1956

May 9

RAVULA SUBBA RAO AND ANOTHER
v.
THE COMMISSIONER OF INCOME-TAX, MADRAS.

[S. R. DAS C.J., BHAGWATI and VENKATARAMA AYYAR JJ.]

Indian Income Tax Act, 1922 (Act XI of 1922), ss. 26-A, 59, Rules 2 and 6 framed under s. 59—Word 'personally' in the Rules—Whether excludes a duly authorised agent from signing an application on behalf of the partner under s. 26-A—Rules 2 and 6—Whether ultra vires *the rule-making authority—Indian Income Tax Act, 1922 —Whether exhaustive of the matters dealt with therein.*

Rules 2 and 6 of the Rules framed under s. 59 of the Indian Income Tax Act provide that an application for registration of a firm under s. 26-A of the Act and for renewal of registration certificate "shall be signed personally by all the parties".

Held that the word 'personally' in the Income Tax Rules, as framed under s. 59 of the Income Tax Act would exclude a duly authorised agent of a partner of a firm signing an application on behalf of the partner under s. 26-A of the Income Tax Act.

(2) That Rules 2 and 6 are not *ultra vires* the rule-making authority.

To decide the question whether on its true interpretation the Indian Income Tax Act intended that an application under s. 26-A should be signed by the partner personally, or whether it could be signed by his agent on his behalf the Court must have regard not only to the language of s. 26-A but also to the character of the legislation, the scheme of the Act and the nature of the right conferred by the section.

The Indian Income Tax Act is a self-contained code exhaustive of the matters dealt with therein, and its provisions show an intention to depart from the common rule, *qui facit per alium facit per se.* Its intention again is that a firm should be given benefit of s. 23(5)(a), only if it is registered under s. 26-A in accordance with the conditions laid down in that section and the rules framed thereunder. And as those rules require the application to be signed by the partner in person, the signature by an agent on his behalf is invalid.

Commissioner of Agricultural Income-tax v. *Keshab Chandra Mandal,* ([1950] S.C.R. 435), relied upon.

Commissioner of Income-tax v. *Subba Rao,* ([1947] I.L.R. Mad. 167) approved.

Other case-law referred to.

1956

Ravula Subba Rao and another
v.
The Commissioner of Income-tax, Madras

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 56 & 57 of 1954.

Appeal from the judgment and order dated the 25th day of March 1951 of the Madras High Court in Case Referred Nos. 32 of 1948 and 31 of 1950.

K. S. Krishnaswami Iyengar, (*K. R. Choudhry*, with him) for the appellants.

G. N. Joshi and *P. G. Gokhale*, for the respondent.

1956. May 9. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The appellant is a firm which was constituted under a deed of partnership dated 10-2-1941, and consists of two partners, Subba Rao and Hariprasada Rao. On 21-3-1942 it was registered under section 26-A of the Indian Income-Tax Act No. XI of 1922, hereinafter referred to as the Act, for the assessment year 1942. Sometime thereafter, one of the partners, Subba Rao, is stated to have left on a long pilgrimage, and the affairs of the partnership were then managed by Hariprasada Rao as his agent under a general power-of-attorney dated 1-7-1940. Hariprasada Rao then applied under rules 2 and 6 of the rules framed under section 59 of the Act, for renewal of the registration certificate for the year 1942-43, and the application was signed by him for himself and again as the attorney of Subba Rao. Those rules provide that an application for registration of a firm under section 26-A and for renewal of registration certificate "shall be signed personally by all the partners". The Income-tax Officer rejected the application for renewal on the ground that it was not personally signed by one of the partners, Subba Rao, and that the signature of Hariprasada Rao as his agent was not valid. The order was taken in appeal, and was ultimately the subject of a reference under section 66(1) of the Act to the High Court of Madras, which held that the word "personally" in rule 6 required that the partner

should himself sign the application, and that the principles of agency under the general law were excluded. (Vide *Commissioner of Income-tax* v. *Subba Rao*(1)).

