

(1964) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 142 of 1963

Gowramma

APPELLANT

Vs

Yella Reddy Chenga Reddy and Others

RESPONDENT

Date of Decision : 20-11-1964

Acts Referred:

Succession Act, 1925 — Section 88

Citation : AIR 1965 AP 226

Hon'ble Judges : P. Chandra Reddy, C.J.;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : A. Bhujanga Rao, for the Appellant; A. Kuppuswamy, for the Respondent

Judgement

Chandra Reddy, C.J.

(1) This appeal is preferred against the judgment of Justice Seshachalapati in Second appeal No. 452/ 1959 under cl. 15 of the Letters Patent with his leave.

(2) The property involved in this appeal is a vacant site situate in Palamaner village in Chittoor District. Its originally belonged to a joint family consisting of three brothers. Ajjagandayya, Chengalayya and Nanjundayya. The first of the three brothers died several years ago leaving behind him his widow Nagamma. Chengalayya's sons are defendants 1 and 2. The third brother Nanjundayya had four sons, Chengiah, Basayya, Rudrayya, is the only surviving son of Nanjundayya. Under Ex. A-1 dated 27-6-1934, the properties of the family were divided into three shares, the properties described in different branches - A schedule to Chengalayya's branch, B schedule to Nanjundayya's branch, and C schedule to Nagamma, widow of Ajjagandayya. Having regard to the part that document plays in the context of this enquiry, it is useful to extract the terms thereof in extenso.

"In the partition entered into by us, on the 24th June 1926, we partitioned amongst ourselves as per the decision of elders, the ancestral and self-acquired

properties of ours valued at Rs. 3,200/- (Rupees three thousand two hundred only) Mareyya and Savalayya should take Rs. 2,000/- worth of A schedule properties ; Chengalayya, Basayya, Rudrayya and minor Sivalingappa, represented by guardian, Basayya, should take Rs. 1000/- worth of B schedule properties, and Nagamma should take Rs. 200/- worth of C schedule properties, and after Nagamma's death one half of Nagamma's properties will be taken by Mareyya and Savalayya, and other half will be taken by Rudrayya and the minor Sivalingappa. The schedule properties shall be enjoyed by each with powers of gift, sale etc. , paying cists due to Government."

(3) The first two branches were required to discharge debts due to certain persons which need not be set out here.

(4) Sometimes later, Nagamma willed out the suit site to one Chinna Nagappa under Ex. A-2 dated 14-3-1941. We are not concerned with the other properties that were allotted to Nagamma. By a document dated 15-3-1941 Nagamma gifted the rest of the properties to the 4th defendant. Chinna Nagappa sold the suit site in 1949 to the plaintiff under two sale deeds, Exs. A-3 and A-4. Nagamma died in May 1944.

(5) Complaining that the defendants interfered with his possession and enjoyment of the suit property, the respondent laid an action in the District Munsif's Court, Kuppam, for a declaration of his title and for an injunction. The suit was mainly contested by the 3rd defendant on the plea that Nagamma had only an estate for life in the suit properties, that on her death Mareyya, Savalayya, Rudrayya and Sivalingappa became entitled to it, that the first three named persons conveyed their right, title and interest to Savalayya and as their right, title and interest to Savalayya and as such he had become an absolute owner of the property and that the plaintiff had no manner of title thereto.

(6) The Trial court decreed the suit in the view that under the partition deed Nagamma get absolute rights in the properties allotted to her and as such could convey a valid title to the predecessor-in-interest of the plaintiff. It also held that though the evidence adduced by both sides was inconclusive as to possession, having regard to the principle that possession follows title, the plaintiff must be deemed to have been in possession of the suit property for well over the statutory period, and that he had prescribed his title by adverse possession.

(7) On appeal carried by the aggrieved 3rd defendant, the Subordinate Judge differing from the District Munsif, dismissed the suit. In his opinion, Nagamma had only a limited estate in the suit property and consequently she could not confer any valid title on Chinna Nagappa.

(8) In the second appeal brought by the plaintiff, our learned brother Judge Seshachalapathi reversed the judgment of the Subordinate Judge and decreed the suit. It was his view that although in the earlier part of the deed what was given to Nagamma was a life estate in the property, having regard to the gift over to defendants 1 to 4, the later clause, viz., "the schedule properties shall be

enjoyed with powers of gift, sale etc." indicates that the suit property vested in Nagamma with absolute rights. It is this conclusion of the learned Judge that is assailed before us.

(9) It is argued by Shri Bhujanga Rao that the learned Judge erred in thinking that Sec. 88 of the Indian Succession Act governed the construction of deeds inter vivos, and that provision of law was applicable only to wills. He draws our attention to the passage in the judgment of the learned Judge, which is as under :

"Where two clauses are irreconcilable, it is the latter one that should prevail. That is the rule of construction embodied in Sec. 88 of the Succession Act. No doubt, that section refers to wills. I do not find any reason why it should not apply to instruments which are not testamentary in character."

It is maintained by Shri Bhujangarao that the principle underlying Sec. 88 can have no application to deeds, and that the operation of Sec. 88 should be confined to wills. We feel that this argument is well founded.

(10) It is convenient to read here Sec. 88 of the Indian Succession Act. It recites :-

"Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail."

