, having jurisdiction, took possession of it. The estate of Medur continued to be in charge of Receivers, duly appointed, until after 1902. The Receivers acted as officers of the Civil Court, and it was their duty to bring and to defend suits affecting the estate, to collect the rents and profits of the estate, to render accounts to the Civil Courts, to invest balances of money which might be in their hands, and to pay monies received by them into a local branch of the Bank of Madras after deducting necessary and legal expenses. The monies paid into the Bank by the Receivers and the Government promissory notes and other securities in which monies derived from the Medur estate were invested were under the control of the Civil Court for the benefit of those who might be entitled to them.

The Medur estate and the Nidadavole estate—with the latter these suits are not concerned—had formed parts of a large Zamindari in the Province of Madras, and the families respectively in which they were vested were nearly related. In December, 1890, Rani Papamma Rao, who was the childless widow of the last male owner of the Nidadavole estate, went through a ceremony of adopting Narayya Appa Rao as a son to her late husband. As will later be seen, it was held by the Board in 1913 that she had not power to make the adoption and that it was invalid. Until that decision of the Board in 1913 it seems to have been generally considered that the adoption was valid. Shortly after Narayya Appa Rao died in August, 1895, disputes arose between Rani Papamma Rao and Venkayyamma as to the right to the possession of the Medur estate. The former claimed a right to the possession as the mother by adoption of Narayya Appa Rao; the latter, alleging that the adoption was invalid, claimed a right to the possession as his natural mother. The Court of Wards in September or October, 1895, passed a resolution to hand over to Rani

Papamma Rao the possession of the Medur estate unless restrained by an injunction of a competent Court before the 1st December, 1895, and, thereupon, Venkayyamma instituted on the 21st October, 1895, in the Court of the Subordinate Judge of Ellore a suit against Rani Papamma Rao and the Collector of the Kistna District, who was the local agent of the Court of Wards, in which she claimed a declaration that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid, and also claimed to be placed in possession of the Medur estate with all the savings, appurtenances, &c., of the estate. That suit was suit No. 35 of 1895 in the Register of the Court at Ellore.

When Venkayyamma died on the 9th March, 1899, her suit, No. 35 of 1895, was still pending in the Court of the Subordinate Judge, and on the 1st May, 1899, on the application of Venkata Narasimha Appa Rao he and his brother Rangayya Appa Rao were brought on the record of suit No. 35 of 1895 as plaintiffs as being the two surviving uncles of Narayya Appa Rao and the nearest legal reversioners to the Medur estate. The Subordinate Judge of Ellore on the 2nd December, 1899, made a decree dismissing the suit, and Venkata Narasimha Appa Rao and Rangayya Appa Rao separately appealed from that decree to the High Court at Madras. To those appeals, Parthasarathi Appa Rao, who was a cousin of Narayya Appa Rao's natural father and had claimed a third share in the Medur estate, was made a party. He had claimed that third share in a suit No. 44 of 1899 in the Court of the District Judge of Godavari, in which his claim to a third share in the Medur estate was dismissed by a decree of that District Judge on the 12th December, 1903. From that decree of the District Judge of Godavari dismissing his claim to a third share Parthasarathi Appa Rao appealed to the High Court at Madras. The three appeals above mentioned were heard together by the High Court at Madras, and on the 20th November, 1905, the High Court by a decree dismissed the appeals of Venkata Narasimha Appa Rao and Rangayya Appa Rao, and allowed the claim of Parthasarathi Appa Rao to a third share in the Medur estate. From that decree of the 20th November, 1905, of the High Court at Madras Venkata Narasimha Appa Rao and Rangayya Appa Rao appealed to His Majesty in Council. Before the appeal came on for consideration by the Board, Rangayya Appa Rao and Venkata Narasimha Appa Rao had died, and Venkatadri Appa Rao, son of Rangayya Appa Rao, and Venkataramayya Appa Rao and Sobhanadri Appa Rao, sons of Venkata Narasimha Appa Rao, were brought on the record as the appellants.