While these proceedings were pending, Hariprasada Rao filed the two applications, out of which the present appeals arise, for renewal of the registration certificate for the assessment years 1943-44 and 1944-45. Both of them were signed by him for himself and as attorney for Subba Rao. At the hearing of these petitions the appellant, apart from maintaining that rules 2 and 6 did not, on their true construction, exclude signature by an agent on behalf of a partner, raised a further contention that the rules themselves were *ultra vires* the powers of the rule-making authority. The Income-tax Officer overruled both these contentions, and rejected the applications, and his orders were confirmed on appeal by the Appellate Assistant Commissioner and then by the Appellate Tribunal. Thereafter, on the application of the appellant, the Tribunal referred the following questions for the decision of the High Court:

"(1) Whether the word 'personally' in the Income-tax Rules, as framed under section 59 of the Income-tax Act would exclude a duly authorised agent of a partner from signing an application on behalf of the partner under section 26-A of the Income-tax Act?

(2) If the answer to the above question is in the affirmative, whether rules 2 and 6 are *ultra vires* the rule making authority?"

The reference was heard by Satyanarayana Rao and Viswanatha Sastry, JJ. Following the decision in *Commissioner of Income-tax* v. *Subba Rao*(1), they answered the first question in the affirmative. On the second question, however, they differed. Satyanarayana Rao, J. held that the rules were *ultra vires*, and that the applications were in order, and ought to have been granted. Viswanatha Sastry, J. was of the contrary opinion, and held that the rules were *intra vires*, and that the applications were properly

(1) I.L.R. [1947] Mad. 167: 1946 I.T.R. 232.

1956

Ravula Subba Rao and another v. The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

rejected as not being in accordance with them. The learned Judges, however, granted a certificate under section 66-A of the Act, and that is how the appeals come before us.

The first question whether the word "personally" would exclude signature by an authorised agent on behalf of the partner was answered in the affirmative by the Madras High Court in *Commissioner of Income-tax* v. *Subba Rao*(1). This was one of the decisions quoted with approval by this Court in *Commissioner of Agricultural Income-tax* v. *Keshab Chandra Mandal*(2), where the question was whether a rule framed under the Bengal Agricultural Income-tax Act that the declaration in the return should be signed by the individual himself required that he should sign it personally, and it was held that it did so require. Sri K. S. Krishnaswami Ayyangar, learned counsel for the appellant, did not urge any grounds for differing from the above conclusion, and we must therefore hold, in agreement with the views expressed in the above decisions, that the signature which is prescribed by the rules is that of the partner himself, and that they are not complied with by the agent signing on his behalf.

Then we come to the second question—and that is the substantial question that arises for our determination in this appeal—whether rules 2 and 6 are *ultra vires* the rule-making authority. The argument of the appellant in support of its contention that the rules are *ultra vires* may thus be stated: Under the common law of England, a person has the right to do through an agent whatever he can do himself, and that right has also been conferred on him in this country by section 2 of the Powers-of-Attorney Act VII of 1882, which runs as follows:

"The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance,

(1) I.L.R. 1947 Mad. 167: 1946 I.T.R. 232.
(2) [1950] S.C.R. 435.

instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

"This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force".

Section 26-A of the Act confers on a partner the right to apply for registration of the firm, and that right could be exercised both under the common law and under section 2 of the Powers-of-Attorney Act through an authorised agent. The sovereign legislature might, if it so chooses, abrogate the rule of common law, and repeal section 2 of the Powers-of-Attorney Act, and enact that the application to be presented under section 26-A should be signed by the partner himself and not by any other person; but it has not done so either expressly or by necessary implication, and, therefore, the application which was signed by Hariprasada Rao is as good as if it had been signed by Subba Rao. The Rules no doubt require that the signature should be that of the partner and not that of his agent. But in prohibiting what would be lawful under the section, the Rules go beyond the ambit of the authority conferred by section 26-A on the rule-making authority, which is limited to framing Rules for giving effect to the principles laid down in the statute. They are therefore *ultra vires*. In the alternative, assuming that the mandate given to the rule-making authority under section 26-A is of sufficient amplitude to authorise the making of the Rules in question, even then, they must be held to be *ultra vires*, as they have the effect of abrogating the common law and of repealing section 2 of the Powers-of-Attorney Act, which confer on a person the right to act through an agent, and that being a legislative function cannot be delegated to a rule-making authority, and section 26-A, if it is to be construed as conferring such power on an outside authority, must be struck down as constituting an unconstitutional delegation by the legislature of its legislative function.

