the interests of the respective heirs who signed the document.

The appeal and the memorandum of cross-objections will be dismissed with costs in favour of the contesting respondents, who are respondents 1 to 3, 8 and 27 to 34. There will be one set of costs in respect of the memorandum of appeal, and one set in respect of the memorandum of objections and a certificate for two Counsel will be granted in each case.

Solicitor for appellant : *N. T. Shamanna.*

Solicitors for twentieth respondent : *King & Partridge.*

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao and Mr. Justice Newsam.

VASANTHARAO AMMANNAMMA (PLAINTIFF), APPELLANT,

v.

VIJIAPURAPU VENKATA KODANDA RAO PANTHULU AND SIX OTHERS (DEFENDANTS), RESPONDENTS.*

1939, May 1.

Will—Hindu—Testator devised properties to be enjoyed by his wife till her death and after her death to be passed on to his daughter and thereafter to be passed on to his grandsons through that daughter—Estate taken by daughter, daughter's estate—Estate taken by grandson, not vested remainder.

A Hindu testator left a will in these terms : "My self-acquired properties . . . belonging to me—all the properties aforesaid shall, on my death, be enjoyed by my wife till he

* Appeal No. 120 of 1936.

AMMANNAMMA v. KODANDA RAO.

death and after her death, they shall pass to my daughter. Thereafter they shall pass to my grandsons through my daughter . . . After discharging all the said debts, the person who shall be enjoying the said properties as aforesaid shall pay to my four grand daughters each a sum of Rs. 25 per annum . . ."

Held that the estate taken by the daughter was neither an absolute estate nor a life estate but a "daughter's estate" and the estate taken by the grandsons was not a vested remainder.

Expressions of view to the contrary in *Ratna Chetti* v. *Narayanaswami Chettiar*(1) dissented from.

APPEAL against the decree of the Court of the Subordinate Judge of Vizagapatam dated 31st October 1935 in Original Suit No. 86 of 1934.

P. Somasundaram for appellant.

K. R. Vepa for *Y. Suryanarayana* for first respondent.

Other respondents were not represented.

Cur. adv. vult.

VENKATARAMANA RAO J.

The JUDGMENT of the Court was delivered by VENKATARAMANA RAO J.—The question for determination in this appeal is, what is the nature of the interest taken by the plaintiff and by her sons under the will of her father Maddirala Buchi Sundara Rao Pantulu Garu, dated 26th July 1899. It is the case of the plaintiff that she took an absolute estate in the properties bequeathed to her. It is the case of the first defendant that she took only a life interest and there was a vested remainder in favour of her sons, defendants 2 and 3, and her deceased son, Bayanna Pantulu, whose sons are defendants 4 to 6. The seventh defendant is the son of the third defendant. The suit itself was filed for a declaration that the plaintiff got an absolute estate in the said properties and that the attachment

(1) (1914) 26 M.L.J. 616.

effected by the first defendant of the interest of defendants 2 to 7 in the property in execution of a decree obtained by him in Original Suit No. 36 of 1930 on the file of the Subordinate Judge's Court of Vizagapatam is invalid. The learned Subordinate Judge on a construction of the will held that the plaintiff did not take an absolute estate and dismissed the suit. It is this decision which is challenged in appeal by the plaintiff.

The main provisions of the will so far as they are material for the decision of this appeal run thus :

" Out of the afore-stated ancestral lands in Dimile and other villages, the one-ninth share of lands to which I am entitled, shall be enjoyed after my death by my wife till her death, and after her death it shall pass to Sundara Rao Pantulu Garu, son of my second elder brother, Maddirala Kamaji Rao Pantulu Garu, deceased.

My self-acquired properties . . . the silver and gold and other movables belonging to me—all the properties aforesaid shall, on my death, be enjoyed by my wife till her death and after her death, they shall pass to my daughter. Thereafter, they shall pass to my grandsons through my daughter.

As stated hereunder, the debts due by me to outsiders should be discharged hereafter from the annual income derived from the said properties mentioned above. After discharging all the said debts, the person who shall be enjoying the said properties as aforestated shall pay to my four grand daughters each a sum of Rs. 25 per annum towards *pasupukunkuma*."

The contention of Mr. Somasundaram on behalf of the plaintiff is that the words of disposition in her favour, namely, " after her (wife's) death, they shall pass to my daughter " confer an absolute estate. It is now settled law that there is no presumption that a gift to a female means a limited gift or carries with it the effect of creating an estate exactly similar to a widow's estate under the law of inheritance ; *Vide* the *dictum* of MITTER J. approved by the Privy Council

AMMANNAMMA v. KODANDA RAO.