On the 10th December, 1913, the Board reported to His Majesty, so far as is now material, that it ought to be declared that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid, and that on the death of Venkamma Rao (Venkayyamma) Rangayya Appa Rao and Venkata Narasimha Appa Rao became entitled as reversionary heirs to the Medur estate and the lands with

mesne profits and movable properties appertaining thereto and that the said estate with mesne profits and the movable properties appertaining thereto ought to be divided into moieties between the appellants Venkatadri Appa Rao as to one such moiety and Venkataramayya Appa Rao and Sobhanadri Appa Rao minors as to the other moiety. His Majesty on the 19th December, 1913, having taken that report into consideration was pleased by and with the advice of His Privy Council to approve thereof and ordered that the same be punctually observed obeyed and carried into execution.

It will be observed that the claim to a third share in the Medur estate which Parthasarathi Appa Rao had made was not allowed, and that the right of Rangayya Appa Rao and Venkata Narasimha Appa Rao to the possession of the Medur estate as reversionary heirs did not arise until Venkayyamma had died on the 9th March, 1899.

The result of the appeal to His Majesty in Council established the fact that Venkayyamma had a right to the income received from the Medur estate from the death of her son Narayya Appa Rao on the 4th August, 1895, until she died on 9th March, 1899, less the expenses of collecting it and less such expenses as were necessarily incurred in maintaining the Medur estate. That income included any interest which was paid or payable upon any Government promissory notes which the Court of Wards may have held in respect of monies received from the Medur estate before the 4th August, 1895, and any interest paid or payable by banks in respect of such part or parts of her income which during her life the bank or banks had received on deposit or otherwise at interest. If Venkayyamma had actually received that income she might have added it to the Medur estate as an accretion, but she did not, and it remained at her absolute disposal by will or otherwise, and on her death it was part of her estate which was applicable for the payment of such legacies as she might bequeath by her will.

Owing to the disputes which have been referred to and to the necessary action taken by the Civil Court to protect the Medur estate for the benefit of whoever might be entitled to the possession of it, Venkayyamma never obtained actual possession of the income to which she was entitled, but her estate, which would be available for the payment of legacies bequeathed by her, consisted to a great extent of that income to which she had been entitled, and no one who was not her executor or an administrator of her estate appointed by a Court or a legatee under her will was entitled to receive what represented that estate or any part of it. After the death of Venkayyamma her estate consisted of the income to which at the time of her death she was entitled and to what represented that income which had been invested or deposited in the Government Treasury, or in a bank or banks, and of any interest which might become payable in respect of such investment as long as it

remained under the control and custody of the Court. If the Court should hand over to any person not entitled to receive that estate it or any part of it, such person would be liable to repay it to the person entitled to receive it with such interest in respect of it as it had made, or at least as it might have made if it had been deposited at interest with the Bank of Madras or any other similar Indian bank of position.

On the 30th January, 1899, Venkayyamma made her will which, so far as is material, was as follows :—

" Will executed on the 30th day of January 1899 by Sri Rajah Venkata Rajagopala Venkayyamma Rao Bahadur Garu, widow of late Sri Rajah Venkataramayya Appa Rao Bahadur Zamindar Varu.

I have been ill for about four months past and now there is much swelling and hard breathing and therefore, being afraid that I will not survive, I, while in a sound state of consciousness and understanding make the following arrangements :—

1. Out of the jewels and other valuables belonging to me, I have already sold a major portion and spent that amount as well as the amount borrowed from my brother, Sri Rajah Inuganti Venkata Rajagopala Buchi Thammayya Bahadur Garu and from my younger brother, Chiranjivi Sri Rajah Inuganti Rajagopala Venkatarama Chinna Rao, for the expenses of the Medur Estate suit and for our maintenance and other expenses.

2. Out of the minor jewels that are remaining with me at present, the jewels set with diamonds and pearls shall be divided into three shares, and out of those shares, one share shall be given to my elder brother Sri Rajah Inuganti Buchi Thammayya Garu and two shares to my younger brother Sri Rajah Chinna Rao.

