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in the first clause. That explains the difference in the language of the two clauses.

It must also be remembered that lands which are 'old waste' at one time may become ordinary ryoti land, not being old waste, and *vice versa*. The question always is whether at the time of the letting in dispute the land was old waste; I therefore think that the words "at the time of letting" refer not to the first letting, but to the letting which is the subject of dispute. In this view the suit lands are not 'old waste'; and under clause (1) of section 6 the ryot acquired an occupancy right in the land, and he could not therefore be ejected. It is unnecessary therefore to consider the other points raised in the appeal. The appeal must be allowed and the plaintiff's suit in so far as it seeks to eject the defendants should be dismissed. He would be entitled to the stipulated rent. I agree as to the order for costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Srinivasa Ayyangar.

1916. March 3, 6, 7 and 15.

KUDOPA VENKAYAMMA (MINOR BY HER FATHER AND GUARDIAN MALLINA KRISTAMMA) (PLAINTIFF), APPELLANT,

v.

KAKARLA NARSAMMA AND FIVE OTHERS (DEFENDANTS), RESPONDENTS.*

Will, construction of—Bequest of life-estate to widow and remainder to grandsons born and to be born—Madras Hindu Transfers and Bequests Act (I of 1914), sec. 2, cl. (2), effect of, on—Period of distribution to future grandsons, happening after the Act—Right of all grandsons born during widow's life, to take—Vested interest of grandson existing on the date of will.

A Hindu bequeathed by his will dated 1905 a life-estate to his widow and an absolute estate thereafter to S, a son of his daughter then born, and to other sons of the daughter that might be born thereafter. The testator died in 1906, and S died in 1909. In a suit by S's widow against the testator's widow and another son of the daughter born during the course of the suit for a declaration that the plaintiff was solely entitled to the estate after the death of testator's widow and for an injunction to restrain the widow from wasting the estate, and alienating the same.

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* Appeal No. 324 of 1914.

Held on a construction of the will (1) that the testator by interposing a life-estate intended *all* his grandsons to take his estate, who might be born before the death of the widow, which was the time fixed for distribution, (2) that by section 2, clause (2), of Madras Act I of 1914, the bequest in favour of the unborn grandsons was good as the disposition in their favour was, under the will, to take effect only after the date of the Act and (3) that as the plaintiff's deceased husband had a vested interest under the bequest she was entitled to maintain the suit and to a share in the estate *along* with other grandsons of the testator who might be born before the death of the testator's widow.

Bangabati Barmanya v. *Kalicharan Singh* (1911) I.L.R., 38 Calc., 468 (P.C.) referred to.

APPEAL against the decree of G. G. SOMAYAJULU, the Temporary Subordinate Judge of Kistna at Ellore, in Original Suit No. 3 of 1913.

One Venkatakrishnamma, who died in 1906, executed a will in 1905, by which he directed *inter alia* that his widow, the first defendant, should enjoy his property until her death and after her death his grandson Subbanna, then born of his daughter, and other grandsons that may be born of the said daughter should take the property absolutely. Subbanna having died in 1909, his widow the plaintiff, brought this suit in 1912 against the first defendant, the widow of the testator, and defendants Nos. 2, 3 and 4, the daughters of the testator, and the fifth defendant, the father of the plaintiff's deceased husband, praying *inter alia* for a declaration of her *sole* right to all the properties of the testator after the first defendant's death and for an injunction restraining the first defendant from making alienations and also waste of the suit properties. The defendants Nos. 1, 2, 3 and 4 pleaded that the plaintiff had no right to the properties and even her deceased husband had no vested interest in the properties, and that at any rate the plaintiff had no right as long as the testator's widow was alive. The fifth defendant pleaded: (*a*) that he was taken into the family as his *illatom* son-in-law by the testator, (*b*) that he therefore succeeded to all the suit properties as such and (*c*) that he was in possession accordingly; and the second issue was raised to determine these three points. After the institution of the suit, plaintiff's mother-in-law gave birth to another son, who was added as the sixth defendant in the suit and it was pleaded on his behalf that the plaintiff had no right to the suit properties but that under the will he was solely entitled to them after the death of the testator's widow. The Subordinate Judge dismissed

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the suit on the ground that though the plaintiff's husband had originally a vested interest under the will, his interest passed on his death to his brother, the sixth defendant, by virtue of Madras Act I of 1914 and that therefore the plaintiff had no right to the suit properties at the time of the suit. Thereupon the plaintiff preferred this appeal.

V. Ramesam and *P. Narayanamurti* for the appellant. Hon. Mr. *S. Srinivasa Ayyangar, the Acting Advocate-General* and *B. Somayya* for the respondents.

