1961

Jibon Chandra Sarma Doloi v. Anandi Ram Kalita

Gajendragadkar J.

This aspect of the matter was completely ignored by the trial court and the appellate court, and so the High Court was right in correcting the error which had crept into the concurrent decisions of the courts below.

Besides, the High Court was also right in holding that in a case of this kind where the appellant urged that the lands could be alienated only to a specified class of persons, the onus was on the appellant and not on the respondents to prove the contrary. Failure to put the onus on the appellant introduced a serious infirmity in the approach adopted by the courts below in dealing with this question. That was another infirmity in their decision. It is also clear that the evidence adduced by the appellant in support of his case to which reference has been made by the first two courts is entirely unsatisfactory, and, even if it is believed, in law it would be insufficient to sustain the plea that there was a limitation on the transferability of the lands in question. We are also satisfied that the declaration granted by the District Court was futile. Therefore, in our opinion, the view taken by the High Court is absolutely correct and the grievance made by the appellant against the validity of the said conclusion cannot be sustained.

In the result the appeals fail and are dismissed with costs.

Appeals dismissed.

N. KASTURI
v.
D. PONNAMMAL AND OTHERS.

1961

February 23.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Will—Construction—Bequest to K in the absence of adoption—Testator's intention to adopt K—Authority to adopt given to widow—No adoption made—K's rights, whether vested interest subject to defeasance by subsequent adoption.

A testator, who was childless, executed a will on April 28, 1937, and died on March 10, 1939, leaving him surviving his widow. In cl. 6 of the will he expressed his desire to adopt a boy and stated that in case he did not make an adoption during his life-time his wife shall adopt K. He also conferred authority on his

1961

Kasturi v. Ponnammal

wife to make an adoption in case K died before being adopted. By cl. 11 of the will he provided that exclusive of the properties that might be given for T's wives, M. A. and K. A., and daughter and for his wife for being enjoyed by each during her lifetime, in respect of one-half of all the remaining properties of his family, his wife shall before making an adoption, execute in favour of K. S. a document under which he shall enjoy only the income from those properties during his lifetime and that after his lifetime his heirs shall get them with absolute rights, and she shall also make an arrangement to the effect that his adopted son similarly got and enjoyed only the remaining half. Clause 12 provided: "Should myself and my wife die without making an adoption or should my wife predecease me or in case I do not adopt any boy or in case the boy adopted by me is not alive at the time of my death, the above K and the above K. S. shall get the whole of my properties in equal shares.....Should myself and my wife die without making an adoption as stated above and should the above K. S, predecease us, the above M. A. and K. A. shall get all the properties....."

No adoption was made either by the testator before his death or by his widow thereafter. K instituted a suit for a declaration of his rights under the will basing his claim under cl. 12 on the footing that under that clause when no adoption was made and until it was so made he had a vested interest in respect of half the properties subject to defeasance by subsequent adoption.

Held, that on a true construction of the will dated April 28, 1937, cl. 12 was intended to operate at the time of the death of the testator and not later and that K would get an interest under that clause only if the widow of the testator pre-deceased the testator and there was no adoption by the testator before his death. In the circumstances K's rights were provided for by cl. 11 only and those rights could not come into existence unless and until he was adopted by the widow. On this view there was a postponement of vesting and a possibility of intestacy, but that cannot be avoided.

The rules of construction of a will against a postponement of vesting and avoidance of intestacy are not absolute and the court cannot embark on the task of construing a will with a preconceived notion that intestacy must be avoided or vesting must not be postponed.

The intention of the testator should be ascertained by construing the will as a whole and giving the relevant clauses in the will their plain grammatical meaning considered together.

Gnanambal Ammal v. *T. Raju Ayyar and Others*, A.I.R. 1951 S.C. 103 and *Venkata Narasimha* v. *Parthasarathy*, L. R. 41 I.A. 51, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 373 of 1956.

Appeal from the judgment and decree dated September 17, 1952, of the Madras High Court in A. S. No. 270 of 1948.

