

benefit to himself (*ex-parte Games*(1)). There is nothing to show that there was want of good faith in that sense in the present case. Section 53 cannot be understood and correctly applied without reference to the English cases on which the section is really founded.

We must reverse the decree of the District Judge and restore that of the District Munsif.

Respondents must pay costs in both Appellate Courts.

RAMASAMIA
PILLAI
v.
ADINARA-
YANA
PILLAI.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Davies.

SESHAMMA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

CHENNAPPA (DEFENDANT), RESPONDENT.*

1897.
September
10.

Construction of will—Appointment of executors by implication—Civil Procedure Code, ss. 27, 53—Amendment of plaint by bringing on a new plaintiff on second appeal.

Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will. The property was alleged to have been entrusted by the testator in 1893 to the defendant. The will contained no express appointment of executors, but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, and imposed upon them the duty of providing for the maintenance of persons therein named :

Held, (1) that the plaintiffs were not appointed executors by implication ;

(2) that, under the circumstances of the case, the plaint should be amended on second appeal in 1897, by substituting the adopted son as plaintiff, with one of the present plaintiffs as his next friend.

SECOND APPEAL against the decree of E. J. Sewell, District Judge of North Arcot, in Appeal Suit No. 986 of 1895, affirming the decree of T. Sami Ayyar, District Munsif of Chittoor, in Original Suit No. 421 of 1894.

The plaintiffs sued as the executors of the will of one Ramappanayanivaru to recover from his brother certain jewels alleged to have been entrusted to him by the testator on 5th November 1893. The will set up was as follows :—

“ Will, dated 29th October 1893, executed by Ramappanayuni
“ Garu, &c.

(1) L.R., 12 Ch. D., 314.

* Second Appeal No. 335 of 1897.

SESHAMMA
v.
CHENNAPPA.

“ 1. As we have no children by the two wives, whom we have married according to the customs and ways of our caste, as we have been falling sick now and then by reason of our old age and have been ill at present, the two wives we have married according to the customs and ways of our caste, Subbambi and Laxmambi should both continue to live in the very same palace at Pullur where we have been living and should enjoy after our death, all the movable and immovable properties with all the rights and privileges we possessed in respect thereto, which have been under our possession and enjoyment in virtue of the partition deed executed between us and our brother Chennappanayanivaru.

“ 2. As Subbambi, the senior of our two wives, has female issue, you, the junior wife, Laxmambi, should act in accordance with her will, and in case you do not beget male issue during my lifetime, should adopt some boy among my relatives whom Subbambi likes, and after him should adopt another boy and do so any number of times and thus should protect (perpetuate) our family.

“ 3. Our son-in-law M.R.Ry. Bangaru Seshamanayanivaru, Sriman Mahanayakacharylu, the Zamindar of Bangarupallam, and my father-in-law M.R.Ry. Irri Vengatapa Nayanivaru, Inamdar of Mopi Roddipalle, should take care of the aforesaid properties until the said adopted boy attains majority and becomes capable of managing the same. [These persons were the present plaintiffs.]

“ 4. Laxmi who has been under our protection for a long time with her three children—two sons—Sarangapani and Kumara Ramudu and one daughter, Janaki, and the children that she may in future beget through me should live with my wives at the place where they live in the palace at Pullur. . . .

“ 7. The persons who are taking care of the said properties and the adopted son after he takes possession of the same should pay to Laxmi's present male and female children and those whom she might beget through me in future some adequate amount out of the said property required for all their expenses.

“ 8. The persons who take care of the said properties should pay out of the same for all expenses of our legal wife's daughter, adopted boy, our wives and for our family.”

The District Munsif held that the will was not genuine and dismissed the suit.

On appeal, the District Judge affirmed the decision of the District Munsif on the ground (not taken by the defendant) that the plaintiffs had no right to maintain the suit even if the will was genuine.

SESHAMMA
v.
CHENNAPPA

The plaintiffs preferred this second appeal.

Sundara Ayyar for appellants.

Srirangachariar for respondent.

JUDGMENT.—We are not satisfied that this is a case in which the plaintiffs would be entitled to probate as executors by implication. The duties which the plaintiffs are directed to perform are not specifically the duties of an executor. It is not the administration of the estate which they are told to carry out. But rather it is as guardians of the child whose adoption is contemplated that they are intended to act. We think, it is quite clear, that there was no intention to vest any property in them. They were only directed to protect the property during the minority. For these reasons, we think that the suit is wrongly brought in the name of the plaintiffs as executors. But as the objection was not taken in the Court of First Instance, and was apparently taken by the Judge himself, we think the suit ought not to have been dismissed without giving the plaintiffs an opportunity to amend. We shall now allow the amendment which, we think, the Judge ought to have allowed and which, if it had been allowed, would have saved the suit from any danger of limitation. The amendment will take the form of substituting the minor son as plaintiff with one of the present plaintiffs as next friends.

The decree of the Judge must be reversed and the appeal remanded for disposal on the merits. Costs will be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

BOYAMMA (PLAINTIFF), APPELLANT,

v.

BALAJEE RAU (DEFENDANT No. 9), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 4—Gazetted holiday—Computation of time.

In calculating the time allowed by law for the presentation of an appeal to a

1897.
September
27.

* Appeal against Appellate Order No. 8 of 1897.