VENKATA-RAMANA RAO J.

in *Surajmani* v. *Rabi Nath Ojha*(1). This was given effect to in *Ramachandra Rao* v. *Ramachandra Rao*(2) where a gift by a husband to his wife *simpliciter* was held to confer an absolute estate. The words used in the will in that case were " my senior wife and junior wife shall each take a half ". SESHAGIRI AYYAR J. remarked in the course of the judgment thus:

" Unless there is an express or implied qualification to the contrary, the donor must be deemed to have conveyed all that he was possessed of in the property granted."

This decision, so far as I am aware, has been followed without question by our High Court. If the words used by the testator had stood by themselves, there is a good deal of force in the contention of Mr. Somasundaram. But they do not stand by themselves; closely following them occur the following words:

" Thereafter", (whether he used that expression to mean after the daughter's death or after the estate is taken by the daughter, whichever it is, is immaterial) " through my daughter they shall pass to my grandsons."

Again, there are other provisions in the will which have also to be considered. Even in cases where the words used by the testator confer an absolute ownership, the circumstances or the context may be sufficient to show that such an absolute ownership was not intended. The question in all these cases therefore depends upon the intention of the testator which has to be gathered from the words used by him and the will read as a whole in the light of the surrounding circumstances at or about the date of the will.

In the light of the principles referred to above, let us see what the intention of the testator was in this case. He was a retired Subordinate Judge on the date

(1) (1907) I.L.R. 30 All. 84, 89 (P.C.).
(2) (1918) I.L.R. 42 Mad. 283.

of the will. There was ancestral property in which he had a share, the division of which was not effected by metes and bounds and wherein not only his brothers but the descendants of his paternal uncles were also interested. The testator was himself a son of one of three brothers and his father had two sons besides the testator. On the date of the will the paternal uncles were dead, the two brothers of the testator were also dead and there was only a daughter by one of his brothers and a son by another brother by name Sundara Rao Pantulu. He himself had a wife and a daughter living and there were sons and daughters by the daughter. His object, as explained by him in the preamble to the will, was to make known how and by whom the property he was possessed of was to be enjoyed after his death without disputes in the family in future. So far as the ancestral property is concerned, he gave a life interest to his wife and after her death he bequeathed it to the son of his brother the said Sundara Rao. Therefore, so far as that property is concerned, it was his intention to retain it in the family of his brothers. It is consistent with the ordinary notion of a Hindu that the ancestral property of the family should be retained in his family.

Coming to the self-acquired property, he directs that his wife should enjoy it during her lifetime. It is immaterial whether it is considered as a widow's estate or a life estate because the wife is dead. He then makes a provision in favour of his daughter to which I have already referred. The question in this case is, what estate did he intend his daughter to take? On a careful consideration of all the clauses in the will, we have come to the conclusion that the estate which the testator intended his daughter to take was an estate which she would take under the law of inheritance,

AMMANNAMMA v. KODANDA RAO. — VENKATA-RAMANA RAO J.

that is, a limited estate analogous to that of a widow's estate. It is only then that the intention of the testator would best be effectuated and that every word in the will could be given effect to, as it ought to be given effect to, as far as possible. The testator had not stopped with the disposition in favour of his daughter but he directs that thereafter (which we think is after the lifetime of the daughter) the estate shall pass to his grandsons. It is clear that the ultimate destination of the estate intended by the testator was to the grandsons.

A good deal of argument was advanced on both sides on the word "dwara" or "through" in the disposition in favour of the grandsons. The contention of Mr. Somasundaram is that the testator gave an absolute estate to the daughter at the same time expressing a desire that she should leave it to the grandsons. It is no doubt difficult to understand what exactly the testator meant by the word "through" but we are not able to accept the contention of Mr. Somasundaram that the words by which he intended that the property should go to the grandsons are mere words of recommendation to the daughter. On the other hand, the intention is pretty plain that the estate must go to the grandsons. It is immaterial whether the testator intended that the property should pass to them in the ordinary course of devolution after the death of the daughter or whether he intended the daughter to convey the said property to them. If the testator had really conferred an absolute estate on the daughter and the words used in favour of the grandsons were only words of recommendation, leaving the option to the daughter to convey the estate to his grandsons or not, the intention of the testator would be frustrated because the words used are "shall pass".

On the other hand, if the estate given to the daughter were to be construed as a life estate or a daughter's estate, the intention would be effectuated and the words used in favour of the grandsons could be given effect to. There is another indication to show that he did not mean to give the daughter an absolute estate. The testator was himself a lawyer and a Judge and knew, or may be presumed to have known, that under the Hindu law an estate owned by a daughter absolutely would go to her daughters in preference to her sons. Therefore, if the daughter took an absolute estate, he must have known that her daughters would get it unless a limitation was placed upon the estate which was going to be conferred upon the daughter. Therefore fully alive to the law he directed that the estate should pass to the grandsons and made a provision in favour of the granddaughters thus :

"After discharging all the said debts, the person who shall be enjoying the said properties as afore-stated shall pay to my four granddaughters each a sum of Rs. 25 per annum towards *pasupukunkuma*."