A. V. Viswanatha Sastri, A. V. Narayanaswami and *M. S. Narasimhan* for *T. K. Sundara Raman*, for the appellant.

M. C. Setalvad, Attorney-General, R. Ramamurthi Iyer and *B. K. B. Naidu*, for respondent No. 1.

R. Ramamurthi Iyer and *B. K. B. Naidu*, for respondents Nos. 2 and 4 and the legal representatives of respondent No. 5.

1961. February 23. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal raises a short question about the construction of a will executed by the testator, Diraviyam Pillai, on April 28, 1937, and it arises from a suit instituted by the appellant N. Kasturi in the Court of the Subordinate Judge at Madura. In his suit the appellant alleged that under cl. 12 of the will certain rights either vested or contingent had been conferred on him in regard to the property as therein described, and it was in pursuance of the said rights that he claimed a declaration with a view to protect his interest and safeguard the estate from being wasted by, and lost in the hands of, the testator's widow, respondent 1, Ponnammal, who was in charge of the said estate. The trial court construed the will against the appellant and held that it conferred no right on him and so he could not claim any of the reliefs set out in his plaint. Incidentally, on the merits the trial court was satisfied that a case had been made out by the appellant and that it did appear that the estate was being wasted by its present holder, respondent 1. The appellant then took the matter before the Madras High Court by his appeal. The High Court has agreed with the trial court in the construction of the will. It has held that the appellant had no right under the will which would justify his claim for any of the reliefs set out in his plaint. On that finding the High Court thought it unnecessary to consider the merits of the case set out by the appellant and denied

Gajendragadkar J.

1961

Kasturi v. Ponnammal

Gajendragadkar J.

by respondent 1. The appellant then applied for and obtained a certificate from the High Court, and it is with the said certificate that he has come to this court by his present appeal; and so, the only question which falls for our decision is: Have the courts below put an unreasonable construction on the will as Mr. Viswanatha Sastri for the appellant contends?

As we have already seen the testator executed the will on April 28, 1937, and he died on March 10, 1939. During his lifetime the testator was a member of a joint and undivided Hindu family consisting of himself and his cousin, Thayumanaswami Pillai. Neither of them had any son. At his death which took place on May 9, 1935, Thayumanaswami Pillai left behind him two widows, respondent 2, Mangayarkarasi Ammal and respondent 3, Kanniammal, and a widowed daughter by the former, respondent 4, Pichai Ammal. The testator who survived his cousin became entitled to the whole of the family property by survivorship, and it is as such that he made, and was competent to make, the will in question. The appellant is the sister's daughter's grandson of the testator, whereas Kalyanasundaram, respondent 5, was treated as a foster-son by the testator's cousin, Thayumanaswami Pillai. Respondent 5 died pending the appeal before this Court leaving behind him two widows, two minor sons and two minor daughters who have been brought on the record as his heirs and legal representatives. These are the persons who have been mentioned in the will and who appear to be the objects of the testator's bounty in one way or another.

It is now necessary to refer to the will in general and read the two clauses which specifically fall to be construed in the present appeal. Clause 1 of the will refers to the fact that the testator had already executed a will on June 12, 1935, and had registered it. The present will was executed by him with a view to cancel his earlier will and with the object of making fresh arrangements in regard to his property as specified in the present will.

Clause 2 of the will states that the testator and his senior cousin, the deceased Thayumanaswami Pillai,

were members of an undivided Hindu family and as such had acquired property and carried on money-lending business in the names of both of them. The testator adds that on the death of his cousin, as the sole surviving coparcener he became the absolute owner of the whole of the property.

Clause 3 recites that the testator was then 64 years of age and that he and his wife, respondent 1, had no issue. Then he refers to his other relations in whom he was interested.

In cl. 4 the testator points out that circumstanced as he was it was necessary to make arrangements with regard to the family property "so that the family affairs may be carried on according to my desire without any dispute or quarrel whatever in the family after my lifetime." This case, like many others, illustrates that the hope and expectation expressed by the testator that the making of his will should prevent litigation and disputes has not come true.

Clause 5 is in the nature of a preamble to the dispositive clauses of the will and is as follows. It says that his deceased cousin had expressed some desire during his lifetime regarding the properties, and the testator out of deference to his wishes was making the arrangements set out in the will agreeably to the said wishes and in accordance therewith.

Clause 6 begins with the declaration that the testator wanted to adopt a boy for the propagation of his family; and it says that in case the testator did not make an adoption during his lifetime his wife, respondent 1, shall adopt the appellant. Then the clause says that should the appellant die providentially before he is taken in adoption the testator permitted and authorised his wife to adopt as she pleases another good and suitable boy from amongst his community; and as a precaution the testator also deals with the possibility of the death of the boy so adopted by his wife and authorises her to make subsequent adoptions if necessary. Thus cl. 6 of the will expresses the testator's desire to make an adoption himself and confers authority on his wife to make such an adoption after his death in case he does not adopt in his lifetime.

