

**(1930) 02 BOM CK 0007**

**In the Bombay High Court**

**Case No : Second Appeal No. 651 of 1927**

Kurvateppa Mahalingappa Kurvatti

APPELLANT

Vs

Ningayya Chnbasaya Patrimath

RESPONDENT

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**Date of Decision :** 14-02-1930

**Acts Referred:**

Evidence Act, 1872 — Section 115

**Citation :** AIR 1930 Bom 299 : (1930) 32 BOMLR 626

**Hon'ble Judges :** Mirza, J;Broomfield, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Mirza, J.—The facts relevant to this second appeal briefly-stated are as follows ;— One Chenmallaya was the original owner of four lands and a house. He died in 1910. One Basava was his daughter. She was married to one Murigeya. They had a son Chenbagaya who was adopted by Chenmallaya. The lands and the house were the property of Chenbasaya until his death on September 4, 1911. Chenbasaya left a widow Nagava. Nagava lived with Murigeya and Basava the natural parents of her deceased husband. They managed the property on her behalf. On March 23, 1912, Nagava executed a sale deed in favour of defendant No. 1 conveying to him the four lands and the house. Basava and Murigeya joined in the conveyance. The consideration mentioned in the sale deed was Rs. 1,500. It is found by both Courts that at the date of the sale-deed Nagava was a minor. On November 13, 1921, the plaintiff was adopted by Nagava, and this suit was brought by him against defendant No. 1 the original purchaser, defendants Nos. 2 and 3 his sons, defendants Nos. 4, 5, and 6 the heirs of the deceased Murigeya and defendant No. 7 Basava. About two years after the purchase of the four lands and the house by him, defendant No. 1 sold the house and three out of the four lands to Murigeya for a consideration of Rs. 200. The trial Court decreed the plaintiff's claim to the possession of the house and four lands on his paying Rs. 640 to defendant No., 1. It also decreed mesne profits for two years

prior to the suit.

2. The trial Court held that the lands were Devasthan Inam lands and as such inalienable. Two grounds of appeal were taken in the lower appellate Court challenging this finding; but the pleader for the defendant-appellants does not seem to have urged them in the lower appellate Court. The lower appellate Court in its judgment has set out four grounds that were urged before it on behalf of the appellants, but none of them relate to this finding. Mr. Thakor on behalf of the appellants has contended that there is no finding by the lower appellate Court confirming the finding of the trial Court on this point and that if we are going to rely upon the finding of the trial Court we should remand the case to the lower appellate Court for its finding on the point. In our opinion if the appellants were challenging the finding of the trial Court before the lower appellate Court they should have urged the point before the lower appellate Court. As their pleader apparently did not urge the point before the lower appellate Court, it may be taken that they did not wish to challenge the finding of the trial Court on the point.

3. Defendants Nos. 1, 2 and 3 are the only appellants before us. The other defendants have not appealed against the decision of the lower Courts. The defendants who have not appealed are in possession of three lands and the house. The appellants are in possession of one land only.

4. At the date of the sale-deed Nagava was a minor. The sale-deed might be held to be binding on her possibly on the ground that it creates an estoppel against her in favour of a bona fide purchaser. But so far as the rights of the adopted son are concerned the estate of the deceased has become divested from the widow and is vested in the adopted son. Any representation made by the widow regarding her capacity to sell the property or the necessity for such sale will not bind the adopted son. It has been urged before us that we should regard the substance of the transaction which was that the managers of the estate on behalf of the widow were also parties to the sale-deed and that we should therefore hold that they acted as her de facto guardians for purposes of the sale. It is also pointed out that Basava who joined in the conveyance was also the next presumptive reversioner at this date, Basava and Murigeya are not described in the sale-deed as being the guardians of Nagava for the purposes of the sale and we would not be justified in reading such a meaning into the sale-deed. Basava no doubt signed the sale-deed because she was the next presumptive reversioner and Murigeya signed it because he was her husband.

5. It is next urged that because Basava was the next presumptive reversioner at the date of the sale-deed and is a party to the sale-deed a presumption in law arises that the sale was for a legal necessity and hence in any event the whole consideration of Rs. 1,500 paid to Nagava by defendant No. 1 should be returned to him before plaintiff can be put in possession of the property. Basava the next presumptive reversioner here is a female and there is a series of rulings of this and other High Courts that consent given by a female reversioner to alienation

