
(1982) 11 AP CK 0025

In the Andhra Pradesh High Court

Case No : Second Appeal No. 899 of 1978

Javvadi Venkata Satyanarayana

APPELLANT

Vs

Pyboyina Manikyan and Others

RESPONDENT

Date of Decision : 02-11-1982

Acts Referred:

Transfer of Property Act, 1882 — Section 13, 14, 16, 20

Citation : AIR 1983 AP 139

Hon'ble Judges : P.A. Choudary, J;Kodandaramayya, J

Bench : Division Bench

Advocate : P. Rama krishna Raju, for the Appellant; P.L.N. Sarma, for M. Krishna Mohan Rao, for the Respondent

Judgement

Kodandaramayya, J.—This appeal is referred by our learned brother Ramaujulu Naidu J., as it involves interpretation of S. 16 of the Transfer of property Act.

2. The facts are not in dispute but only its effect in law. The plaintiff is the appellant in this second appeal. One P. Muthaiah had a son Ganga Raju and executed a settlement deed in respect of the suit property conferring life estate on his son and after his death to the sons of Ganga Raju to be borne absolutely. Ganga Raju in his turn executed a relinquishment deed of his life estate got under Ex. A-3 in favour of his father Muthaiah on 31-8-1934 under Ex. A-4. Ganga Raju died in 1971 leaving behind three sons viz., rama Rao, lakshmanarao and Muthaiah. The first son Ramarao was born in the year 1942 the plaintiff happened to be the auction purchaser of th one-third share of Muthaiah under a sale certificate Ex. A-1 in a Court auction in execution of the decree. The plaintiff also purchased the share of lakshmanarao from his wife Raghavamma under a registered sale deed dt. 24-2-1972 as per Ex. A-2 and he filed the present suit for the recovery of this two- thirds share. The 1st defendant is the son of Muthaiah who resisted the suit. The other defendants are in possession of the property and the suit is contested by the 1st defendant contending that the relinquishment deed in favour of ganga Raju (sic) executed a relinquishment

deed long before the birth of his sons and hence the gift in favour of the unborn sons has failed.

3. The courts below held that the settlement deed is true and valid but not a nominal one and ganga raju executed a relinquishment deed before the birth of sons to him and consequently the entire estate has gone out of the original donee and hence the gift in favour of urban children has failed and the present suit is not maintainable and liable to be dismissed.

4. It is seen that the result of the suit depends upon the correct interpretation of S. 16 of the Transfer of property Act and hence it is necessary to examine its terms which may be extracted in full.

"16. Where by reason of any of the rules contained in Ss. 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails".

The section embodies the English law that a limitation following upon a limitation void for remoteness is itself void even though it may not of itself transgress the rule against perpetuity. A reading of the section discloses that three conditions must be present before the said section is attracted. (1) there should be an interest created for the benefit of a person or class of persons which must fail by reason of the rules contained in Ss. 13 and 14. (2) There should be another interest created in the same transaction. (3) The other interest must intend to take effect after or upon failure of the prior interest. A gift made to an unborn person should not offend S. 13 or S. 14. S. 13 requires two conditions to be fulfilled. (1) the transfer inter vivos cannot be made directly to an unborn person but must be preceded by a prior disposition in favour of a living person. (2) the interest given to the unborn person is the whole of the interest remaining in the transferor. S. 14 embodies the rule against perpetuity. So, S. 16 embodies the rule that if any gift made in favour of unborn persons fails by reason of the rule contained in those two sections, the subsequent interest created in the same transaction also fails. So in order to attract S. 16 we must see whether the three conditions mentioned above are fulfilled or not before the principle that the gift is void for remoteness as embodied in the said section can be invoked.

5. AIR 1934 35 (Oudh) furnishes a neat illustration for the principles embodied both in Ss. 13 and 14. One "S" made a gift of property to his daughter "R" for life and then to R's daughter without power of alienation and the further condition is if R has no daughter the property has to go to D. The daughter died without issue. It was ruled for the Full Bench that the gift of the daughter failed under S. 13 of the Transfer of property Act as the interest given to the unborn person did not comprise whole of the interest remaining in the transferor. The gift to D also failed under S. 16 of the Transfer of property Act as the prior interest in favour of the unborn children of R has failed.

