

(1966) 08 AP CK 0009

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 120 of 1963

Boddu Veeraiah and Others

APPELLANT

Vs

Aripirala Venkata Laxmamma and Others

RESPONDENT

Date of Decision : 03-08-1966

Acts Referred:

Evidence Act, 1872 — Section 114, 90

Citation : AIR 1968 AP 276

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Krishna Rao, J

Bench : Division Bench

Advocate : P. Babulu Reddy and I. Koti Reddy, for the Appellant; M. Venkata Subba Rao and M.V. Ramana Reddy, for the Respondent

Final Decision : Allowed

Judgement

Krishna Rao, J.—The above Letters Patent Appeal is filed by defendants 11, 12, 14 and 15 in O. S. No. 2 of 1956 on the file of the Court of the Subordinate Judge. Narasaraopet which arose under the following circumstances: The plaintiff Aripirala Venkata Laxmamma filed the suit for recovery of possession of the properties shown in the plaint-schedule on the ground that she was the heir to the properties of one Korukonda Suryanarayana who was the owner of the said properties, that he died in or about the year 1900 leaving his widow Ramalaxmamma alias Ramamma, that a deed of surrender, Ex, B-7. executed on 12-5-1924 by the widow was invalid and that after the death of the widow, Ramalaxmamma, on 2-8-1954. she became entitled to succeed to the estate. The relationship between the parties is shown in the pedigree shown in the pedigree shown herebelow:

Venkayya (Died prior to 1890) wife Venkamma (Died 22.12.1909) | _____

____ | | | Venkatramayya (pre Venkata Sessaiah went Surya-narayana (Died Aripirala Venkata deceased his father) in adoption to junior in about 1900 Ramalax Laxmamma (Plaintiff) paternal uncle Sessaiah mamma @ Ramamma

Appaiah (Died on 19.12.1907) |
| Kutumbayya (Died on 14.3.1920) Satyanarayan (Died on 10.3.1940) wife Laxmi-narasamma (died 5.11.1918) | | Kutumba sastry (Defendant 2)

Seshayya (Died prior to 1870 wife Venkamma | (Adopted son died on 31.3.85)
| | Venkata Hanumaiah Venkataramaiah (Deft. 8) (Deft. 4)

Venkata Hanumaiyah (Deft. 1) | | Aripirala Laxmi-narasamma Aripirala Hanumayamma (Deft. 5) (Deft. 6)

The plaintiff entered into compromises with various defendants except the above appellants (Defendants 11, 12, 14 and 15) who claimed items 13 and 14 which are Ac 4-25 cents and Ac. 3.20 cents dry respectively as alienees from defendants 1 and 2 all of whom contend that the surrender by the widow was valid.

2. The plaintiff seeks to attack the validity of the surrender on three grounds: Firstly, that the surrender is a device to divide the estate intended to benefit her nominee, the first defendant, and hence not bona fide, secondly that the surrender was not made in favour of the entire body of reversioners and thirdly that the surrender was not in respect of the entire estate of the last male holder. Both the trial Court as well as the High Court on appeal in A. S. No. 193 of 1958 decreed the suit.

3. We will now take up the first question, viz., whether the surrender was not bona fide in the sense that it was a device to divide the estate between the plaintiff and the reversioners and by which she reserved a benefit to her nominee, the first defendant. As already stated, the widow Ramalaxmamma executed the surrender on 12-5-1924 under Ex. B-7 in favour of the nearest reversioner Satyanarayana who was the last male holder Suryanarayana's father's brother's son (vide pedigree). On the same day, i.e., 12-5-1924, the surrenderee Satyanarayana executed a deed of maintenance Ex. B-8 in favour of the widow giving her Ac. 7-00 out of a total extent of Ac. 28-00 towards her maintenance. Again on 15-5-1924 the surrenderee Satyanarayana executed a deed of gift, Ex. B-9 in favour of the first defendant who was his brother Kutumbayya's son conveying a portion of the property got by him by virtue of the surrender for the reasons stated in the gift deed.

