holder, however, after the judgment-debtor's insolvency, is not entitled to a decree declaring the property liable to be attached, but he is entitled to a decree declaring that the property is that of the judgment-debtor. This is what the first part of the decree of the lower Appellate Court gives. The rest of the decree which awards him a decree for Rs. 125 against the claimant must be set aside, as the right to this sum is now vested in the Official Assignee. The decree of the lower Appellate Court will be modified accordingly. Each party will bear his own costs throughout.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

RAMACHANDRA NAIKER (PLAINTIFF), APPELLANT,

v.

VIJAYARAGAVULU NAIDU AND ANOTHER (DEFENDANTS NOS. 4 AND 5), RESPONDENTS.*

1908. January 8, 17.

Hindu Law—Will, construction of gift to female—Gift for maintenance may be of an absolute estate—Where testator gives a female immoveable property for maintenance and makes several devises of other properties to others and adds a clause declaring the gifts to be absolute, the gift for maintenance will be an absolute gift—Devisee in possession of land under an invalid will must be presumed to prescribe for the estate given by the will.

An absolute gift of immoveable property to a widow for maintenance is not unknown to Hindus or repugnant to their ideas of propriety.

In construing a will, every portion of it must be given the full effect which, on a natural and grammatical construction of the will, must be allowed to it, and no portion of it ought to be rejected unless such a construction makes the provisions of the will inconsistent with each other or leads to results which must be repugnant to the testator's ideas of propriety.

Where a Hindu testator by his will give immoveable property to a widow stating it to be for her maintenance, and, after making various other gifts, added a clause by which he declared that all the gifts under the will should be absolute, there is no such inconsistency or repugnancy in giving the clause its natural and grammatical construction by making it applicable to the gift to the widow, and she will accordingly take an absolute interest in the property.

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* Second Appeal No. 1416 of 1904, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 416 of 1904, presented against the decree of M. R. Ry. C. V. Visvanatha Sastri, District Munsif of Shiyali, in Original Suit No. 125 of 1903.

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By so construing the will, the subsequent clause only removes the ambiguity in the case of all the gifts and does not alter any material portion of the will.

The statement by the testator that he gave such property 'out of sympathy' will not affect the absolute nature of the estate given, if there was no legal obligation on him to provide for such widow's maintenance in his will.

Where a person takes possession of property under a will, which cannot legally operate to convey such property, the person so entering on possession must be presumed to prescribe for the interest which the will purports to give him; and the burden of proving that he prescribed for something less will be on the party alleging it.

ONE Lingappa Naiken made his last will and testament on the 8th March 1871. Prior to the execution of his will he had adopted a son,—his only son having died leaving a widow, Thirumalai Ammal. Under his will Lingappa Naiken made various gifts of lands to his divided dayadies and others including his widowed daughter-in-law to whom he devised by his will 5 velis in the following terms:—

"[Land] given to Thirumalai Ammal, widow of Sami Naicken, my son, who died issueless, for her sustenance, etc., as requested by her."

The land is then described and the devise concludes "Total inclusive of nanja and punja, 5 velis.

After the various dispositions referred to, the will stated, "Thus I have given away 20 velis of nanja, punja and other lands to the above persons, as gift, and out of sympathy so that they may enjoy them as they liked with power of alienation by gift, sale, exchange, etc."

The testator died a few days after making his will; and Thirumalai Ammal took possession of the lands given to her.

In 1892, Alagiri, the brother of Thirumalai Ammal, and two others, *A* and *B*, took certain lands on lease from the Court of Wards for five years. *A* and *B* mortgaged their landed property as security for the due performance of the conditions of the lease, while Thirumalai Ammal transferred the lands devised to her as security for Alagiri's performance of the conditions of the lease.

The rent payable in respect of the lease having fallen into arrears, the Court of Wards sued the lessees, and Thirumalai, and obtained a decree, in 1900, for Rs. 4,000 and odd, which amount was recovered from *A* and *B*. Thirumalai Ammal died in 1900 shortly after the decree, and Alagiri died in 1901, leaving his sons defendants Nos. 1 to 3. *A* brought this suit for contribution and

sought to recover against the lands of Thirumalai Ammal. The defendants impeached the will, and contended that, if genuine, it conferred only a life-interest on Thirumalai Ammal and that, apart from the will, Thirumalai Ammal did not acquire an absolute interest by adverse possession. The Munsif passed a decree in favour of the plaintiff. On appeal, the District Judge held that Thirumalai Ammal took only a life-estate and exempted the lands from liability.

The plaintiff appealed.

