

Privy Council Appeal No. 1 of 1983

Savitri Lalla (representing the
estate of Poochoon Harracksingh)

Appellant

v.

Baby Deosaran

Respondent

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 17TH OCTOBER 1983

Present at the Hearing:

LORD DIPLOCK

LORD ELWYN-JONES

LORD ROSKILL

LORD BRANDON OF OAKBROOK

LORD BRIGHTMAN

[Delivered by Lord Brightman]

This is an appeal from the Court of Appeal of Trinidad and Tobago. Under the will of Seemirkee (so far as relevant for present purposes) the property in question, which their Lordships understand to be of considerable value, was given to the testatrix's husband Rampaul for life and, after his death, to her son Poochoon absolutely, but if Poochoon should die in the lifetime of Rampaul the property was to vest in Rampaul absolutely.

Mr. Ramsahoye, in his submissions on behalf of the appellant, sought to take a point of construction on the will which was not taken in the High Court or in the Court of Appeal, namely, that the interest of Poochoon was only to be defeated by his death in the lifetime of Rampaul if that event should happen before the death of the testatrix. In the view of their Lordships that construction of the will is quite impossible. It is clear that the interest in reversion of Poochoon was only to take effect if he should survive his father, the life tenant.

The testatrix died in 1945. Section 12 of the Administration of Estates Ordinance provides:-

"(1) At any time after the death of the owner of any land, his representative may by deed assent to any devise contained in his will, and may convey or transfer the land or any estate or interest therein to any person entitled thereto as next of kin, devisee, or otherwise"

By an assent made on 22nd November 1957, expressed to be under and by virtue of the provisions of the Administration of Estates Ordinance, Rampaul, expressed to be acting as the personal representative of Seemirkee, assented to the property vesting in himself for life, with reversion to Poochoon. The deed, neither in the recital of the will nor in the text of the operative part of the document, referred to the ultimate reversion of Rampaul which was expressed to take effect in the event of the death of Poochoon during the lifetime of Rampaul.

Poochoon died in 1968 during the lifetime of Rampaul. Therefore on the true construction of the will of the testatrix Rampaul's interest in reversion took effect and the reversion, expressed to be given to Poochoon, was defeated.

The executrix of Poochoon nevertheless claimed that the assent operated not only to vest in Poochoon the defeasible interest in reversion given to him by the will but also as a deed of gift of Rampaul's ultimate reversion. The issue raised by the executrix depends entirely on the true construction of the deed of assent.

The claim of the executrix failed in the High Court and also in the Court of Appeal. Their Lordships do not feel that it is necessary to repeat the reasons which are set out in the respective judgments. Their Lordships agree with those judgments and with their reasoning.

The appeal will therefore be dismissed. The appellant must pay the costs of the respondent. The order for costs against the appellant is without prejudice to such rights as the appellant may have to recoup her costs out of Poochoon's estate.

