
(1960) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Second Appeal No. 160 of 1957

Chavali Mahalakshamma

APPELLANT

Vs

Badeneedi Machamma and Others

RESPONDENT

Date of Decision : 25-08-1960

Acts Referred:

Citation : AIR 1961 AP 263

Hon'ble Judges : P. Chandra Reddy, C.J.; Srinivasachari, J

Bench : Division Bench

Advocate : Y. Suryanarayana, for the Appellant; G.V.R. Mohana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—This second appeal has been placed before the Bench, because the learned Judge who initially heard the second appeal was of the opinion that the question that arises for determination in the case was one, which, having regard to the importance, should be decided by a Bench.

2. The brief facts which have led up to the second appeal are that one Ankamma, who was possessed of considerable properties, died without leaving any male issue. Mahalakshamma is his daughter by his first wife Ayyamma. Basavapurnamma is his daughter by his second wife Machamma. Machamma and Basavapurnamma gifted away the suit property consisting of one acre to "Yadava Pradhamic Patasala Sangham", the second defendant in the case, by a deed of gift dated 10-4-1947. According to the donors, the gift was made for the spiritual benefit of the late Ankamma.

The plaintiff, the daughter by the first wife of Ankamma, claiming to be the reversioner to the estate questioned the gift as being invalid and not binding on the reversioner in view of the fact that such a gift would not conduce to the spiritual benefit of the late Ankamma and also for the reason that the recital in the deed of gift did not express any such intention. The donors, however, stated

that this gift was made with the consent of the plaintiff and other relatives and it was made for the spiritual benefit of the late Ankamma.

3. The trial court held that the gift in question was valid and binding on the reversioner and dismissed the suit. When the matter came up before the lower appellate court, it concurred with the trial court and held that it must be regarded as a charitable gift made for the spiritual benefit of the late Ankamma who himself, if he had lived, would have made such a gift and under those circumstances, the gift made by his widow and daughter was binding on the estate. In the result it dismissed the appeal. The plaintiff has now come up in appeal.

4. Two arguments are urged before us: Firstly it is urged that the deed of gift contains no express recital that such a gift was being made for the spiritual benefit of the late Ankamma. The argument was that the intention of the donors was not manifest from a reading of the gift deed, The second argument was that at best it could be regarded as a charitable disposition and can never be regarded as an alienation made by a limited owner for a religious purpose in which case alone such an alienation would be binding on the estate. On these grounds it was argued that the gift is liable to be set aside and the plaintiff's suit decreed.

5. The argument on the other side is that it is not essential that the intention or the purpose for which the gift was made be manifest, but if the gift itself is a charitable disposition, which could be regarded as being conducive to the bliss of the soul of the late Ankamma, then the gift ought to be upheld. Further it was urged that it is always open to a limited owner to alienate a small portion of the estate for a pious or a charitable purpose. The question therefore is whether the impugned gift to the second defendant, a Patasala, could be regarded as a pious act conducive to the spiritual welfare of the deceased.

6. The powers of a limited heir like the widow with regard to alienation of the properties that she inherits from her husband are well settled. In this connection it would be useful to refer to the observations of the Privy Council in the case of *Sardar Singh v. Kunj Bihari Lal*, 49 Ind App 383: (AIR 1922 PC 201). Their Lordships observed that the Hindu system recognised two sets of religious acts, one in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed under the Hindu Law, which are essential for the salvation of the soul of the deceased.

The other relates to acts, which although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. The powers of the limited owner are wider in the first case than in respect of the acts which have been held to be meritorious and conducive to the spiritual benefit of the deceased. In *Smrithi Chandrika*, Chapter 11, it is stated that the religious and charitable acts conducive to the welfare of her husband have to be done because she takes his estate.

It is also stated therein that she possesses independent power of making gifts for religious and charitable purposes for, by reason of such gifts, the husband would reach the Heavenly abode even if he be sonless. What may be called locus classicus in this regard is the case of Collector of Masulipatam v. Cavalry Venkata, 8 Moo Ind App 529 (PC). The Privy Council stated that for religious or charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition than that which she possesses for purely worldly purposes.

These observations of the Privy Council would indicate that the limited owner has the power to expend for religious and charitable purposes which would conduce to the salvation of the deceased. A distinction has been drawn between Nitya Karma or an indispensable act or duty which cannot be neglected, such as the Shrad of the husband, the marriage of his daughter or the like and Kamyā Karma which is an optional religious act, the non-performance of which would not be regarded as a sin but the performance of which is supposed to confer Punya or religious merit.

