

DHARMASIRI
V.
ROSLIN PERERA AND OTHERS

COURT OF APPEAL
P. R. P. PERERA, J. AND PALAKIDNAR, J.
C. A. NO. 425/79 (F).
D. C. GAMPAHA 1197/T.
JANUARY 24, 1989.

Last Will - General Legacy - Specific Legacy - Payment of debts of testator.

A general legacy is liable pro rata for all the debts of the state before specific legacies.

Special or specific legacy is one of a specified thing such as a farm or a motor car or a particular debt owed to the testator or of a specified collection of things

such as a library or a flock of sheep. A general legacy is a disposition of a class of things described as a rule by number or quantity such as a thousand sheep or £ 1000. A legacy of all the money to the credit of the testator is a specific legacy.

A general legacy cannot be distinguished from others of the same kind.

APPEAL from judgment of the District Court of Gampaha.

H. L. de Silva P. C. with Gomin Dayasiri for Petitioner-Appellant
S. C. Crossette Thambiah with V. Selvarajah and K. Thebarajah for Respondents.

Cur. adv. vult.

May 27, 1989

P. R. P. PERERA J.

The appellant above named is the executor of the Last Will of the estate of the late Parapitiya Gamaralalage Wilbert of No. 58, Main Street, Ja-ela which was duly proved in the District Court of Gampaha. The executor-appellant and the respondents to this appeal, are the beneficiaries under the said Last Will. In terms of paragraph (4) thereof, the Testator devised and bequeathed his "business assets" specified therein to the appellant and the respondents jointly in accordance with the shares set out in the Will subject to the payment of a loan of Rs. 100,000/- to the Bank of Ceylon. By the succeeding clauses of the Will, the Testator devised and bequeathed to his widow, the first respondent, monies lying in deposit in certain Bank Accounts as well as a Life Insurance Policy, and all his household goods.

In the course of the proceedings in respect of the Final Accounts filed by the Executor-Appellant, the parties accepted the correctness of the accounts, but a dispute arose as regards the appropriation and application of the assets for the payment of the debts of the deceased.

The specific issue which arose for determination was whether the balance sum of money - Rs. 4302.18 cts. due to Mercantile Credit Ltd., on a finance of the lorry bearing Registration No. 22 Sri 6160, should be paid out of the assets of the Estate. For this purpose, it was necessary for the Court to determine whether paragraph (4) of the Last Will bearing No. 4711, where the

Testator has devised certain assets to his heirs namely his widow and children, and his brother (which included the lorry in question) could be construed as a general legacy or a specific legacy.

It was contended by the executor-appellant that the assets included in paragraph (4) were charged with the payment of the loan of Rs. 100,000/- only, and that all the other debts of the deceased were a charge on the assets devised to the first respondent-widow. The first respondent however contended that all the debts were a first charge on the "business assets" and that the assets devised and bequeathed to her were only liable for any deficiency after appropriation of the business assets.

At the inquiry, the following issues were adopted :

1. Are the business assets referred to in paragraph '4' of the Last Will, devised and bequeathed to the beneficiaries named therein subject only to the payment of a loan of Rs. 100,000/-, or are they liable pro rata for all other debts as well?
2. Are the monies lying in—
 - a. Savings Account No. 30754, Bank of Ceylon, Gaffoor Building, Colombo.
 - b. Savings Account No. 5 in the Co-operative Bank, Ja-ela.
 - c. Current Account No. 67700 in National Grindlay's Bank, Colombo.
 - d. Proceeds of Life Insurance Policy No. 311709, bequeathed to the widow, liable for the payment of the other debts of the deceased, or are these assets only to be utilised after exhausting of the assets mentioned in issue (1)?

After inquiry, the learned District Judge upheld the contention of the first respondent that the legacy relating to the business assets (set out in paragraph '4' of the Last Will) was a general legacy, and the legacies in favour of the first respondent were special legacies, and answered the issues accordingly.

It would be necessary therefore at this stage to reproduce paragraph 4 of the said Last Will which reads as follows:

"I do hereby devise and bequeath my business assets namely —

1. Wijaya Stores at No. 53, St. Mary's Road, Ja-ela.
2. Firewood Shed at No. 58, St. Mary's Road Ja-ela.
3. Lime Kiln at No. 43, St. Mary's Road, Ja-ela.
4. Wijay Stores at No. 58, Main Street, Ja-ela.
5. Coal Tax at No. 58, Main Street, Ja-ela.
6. Metal Works at No. 58, Main Street, Ja-ela.
7. Vehicles — Spares and Remnants at No. 58, Main Street Ja-ela.
8. The property called Gorakagahawatte, and all the buildings thereon bearing assessment No. 58, Main Street Ja-ela.
9. Lorry No. 24 Sri 4748
10. Lorry No. 24 Sri 4749
11. Lorry No. 22 Sri 6160.
12. All monies lying to my credit, and the credit of the business at Bank of Ceylon Ja-ela, Account No. 162.
13. Bank of Ceylon (Foreign Dept.) Account No. 17242.

All these assets subject to the payment of a loan of Rs. 100,000/- borrowed from the Loans Department, Bank of Ceylon, Central Office, Colombo. I devise and bequeath unto the following and in the proportions set out below.

Counsel for the appellant conceded that the District Judge was right when he held that a general legacy is liable pro rata for all the debts of the estate before any other specific legacies but contended strongly that he has misdirected himself when he came to a finding that paragraph 4 of the Last Will reproduced above was a general legacy. Counsel submitted that having regard to the words used in the said paragraph, it was clear that the Testator had intended to create specific legacies. Counsel urged in the circumstances that the sum of Rs. 4302.18 cts. due to Mercantile Credit Ltd., on the finance of Lorry bearing No. 22 Sri 6160, should be paid out of the assets of the estate.

Citing a passage from "The Law of Succession" by Perry, 4th Edition, Counsel urged that a specific legacy is defined as the gift of a specified thing which could be identified and is distinguishable. Further, according to Mustoe, "The Law of Executors and Administrators" 5th Edition Chapter 11, 'A general legacy is one which cannot be distinguished from others of the same kind.'

Wille, on "Principles of South African Law", 5th Edition, supports this proposition. At page 270 of this work Wille states thus — "A legacy is a disposition in a will to a person termed a legatee of things which are described either specially or generally. A special or specific legacy is one of a specified thing such as a farm or a motor car or a particular debt, owed to the Testator or of a specified collection of things such as a library, or a flock of sheep. A general legacy is a disposition of a class of things described as a rule by number or quantity such as a thousand sheep or £1,000. It would seem to follow that a legacy of all the money to the credit of the Testator is a specific legacy."

On a consideration of the principles set out above we are inclined to agree with the submission of Counsel for the appellant, that the property set out in paragraph '4' of the said last will, constitutes specific legacies. We accordingly hold that the learned District Judge was in error when he held that paragraph '4' of the last will is a general legacy. We therefore set aside the order of the learned District Judge relating to this particular finding. Subject to this variation we dismiss this appeal without costs.

PALAKIDNAR, J. — I agree.

Appeal dismissed