

KALIAPPA
GOUNDEN
v.
VENKATA-
CHALLA
THEVAN.

The District Munsif gave the plaintiff a decree, but on appeal the District Judge reversed the decree of the District Munsif.

Plaintiff appealed.

Ramachandra Rau Saheb and *Kasturi Rangayyengar* for appellants.

Desikachariar for respondents.

JUDGMENT.—There is no provision in Act II of 1864 which enables a Collector to revive a sale which he has once cancelled. In the present case the Head Assistant Collector cancelled the sale on the 2nd November 1883. He had no power to revive the sale nearly a year afterwards as he purports to have done. The issue of the certificate was, therefore, ineffectual to create any title in the plaintiff.

We dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Davies.

ARUMUGAM PILLAI (DEFENDANT), APPELLANT,

v.

ARUNACHALLAM PILLAI (PLAINTIFF), RESPONDENT.*

Registration of wills after death of testator—Inquiry by registering officer into disability of testator—Indian Registration Act, ss. 35, 40, 41.

The procedure prescribed by section 35 of the Indian Registration Act is not applicable to the registration of wills which, under section 40 of that Act, are presented for registration after the death of the testator by persons claiming under them.

SECOND APPEAL against the decree of E. J. Sewell, Acting District Judge of Tanjore, in Appeal Suit No. 211 of 1894, confirming the decree of C. Venkobachariar, Subordinate Judge of Tanjore, in Original Suit No. 80 of 1893.

The plaintiff, the maternal uncle of one Manikam Pillai, deceased, applied to have a document purporting to be the will of Manikam Pillai registered. The Sub-Registrar refused registration, and on appeal the Registrar confirmed the decision of the Sub-Registrar. Thereupon the plaintiff filed this suit under

* Second Appeal No. 1067 of 1895.

section 77 of the Indian Registration Act, making the divided paternal uncle of Manikam Pillai the defendant in the suit.

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The defendant contended that the will was not genuine, that Manikam was a minor on the alleged date of its execution, and therefore not competent to make the will, and that moreover he was unconscious and not in a fit state of mind to execute any testamentary disposition.

The following were the issues framed in this suit for decision :—

Whether or not the deceased Manikam Pillai was a major at the time of the execution of the alleged will.

Whether the will is genuine and was duly executed by the deceased Manikam Pillai.

Whether or not suit is barred by limitation.

Whether the plaintiff is entitled to have the will registered.

On all these issues the Subordinate Judge found for the plaintiff and directed the registration of the document.

On appeal the District Judge found on the second issue that the will was duly executed by Manikam Pillai. On the first issue, as to whether the testator was a minor at the time of the execution of the will, the District Judge said : “ I consider, therefore, that a Registering officer is not permitted by the Registration Act to refuse registry of a will when presented by any person other than the testator, on the ground of the minority of the deceased testator when he executed the will,” and did not allow the appellant to argue whether in fact Manikam Pillai was a minor at the time when the will was executed.

The question of limitation under the third issue was raised upon the following facts :—

The District Registrar's order of refusal was made on 3rd November 1892. The plaintiff filed his suit before the Tiruvadi District Munsif on 2nd December within thirty days of the order. The District Munsif came after some months to the conclusion that the suit was not within his pecuniary jurisdiction and returned it to be filed in the Subordinate Judge's Court. That order is dated 21st July 1893. The suit was filed before the Subordinate Judge on the same day. With regard to this the District Judge said : “ I consider therefore that the suit was instituted when the plaint was presented to the District Munsif of Tiruvadi on 2nd December 1892, and, therefore, is not barred by limitation.” In the result he confirmed the decree of the Subordinate Judge.

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Defendant appealed.

Sivasami Ayyar for appellant.

Pattabhirama Ayyar for respondent.

JUDGMENT.—The bar of limitation could not avail if the plaint was originally presented in the proper Court, and we consider that it was so presented in that the Munsif had jurisdiction. On this ground, but not on the grounds given by the Judge, we hold that the suit was not time-barred.

With regard to the question whether the alleged minority of the testator was a valid reason for the Registrar refusing registration, we agree in the conclusion arrived at by the Judge. A clear distinction is made in section 41 of the Registration Act between the case of a will presented by the testator himself, and that of a will presented by any other person entitled to do so. In the former case the rules laid down in section 35 are made applicable, but in the latter case special rules are given. In these special rules no provision is made for an enquiry as to the testator's minority or sanity, for which enquiry provision is made in the rules in section 35. It would not be reasonable to hold that the special rules (a), (b) and (c) of section 41 are merely supplemental to the rules in section 35, because at least in one instance the same rule in substance appears in both sections. The second appeal, therefore, fails and is dismissed with costs.

PRIVY COUNCIL.

SRI RAJA VIRAVARA THODHRAMAL RAJYA LAKSHMI
DEVI GARU (DEFENDANT),

AND

SRI RAJA VIRAVARA THODHRAMAL SURYA NARAYANA
DHATRAZU BAHADUR GARU (PLAINTIFF).

[On appeal from the High Court at Madras.]

Hindu law—Impartibility not established—Possession of one member of joint family at a time—What constitutes partition.

A zamindari granted by the Government in 1803 to a Hindu descended in his family, possession being held by one member at a time. The estate, however,

* Present: Lords WATSON, HORHOUSE and DAVEY, and Sir RICHARD COUCH.