1961

Kasturi v. Ponnammal

Gajendragadkar J.

Clause 7 provides for the management of the estate if the adopted son happens to be a minor. It lays down that during the minority of the adopted son his wife shall be his guardian and shall take only the advice necessary for the management of the properties and also regarding other family affairs from the advisers specified by him in his will. On the adopted son attaining majority she is directed to hand over the properties to him. The testator makes it clear that the adopted son shall enjoy the properties thus received by him without subjecting them to usufructuary mortgage, simple mortgage, sale, etc., and after his death his heir shall get them with absolute rights. Thus the testator has conferred on his adopted son a life estate and left the estate absolutely to the heirs of the adopted son.

By cl. 8 the testator makes his wife the executrix of his will in case he died without making any adoption; and it confers on her the powers to carry out the provisions of the will in that connection and take the necessary advice from advisers specified by him. This clause enjoins upon the executrix the obligation to execute in favour of respondents 2, 3, 4 and 5 the necessary documents as mentioned in detail under the following clauses, to adopt a boy in accordance with the permission given by him, to manage the properties till the boy attains majority and to hand over to him the properties on his attaining majority. In discharging her obligations set out in this clause she has been asked to consult the advisers and carry out her duties "duly and properly." In this clause the testator has indicated the objects of his bounty and has imposed upon his executrix the obligations to carry out the dispositions specified in the will.

Clause 9 deals with the dispositions in favour of respondents 2, 3 and 4. In respect of respondent 4 the testator has expressed his special solicitude because she had become a widow while young and he was keen that a provision should be made for her maintenance during her lifetime consistent with the status of the family so that she might maintain herself without difficulty. The direction contained in this clause shows

that the testator wanted the three respondents to receive properties separately for their maintenance with the condition that they shall enjoy the income of the said properties as they liked during their lifetime without subjecting them to sale, usufructuary mortgage, simple mortgage, etc.

Clause 10 deals with respondent 5. Respondent 5 is the son of the first wife of the late Muthuswami Pillai who was the husband of respondent 4 and sister's son of respondent 2. He had been treated by Thayumanaswami Pillai, the cousin of the testator, as his abhimanaputran (foster son) and the said cousin had the desire to give properties to him with which desire the testator had agreed. In accordance with this desire the testator proceeded to make a disposition in favour of respondent 5 in the succeeding clauses. That is the effect of cl. 10. Clauses 11 and 12 are the clauses which fall to be construed and so we will now read them in extenso:

"*Cl. 11.* Exclusive of the properties that may be given in writing, as stated above, to the late Thayumanaswami Pillai's wives and daughter and similarly for herself, that is to say, for my wife, for being enjoyed by each during her lifetime, in respect of one-half of all the remaining properties of my family, my wife shall, before making an adoption, execute in favour of the above Kalyanasundaram a document with suitable recitals to the effect that he shall enjoy only the income that may be derived therefrom during his lifetime without subjecting them to any encumbrances whatever, that is to say, without effecting any sale, usufructuary mortgage, simple mortgage, etc., and that after his lifetime, his heirs shall get them with absolute rights and, she shall also make an arrangement to the effect that my adopted son similarly gets and enjoys only the remaining half. My wife Ponnammal herself shall also manage one-half of the properties aforesaid till Kalyanasundaram attains majority, and as soon as he attains majority, she shall hand over to him the properties due to him for being enjoyed by him according to the terms mentioned above. Whereas

1961

Kasturi v. Ponnammal

Gajendragadkar J.

properties have been set apart, as stated above for the late Thayumanaswami Pillai's wives, daughter Pichammal and my wife Ponnammal for their maintenance, it shall be mentioned in the documents that after their respective lifetime, the above properties shall be taken in equal shares by the above Kalyanasundaram and the boy that may be adopted by me or my wife, or that on the death of the respective persons their respective male heirs, if any, shall succeed to their respective one-half share and that should any one of them die without a male heir and the other alone survive such survivor alone shall take both the shares.