6. Section 16 must be compared with S. 27 where the prior interest created in a

deed is not invalid but subsequently fails because the condition upon which it depends is not fulfilled. In such cases S. 27 applies and the subsequent interest in such cases can be sustained. The said distinction is made in *Insmail Haji v. Umar Abdulla* (AIR 1942 Bom 155) by Chagla, J. (As he then was) and stated at page 158 the failure contemplated by S. 27 T.P. Act, and S. 129 succession Act, is the failure of a valid gift. When the gift is ab initio void. The subsequent gifts must also fail as provided by S. 16, T.P. Act, and S. 116, succession Act".

7. Now if we apply these principles to the facts of this case the following results can be arrived. Firstly the gift of the unborn children has not failed either because of the rules contained in S. 13 or S. 14. Secondly the prior interest created in favour of Ganga Raju is also not invalid. Thirdly a valid estate created in favour of Ganga Raju was voluntarily transferred in favour of muthaiah and lastly when there is no failure of prior interest and no question of failure of the subsequent interest arises as contemplated u/s 16. Further this is not a conditional transfer as contemplated under S. 27 and consequently all the children of Ganga Raju on their birth acquire vested interest as contemplated under S. 20 of the Transfer of property Act.

8. The Court below misdirected themselves in thinking that a voluntary transfer made by ganga raju makes the subsequent gift to the unborn children void.

9. The invalidity of the transfer must be judged with reference to the original settlement deed but not by the voluntary Act of the donees under the deed itself. The person who obtained the benefit of the deed by his own volition cannot defeat the terms of the deed under which he obtained the interest. The courts below committed a serious mistake in holding that as Ganga raju renounced his life estate and hence the original estate created in favour of unborn persons has failed. Further the courts below made a distinction that Ganga Raju made the relinquishment deed before the birth of children to him but according to us it has no legal consequence as once the gift to the unborn person is valid under S. 13, no one can defeat such interest and the unborn person acquires vested interest on his birth. The life estate holder cannot defeat the interests of the unborn person by transferring the life estate to a third person. We are clearly of the opinion that the relinquishment made by ganga Raju before the birth of his children has not altered the legal position in any way and the sons born to him acquire vested interest as and when they are born. The view of the courts below to the contrary is clearly unsustainable.

10. Sri B. L. N. Sarma, the learned counsel for the respondents having realised the position that the gift to the unborn persons in this case is valid and the life estate holder cannot defeat the interests of the unborn persons by voluntarily transferring the estate to third parties relied upon some observations in *Smt. Rukhamanbai Vs. Shivram and others*, stating that the unborn children have only contingent interest and hence it was contended that the transfer by the life estate holder may not defeat a vested remainder but certainly it can put an end to the contingent interest.

11. In the above decision the question arose under the Bombay tenancy and Agricultural Lands Act (67 of 1948) where the title of the landlord tot he land passes immediately to the tenant on the tillers" day as the landlord happened to be a life estate holder in that case. Their Lordships on the consturction of the said provisions of the tenancy Act held that any person lawfully cultivating any land belonging to another person shall be deemed to be a teanant even if the life estate holder leased out the property. On a further contention that the life estate holder has no vested remainder and hence by virtue of the statutory transfer the vested remainder has not passed on to the tenatn they observed that the life estate holder has a vested interest in the property during her lifetime and the children had only contingent interest during that period and consequently there is no legal impediment for the statutory transfer to the tenant of the ownership. The observation that the children have only contingent interest must be understood in the context that the limited owner represents the landlord's interest and the entire interest in the land passes on to the tenant on statutory transfer. Further they made it clear in that case that the deed of settlement cannot be construed as a transfer in favour of unborn person yet it settles property on trust and the unborn children under trust may be beneficiaries but they can claim interest only after the death of the appellant and no interest in her lifetime". And thus they construed the said settlement deed as creating beneficial interest both to the life estate holder and the unborn children but not as a transfer in favour of unborn children as contemplated under S. 13 of the Act.

12. Once it is admitted that the gift to unborn children in this case did not offend S. 13 or 14 of the Transfer of property Act and the unborn children acquire vested interest the moment they are born under S. 20 there is no possibility of defeating the interests of the unborn children as violative of the provisions of S. 16 of the Act. None of the requirements of S. 16 of the Transfer of peoperty Act were satisfied and hence the settlement deed is operative in respect of both life interest and the interest created in favour of unborn children.

13. In the result we allow the appeal and set aside the decree and judgments of the courts below and direct that a preliminary decree for partition should be passed in favour of the plaintiff as he is entitled to two-thirds share and separate possession of the said share with future profits. The plaintiff is entitled to costs throughout.

14. Appeal allowed.