3. Further, the remaining gold and silver jewels, utensils, &c., and also cattle, shall be given to my two brothers as specified in paragraph 2.

4. The two silver maces of chobdars and orderlies, which belong to us shall be given to my junior brother-in-law Sri Rajah Venkata Narasimha Appa Rao Bahadur Garu.

5. The Government promissory notes and cash relating to the Medur Estate which have been in the custody of Court till this day, as well as the interest accruing thereon till payment of the amount, shall be divided into four shares, and out of them, one share shall be given to my elder brother Buchi Thammayya Garu, and three shares to my younger brother Chinna Rao.

6. Out of the Government promissory notes and cash of the Medur Estate which are remaining in deposit in Court and the jewels, &c., the amounts specified hereunder shall be first expended and only out of the remaining amount, one share shall, as stated in paragraph 5, be paid to my elder brother and three shares to my younger brother.

Particulars of the expenses to be incurred :—

	Rs.	A.	P.	
1	80,000	0	0	Rupees eighty thousand only to my younger sister-in-law Inuganti Kasturammah.
2	40,000	0	0	Rupees forty thousand to my elder sister-in-law Inuganti Venkataramanayyamma Garu.
3	40,000	0	0	Rupees forty thousand to my younger sister Damera Venkatrajagopala Seethayyamma.
4	12,000	0	0	Rupees twelve thousand to Inuganti Achayya Garu's son Venkatanarasimha Rao.

Particulars of the expenses to be incurred :—

	Rs.	A.	P.	
5	12,000	0	0	Rupees twelve thousand to Inuganti Kondamma Garu's daughter Bangaramma.
6	1,000	0	0	Rupees one thousand to Inuganti Achayya Garu.
7	1,000	0	0	Rupees one thousand to Chelikani Narasimharayanim Garu's sons Suramma and Achayya.
8	1,500	0	0	Rupees one thousand five hundred to the three daughters of Chelikani Narasimharayanim Garu.
9	600	0	0	Rupees six hundred to Inuganti Papayya Garu's wife Venkamma Garu.
10	5,000	0	0	Rupees five thousand to our agent Jandhyala Venkatapurnayya Garu, who has been working on our behalf in our Medur Estate Suit with zeal and interest.
11	3,000	0	0	Rupees three thousand to R. Sriramulu Sastrulu Garu, High Court Vakil.
12	1,000	0	0	Rupees one thousand to Adapa Venkataswami.
13	1,400	0	0	Rupees fourteen hundred to Venkataramanna.
14	500	0	0	Rupees five hundred to Thirumalasetti Sobhanadri.
15	800	0	0	Rupees eight hundred to Adapa Pentayya.
16	800	0	0	Rupees eight hundred to Kundali Mangayya.
17	500	0	0	Rupees five hundred to Adapa Rangam.
18	500	0	0	Rupees five hundred to Ramakristi.
19	200	0	0	Rupees two hundred to Patti Ramalakshmi.
20	200	0	0	Rupees two hundred to Kandukuri Kotayya.
21	200	0	0	Rupees two hundred to Chelikani China Lakshmadu.
22	50	0	0	Rupees fifty to the second daughter of Adapa Venkataramanna.
23	100	0	0	Rupees one hundred to Sesha—torn.
24	2,000	0	0	Rupees two thousand to Lakkaraju Bapayya Garu.
25	2,000	0	0	Rupees two thousand to Voppula Venkatachalam Pantulu Garu.
26	100	0	0	Rupees one hundred to Sri Satyanarayanaswami Varu enshrined in Annavaram.
27	1,000	0	0	Rupees one thousand for the daily *Bhogam* (offerings) of Sri Sitaramaswami Varu enshrined in Annavaram.

Saripalli Gopalakrishnamma Garu, an inhabitant of Rajahmundry, shall be the executor and give effect to the will as stated above, from after my death.

This Will is executed with my full will.

(Signed) Sri Rajah Venkata Rajagopala Venkayyamma Rao Bahadur Zamindar Garu."