He would not have cut off his granddaughters with this annuity unless he intended that they should not get the estate. The obligation to pay the annuity was imposed upon the persons who take his property and they are mentioned in the previous paragraph of the will, namely, the widow, the daughter and the grandsons. It is common knowledge that a Hindu would ordinarily prefer, in the absence of a male issue, that his estate should go to his daughter's son in preference to his daughter's daughter, both on account of natural love and affection and also on religious grounds which every pious Brahman might be expected to have in view. The testator knew that the religious efficacy conferred by a daughter's son in regard to funeral

AMMANNAMMA v. KODANDA RAO. — VENKATA-RAMANA RAO J.

ceremonies and oblations is equal to that conferred by a son. Therefore it is quite natural to expect that a testator like Buchi Sundara Rao would desire that the estate would ultimately go to his grandsons in preference to his granddaughters. As observed by their Lordships of the Privy Council in *Mahomed Shumsool* v. *Shewukram*(1), in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of a Hindu in respect of devolution of property. There is again another indication that the daughter was not intended to take the property absolutely. In making a provision for the discharge of debts he enjoins that they should be discharged out of the annual income and he does not empower the widow or the daughter to alienate the corpus. No doubt such a power of alienation is not necessary and it can well be understood to be comprised in a pure gift to a widow or a daughter *simpliciter*. But in the context the absence of express words as to power of alienation would seem to connote that the estate intended to be conferred upon the daughter was not absolute.

The question therefore arises, did he intend to confer only a life estate or a daughter's estate ? It seems to us that he meant to give a daughter's estate rather than a life estate. He omits the word " during her life " with reference to the disposition in favour of the daughter. The words " pass to my daughter " would rather indicate that in the ordinary course of devolution the estate should pass to her, that is, the daughter and then to the grandsons. The words used in favour of the grandsons seem to indicate that the estate conferred on the daughter was not a life estate because there is no direct gift in favour of the grandsons,

(1) (1874) L.R. 2 I.A. 7

but on the other hand, what he says is that through his daughter the estate shall pass to his grandsons. He must have intended either that the daughter should convey the property by will or *inter vivos* to the grandsons or that, she having taken the estate, it should pass through her to the grandsons in the ordinary course of devolution. If it was the daughter's estate that was intended to be conferred, there can be no question that the estate taken by the grandsons is not a vested interest. No doubt there have been expressions of view that it is possible to have a vested remainder after a limited estate of a Hindu widow or a daughter; vide *Ratna Chetti* v. *Narayanaswami Chettiar*(1). But it seems to us that it is not possible to have a vested remainder after conferring a limited estate analogous to that of a woman's estate, under the Hindu law. The holder of such an estate, whether she be a widow or a daughter, would fully represent the inheritance. There is nothing to vest in anybody else. The observations of the Privy Council in *Bhagbutti Deyi* v. *Bholanath Thakoor*(2) seem to be almost decisive on the matter. The question pointedly arose in that case whether an estate taken by a wife under the will of her husband was a life estate or a Hindu widow's estate under the law and the gift over in favour of the adopted son was a vested or a contingent remainder. Their Lordships pointed out that, if it was a life estate, the adopted son would take a vested remainder; if it was an estate of a Hindu widow, the estate taken by the adopted son would be a contingent remainder. In that case their Lordships held that the estate taken by the widow was a life estate and that taken by the adopted son was a vested remainder. Even if it is assumed in this case

(1) (1914) 26 M.L.J. 616.
(2) (1875) 24 W.R. 168; I.L.R. 1 Cal. 104 (P.C.).

AMMANNAMMA v. KODANDA RAO. VENKATA-RAMANA RAO J.

that there is a direct gift in favour of the grandsons, the estate taken by them would be a contingent remainder. But there is no direct gift in their favour and it was the intention of the testator that the daughter should take, not an absolute estate, but, only the limited estate of a daughter. It is immaterial whether the words used in favour of the grandsons were intended to connote a power vested in the daughter to convey the property, or whether the words meant that the property should be taken by the grandsons in the ordinary course of devolution.

In the view which we have taken that the daughter took a daughter's estate, there can be no vested remainder which is liable to be attached by the first defendant. But in so far as the plaintiff sued for a declaration that she has got an absolute estate in the suit properties, her suit fails and has to be dismissed. We direct each party to bear his own costs both here and in the Court below.

G.R.