Cl. 12. Should myself and my wife die without making an adoption or should my wife predecease me or in case I do not adopt any boy or in case the boy adopted by me is not alive at the time of my death, the above Kasturi and the above Kalyanasundaram shall get and take the whole of my properties in equal shares for being enjoyed according to the terms mentioned in paragraph 11 above and subject to the conditions regarding the properties to be set apart for maintenance as stated above. Should myself and my wife die without making an adoption as stated above and should the above Kalyanasundaram predecease us, the above Mangayarkarasi Ammal and Kanniammal shall get all the properties and enjoy them during their lifetime without subjecting them to any encumbrances whatever and by virtue of the permission hereby granted by me to them to adopt a boy, they shall adopt a boy and that adopted boy shall succeed to them."

Before proceeding to construe these clauses we may refer briefly to the remaining clauses of the will. Clause 13 refers to the charitable dispositions already made by the testator and the arrangements made by him in that behalf. It adds "even as regards the other charities which I intend to do hereafter, the respective documents shall be acted upon." Clause 14 names the advisers in consultation with whom the executrix has been asked by the testator to carry out

the terms of his will. Under cl. 15 the testator provides that after his wife's death or in the event of his wife dying even at the outset when his will takes effect respondent 2 shall be the executrix and guardian of respondent 5 " suitably to circumstances. " In case she also is not alive at the relevant time respondent 3 should be the executrix and guardian. Clause 16 provides that in case the testator dies without making an adoption during his lifetime his obsequies shall be performed by respondent 5 and the appellant; the said two persons are also required to perform the obsequies of his wife if she dies without making any adoption as well as obsequies of respondents 2 and 3. Respondent 5 is required to perform the obsequies of respondent 4. Under cl. 17 the testator has provided that in case respondent 2 or 3 became the testatrix she shall manage the properties in consultation with the advisers specified in the will. By cl. 18 the testator provided that his will will take effect from the date of his death, and by cl. 19 the testator reserved the power to alter his will or to add to it. It would thus be seen that this will which contains 19 clauses is a very reasonable will and it seeks to do justice to the claims of all persons belonging to the family in whom the testator was interested and in respect of whom as the sole surviving coparcener he recognised his responsibilities. He has scrupulously attempted to carry out the desires of his deceased cousin, and on the whole its terms are very fair and reasonable. The question which arises for our decision is: Does the appellant get any right under cl. 12 of the will which would justify his claim for a declaration and other appropriate reliefs made by him in the present suit? As we have already indicated, both the courts below have answered this question against the appellant.

Mr. Sastri contends that in construing the two relevant clauses it is necessary to bear in mind two principles which govern the construction of wills. The first principle is that so far as is reasonably possible courts should adopt that construction of the will which would avoid intestacy; and the second principle is that the construction which postpones the vesting of

1961

Kasturi v. Ponnammal

Gajendragadkar J.

the estate after the death of the testator should be avoided. In support of the first principle Mr. Sastri has relied on the observation of Mookerjee, J., in *Sarojini Dassi* v. *Gnanendranath Das & Others etc.* (1). On a construction of the several dispositions contained in the will with which the learned judge was dealing he came to the conclusion that taken together the said dispositions show that the testator intended to dispose of all his properties, and then he added "if there is any doubt, we ought if possible to read the will so as to lead to a testacy, not to an intestacy." In support of this conclusion the learned judge referred to four English decisions, *In re Redfern* (2), *In re Harrison* (3), *Kirby Smith* v. *Parnell* (4) and *In re Edwards* (5). In support of the second principle enunciated by Mr. Sastri he has relied on the decision of the Privy Council in *Bickersteth & Another* v. *Shanu* (6). In that case the Privy Council held that the established rule for construing devises of real estate is that they are held to be vested unless a condition precedent to the vesting is expressed with reasonable clearness.

