
(1942) 11 MAD CK 0041
In the Madras High Court

Dharmasamarajayya

APPELLANT

Vs

Sankamma and Others

RESPONDENT

Date of Decision : 27-11-1942

Acts Referred:

Citation : AIR 1943 Mad 453 : (1943) 56 LW 210 : (1943) 1 MLJ 166

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The appellant here is the 3rd defendant in the Court of the District Munsiff of Karkal. He was a lessee of certain properties under a permanent lease from the first defendant. The first defendant was the widow of one Nagaraja Shetty. In 1926 Nagaraja Shetty made a gift (Ex. II) in favour of his wife, the first defendant, of the properties now in suit. In October, 1926, he was adjudicated insolvent and in March, 1927, the gift deed was set aside. In March, 1928, the adjudication was annulled. Although the gift deed had been set aside it had not been necessary for the Official Receiver to dispose of the property which was dealt with by the gift deed. Between these dates Nagaraja Shetty executed a will on the nth August, 1927. In that will he assumed that as the gift deed had been set aside the property had reverted to himself and he could dispose of it. He bequeathed it to his wife and after his wife's death to their three daughters. The suit was filed in the Munsiff's Court by the first plaintiff, one daughter of Nagaraja Shetty, and other plaintiffs who are the daughters of another daughter, for a declaration that the permanent lease given by the first defendant to the third defendant was not valid beyond the lifetime of the first defendant. The suit has been decreed by the learned District Munsiff and the District Munsiff's decree has been confirmed by the learned Subordinate Judge of South Kanara and the third defendant now appeals to this Court.

2. The first point which requires discussion is whether the property passes under the gift deed Ex. II or under the will. It seems to me that, as argued for the appellant, it must be the gift deed which is here the effective document. No

doubt that gift deed was set aside in 1927, but it was set aside not in the interests of the insolvent as a person but in the interests of the insolvent's creditors represented by the Official Receiver. As it was unnecessary to dispose of the property covered by Ex. II in order to meet the claims of the insolvent's creditors it seems to me that the effect of the annulment of Ex. II must automatically disappear at the conclusion of the insolvency proceedings. It is true that there is no specific provision in the Provincial Insolvency Act to deal with this rather unusual situation and it was argued by the Subordinate Judge that u/s 37, the setting aside of the sale deed was confirmed finally. I am not prepared to hold this. It seems to me that in accordance with the principle of the law in England as referred to in *In re Parry: Ex parte Salaman* (1904) 1 K.B. 129 the annulment of an alienation of this kind is solely in the interests of an insolvent's creditors, and to the extent that those interests do not require the annulment, the annulment is automatically cancelled. I would hold therefore that from March, 1928, onwards any rights which had accrued under Ex. II are automatically restored, and this appeal must be decided upon an examination of the gift deed, Ex. II.

3. On the question of the interpretation of Ex. II the learned District Munsiff held that it conferred a life estate upon the first defendant and an absolute estate after her death upon her three daughters Padmavathi, Sankamma and Shivadevi. The learned Subordinate Judge took the opposite view that it conferred an absolute estate on the first defendant and that that absolute estate could not be defeated by a subsequent reference to the fact that the three daughters would be succeeding their mother on her death. It seems to me that of these views that of the District Alunsiff should prevail. The District Munsiff points out the contrast between the language in which the rights of the first defendant are mentioned and that in which the rights of the three daughters are mentioned later in the document. The donor says:

I have hereby now delivered possession of the undermentioned properties to you as gift subject to the condition set out below;

and near the conclusion of the document he says:

After your death your daughters Padmavathi, Sankamma and Shivadevi, these three individual* alone shall be the absolute huqdars to enjoy the said properties.

In the first instance there is a reference to conditions. In the second instance there is the use of the word " absolute " . The learned Subordinate Judge refers to several other clauses in the document all of which seem to me to be inconclusive. The donor takes pains to say that now that he is giving his property he himself has no interest in it and he himself will not interfere with any manner in which it may be enjoyed. That is in my opinion quite inconclusive. The manner in which the first defendant is to enjoy the property is thus stated:

Henceforth in the matter of your enjoying the same, effecting improvements as you please, paying theerva with entry in the patta in your name and continuing

to " prosper " as you please.

These are all indications of a permanent association between the first defendant and the property. It would have been easy for the donor in this context to have inserted some reference to mortgage or other form of alienation but every word he uses presupposes that the first defendant shall continue to enjoy the property in the ordinary sense of the term by remaining its owner throughout her life. The learned Judge seems to think that because the first defendant is enjoined by the donor to pay his debts and because it is possible that these debts could not be paid except by the alienation of part of the property, therefore, the estate given to her must be absolute. But I cannot see how this logically follows. Whether the donor had intended to give an absolute estate to his wife or a life estate to his wife followed by an absolute estate to his daughters, if the debts were so large that they could not be met without the alienation of part of this estate, that part would have to be alienated whatever his intentions might have been. The mere fact of the existence of debts and the failure by the donor to indicate as to who exactly should have power to dispose of the estate seems quite inconclusive. No doubt it is in favour of the third defendant's contention that Ex. II is a document actually executed only in favour of the first defendant. The first defendant's daughters are not actually made parties to the document; but it seems to me that when the document is read as a whole it is more likely that the intention of the donor was that the property should remain with his wife only for her lifetime and then go to his daughters, than that he contemplated any kind of absolute disposal of the property in favour of his wife. I am inclined to think that if there is any ambiguity in the construction of Ex. II that ambiguity will be finally resolved by a consideration of the will which was executed by Nagaraja Shetty about a year later. There can be no doubt whatever from the language of the will that Nagaraja Shetty was bequeathing his property to his wife for her lifetime and to his daughters after her death. It seems to me very unlikely that Nagaraja Shetty would have any different views on the question of the disposition of his property at the time when he made the gift in 1926 and at the time when he executed his will in 1927. The fact therefore that by his will he gave only a life estate to his wife is an almost convincing indication that in 1926 by the gift deed he intended that his wife should take only a life interest.

4. I am accordingly of opinion that the decision of the lower Courts is correct that the interest acquired by the first defendant was only for her lifetime and therefore that she had power to lease the property to the third defendant only for a term which coincides with her life. The decrees of the Courts below are therefore correct and this appeal is dismissed with costs.