Nine persons signed an attestation clause in which they stated that the will was signed by the testatrix as her will in their presence, who at the same time at her request in her presence and in the presence of each other signed their names as witnesses. The will having been executed was enclosed in a sealed cover which bore the following endorsement :—

" Will executed on the 30th January 1899 by Sri Rajah Venkata Rajagopala Venkayyamma Rao Bahadur Zamindarini Garu of Sanivarapeta Garu, to be given effect to after her death."

The will was presented for deposit on the 2nd February, 1899, at the office of the Registrar of Godavari by the agent whom the testatrix had appointed to deposit it at the Registry. After the testatrix had died the Registrar of Godavari, having satisfied himself that she had died, opened the sealed cover and registered the will. The sole executor appointed by the will did not take upon himself the duties of an executor and died shortly after the testatrix.

It was the will of a Hindu of the Province but not of the town of Madras, and had not been made by her within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature of Madras, and did not relate to immoveable property situate within the local limits of that original civil jurisdiction.

After the death of Venkayyamma, a Sub-Magistrate of Ellore took possession of certain jewellery and other things which had belonged to her as her stridhanum. He handed over the things to the police, who gave them into the possession of Rangayya Appa Rao and Venkatarasimha Appa Rao, who had no title to them as reversioners or otherwise, and they took possession of them and claimed them as reversioners. Thereupon the two brothers of Venkayyamma, who are mentioned in the first and second clauses of her will, brought a suit on the 2nd March, 1902, in the District Court of Godavari against Rangayya Appa Rao and Venkatarasimha Appa Rao for possession of that property. The first plaintiff in that suit having died, his son and heir was made a plaintiff. Finally a decree for possession of the property claimed was made in favour of the plaintiffs. It is necessary to refer to that suit as one of the contentions of the appellants in this appeal has been that the suit of 1902 having been brought these suits were not maintainable. That contention was founded on misconception. The causes of action were not the same. The suit of 1902 was for the wrongful conversion (trover, it used to be called in England) of goods. The present suits are to obtain payment of legacies, and there is no claim in respect of any of the goods to which the suit of 1902 related.

The other contentions of the appellants in this appeal were that (*a*) Venkayyamma had no disposing power to bequeath the legacies; (*b*) that clauses 5 and 6 of the will had been wrongly construed by the High Court; and (*c*) that the suit was barred by the law of limitation.

As to the objection that Venkayyamma had no disposing power to bequeath the legacies, that question is involved in the contention that clauses 5 and 6 of the will have been wrongly construed by the High Court. Their Lordships will consider these two contentions together. On the death of her son Narayya Appa Rao on 4th August, 1895, she became entitled to the Medur estate and its income to hold for her own life, and that income included the interest on investments of all monies received in respect of the Medur estate collected before the death of her son on the 4th

August, 1895. To that income she remained entitled until her death on the 9th March, 1899. That income or any part of it she could, while she remained entitled to it, have added as an accretion to the Medur estate if she had wished to do so. There is no evidence to suggest that she had ever added any part of that income as an accretion to the Medur estate. She was consequently entitled to dispose of it by will or otherwise.

It has been contended on behalf of the appellants that the High Court in the decree of the 4th April, 1922, in Parthasarathi Appa Rao's Letters Patent Appeal must have misconstrued clauses 5 and 6 of Venkayyamma's will as to those promissory notes in those clauses mentioned which represented monies received by the Court of Wards before the 4th August, 1895, in Narayya Appa Rao's lifetime, and included them in the income of the Medur estate mentioned in the 3rd paragraph, as amended by their Lordships, of that decree. There was no misconstruction of clauses 5 and 6 of the will. Venkayyamma was, after the death of her son on the 4th August, 1895, entitled to hold during her life as part of the Medur estate those promissory notes or other investments which represented monies received by the Court of Wards in respect of the Medur estate so that she might receive for her own use and as part of her income such interest as might be payable under them, but by her will she did not bequeath these promissory notes which represented monies which had been received by the Court of Wards before the 4th August, 1895, she only dealt with the promissory notes to which she was absolutely entitled as representing monies which had been received after her son's death by the Court of Wards as the receivers. That is the only reasonable construction of her will and the High Court in the decree of the 4th April, 1922, passed in Letters Patent Appeal No. 20 of 1921, was under no misconception of Venkayyamma's position or of her rights.