(11) It is this section, as already mentioned, that is the basis of the conclusion of the learned Judge. We are of opinion that Sec. 88 of the Indian Succession Act cannot come into play in the context of the interpretation of deeds. It is now well settled that when there is a conflict between two clauses in a deed and are irreconcilable, the earlier clause overrides the later. Unlike in a will, in the deeds it is the earlier clause that prevails and if the later clause is repugnant to the earlier one and has the effect of nullifying it, it is the first one that prevails. That being correct legal position, since the earlier clause confers only a limited estate, that cannot be enlarged by the later one and so the later one should be disregarded. Of course, if it is possible to reconcile both the clauses, effect must be given to both the clauses, effect must be given to both of them. But if the conflict cannot be resolved, then it is the earlier clause that should be given effect to. As already mentioned, if the later clause does not destroy the earlier one, but merely qualifies it, the two should be read together and effect given to them.

(12) This is the doctrine embodied in *Forbes v. Git*, AIR 1921 PC 209. The principle was stated by their Lordships of the Judicial Committee in the following words :

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over

the later. Thus if A covenants to pay \$100 and the deed subsequently provides that he shall not be liable under his covenant, that later provision is to be rejected as repugnant and void, for it altogether destroys the covenant. But if the later clause does not destroy, but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole."

(13) This was referred to with approval by the Supreme Court in *Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others*, . Justice Venkatarama Aiyar, who spoke for the Court, summed up the legal position on this subject thus :

"If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not "vice versa". "

(14) In the same trend of thought is another judgment of the Supreme Court in *Ramkishore Lal Vs. Kamal Narain*, .

(15) Having regard to these authoritative pronouncements, there could be little doubt that it is the earlier clause, which conferred a limited estate upon Nagamma, that prevails and the later clause has to be ignored. It is a cardinal rule of construction of deeds that the contention of the parties has to be gathered by reading the document as a whole and by giving effect to all the words used therein. The surrounding circumstances can also be taken into account to understand the language of the document . If we interpret the document bearing in mind these golden rules of construction, we can only reach the same conclusion, namely, that what was conferred upon Nagamma was only a life estate.

(16) The surrounding circumstances also lend support to this view of ours. Nagamma was at that time entitled only to maintenance and there is absolutely no reason why the parties should have thought of giving her absolute rights in the properties that were allotted to her. Secondly, one of the parties was a minor and as such her guardian was not competent to enlarge the limited estate into an absolute one. The last circumstance which is somewhat significant in these circumstances is that no liability is attached to the share of Nagamma.

(17) For these reasons, we must hold that Nagamma had only an estate for life and on her death, the properties devolved upon the persons in whose favour they were gifted over.

(18) It is urged by Shri Kuppuswamy, learned counsel for the respondents, that the later clause should not be read as destroying or nullifying the earlier one, but as qualifying it and that we should give effect to both the clauses by reading the second clauses as meaning that such of the property as remained undisposed at the time of her death, should be taken by the four persons mentioned therein. We are not disposed to give effect to this argument. It must first be remembered

that that clause was used indiscriminately with reference to all the three sharers, instead of describing separately the nature of the estate of Nagamma. Secondly, we find it difficult to read the second clause as qualifying the first one. Both of them are irreconcilable and we have to reject one of them. There is no warrant for reading into the document words like "such of the property as remained undisposed of at the time of her death". It is manifest from the earlier clause that Nagamma was to be in possession of the property with a life estate and had no power of disposal, whether by way of sale, gift or will. All the properties that were allotted to her were to go to the four persons mentioned in the document on her death.

(19) In this view of the matter, the decisions relied on by the learned counsel are not quite in point and it is not necessary to refer to all of them. Suffice it to cite the case of *Jogeswar Narain Dev v. Ramchund Dutt*, 23 Ind App 37 (PC). One of the questions that fell for consideration was whether the gift of a share given to one of the legatees for maintenance would reduce the estate to a limited one, notwithstanding the tenor of the document showed that what was conferred was an absolute estate. Their Lordships stated that "these words are quite capable of signifying that the gift was made for the purpose of enabling them to live in comfort, and do not necessarily mean that it was to be limited to a bare right of maintenance". There are no such expressions in this document and the situation is dissimilar here.

(20) The learned counsel next relies upon the passage in the same paragraph, which is as under :

"Then the gift to both is made, not in similar language merely, but under the very same words. If there had been a gift of the Rani alone in these terms, there could hardly have been a doubt that it would have conferred upon her an estate of inheritance, with power of alienation ; and their Lordships cannot understand why the same terms when equally applied to her and the appellant, should be held to confer upon her any lesser interest."

(21) On the basis of these observations, it is argued by Shri Kuppuswamy that the partition deed used the words "take the properties" with reference to all the sharers, there is no reason why the estate given to Nagamma should be construed as conferring upon her a lesser interest. We are not persuaded that this argument is admissible. We cannot overlook the fact that although in the partition it was stated that Nagamma would take the properties described in the C schedule, these words were succeeded immediately by the clause which said that on her death, the properties would evolve upon the four persons mentioned therein. Consequently , this passage renders no assistance to him. For these reasons we are unable to give effect to this argument either.

(22) In the result, the appeal is allowed and the suit dismissed. Parties will bear their own costs throughout.

(23) Appeal allowed.