On the other hand, the learned Attorney-General has invited our attention to a decision of this Court in *Gnanambal Ammal* v. *T. Raju Ayyar & Others* (7), in which this Court has definitely ruled that a presumption against intestacy may be raised if it is justified by the context of the document or the surrounding circumstances; but it can be invoked only when there is undoubted ambiguity in ascertainment of the intentions of the testator. Mukherjea, J., as he then was, observed that the cardinal maxim to be observed by courts in construing a will is to endeavour to ascertain the intentions of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been

(1) (1916) 23 Cal. L.J. 241, 255.
(2) (1877) 6 Ch. D. 133.
(3) (1885) 30 Ch. D. 390.
(4) [1903] 1 Ch. 483.
(5) [1906] 1 Ch. 570.
(6) [1936] A.C. 290.
(7) A.I.R. 1951 S.C. 103.

better informed or better advised; and in support of this view the learned judge cited similar observations made by the Privy Council in *Venkata Narasimha* v. *Parthasarathy* (1). In dealing with the principle that intestacy should be avoided, Mukherjea, J. said that the desire to avoid intestacy was based on English habits of thought which should not necessarily bind an Indian court. Therefore, there can be little doubt that what Mr. Sastri formulates as a rule of construction against the avoidance of intestacy cannot be treated as an absolute rule which should have overriding importance in construing a will. If two constructions are reasonably possible, and one of them avoids intestacy while the other involves intestacy, the court would certainly be justified in preferring that construction which avoids intestacy. It may be permissible to invoke this rule even in cases where the words used are ambiguous and an attempt may be made to remove the ambiguity by adopting a construction which avoids intestacy. Similarly, in regard to the rule that vesting should not be postponed the position is exactly the same. It is obvious that a court cannot embark on the task of construing a will with a preconceived notion that intestacy must be avoided or vesting must not be postponed. The intention of the testator and the effect of the dispositions contained in the will must be decided by construing the will as a whole and giving the relevant clauses in the will their plain grammatical meaning considered together. In construing a will it is generally not profitable or useful to refer to the construction of other wills because the construction of each will must necessarily depend upon the terms used by the will considered as a whole, and the result which follows on a fair and reasonable construction of the said words must vary from will to will. Therefore, we must look at the relevant clauses carefully and decide which of the two rival constructions should be accepted.

Mr. Sastri argued that cls. 11 and 12 are separate and independent clauses and they deal with two

(1) (1913) L.R. 41 I.A. 51, 70.

1961

Kasturi v. Ponnammal

Gajendragadkar J.

separate and different positions. According to him, cl. 11 deals with the position which would have arisen if an adoption had been made by the widow of the testator, whereas cl. 12 deals with the position which would arise where no adoption is made. His argument is that when no adoption is made and until it is so made there is a vested right in respect of half the properties in the appellant which right no doubt may be defeated if an adoption is subsequently made. He contends that this is a vested right subject to defeasance by subsequent adoption, and this right has nothing to do with the right which would be conferred on the appellant if he is adopted as contemplated by cl. 11. That according to the appellant is the tenor and the effect of cl. 12, and that is how the appellant avoids intestacy and postponement of vesting.

The respondents' case, however, is, and that is the case which has been accepted by the courts below, that cl. 12 should be construed as operating at the time of the death of the testator and not later, and according to this argument, as soon as the testator died the said clause ceased to be applicable and the rights of the appellant fall to be considered only under cl. 11. If cl. 12 had to be construed by itself separately and in isolation from cl. 11 much could have been said in favour of the contention urged by the appellant; but, in our opinion, it would be plainly inconsistent with all the rules of construction to take cl. 12 by itself and isolate it from the rest of the will. Clauses 6 to 11 deal primarily with the adoption which the testator contemplated would be made by his widow in case he did not make an adoption in his lifetime. Clause 11 confers a vested interest on respondent 5. This has to be done before respondent 1 makes any adoption and indeed it is an independent bequest by itself. Then the said clause contemplates the appellant as a possible adoptee and then deals with his rights on that footing. With the other bequests made by the said clause we are not directly concerned. Having thus made the provisions in cl. 11 on the basis that his widow may adopt, cl. 12 deals with an alternative situation which would arise in

cases contemplated by the said clause, and it is intended to be operative only at the time of the death of the testator and not otherwise. If that be the true position then the appellant would not be entitled to any right under cl. 12 at all.