4. It is contended by Sri M. Venkata Subba Rao, the learned Counsel for the plaintiff-respondent that the proximity at which the three documents came into existence coupled with the fact that the first defendant, the donee under the gift deed being the sister's son of the widow, goes to establish the fact that the transactions were part and parcel of a single scheme by which the widow conferred a benefit upon her nominee, the first defendant. It may be stated that except the fact that the first defendant happened to be also the sister's son of the widow and that the gift deed Ex. B-9 was executed three days after the

surrender deed, there is no independent evidence to show that the widow was instrumental in the execution of the gift deed and that unless the said gift deed was executed in favour of her nominee she would not be a party to the surrender deed. Though prima facie the argument of the learned counsel for the plaintiff weighed with the Courts below, we are unable to come to the said conclusion as there is ample convincing evidence on behalf of the first defendant establishing the various circumstances under which the gift deed came into existence which show that the gift deed was the outcome of settlement of disputes between the first defendant and the surrenderee and that the widow had no hand in the execution of the said deed. It is in evidence (Vide D. W. 3) that the widow was 70 years old at the time of the surrender and that the document itself recites that due to her old age she was not able to manage the properties and that she intended to surrender the property taking a portion of the same towards her maintenance. It is settled law that a provision for maintenance at the time of the surrender does not invalidate the surrender and it is also not contended by the plaintiff that the execution of the maintenance deed on the same day as the deed of surrender invalidates the surrender. The only attack is that the gift deed was executed in favour of the widow's sister's son who should be regarded as her nominee. The evidence adduced on behalf of the defendants is that Satyanarayana, the first defendant's uncle managed the family properties, incurred various debts and sold away the family properties in discharge of the said debts, that the first defendant raised disputes questioning the alienation of the joint family properties on the ground that the debts were not binding on him, that immediately after Satyanarayana acquired properties under the surrender, the first defendant raised the said disputes for which there was a mediation by respectful persons and that in pursuance of the mediation, the surrenderee Satyanarayana executed the said gift in favour of the first defendant conveying a part of the properties acquired by him under the deed of surrender in order to compensate the first defendant for the loss of his family property. These facts are borne out by ample evidence adduced on the side of the defendants Ex. B-9. the deed of gift recites as follows.

"You are my brother's son. Since your father and mother died 5 years back you have been under my protection. I alienated our property on account of the debts which I incurred for the protection of our family as there were no sufficient means. Out of the property which I got today by means of the surrender deed from Korukonda Ramalaxmamma, to whom I am the nearest reversioner, I am settling today Immovable property of the value of Rs. 500....."

This document was written by D. W. 6, a person who was 80 years old at the time when he gave evidence in 1958. He is a common relation of both parties and he clearly sets out the various disputes between the first defendant and his uncle Satyanarayana and the circumstances which culminated in the execution of the gift deed. The first defendant has also given evidence as D W. 7 and he speaks to the various details of the debts and the disputes raised by him which were settled by mediators resulting in the execution of Ex. B-9. D. W. 3 also

speaks about the disputes raised by the first defendant, that he was present at that time, and that he attested the deed of maintenance. He also states that Ramalaxmamms was 70 years old at that time. D. W 4 who is the nephew of the plaintiff's husband also speaks to the circumstances under which the gift deed was executed. We may also point out that having regard to the old age of the widow, she had no desire or motive to retain any benefit in the estate. On a consideration of the oral evidence on the side of the defendants coupled with the recitals in the deed of gift, and in the absence of any evidence on the side of the plaintiff that the widow was responsible for the execution of the deed of gift, we have come to the conclusion that the transaction evidenced by Ex. B-9 is an independent transaction and is not part and parcel of the deed of surrender. In view of the positive convincing case of the first defendant establishing that the deed of gift was an independent transaction, we cannot readily infer from the mere proximity of the various documents, their registration on the same date and the mere circumstance that the first defendant is also the sister's son of the widow, that the widow bargained for the deed of gift as consideration for the surrender. So soon after the surrenderee got possession of the properties under the deed of surrender, the first defendant was diligent enough to put forth his claims against the surrenderee and had his claims satisfied. It is therefore a clear case where the gift deed was executed in settlement of the claims of the first defendant and there is absolutely no reason to infer that the widow reserved any benefit in the name of the first defendant by virtue of the surrender. As already seen, it has not been made out by the plaintiff that she had any special affection for the first defendant. In fact, when the first defendant lost his parents at a very young age, it was his uncle Satyanarayana, the donor of Ex. B-9 that brought him up and it is not even suggested that the first defendant was living with the widow or that really it was the widow who enjoyed the properties which were gifted to the first defendant. No doubt, an unsuccessful attempt was made by Sri M. Venkatasubba Rao, the learned counsel for the plaintiff, that the properties gifted under Ex. B-9 continued to be in the possession of the widow and in support of his argument he relied upon certain cist receipts relating to the period from 1940 to 1950. The learned Advocate has not been able to establish any connection between the cist receipts and the property covered by Ex. B-9. Moreover, the properties were gifted as early as in 1924 and the first defendant alienated the suit properties even in 1926 and the alienee (defendants in the suit) were admittedly in possession of the properties. It is therefore idle to contend that the widow continued to be in possession of the properties.

