
(1923) 03 MAD CK 0057
In the Madras High Court

K. Kotayya (dead) and Another

APPELLANT

Vs

Peddi Veeraya and Others

RESPONDENT

Date of Decision : 23-03-1923

Acts Referred:

Citation : AIR 1924 Mad 177

Judgement

1. We have had the benefit of a long argument by the Bar, but when the facts are properly appreciated we think the case presents no difficulty at all. The facts are these. The plaintiff's property is the estate of one Ankayaya. He died leaving a son, who also died shortly after, and a widow, named Mangamma. He also left two divided brothers, plaintiff and Appayya; since deceased. The third defendant is the son of Appayya: the first defendant is the son of Mangamma's sister and the second defendant is the son of the first defendant. In 1903, the members of this family entered into an agreement which is set forth in two documents, Exs. I and V. In Ex. V. Mangamma made a gift of all the Immovable property left by her husband in equal shares to her for her own sister's son, the first defendant and to the third defendant, the son of her husband's brother. Out of the properties so gifted, it was provided that a small portion should be kept and enjoyed by her for maintenance during her life. At the same time, plaintiff and Appayya executed a deed of release of their reversionary right in favour of the first and third defendants. This is Ex. 1. One day earlier than this, Mangamma executed a promissory note in favour of the plaintiff for Rs. 1,200. Under Ex. 1 plaintiff and Appayya were to receive a payment of Rs. 300 between them. Whether this was actually paid or not was not found by the lower Courts; but it has been found, and we must accept the finding, that the consideration for the plaintiff's executing the deed of release by Ex. 1, was the sum of Rs. 1,200, payment of which Mangamma undertook by the promissory note, to which we have referred. A little consideration will show the nature of these transactions. Ankayya's estate was divided up. Half of it went to the son of one of his surviving brothers the third defendant and the other half went to Mangamma's nephew who had no right to it at all. The plaintiff his other brother was to receive compensation by

payment of Rs. 1,200 which was to be met, as the lower Courts found, out of the income of the estate. In other words, it was clearly a device to divide the estate between the reversioners and widow and as such it is an arrangement which cannot be held to be a bona fide surrender with the assent of the reversioners, to which effect can be given, (vide the remarks of Their Lordships of the Privy Council in Rangasami Gounden v. Nachiappa Gounden [1919] 42 Mad. 523. That is to say gift by Ex. V is absolutely invalid and can be given no effect at all. It has been argued before us that although Ex. V. is void and has no effect, yet the plaintiff who has consented to it in fix. I should be held to be estopped from preferring the present claim. We do not think this is so. Estoppel is an equitable relief and in the present case, it is clear that the defendants are entitled to it. As we have already said, under this scheme, the plaintiff was to receive compensation in the shape of payment of Rs. 1,200 guaranteed by the promissory note. But as a matter of fact, when the plaintiff sued on that promissory note and got a decree he was prevented from recovering anything under his decree by the action of the defendants who promptly laid claim to the property which he attached in execution alleging that it was theirs and not that of the widow, the promisor under the note. That is to say, the plaintiff was, by the action of the defendants, practically cheated of his share of the spoil and in these circumstances it would be most inequitable to allow the plea of estoppel which they now seek to set up against him. We think that the decree of the lower Court is correct and the present second appeal is dismissed with costs.

2. S.A. 2126 of 1920 follows the decision of S.A. 2125 and this also is dismissed with costs.