Now, as a matter of construction there are some serious difficulties in the way of accepting the appellant's case. The first part of cl. 12 refers to four possible cases, joint adoption by the testator and his wife, the death of his wife during the lifetime of the testator, the failure of the testator to make an adoption during his life time on his own, and the death of the adoptee by the testator before his death. If the appellant's argument was accepted the first part of the clause would have to be split up into two and would have to be read as covering the failure of the testator or that of his wife to make an adoption. In other words, the expression "myself and my wife" has to be read as "myself or my wife", and in the context that seems inappropriate. The argument that there cannot be a joint adoption by the testator and his wife is, in our opinion, too academic and technical. It is perfectly true that under Hindu law the adoption has to be made and can be made to the testator, but it is equally true that if the testator had made an adoption during his lifetime his wife would have joined him and there is little doubt that Hindu law does in that sense recognizes an adoptive mother ('pratigrihitrimata' (9)) (Vide: *Annapurni Nachiar* v. *Forbes* (10). Therefore, it does not sound reasonable to contend that since joint adoption by husband and wife is unknown to Hindu law the word "and" should be read as "or" in the relevant clause. That is the first difficulty in accepting the appellant's construction.

The second difficulty is that if the word "and" is read as "or" the third case contemplated in the first part of the clause of the testator adopting the boy himself alone would be superfluous. The adoption by the testator himself acting alone is already covered in

(9) Mayne on Hindu Law & Usage, 11th Edn., pp 244, 245.

(10) (1899) 26 I.A. 246, 253.

1961

Kasturi v. Ponnammal

Gajendragadkar J.

the first part of the clause. Mr. Sastri fairly conceded that this superfluity would follow on his construction; but, he argued, that that need not necessarily defeat his construction.

The third difficulty in accepting the said construction is that the right which has already vested under cl. 11 in respondent 5 is again vested by cl. 12. As we have already seen, under cl. 11 respondent 5 was given half the estate in pursuance of the agreement between the testator and his deceased cousin Thayumanaswami Pillai. Therefore, there is hardly any occasion or necessity to make a disposition in favour of respondent 5 once again under cl. 12. The presence of this difficulty also is not seriously disputed. The only argument in respect of this difficulty was that as an abundant precaution the testator repeated the bequest in favour of respondent 5 though the said bequest had been completely provided for under cl. 11.

There is still one more difficulty in accepting the appellant's construction, and that is in regard to the last part of cl. 12. Under this clause, if the testator and his wife died without making any adoption and if Kalyanasundaram predeceased them respondents 2 and 3 were to take all the properties and enjoy them during their lifetime subject to the conditions specified in the clause. Now, it is obvious that if the expression "all the properties" means, as it must, all of them without any exception, then what is already vested in respondent 5 is divested by this clause in case he dies after the testator but before his widow and neither of them has made any adoption, and that would be plainly inconsistent with cl. 11. Faced with this difficulty Mr. Sastri suggested that the context requires that "all the properties" would mean all the properties which would have gone to the appellant if he had been adopted; that is to say, half the properties given to him under cl. 11 on the basis of his adoption. Such a limitation on the meaning of the words "all the properties" seems to us to be wholly unjustified. Therefore, we are satisfied that reading cls. 11 and 12 together the High Court was right in holding that cl. 12 was intended to operate

1961

Kasturi v. Ponnammal

Gajendragadkar J.

at the time of the death of the testator and not later and that the appellant would get an interest under cl. 12 only if the widow of the testator pre-deceased the testator and there is no adoption by the testator before his death. If that be so, the appellant cannot claim any right or title on the strength of cl. 12 because at the relevant time it was not intended to be operative at all. In the circumstances the appellant's rights are provided for by cl. 11 alone, and those rights cannot come into existence unless and until he is adopted by respondent 1. On that view there is a possibility of intestacy and there is postponement of vesting; but that cannot be avoided. That is the view taken by the courts below, and having carefully considered the argument urged before us by Mr. Sastri on behalf of the appellant we see no reason to interfere with the said conclusion.

The result is the appeal fails; there would be no order as to costs.

Appeal dismissed.

STATE OF JAMMU KASHMIR
v.
MIR GULAM RASUL.

1961

February 23.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Fundamental rights—Equality before law—Breach of law, if amounts to violation of equal protection of law—Writ Petition—No fundamental right involved—Duty of High Court—Constitution of India, Arts. 14, 32(2A).

The Government of Jammu and Kashmir on the basis of the report of the commission of enquiry set up by it demoted the respondent who had been suspended earlier. The respondent moved the Jammu and Kashmir High Court under Art. 32(2A) of the Constitution of India as applied to the State of Jammu and Kashmir for a writ, *inter alia*, questioning the validity of the order suspending and demoting him, alleging violation of rules of natural justice by the commission of enquiry and breach of statutes and rules of service. Articles 226 and 311(2) of the Constitution of India had not been applied to the State of Jammu