The Hon. Mr. *V. Krishnaswami Ayyar* and *K. Jagannadha Ayyar* for appellant.

The Hon. The Acting Advocate-General for the respondents.

JUDGMENT.—The question in this case is, what is the nature of the estate taken by Thirumalai Ammal under her father-in-law's will? The will recites the adoption of one Ramchandran by the testator, and then describes all the immoveable property disposed of, the description ending with the words "These I have." Then follows a description of the property devised to different persons.

The first devise commences with the words "given by me out of grace to my divided dayadies, namely," the devisees are then named, and the land is described, the description concluding with "Total nanja, punja and other lands measuring 3 velis 5 mahs of land is given to them." After some other devises, all in substantially the same form as the first, we have that in question "Given to Thirumalai Ammal, widow of my son Sami Naiken who died issueless, for her sustenance and other things as requested by her." The land is then described, and the devise concludes "Total inclusive of nanja and panja, 5 velis. These for the said person." Then, after one further gift of land, we have the important sentence "Thus I have given away 20 velis of nanja, punja and other lands to the above persons, as gift and out of sympathy, so that they may enjoy them as they like with all ownership, rights, with power of alienation by gift, sale, exchange, etc."

The question for decision is, in effect, whether this sentence which we will call the general clause is to be applied to the gift to Thirumalai Ammal. The learned Advocate-General conceded that, if it be so applied, the estate taken is an absolute estate. But he contended that we ought not to apply it. His reasoning is, put even more briefly than he put it, that the first clause stating the gift declares it to be for maintenance and therefore

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a gift of a life-estate, and the general clause later on should not be admitted to enlarge the estate. The testator being a Hindu must be deemed to have contemplated the gift of no more than a widow's estate, and by an oversight to have set out the general clause as applicable to all the gifts.

We cannot accept this view. There is no doubt (it is not denied) that naturally, and grammatically, the general clause ought to be applied to all the gifts preceding it in the instrument. The extent of 20 velis can be made up only by including the gift to Thirumalai Ammal, and to give effect to the Advocate-General's contention, we must assume (for there is no evidence) that, the testator, who correctly totalled up to the extent given, forgot that one of the gifts was for Thirumalai Ammal. There is nothing to support any such presumption.

It was not shown to us that an absolute gift of immoveable property to a widow for maintenance is unknown among Hindus, or repugnant to their ideas of propriety, nor is there anything inconsistent or difficult to harmonise in the will, if the general clause is applied to the gift. It was suggested that a gift of an absolute estate for maintenance could not properly be described as given "out of sympathy," but there was no obligation on the testator to provide for the lady's maintenance in his will: it was the duty of his adopted son to maintain her after his death and the phrase "out of sympathy" is not inapplicable to the gift to her. The two sentences stand perfectly well together. The land is given for the maintenance of the devisee at her request, out of sympathy to be held by her as absolute owner: if this had been embodied in a single clause no possible objection could have been raised to its construction as conveying an absolute estate.

No doubt if we were entitled to strike the general clause out of the will, we might have to construe the instrument as conveying absolute estates to all the male devisees and a life-estate to Thirumalai Ammal, but, to arrive at that conclusion, we should have in the case of all the gifts to construe the document by the light of presumptions.

The general clause removes the ambiguity in all cases, but it does nothing more: it does not require us to strike out or alter a material word in any one of the special clauses in order to give effect to the several devices.

We are therefore of opinion that by the terms of the will the land in suit was given absolutely to Thirumalai, and she consequently held it as absolute owner if the testator had power to give it to her.

Whether he had such power or not we need not decide, nor is it necessary to decide whether the only person entitled to contest the gift, the testator's adopted son, ratified or confirmed or acquiesced in it. For assuming the gift invalid there is no doubt that Thirumalai entered into possession under the will, and in the absence of evidence to the contrary she must be held to have prescribed for the estate given her by it. The District Judge does not say that there is evidence to the contrary. We do not understand him to mean, and we do not see how he could properly mean, that the circumstances to which he draws attention suggest any positive inference of an intention in Thirumalai Ammal to prescribe for a less estate than that given her by the will. The District Judge says, and it is the most that we can say on the evidence as he describes it, that the course of dealing with the property does not suggest the inference that Thirumalai prescribed for a larger estate than a widow's estate, but this is, on our construction of the will, to throw the onus on the wrong party. Had the District Judge construed the will as we do, we feel little doubt that he would have arrived on the question of prescription at the conclusion at which we have arrived, that Thirumalai Ammal prescribed for the absolute estate given by the will.

The appeal is allowed with costs here and in the lower Appellate Court and the decree of the Court of First Instance is restored.