ABDUR RAHIM, J.

ABDUR RAHIM, J.—There are two questions arising in this appeal. The first relates to the construction of the will (Exhibit A). There can be no doubt that Subbanna, one of the sons of a daughter of the testator, acquired a vested interest under the terms of the will on the death of the testator. He lived for some time after the testator's death and then died leaving the plaintiff, his widow. It is argued on behalf of the plaintiff that upon a proper construction of the will, only such of the sons of the testator's daughter would take as were born and living at the time of the testator's death, and Mr. Ramesam relies for this construction upon a ruling of the Privy Council—*Bangabati Barmanya* v. *Kalicharan Singh*(1). The question being one of construction, it has to be determined with reference to the terms of the document in each case, though in arriving at the true meaning of the document, one must have regard to any general rule of construction that bears on the matter. It is said that because under the Hindu law which governed the will of the Hindus at the date of the will in question, the unborn persons would take no interest, therefore the testator must be presumed to have intended that only persons that were born at the date of his death should take. No doubt that is an element to be taken into consideration and we do not think their Lordships of the Privy Council in alluding to that factor in the construction of the will meant to lay down anything further than that that this fact is to be borne in mind in arriving at the true intention of the testator. The terms of the will seem to be quite clear to show that not only the sons of the daughter of the testator born and living at the date of the testator's death but also others who may be born thereafter and existing at the

(1) (1911) I.L.R., 38 Calc., 468 (P.C.).

period of distribution were intended to take. Here a life-estate in favour of the testator's widow has been interposed so that the property would not come into the possession and enjoyment of the residuary legatees until her death. The material passage in the will is to this effect :—" The whole of the remaining property consisting of immoveable property, etc., should be enjoyed with right by the son already born to my second daughter, Kudapa Chinna Gopanna, viz., Subbanna and by the male issues who may be born hereafter to the said Chinna Gopanna. The will then goes on to provide for certain payments to be made by the testator's wife, and it is only the residue that is left that is to go to the sons of the testator's daughter. No good reason can be suggested why the testator should have intended to benefit only those sons of his daughter who might be born at the time of his death and not those who might be born thereafter and as I have said the terms of the will indicate the contrary. If there was no intervening life-estate, the argument of the appellant no doubt would have force, but the fact that the life-estate intervened prevents the application of the general rule that only the persons born at the death of the testator were intended to take.

The next question arises upon the construction of the Madras Act I of 1914. The Act came into operation only in March 1914, and the respondents were born after the Act came into force. The will itself was made long before the Act was passed. The question then is whether clause (2) of section 2 of that Act operates upon the dispositions of this will. That clause says : " In the case of transfers *inter vivos* or wills executed before the date of the Act the provisions of this Act shall apply to such of the dispositions thereby made as are intended to come into operation at a time which is subsequent to such date : Provided that nothing contained in this section shall affect *bona fide* transferees for valuable consideration in whom the right to any property has vested prior to the date of the Act." The language is general and has the effect of validating dispositions which are to come into operation at a future date in accordance with the intention of the testator. What is argued on behalf of the appellant is that the testator cannot be said to have intended that his disposition would be valid in favour of persons who were not in existence at his death. That is the very question we have already disposed of. Clause (2) of section 2 of the Madras

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Act I of 1914 means that if the testator intended that his disposition should take effect at a future date and that date happened to be subsequent to the passing of the Act, then by virtue of this Act, the disposition will be valid and effective. The gift therefore to the respondents is valid. The result will be that the plaintiff as widow of Subbanna is entitled to the widow's interest in such shares as Subbanna would, if living, have taken along with persons who might be born to his mother at the time the distribution takes place that is to say, the plaintiff as representative of Subbanna will be entitled to share equally with other sons of Subbanna's mother including the sixth defendant who may be born before the death of the first defendant. The Subordinate Judge has dismissed the plaintiff's suit altogether on the ground that what was intended by the testator was that Subbanna and the other sons of the testator's daughter who might be born at any time would take as members of a joint family and as Subbanna died before his mother, he did not take anything or rather his interest survived to the other sons. It is difficult to understand how such a construction could be arrived at and no attempt has been made to support it before us.

The case will stand over till Monday for further hearing.

This appeal again coming on for hearing the Court delivered the following

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JUDGMENT.—The fifth defendant gives up the contention raised by the second issue. Upon the above findings, the decree will be that the plaintiff is entitled after the lifetime of the first defendant as widow of Subbanna to the properties in the suit in equal shares with the sixth defendant and the other sons that may be born to the third defendant during the lifetime of the first defendant. Each party will bear his or her own costs in both the Courts as no one has succeeded entirely in his claim.

N.R.