Under this class would come pilgrimage to Benaras etc. Under the Hindu Law, besides the essential and obligatory acts which have been considered to be necessary for the salvation of the soul of the deceased, other, pious observances have been recognised as being conducive to the bliss of the soul of the deceased. It would well nigh be impossible to give an exhaustive list of the acts, which could be regarded as pious and charitable conducive to the bliss of the departed soul. Judicial decisions have recognised some and those are only illustrative.

In Vyavasa Dharpana, religious purpose has been held to include dowry to a daughter, building, temples for religious worship, digging tanks and the like. Vide Vyavasa Dharpana, 2nd Edition page 89; A gift to a son-in-law on the occasion of the marriage or at the time of the departure i.e., "Vidhahi" has been held to be meritorious. With the advance of the Hindu civilisation the religious and pious purposes have been enlarged.

In Ramaswami Iyer v. Venguduswami Iyer, ILR 22 Mad 113 a gift of land to a son-in-law was supported on the ground that such a gift was regarded as enhancing the merit of the primary act viz, of the giving away of a virgin in marriage. This act was considered productive of considerable benefit to the parents. To a like effect are the observations of the learned Judges in another case of the Madras High Court in Sundaram Aiyar v. Krishna Swami Aiyar, 28 Ind Cas 992: (AIR 1916 Mad 1008). Excavation and consecration of a tank in connection with a temple has been held to be meritorious. Vide Khublal Singh v. Ajodhya Misser, ILR 43 Cal 574: (AIR 1916 Cal 792).

In a case where the widow had sufficient income for the religious observance, still the gift of a portion of the estate inherited by her for the offering of Bogh or food offerings to the Deity at Puri and the maintenance of a Priest was held to be valid, because the gift made was supposed to be for the continuous spiritual

benefit of the deceased. The dedication or an alienation of a small fraction of the property by a Hindu female for the continuous benefit of the soul of the deceased is recognised by Hindu Law. This dedication of gift was upheld by the Privy Council in the case already referred to viz. 49 Ind App 383: (AIR 1922 PC 261).

7. In all these cases where it is sought to determine as to whether a particular act could be regarded as a pious or meritorious act conducive to the bliss of the soul of the deceased the test would be, is the act in accordance with the Hindu Religious belief and Hindu sentiments, an act which would be conducive to the bliss of the deceased's soul. This principle was laid down by the Madras High Court in *Vuppuluri Tatayya v. Ramakrishamma*, ILR 34 Mad 288 and was accepted with approval by the Privy Council already referred to.

8. The next aspect of the case, which has to be taken note of is that while in the case of an essential and obligatory duty such as the Shrad and the like, the powers of a limited owner are very wide and extensive and they go to the extent of enabling the limited owner to sell away the whole estate, in the case of expenditure incurred in regard to the pious or charitable acts conducive to the bliss of the departed soul, Hindu Law and judicial decisions have only permitted the alienation of a reasonable portion of the estate of the deceased, that is to say, where the act partakes of the nature of a mere pious or religious act contributing to the salvation of the deceased, the expenditure can only be of a reasonable proportion of the estate.

And as to what would be a reasonable proportion of the estate would have to be determined on the particular facts and circumstances of the case, having regard to the nature of the purpose for which the alienation was made. That a portion of the property could be given away for charitable purpose also, not necessarily a pious purpose, would be evident from the dictum of their Lordships in the Privy Council case referred to, for, their Lordships observed:

"In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view".

The dedication in that case being only of a small fraction of the property, their Lordships declared that alienation to be justifiable although the lady had ample income for defraying the expenses of this charitable purpose, on the ground that that alienation was intended to be for the perpetual performance of acts recognised in the Hindu system as pious.

9. A distinction was sought to be drawn between the case of a widow and that of any limited heir and it was argued that the widow has to contribute to the salvation of her husband and that being an essential and obligatory act, any alienation made by her for that purpose would certainly be binding but that was not so in regard to a daughter who inherited from her father. We do not think that the drawing of any such distinction, is warranted under the Hindu Law.

In the very case before the Privy Council referred to above, the person who

alienated the property for the daily Bogh of the deity at Puri, was one, who succeeded to the estate as mother on the death of her son and the gift by such limited owner viz., the mother was upheld by the Privy Council.

Another subtle distinction was sought to be made and that was that where the act is such that could be regarded as being conducive to the welfare of the party and not conducive to the bliss of the departed soul, an alienation for such act could not be justified, that is to say, where the merit goes to the party, alienating the property and not to the departed soul, such an alienation could not be supported. It has to be noted that the soul of the deceased participates in the religious merit of the act of the widow. This is based upon a text of Brihaspati which says;

"In Scripture and in the Code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband equally sharing the fruit of pure and impure acts".