5. It is further contended that the surrenderee did not retain the properties which he got under the surrender. We cannot agree with this argument because once the surrenderee becomes the full owner of the property, he is entitled to deal with it in any manner he likes, the only objection being that he should not reconvey the property or part thereof either directly or indirectly to or for the benefit of the widow. Sri Babul Reddi, the learned counsel for the appellants-alienees rightly relied upon the aforesaid circumstances and contended that on

the facts of the present case, it is impossible to arrive at the conclusion that the execution of Ex. B-9 in favour of the first defendant is a device to divide the estate in the sense that the widow conferred a benefit on her alleged nominee, the first defendant. Sri M, Venkatasubba Rao, the learned counsel for the plaintiff, cited Abbireddigari Rami Reddi and Others Vs. Atla Rosamma and Others, and Chundru Akkamma and Another Vs. Chundru Brahmadu, as instances where a surrender by a widow was held to be invalid for want of bona fides as the nominees of the widow were benefited. It is needless to examine the decided cases as it is a pure question of fact in each case whether the widow really intended to benefit her nominee as a consideration for the surrender effected by her. The legal requisites of a valid surrender are now well, settled and the principles may be stated thus: A surrender by a widow operates as a self-effacement and accelerates the succession in the same manner as if she died. Hence the surrender must be in respect of the entire properties. If the widow retains a part of the properties, either as part of the bargain in herself or in the hands of her own nominee, there is really no surrender of the entire estate and it is said that in such a case there is only a partial effacement and no surrender at all. In view of these principles, we have to see in every case whether it was the widow who really retained any portion of the property except the property retained for maintenance or whether she received an indirect benefit by giving the property to a nominee of hers. Applying these principles to the facts of the instant case, we are clearly of the opinion that the plaintiff has miserably failed to show by evidence ali under that the widow was instrumental in the execution of the deed of gift and that it therefore formed part and parcel of a scheme to divide the estate between herself and the reversioner. On the other hand, Sri Babul Reddi, the learned Advocate for the contesting defendants, has established beyond doubt on the evidence, circumstances and probabilities of the case that the deed of gift was an independent transaction which happened to come into being by sheer accident in close proximity with the deed of surrender. Hence, on this point we are unable to agree with the Courts below and we come to the conclusion that the surrender is not a device to divide the estate by reason of the execution of the deed of gift. Ex. B-9 by the Surrenderee in favour of the first defendant.

6. The second objection to the validity of the surrender is that on the date of surrender there was one Venkata Seshaiah, adopted son of Seshaiah, the natural brother of Appiah (Vide pedigree) who was the reversioner of equal degree along with the surrenderee Stayanarayana, that the surrender not having been made in favour of the said Venkata Seshaiah also, the surrender is not valid, as it was only executed in favour of one of the reversioners and not the entire body of reversioners. To this objection, the answer given by Sri Babul Reddi for the contesting defendants is that Seshaiah went away in adoption to a different family, that his son Venkata Seshaiah was no longer a member of the family of the last male holder and that therefore that the surrender need not be made in his favour. On this point, the trial Court held that Seshaiah must have been