There remains to be considered the question of limitation. The Article of the First Schedule of the Indian Limitation Act, 1908, which applies to the suit in which these consolidated appeals have arisen is Article 123, which allows twelve years, calculated from the time " when the legacy or share becomes payable or deliverable," for bringing a suit " For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate." The question as to what the word " payable " means is not without difficulty. It has been contended on the part of the appellants that the legacies sued for became payable at latest twelve months after the death of Venkayyamma, in which case the suits would be barred by limitation. Looking at Article 123 as one of general application to such suits, it appears to their Lordships that a similar interpretation must be given to the words " payable " and " deliverable " as used in the Article, and that a share in the property of an intestate would not be " deliverable " until the administrator, to whom letters of adminis-

tration had been granted, had in his hands the share to be delivered, and, similarly, a legacy or share in a legacy does not become " payable " until the executor or other person liable to pay it has in his hands money with which it could be paid.

In the present case no one could have had in his possession or control any fund representing the income of the Medur estate, which Venkayyamma had had a right to enjoy for her own use but had not received, until it had been finally decided by the Board in 1913 that the adoption of Narayya Appa Rao by Rani Pepamma Rao was invalid, and there was no other fund. It was suggested on behalf of the appellants that the plaintiffs in these suits might have brought suits for these legacies as soon as Venkayyamma had died or within twelve months after her death against her heir, whoever he might then have been, and might have obtained decrees against him for the payment of the legacies when he might be in possession of assets with which the legacies might have been payable. Without expressing any opinion as to whether such a suit could or could not have been maintained against a Hindu heir who had received no property belonging to Venkayyamma, their Lordships may quote a passage from the judgment of the Board in *Mussamat Basso Kuar* v. *Lala Dhum Singh*, L.R. 15 I.A. 211, as to the effect of Article 97 of Act XV of 1877. The passage is as follows :—

> " Barumal might have sued for his debt, but the utmost benefit that could have come to him from such a suit would have been to have it suspended or retained in Court till after the decision of the appeal in the specific performance suit. Dhum Singh's defence would have been that the debt was paid by virtue of the contract, and that defence must have prevailed if the suit were heard while the decree of 1881 still stood unreversed. It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not, and it would be a lamentable state of the law if it were found that a debtor, who for years has been insisting that his creditor shall take payment in a particular mode, can, when it is decided that he cannot enforce that mode, turn round and say that the lapse of time has relieved him from paying at all."

In this case no difficulty of applying Article 123 of the First Schedule of the Indian Limitation Act, 1908, arises when the will of Venkayyamma is considered. It was a carefully drawn will bequeathing legacies of, in the aggregate, a large sum of money. Venkayyamma had already when she made her will commenced her suit which would determine whether she was entitled to any fund out of which any legacies which she might bequeath could be paid. If the adoption of Narayya Appa Rao by Rani Papamma Rao should be finally held to have been valid, Venkayyamma and her advisers must have known that there was and would be no fund out of which the legacies could be paid. They could not be paid unless it should be finally decided that the adoption was invalid. She stated in her will that she had been very ill for four months and was afraid that she would not survive, and that she had sold the

major part of her jewels and other valuables and had spent the amount (obtained by the sale of them) as well as the amount of money which she had borrowed from her two brothers, mentioned in her will, " for the expenses of the Medur estate suit and for our maintenance and other expenses," and in clause 5 directed that " the Government promissory notes and cash relating to the Medur estate, which have been in the custody of Court till this day, as well as the interest accruing thereon till payment of the amount, shall be divided " in the manner which she directed. And in clause 6 she directed that " Out of the Government promissory notes and cash of the Medur estate which are remaining in deposit in Court and the jewels, etc., the amounts specified hereunder shall be first expended and only out of the remaining amount, one share, shall, as stated in paragraph 5, be paid to my elder brother and three shares to my younger brother." And then she set out as expenses to be incurred a full and complete list of the legacies to be paid. The only conclusion which on these facts, their Lordships can arrive at is that the testatrix intended that the legacies should be payable and be paid after the final determination of the suit which she had brought for a declaration that the adoption of Narayya Appa Rao by Rani Papamma Rao was invalid and to establish her right to the income of the Medur estate. That litigation was not finally determined until the judgment of the Board was delivered in 1913, and these suits were instituted in 1916 and were within the time allowed by Article 123 of the First Schedule to the Indian Limitation Act, 1908.