That there is no warrant for making a distinction between a gift made by her as amounting to contributing to her own salvation and a gift made for the salvation of her husband is well pointed in the case of Prabhala Krishnamurthi Vs. Valluri Lingayya and Another, .

It is well recognised and it is a matter of strong religious belief amongst the Hindus that the making of an endowment or say, the erection, of a temple is considered to be an act of high religious merit and if such an act is done by the widow it would benefit not only her soul but also the soul of her husband. This distinction sought to be drawn by the learned counsel, as pointed out by Mukherjee J. in ILR 43 Cal 574: (AIR 1910 Cal 792) is not supported by the texts.

Such an act must be supported on the basis that performance of such acts is commended as they would confer Punya (spiritual benefit) and consequently conducive to the bliss of the soul of the deceased. This is also supported by the observations of Benson and Krishnaswami Iyer JJ. in the case already referred to viz. ILR 34 Mad 288 wherein the learned Judges observed:

"It the expenditure by the daughter is for the spiritual needs of the father's soul, it stands on the same footing as the expenditure by the widow for the spiritual needs of her husband". This as has, already stated, received the approval of the Privy Council. This principle was also recognised and followed by Venkataramana Row, J. in T. Srinivasa Rao and Another Vs. Annadhanam Seshacharlu and Another,

10. Some decisions were brought to our notice and it was argued on the basis of those that the alienation for getting a choultry constructed or such other charitable purposes could not be held to be justifiable, to support the alienation by a limited owner. The case relied upon was the case of Odoni Municipal Council v. Kallamma, 8 Mad LJ 153. The judgment in that case would show that the learned Judges came to the conclusion that the disposition that was made was

not in any way connected with the spiritual benefit of the donor's husband.

Obviously where it had nothing to do with the salvation of the deceased husband, or for the bliss of the soul of the husband, the alienation by the widow could not be sustained. That judgment cannot be said to be against the long trend of judicial decisions supported by the Privy Council decision, that a dedication or a gift of a reasonable portion of the property for a purpose which would be conducive to the bliss of the soul of the deceased is justifiable.

We may also state that according to ceremonial law it is incumbent on the daughter to serve the Spiritual necessities of her deceased father whose property she inherits. She has to perform his Shrad and, looked at from that point of view also, the daughter's religious acts would be regarded as being conducive to the spiritual welfare of the father. There may be certain acts which though not absolutely necessary are regarded by Hindus as reasonable and proper and conducive to the spiritual bliss of the deceased.

The acquisition of spiritual merit or Punya, the object of life in this world, has been emphasised by the Smrithi-writers. It is for this reason that in the Sastras the various modes by which a person can acquire spiritual merit or Punya are mentioned and enjoined. Therefore, if the estate permits, the limited owner could, in order to acquire the spiritual merit or Punya, which Punya will contribute to the spiritual welfare of the deceased, perform acts of Punya and for such purpose alienate a portion of the property inherited by her.

It may also be stated that in respect of pious, or charitable acts, a widow, after the death of her husband, is competent to do a charitable act, which her husband would have done. Likewise as in this case, a daughter is competent to do a pious or charitable act which her father, during his life time would have done. This view of ours receives support from *Boda Viraraju Vs. Vetcha Venkataratnam and Others*,

11. Having discussed the question as regards the justifiability of the alienation of the daughter of a portion of the properly inherited by her for a pious purpose, we have to consider as to whether the alienation made in this case could be upheld. What fraction of the estate could be alienated is not a matter which could be laid down as a principle of law. It will have to be determined in relation to various circumstances.

There can be no ratio as such between the extent of the property and the amount of the alienation. So long as it is not a very considerable portion of the estate inherited, an alienation or dedication for a charitable purpose is allowed. In a case brought to our notice of the Calcutta High Court, the alienation was not upheld for one reason, viz. that the property alienated was of considerable value.

In that very case the learned Judges observed that the alienation could not be upheld as against the reversioners, because it could not be sustained on the ground of religious necessity or that the alienation was for a pious purpose or

that the alienated property being only a small portion of the estate, thereby meaning that if it was a small fraction the alienation could be sustained. Vide *Ramkawal Singh v. Ramkishoredas*, ILR 22 Cal 506 (PC). In this case the alienation is of an extent of one acre and having regard to the proportion it bears to the total extent of the land inherited by the lady, viz. 30 acres, the alienation must be upheld as it is only a small and insignificant fraction.

12. For the above reasons the judgment of the lower appellate court is upheld and this appeal dismissed with costs.