
(1956) 03 AP CK 0037

In the Andhra Pradesh High Court

Case No : Second Appeal No. 417 of 1950

Emineni Galb and Another

APPELLANT

Vs

Bola-gani Veerananarayana and Another

RESPONDENT

Date of Decision : 13-03-1956

Acts Referred:

Citation : (1956) 03 AP CK 0037

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : Alladi Kuppaswami, for the Appellant; K. Ranga-nadhachari, for the Respondent

Judgement

Chandra Reddy, J.—Defendants 5 and 6 are the Appellants. This second appeal arises out of a suit filed by a reversioner for partition of six items of property which originally belonged to one Subbayya. Subbayya died leaving behind him his widow Adem-ma, a son Raghavayya and a daughter Lakshmiddev-amma. Raghavayya died unmarried a few years after his father's death and the estate devolved on his mother Ademma. In 1927, Ademma executed a document, Ex. B-1, dated 30th May 1927, settling Ac. 2-1, cent which is the subject-matter of this appeal on her daughter Lakshmiddevainma. It was recited therein that the donor's husband Subbayya desired at the time of his death (that his wife should give the donee who was then a minor and of feeble health: the property mentioned in the schedule.

2. Lakshmiddevamma conveyed it to her husband, the first Defendant, under Ex. B-2 on 21st April 1938. The first Defendant in his turn transferred it to his brother, the fifth Defendant. The sixth Defendant is the latter's son. The Plaintiff claiming to be the sister's son of Subbayya, filed the suit for recovery Rs. a 1/3 share in the property left by Raghavayya, Defendants 2 and 3 being the sons of the other sisters of Subbayya. The suit covered six items of property, but we are only concerned with item 1 which is of an extent of Ac. 2-1 cent and which formed the subject-matter of Ex. 13-L Item 1 originally belonged to the, paternal

aunt of Subbayya and she settled it on him (2) Various defences were raised to the suit but . the one relevant for the purpose- of this enquiry is validly Plaintiff and Defendants 2 and 3 could not COURT the suit properties for the reason that it was by Ademma in pursuance of the directions of [fist husband and that consequently the donee .under Ex. BM could settle it on the first Defendant.

3. The trial Court dismissed the suit as against Defendants 5 and 6 on the grounds that by reason of the oral will of Subbayya, Ademma could convey the property to her daughter and that even otherwise it was competent for Ademma to give property to her daughter as a marriage provision.

4. On appeal the Subordinate Judge disagreed with the trial Court regarding the oral will and decreed the suit as against the fifth and sixth Defendants also without going into the question whether Ademma could make a gift of a part of the estate inherited by her as a marriage provision. Defendants 5 and 6, who are aggrieved by the above judgment, have brought this second appeal.

5. The two questions that arise for consideration are:

1. Whether Subbayya had issued any directions to his wife as contended for by the Appellants? And

2. Whether Ex. B-I could be upheld on any other ground?

6. On the first point, I must agree with the lower appellate Court that the Defendants 5 and 6 have not succeeded in proving the oral will of Subbayya set up by them. In considering whether Subbayya was likely to have issued any such directions, we should bear in mind that the property in dispute formed the bulk of his property. In all he owned Ac. 3-45 cents and the suit property consists of Ac. 2-1 cent. It is unlikely that a father would have asked his wife to give away about 2/3 of his property to his daughter while he had also a minor son at that time.

7. Second, if really Subbayya was inclined to give away his property to his daughter nothing prevented himself making a will at that time instead of desiring that his wife should convey it to his daughter. Lastly, if there was any such oral will, Ademma would have complied with it shortly after her husband's death and would not have waited till 1927. For these reasons, I am in agreement with the lower appellate Court that the Appellants have not proved that Subbayya made any oral will as pleaded by them.

8. This leads me to the question whether it was within the competence of Ademma to make a gift of a portion of the property that devolved on her on the death of her son. The principle that the widow can make a gift of a reasonable extent of her husband's property to the daughter at the time of marriage either before or after, applies in my opinion, equally to a gift of property inherited by her as the mother because the brother also is under an obligation to defray the marriage expenses of his sister.