1956

Ravula Subba Rao and another v. The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

It is the correctness of these contentions, that now falls to be considered.

According to the law of England—and that is also the law under the Indian Contract Act, 1872—"every person who is *sui juris* has a right to appoint an agent for any purpose whatever, and that he can do so when he is exercising a statutory right no less than when he is exercising any other right". Per Stirling, J. in *Jackson and Co.* v. *Napper*: *In re Schmidts' Trade-Mark*(1). This rule is subject to certain well-known exceptions as when the act to be performed is personal in character, or is annexed to a public office, or to an office involving fiduciary obligations. But apart from such exceptions, the law is well settled that whatever a person can do himself, he can do through an agent. It has accordingly been held that "at common law, when a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it". Per Blackburn, J. in *The Queen* v. *Justices of Kent*(2). The appellant is therefore right in his contention that unless the statute itself enacts otherwise, an application which a partner has to sign would be in order and valid, if it is signed by his authorised agent. The question then is whether there is anything in the Act, which requires that an application under section 26-A should be signed by the party personally.

Section 26-A is as follows:

"(1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall

(1) [1887] 35 Ch. D. 162, 172. (2) [1872-73] L.R. 8 Q.B. 305, 307.

be dealt with by the Income-tax Officer in such manner as may be prescribed".

The section does not, it should be noted, provide that the application for registration should be signed by the partner personally, and it is this that forms the foundation of the contention of the appellant that the right which a person has under the general law and under section 2 of the Powers-of-Attorney Act to act through an agent has not been taken away or abridged by the section. He relies in support of his contention on the following rules of construction:

(1) Statutes which encroach on the rights of a subject should be interpreted if possible so as to respect such rights. [Vide Maxwell on Interpretation of Statutes, 10th Edition, page 285; Craies on Statute Law, 5th Edition, pages 111 to 114). The law is thus stated by Lord Justice Bowen in *In re Cuno*: *Mansfield* v. *Mansfield*(1):

"In the construction of statutes, you must not construe the words so as to take away rights which already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the legislature".

(2) In the absence of clear and unambiguous language, an intention to alter the existing law should not be imputed to the legislature. (Vide Craies on Statute Law, 5th Edition, pages 114 and 115).

(3) The law does not favour repeal of a statute by implication, and therefore a later statute should not be construed as repealing an earlier one without express words or by necessary implication. (Vide Maxwell on Interpretation of Statutes, 10th Edition, page 170; Craies on Statute Law, 5th Edition, page 337).

"If it is possible", observed Farwell, J., "it is my duty so to read the section as not to effect an implied repeal of the earlier Act": *Re Chance*(2).

"Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied". Per A. L. Smith, J. in *Kutner* v. *Phillips*(3).

(1) [1890] 43 Ch. D. 12, 17. (2) [1936] 1 Ch. 266, 270.
(3) [1891] 2 Q.B. 267, 272.

1956

Ravula Subba Rao and another v. The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

In the light of these principles, it is contended that the true scope of section 26-A is that it confers a right on a partner to register the firm, and leaves the *modus* of the exercise thereof to be regulated by the existing law, and that, therefore, far from showing an intention either to alter the general law as to the right of a person to act through his agent or to repeal section 2 of the Powers-of-Attorney Act, the section depends on their continued operation for its implementation.