adopted away into another family while our learned brother reversed the said finding and held that the adoption of Seshaiah was not proved. In support of his contention, Sri Babul Reddi relied upon Ex. B-13 as a very clinching document which establishes the adoption of Seshaiah. Ex. B-13 is an unregistered deed of sale with respect to the property of the value below Rs. 100/- executed on a stamped paper on 13-6-1880 by Seshaiah in favour of his nature" brother Appaiah. The recitals in this document are to the effect that Seshaiah went in adoption to one Korukonda Papaiah's daughter-in-law Venkamma, that he was not residing in the village of Nadikudi in which the members of his natural family reside, that he became entitled to it in view of the fact that it fell to the share of Papaiah in a division between the shares and that he was selling the same as it was not convenient for him to reside therein. The description of the boundaries to the schedule of the property comprised in Ex. B-13 also indicates that the members of the natural family are owners of the adjoining shares and that there used to be a common passage for the use of all the shares. The above recitals support the suggestion of Sri Babul Reddi that the property sought to be sold under Ex. B-13 must have been originally owned in common by the members of Seshaiah's natural family as well as the members of his adoptive family either on the ground of their being Dayadis or otherwise Suffice it to say that the said document contains a clear admission by Seshaiah that he went in adoption to Papaiah's family. The said document was filed by the first defendant and it being more than 30 years old and coming from proper custody, it must be presumed to have been executed by Seshaiah by whom it purports to have been executed. This document. Ex B-13 was attacked in the first court on the ground that it must have been got up for the purposes of this suit. We are not inclined to accept this suggestion and we may also point out that Sri M. Venkatasubba Rao appearing for the plaintiff did not in our opinion rightly, take that stand before us. He however raised other contentions in answer to Ex. B-13. He relied on a document, Ex. B-4 which was a registered deed of gift dated 26-2-1903 executed by Korukonda Venkamma who was the wife of Korukonda Seshaiah, in favour of her adopted son Venkata Seshaiah, in which she stated as follows:

"As you are my undivided brother-in-law's son I have adopted you 35 years back with the consent of my husband and brothers-in-law and I have performed your thread marriage and marriage ceremonies etc."

On the basis of this recital, Sri Venkatasubba Rao raised two contentions: Firstly, the recital that the donee was her undivided brother-in-law's son and that therefore she was referring to herself as a member of the natural family and it may here be noted that her adopted son Venkata Seshaiah was the natural son of her husband's natural brother Venkaiah's son. Sri Babul Reddi suggested that though the word "undivided" may refer to her brother-in-law referring to Seshaiah's eldest natural brother Venkaiah, the description as undivided is obviously incorrect because it is the common case that the brothers were divided at that time and it is also suggested by Sri Babul Reddi rightly in our opinion, that the reference to her adopted son Venkata Seshaiah may have been with

reference to the state of affairs prior to the adoption of Venkata Seshaiyah, in which case the recital is correct. We are inclined to agree with the suggestion of Sri Babul Reddi and hold that the said description in the document is not clinching one way or the other on the question of adoption of Seshaiyah.

7. The second point raised by Sri Venkatasubba Rao is based upon the recital that the adoption of Venkata Seshaiyah was made by her 35 years ago which would take us to 1868 and that it clearly implies that her husband Seshaiyah must have died by 1868 as it was stated that she made the adoption in pursuance of the power given by her husband and the consent obtained from her husband's brothers. On this basis, Sri Venkatasubba Rao contends that Seshaiyah would not have been in existence on the date of Ex B-13, that is 1880 and consequently that Seshaiyah who was the executant of Ex. B-13 must refer to some other Seshaiyah and not the husband of Venkamma. No doubt the said argument is prima facie plausible but if we are to give effect to Ex B-13 which was a document executed by Seshaiyah himself, the recital made in Ex. 3-4. namely, that the adoption was made 35 years prior to Ex B-4 must have been a mere approximation and does not represent the correct date of the adoption. On the recitals in Ex. B-13 we are convinced that Seshaiyah, the executant therein was the very Seshaiyah who was the natural brother of Appaiyah. In this view of the matter, we are not prepared to hold that the recitals in Ex. B-4 outweigh the recitals in Ex. B-13 having regard to the circumstances under which Ex. B-13 was executed. We may however state that our learned brother did not refer to Ex. B-13 obviously because no arguments were addressed to him on the basis of Ex. B-13 as against Ex. B-4.

8. Sri Venkata Subbarao contended that the word used in Ex. B-13 was "Pempakam" and not "Dattatha" and that Pempakam may mean mere fostering. But we are supported in our view by the translation in Sankaranarayana's Standard Dictionary of Telugu to English words that the word "Pempakam" also means adoption.