In fact, *Ramasarni v. Vengidasami*, ILR 22 Mad 113 (A), is an instance where the mother in whom, the property of her son who died childless vested, gave a portion of the property to her son-in-law on "the occasion of his marriage with her daughter. It "is now too late to contend that such gift cannot be made by a limited owner who succeeds to the estate "either as a widow or as a mother having regard to the catena of decisions including the one already " -cited above. See also *Churaman Sahu v. Gopi Sahu*, 4 LR 37 Cal 1 (B). The rulings cited by Mr. Ranga-%adhachari for - the contrary propositions really do "not support him. *Kamakshi Ammal v. Chakrapani "Chettiyar*, ILR 30 Mad 452 (C), is absolutely irreverent as the case did not deal with a marriage proviaiertrte a daughter and no further reference to it is necessary. *Kalavagunta Singara Charlu and Others Vs. Sreeman Gudimalla Venkata Seshamma*, , another decision called in aid by Mr. Ranganadhachari, also does not assist him. There a Hindu widow made a gift of a part of "her husband"s estate to the niece of her husband long after the latter"s marriage. This gift was invalidated on the ground that the "gift was made long after the marriage and not at or about the time of the .marriage or the .consummation ceremony Therefore it is an established proposition that the limited owner is empowered by Hindu Law to make a gift of a reasonable part of the estate she inherited to -her .daughter either at the time of or before or after marriage.

9. The next question to be considered is what is meant by reasonable extent. In my opinion, this has to be judged with reference to the extent of the property left by the last male holder and other surrounding circumstances. In ILR 1937 Cal 1 (B), the learned Judges extracted with approval the remarks made by Lord Gifford in *Nontriou"s* cases on Hindu Law, *Vyavastha Darpan*, second edition, pp. 89 to 107 that it was in his opinion absolutely impossible to define.

the extent and limit of her power of disposing it, because it must depend upon the circumstances of the disposition whenever such disposition shall be made and must be consistent with the law regulating such disposition.

In that case they thought that a gift of property worth about Rs. 1,200 out of a total of property valued approximately at Rs. 3,800 was a reasonable case Mr. Kuppuswamy urged that the gift of Ac. 2-1 out of Ac. 3-45 cents could not be regarded as unreasonable in view of the judgment of Greaves and B. B. Ghose, JJ., in *Sailabala Devi v. Baikuntha Nath Ghose*, AIR 1926 Cal 186 (E). There, the learned Judges decided that a gift of twelve annals" share of her husband"s estate by the widow to her daughter at the time of her marriage was not unreasonable.

This ruling, in my opinion, should not be understood as laying down a general proposition of law that a gift of a 3/4 share that is vested in a limited owner to a daughter of the family is not unreasonable. The circumstances which induced the learned Judges to hold the gift in a particular case to be reasonable were that the value of the property conveyed was only Rs. 1,000, that the daughter was married in accordance with the wishes of the father and that the ancestors of the

Plaintiff who sought to set aside the gift took active part in the ceremony and also in the execution of the gift deed and they all attested the document.

That case, therefore, does not furnish much of guidance in deciding the, instant case. Nor can I agree with Mr. Ranganadhachari that the maximum limit should be only 1/4. This matter was dealt with in *Sailabala Deb and Others Vs. Baikuntha Nath Ghose and Others*, (E), where it was stated that 1/4 could not be considered to be the limit of what! a maiden daughter could obtain as her marriage provision, having regard to certain texts of Manu. I may also point out that the gift which was upheld in ILR 37 Cal 1 (B), was a little over 1/4 and a little less than 1/3. In *T. Srinivasa Rao and Another Vs. Annadhanam Seshacharlu and Another*, (F), Justice Venkata-ramanarao thought that where the property of the last male holder was worth about Rs. 2,700, an alienation of property to meet the marriage expenses of daughters would be valid only to the extent of Rs. 900. As I have already observed, no hard and fast rules could be laid down as to what is a reasonable extent in matters of this kind. Normally, if bulk of the property is gifted away it would not be deemed to be a reasonable fraction of the estate, I consider that in the circumstances of this case a gift of property of about 2/3 of the entire extent is unreasonable and that one acre, of land will be within reasonable limits

10. This leads me to the point whether the whole gift should be declared illegal or whether, the declaration should be limited to the excess. In my considered judgment, the whole gift should not be held invalid but only to the extent of the excess, i.e., over and above one acre of land. I am fortified in this view by the judgment of Justice Venkataramana-rao in *T. Srinivasa Rao and Another Vs. Annadhanam Seshacharlu and Another*, at p. 56 : AIR 1942 Mad 106 at p. III) (F).

11. In the result, the judgment and decree of the lower appellate Court are accordingly modified and the appeal is allowed to that extent. As regards costs in the lower Court, the order of the lower appellate Court stand Here, the parties bear their own costs.