Now, the rules of construction on which the appellant relies are well-established. But then, it should not be overlooked that they are only aids to ascertain the true intention of the legislature as expressed in the statute, and the question ultimately is, what in the context do the words of the enactment mean? The following passage from Crawford on "The Construction of Statutes", 1940 Edition, page 454 cited by the appellant may be usefully referred to in this connection:

"Why should a statute be subjected to a strict or a liberal construction, as the case may be? The only answer that can possibly be correct is because the type of construction utilized gives effect to the legislative intent. Sometimes a liberal construction must be used in order to make the legislative intent effective, and sometimes such a construction will defeat the intent of the legislature. If this is the proper conception concerning the rule of construction to be adhered to, then a strict or a liberal construction is simply a means by which the scope of a statute is extended or restricted in order to convey the legislative meaning. If this is the proper position to be accorded strict and liberal constructions, it would make no difference whether the statute involved was penal, criminal, remedial or in derogation of common right, as a distinction based upon this classification would then mean nothing".

That being the correct position, the question is whether on its true interpretation, the statute intended that an application under section 26-A should be signed by the partner personally, or whether it could

be signed by his agent on his behalf. To decide that, we must have regard not only to the language of section 26-A but also to the character of the legislation, the scheme of the Act and the nature of the right conferred by the section. The Act is, as stated in the preamble, one to consolidate and amend the law relating to income-tax. The rule of construction to be applied to such a statute is thus stated by Lord Herschell in *Bank of England* v. *Vagliano*(1):

"I think the proper course is in the first instance to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably "intended to leave it unaltered.....
....."

We must therefore construe the provisions of the Indian Income-tax Act as forming a code complete in itself and exhaustive of the matters dealt with therein, and ascertain what their true scope is.

Turning then to the provisions of the Act, considerable light is thrown on their true import by the decision of this Court in *Commissioner of Agricultural Income-tax* v. *Keshab Chandra Mandal*(2). There, the question was as to the meaning of Rule 11 framed under the Bengal Agricultural Income-tax Act, 1944 read with Form No. 5, which required that the declaration in the return should be signed "in the case of an individual, by the individual himself". It was held by this Court on a review of the provisions of the statute that the intention of the legislature as expressed therein was to exclude the common law rule, *qui facit per alium facit per se*, and the declaration to be valid must be signed by the assessee personally. It is argued for the appellant that *Commissioner of Agricultural Income-tax* v. *Keshab Chandra Mandal*(2) was a decision only on the interpretation of Rule No. 11 and not on its validity, and that the question whether the rule was *ultra vires* or not was not in issue. That is so, but the materiality of the

(1) [1891] A.C. 107, 141.

(2) [1950] S.C.R. 435.

1956

Ravula Subba Rao and another v. The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

decision to the present controversy lies in this that the interpretation which was put on Rule 11 as requiring personal signature was based on the conclusion which this Court reached on a consideration of the relevant provisions of the Bengal Agricultural Income-tax Act that the intention of the legislature was to exclude the rule of the common law on the subject. Now, the provisions of the Bengal Act which were construed in *Commissioner of Agricultural Income-tax* v. *Keshab Chandra Mandal*[1] as indicative of the above intention, are identical in terms with the corresponding provisions in the Indian Income-tax Act, and are, in fact, based on them, and it would therefore be logical to construe the latter as expressing an intention to discard the rule of common law on the subject.

The relevant provisions of the Bengal Agricultural Income-tax Act may now be noticed. Section 25(1) of the Bengal Act provides that if the Income-tax Officer is not satisfied that the return made is correct and complete, he may require the assessee by notice either to attend at the Income-tax office or to produce or cause to be produced any evidence on which he might rely. This corresponds to section 23(2) of the Indian Income-tax Act. The point to be noted with reference to this section is that it contains an express provision for production of evidence by the assessee through his agent, a provision which would have been wholly unnecessary if the common law was intended to apply. Sections 35 and 36 of the Bengal Act contain provisions as to who can represent the assessee and in what proceedings, and they follow section 61 of the Indian Income-tax Act and form a code complete in themselves. Then again, both the Bengal Act and the Indian Income-tax Act provide that certain provisions of the Civil Procedure Code are applicable to the proceedings under the Act. The provisions of Order 3 of the Civil Procedure Code enacting that parties may appear and act through recognised agents are not among them. To cut the discussion short, the effect of the provisions of the

(1) [1950] S.C.R. 435.