9. Sri Babul Reddi relied on various other probabilities also to indicate that Seshaiyah must have been adopted away into another family. He relied on the circumstance that when the surrenderee filed a suit O. S. 139/27 on the basis of the surrender against the plaintiff's husband and her sons for recovery of item 16 of the present suit without mentioning in the plaint in the said suit the existence of Seshaiyah, we find that in the written statement Ex B-17, no case was set up that Seshaiyah was a member of the family, that the surrender was invalid on the ground that it was not in favour of Venkata Seshaiyah also. It is also pointed out that Venkata Seshaiyah was alive in 1926 and that he could have been examined in the said suit invalidates the surrender. It was therefore contended that if really Seshaiyah was not adopted into another family, the plaintiff's husband and sons as defendants in the said suit would have certainly raised a contention that the surrender was invalid on the ground that Venkata Seshaiyah was not one of the surrenderees. Sri Babul Reddi relied upon the evidence of D. W. 1. the Purohit

who officiated at the obsequies of Venkata Seshiah. It appears from the evidence of D. W. 1 that at the time of the obsequies, he recited Vara-gatrayam i.e. the names of his three ancestors and states that Seshiah's adoptive father was Korukonda Venkatramayya and that his father was Korukonda Papaiah. This evidence was attacked by Sri Venkatasubba Rao on the ground that p. W. 1 officiated on a solitary occasion in 1935 when Venkata Seshiah died, that he was giving evidence long after in 1958 and that it was unlikely that he could remember such details even after such a long lapse of time. But Sri Babul Reddi rightly pointed out to us that D. W. 1 was a close relative of the family and states that the plaintiff was the widow of his junior paternal uncle and hence there is no reason why we should not act upon his evidence. It may also be pointed out that the plaintiff herself as P. W. 3 admitted that D. W. 1 officiated at the obsequies of Venkata Seshiah. As against this evidence, Sri Venkatasubba Rao relied upon the recitals in Exs. B-4, B-3, A-35 and B-20 showing that the parties were dealing with a one-third share and that it probalises the existence of three shares including Seshiah. We are not impressed by the said argument in view of the clinching evidence on the other side. The contention of Sri Venkatasubba Rao based on the said documents cannot outweigh the inference which we have drawn from the evidence relied on by Sri Babul Reddi. Moreover, it does not necessarily follow that Seshiah continued to be a member of the natural family. Therefore, On a consideration of the entire evidence touching the question and the arguments of the learned counsel, we are, with due respect, unable to agree with the conclusion of our learned brother and we hold that Seshiah must have been adopted away into another family.

10. The third point argued against the validity of the surrender is that the surrender did not comprise of the entire extent of the property belonging to the last male holder, namely, items 7, 8, and 17 of the plaint schedule. Regarding items 7 and 8, there is no evidence let in on behalf of the plaintiff to show that the last male holder died possessed of the said items of property before he died. The only evidence relied on, namely, Exs. A-5, A-6 and A-20, are Revenue Registers which contain the name of the widow as the owner of the property. On this material our learned brother held that item 7, can be presumed to be the property of the last male holder. We are unable to agree with this conclusion as it is well settled even as early as in *Diwan Ran Bijai Bahadur Singh v. Indarpal Singh* 1899 ILR Cal 871 that the mere fact that a widow is in possession of certain properties does not give rise to a presumption that she got the same as the heir or her husband. We are therefore inclined to hold that items 7 and 8 have not been established to be in the possession and ownership of the last male holder at the time of his death and that the said items formed part of his estate.

11. Regarding item 17 which is ac. 1-50 cents in extent, the case of the defendants is that though it originally belonged to the last male holder. he sold away the same before his death under an oral sale and part with possession in favour of the vendees having received the consideration therefore. Subsequent to his death, the sale transaction was effected by the execution of a document.

Ex. B-1 dated 28-5-1901 by the last male holder's widow and uncle Appaiah and the said document was attested by the Plaintiff's husband. It is therefore clear that the item 17 ceased to be part of the estate of the last male holder at the time of his death. Our learned brother accepting the argument of the plaintiff held that as the widow's name was shown in Exs. A-18 and A-19, which were re-settlement registers, the property should be regarded as having formed part of the estate at the time of the death of the last male holder. But Exs. A-18 and A-19 do not contain any entries showing the possession and enjoyment of any individual. In the absence of any steps taken by any party, the settlement registers merely indicate the name of the original pattadar. Hence, we have come to the conclusion that item 17 also cannot be regarded as part of the estate of the last male holder which could have been the subject matter of the surrender. Hence the third point raised on behalf of the plaintiff also fails.

12. For all the above reasons, we allow this Letters Patent Appeal, set aside the judgment of our learned brother as well as that of the trial Court and we direct that the suit be dismissed against the appellants herein, with their costs here and in the courts below.