If any authority were necessary to show that the intention of a testatrix, when not expressly and unambiguously stated in her will, may be inferred by a Court from other facts stated or referred to in her will that legacies bequeathed by the will should not be paid until the conclusion of litigation in which she was engaged when she made her will, it may be deduced from the judgment of Lord Justice Turner, L.J. in *Lord* v. *Lord*, 2 Ch. App. at page 788.

In *Roddy* v. *Fitzgerald*, 6 House of Lords Cases at page 876, Lord Wensleydale, in referring to the rules for the construction of wills, said :

> " These rules are perfectly plain and clear. The first duty of the Court expounding the will is to ascertain what is the meaning of the words used by the testator. It is very often said that the intention of the testator is to be the guide, but that expression is capable of being misunderstood, and may lead to a speculation as to what the testator may be supposed to have intended to write, whereas the only and proper inquiry is, what is the meaning of that which he has actually written. That which he has written is to be construed by every part being taken into consideration according to its grammatical construction and the ordinary acceptation of the words used, with the assistance of such parol evidence of the surrounding circumstances as is admissible, to place the Court in the position of the testator."

And then Lord Wensleydale referred to other rules to be followed by Courts in construing wills.

In *Gordon* v. *Gordon*, 5 L.R., E. and I. Appeals, at page 284, Lord Cairns, as to the construction of wills, said :—

> " I take the law on this subject to have been expressed with much accuracy and felicity by Lord Cranworth, than whom no Judge more consistently adhered to sound and strict principles of construction in the interpretation of wills. In the case of *Abbott* v. *Middleton* before this House, Lord Cranworth speaks thus : ' Where, by acting on one interpretation of the words used we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most obvious, or the most grammatically accurate. But if the words used are unambiguous, they cannot be departed from merely because they lead to consequences which we consider capricious, or even harsh and unreasonable."

The case of *Lord* v. *Lord* (*supra*) was referred to by Sir W. S. Schwabe C.J., and by Coutts Trotter and by Kumaraswami Sastri, JJ., in their learned judgments in the Letters Patent Appeals.

It appears from the judgments of the Subordinate Judge of Bezwada of the 29th November, 1917, and from the judgment of Kumaraswami Sastri J. of the 4th April, 1922, that at different dates between 1903 and 1908 Rangayya Appa Rao, Venkata Narasimha Appa Rao and Parthasarathi Appa Rao each obtained on his own application to the High Court one-third of the amount standing to the credit of suit No. 35 of 1895. They each gave some security. It also appears that after the order of His Majesty in Council of the 19th December, 1913, had been made Venkatadri Appa Rao, Venkataramayya Appa Rao and Sobhanadri Appa Rao obtained from Parthasarathi Appa Rao the one-third which he had received. For the amounts received by Rangayya Appa Rao and by Venkata Narasimha Appa Rao their sons, as their heirs and legal representatives, are responsible.

The decrees of the High Court from which these consolidated appeals have been brought, having been amended as to one of them by substituting " income " for the words " mesne profits " were the right decrees to make in the appeals under the Letters Patent, and their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

In the Privy Council.

SRI RAJAH VENKATADRI APPA RAO BAHADUR ZAMINDAR GARU AND OTHERS.

v.

MAHBOOB SIRFRAZ VANTH SRI RAJAH PARTHASARATHI APPA RAO BAHADUR VARU, ZAMINDAR OF BHADRACHALAM AND PALAVANCHA, AND OTHERS.

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