Bengal Act is thus summarised in *Commissioner of Agricultural Income-tax* v. *Keshab Chandra Mandal*(1):

"The omission of a definition of the word 'sign' as including a signature by an agent, the permission under section 25 for production of evidence by an agent and under sections 35 and 58 for attendance by an agent and the omission of any provision in the Act applying the provisions of the Code of Civil Procedure relating to the signing and verification of pleadings to the signing and verification of the return while expressly adopting the provisions of that Code relating to the attendance and examination of witnesses, production of documents and issuing of commission for examination and for service of notices under sections 41 and 60 respectively, cannot be regarded as wholly without significance".

This reasoning applies with equal force to the provisions of the Indian Income-tax Act, and goes far to support the contention of the respondent that the common law is not intended to apply to proceedings under the Act.

Another factor material for the determination of this question is the nature of the right conferred by section 26-A. Under the common law of England, a firm is not a juristic person, the firm name being only a compendious expression to designate the various partners constituting it. But, as pointed out by this Court in *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur*(2), inroads have been made by statutes into this conception, and firms have been regarded as distinct entities for the purpose of those statutes. One of those statutes is the Indian Income-Tax Act, which treats the firm as a unit for purposes of taxation. Thus, under section 3 of the Act the charge is imposed on the total income of a firm, the partners as such being out of the picture, and accordingly under section 23 of the Act, the assessment will be on the firm on its total profits. Section 23(5) enacts an exception to this in the case of firms registered under the Act, and provides that,

"(a) ..... the sum payable by the firm itself shall

(1) [1950] S.C.R. 435. (2) A.I.R. 1956 S.C. 354.

1956

Ravula Subba Rao and another
v.
The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined".

Thus, if a firm is registered, it ceases to be a unit for purposes of taxation and the profits earned by it are taken, in accordance with the general law of partnership, to have been earned by the individual partners according to their shares, and they are taxed on their individual income including their share of profits. The advantages of this provision are obvious. The rate of tax chargeable will not be on the higher scale provided for incomes on the higher levels but on the lower one at which the income of the individual partner is chargeable. Thus, registration confers on the partners a benefit to which they would not have been entitled but for section 26-A, and such a right being a creature of the statute, can be claimed only in accordance with the statute which confers it, and a person who seeks relief under section 26-A must bring himself strictly within its terms before he can claim the benefit of it. In other words, the right is regulated solely by the terms of the statute, and it would be repugnant to the character of such a right to add to those terms by reference to other laws. The statute must be construed as exhaustive in regard to the conditions under which it can be claimed.

Thus, considering the question with reference to the character of the legislation, the scheme of the statute and the nature of the right conferred by section 26-A, the conclusion is irresistible that rules of common law were not intended to be saved, and that the right to apply for registration under that section is to be determined exclusively by reference to the prescriptions laid down therein. If that is the true construction, in authorising the rule-making authority to frame rules as to who can apply for registration under section 26-A, and when and how, the statute has merely directed that authority to fill in details in the field of legislation occupied by it, and it is not denied that Rules 2 and 6 are within the mandate conferred

by the section. In this view, section 59(5) of the Act which enacts that "Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act" directly applies, and the *vires* of the Rules is beyond question. Vide the observations of Lord Herschell in *Institute of Patent Agents* v. *Lockwood*(1).

Then, there is the contention of the appellant that the Rules in question are repugnant to section 2 of the Powers-of-Attorney Act VII of 1882, and are therefore *ultra vires*. In addition to the reasons given above in support of the conclusion that the rule of the common law was not intended to operate in the field occupied by section 26-A, there is a further and a more compelling reason why this contention should not be accepted. It is that there is, in fact, no conflict between the two statutory provisions. To understand the scope of section 2 of the Powers-of-Attorney Act, it is necessary to refer to the history of this legislation. Under the common law of England, an agent having authority to execute an instrument must sign in the name of the principal if he is to be bound. If the agent signs the deed in his name albeit as agent, he is the person who is regarded as party to the document and not the principal. It is the agent alone that can enforce the deed, and it is he that will be liable on it. Vide *In re International Contract Company*(2); *Schack* v. *Antony*(3), Halsbury's Laws of England, 3rd Edition, Volume 1, page 217, and Bowstead on Agency, 10th Edition, page 93. To remove the hardships resulting from this state of the law, the Conveyancing and Law of Property Act, 1881 (44 and 45, Vict, Chapter 41) enacted section 46, which is as follows:

"(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be

(1) [1894] A.C. 347, 351. (2) [1871] 6 Ch. App. 525.
(3) 1 M. & S. 573; 105 E. R. 214.

1956

Ravula Subba Rao and another
v.
The Commissioner of Income-tax, Madras

Venkatarama Ayyar J.

as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act".

The Indian Legislature immediately followed suit, and enacted the Powers-of-Attorney Act VII of 1882 incorporating in section 2 therein word for word, section 46 of the English Act. The object of this section is to effectuate instruments executed by an agent but not in accordance with the rule of the common law and the enactment is more procedural than substantive. It does not confer on a person a right to act through agents. It presupposes that the agent has the authority to act on behalf of the principal, and protects acts done by him in exercise of that authority but in his own name. But where the question is as to the existence or the validity of authority, the section has no operation. Thus, the fields occupied by the two enactments are wholly distinct. Section 26-A says that a partner cannot delegate the exercise of his rights under that section to an agent. Section 2 of the Powers-of-Attorney Act says that if there can be and, in fact there is, delegation, it can be exercised in the manner provided therein. There is accordingly no conflict between the two sections, and no question of repeal arises.

To sum up, the Indian Income-tax Act is a self-contained code exhaustive of the matters dealt with therein, and its provisions show an intention to depart from the common rule, *qui facit per alium facit per se*. Its intention again is that a firm should be given benefit of section 23(5)(a), only if it is registered under section 26-A in accordance with the conditions laid down in that section and the rules framed thereunder. And as those rules require the application to be signed by the partner in person, the signature by an agent on his behalf is invalid.

In the view which we have taken, the further question raised by the appellant that the power to repeal

a law being a legislative function, can be exercised only by the legislature duly constituted and not by any outside authority, and that the delegation of such a power to an outside authority is unconstitutional, does not arise for decision.

In the result, we agree with Viswanatha Sastry, J. that rules 2 and 6 are *intra vires* the powers of the rule-making authority, and dismiss the appeals with costs.

MRS. SHIRINBAI MANECKSHAW & OTHERS

v.

NARGACEBAI J. MOTISHAW & OTHERS.

[S. R. DAS C.J., BHAGWATI and S. K. DAS JJ.]

Will—Construction—Substitutional bequest, Validity of—Indian Succession Act (XXXIX of 1925), ss. 67, 129, 130.

A Parsi testator by a holograph will provided, "I hereby give, devise and bequeath to my so called mother Mrs. Shirinbai, ...her heirs, executors and administrators, for her and their own use and benefit, absolutely and for ever all my estate and effects, both real and personal, whatsoever and wheresoever and of what nature and quality soever, and I hereby appoint her the said Mrs. Shirinbai Maneckshaw Bejonji Mistry, sole executrix of this my Will....." The will was attested by two witnesses one of whom was the husband of Mrs. Shirinbai. Mrs. Shirinbai as the sole executrix obtained probate of the said will from the High Court and took possession of the estate. A suit was brought by the heirs of the testator in the Court of the Civil Judge for a declaration that the bequest in favour of Mrs. Shirinbai was void in law by operation of s. 67 of the Indian Succession Act and that the estate of the testator had, therefore, become divisible amongst his heirs as on intestacy. The trial Judge held that the bequest in favour of Mrs. Shirinbai was void under s. 67 of the Indian Succession Act and there was no gift over but that the plaintiffs were not the heirs of the testator and, consequently, they could not maintain the suit. On appeal by the plaintiffs, the High Court agreed with the first two findings of the trial Judge, but reversed his decision and decreed the suit holding that the plaintiffs were the heirs of the testator. It was contended on behalf of Mrs. Shirinbai and her two daughters in this appeal that on a true construction of the will there was a substitutional bequest in favour of the heirs, executors and administrators of Mrs. Shirin-