by a widow would not raise the presumption of legal necessity under the Hindu law against those other than such reversioner who challenge such alienation. See *Tuljaram Morarji v. Atathuradas* ILR(1881) 5 Bom. 602, followed in *Vinayak v. Govind* ILR (1900) 25 Bom. 129, 3 Bom. L.R. 830 and in *Bepin Behari Kundu v. Durga Charan Banerji* ILR (1908) Cal. 1086. Mr. Thakor for the appellants has relied on the case of *Rangasami Gounden v. Nachiappa Gounden* (1918) L.R. 46 I.A 72, 21 Bom. L.R. 640. In that case the consenting next reversioner was a male. The ruling of their Lordships of the Privy Council, in my opinion, does not overrule *Tuljaram Morarji v. Mathuradas*, *Vinayak v. Govind*, and *Bepin Behari Kundu v. Durga Charan Banerji*. Mr. Thakor has also relied on the Full Bench ruling of this Court in *Akkava Ramchandrapa Yadav Vs. Sayadkhan Muthekhan Mulgund*, . In that case the question submitted to the Full Bench was as follows :-

If a Hindu widow soils a part "of her husband"s property without legal i necessity but with the consent of the next presumptive reversioner, and subsequently dies, is the same reversioner estopped from challenging the validity of the transaction after the widow"s death, either u/s 115 of the Indian Evidence Act or Section 43 of the Transfer of Property Act or otherwise, and whether such reversioner is a male or a female.

6. The answer given was-

I would, accordingly, answer the question submitted to us by saying that the reversioner in the present case cannot now challenge the validity of the transaction having regard to her election testified by her being a party to the deed of August 14, 1911.

7. The learned Chief Justice at p. 395 of his judgment observed:-

That being so, it follows that I also agree with the conclusion arrived at by Sir Norman Macleod and Mr, Justice Shah in *Basappa v. Fakirappa*, though, as I have already intimated, I base my decision on the ground of election and not on the ground of estoppel.

8. In *Basappa v. Fakirappa* ILR (1921) 46 Bom. 292 , 23 Bom. L.R. 1040 this Court had held that a gift made by a Hindu widow of a portion of her husband"s property in favour of her husband"s brother"s grandson with the consent of the next reversioner-another brother of her husband-was valid on the principle of estoppel as against the particular reveraioner who had consented to it. Shah J. in his judgment at p. 301 observes:-

Apart from the decisions, it seems to me that where, as in the present case, we have a gift by a Hindu widow in favour of the grandson of her deceased husband"s brother for whom she would naturally have affection, and where that it is consented to by the next reversioner, there is no reason why at least the consenting reversioner should not be held bound by his consent, and why he should not be estopped from questioning the validity of such a gift ... I think that the gift ought to be upheld as against the particular reversioner who has

consented to the gift by the widow during her life-time.

9. The point whether the next reversioner was a male or a female was held to be immaterial on the question of estoppel. The point in reference before the Full Bench in *Akkava v. Sayadkhan* related to the question whether the next reversioner-male or female-would be estopped either u/s 115 of the Indian Evidence Act or u/s 43 of the Transfer of Property Act or otherwise if he or she had consented to the alienation from disputing the validity of such alienation. The ruling of the Full Bench, does not, in my opinion, overrule *Tuljaram Morarji v. Mathuradas*, *Vinayak v. Govind*, and *Basappa v. Fakirappa*, except in the last case to the extent that instead of putting the matter against the: consenting reversioner on the ground of estoppel, the next reversioner, whether male or female, should be held to be debarred from questioning the validity of the alienation on the ground that he or she by joining the sale-deed elected not to have it set aside. The ruling of the Full Bench is no authority, in my opinion, for the proposition that a consent to alienation given by a female reversioner would raise a presumption in law against parties other than such reversioner that there was legal necessity for the alienation,

10. In the recent case of *Manjaya Sannaya Shanbhog Vs. Sheshgiri Shambhuling Upadhya*, this Court has held that the consent of the whole body of reversioners at the date of the alienation by a Hindu widow would afford presumptive evidence of necessity but would not eatop the actual reversioners from disputing the alienation unless the consenting reversioners themselves were the actual reversioners at the date when the reversion, fell due.

11. The lower Courts have hold it proved that there was collusion between the purchaser and Basava and Murigeya in respect of the sale. The fact that most of the properties sold in 1912 to defendant No. 1 were re-sold by him to" Murigeya two years later for a nominal consideration of Rs. 200 is a valid ground for holding that the prior sale-deed must have been collusive. Whatever presumption of law as to legal necessity there may be in favour of the purchaser would be rebutted by the evidence of collusion. There being no presumption in favour of the purchaser in this case, he has failed to prove that there was legal necessity for the sale beyond a sum of Rs. 640 required for the discharge of prior debts. The plaintiff has been ordered to pay that amount to defendant No. 1 on recovering possession of the plaint property. The appeal, in my judgment, fails and should be dismissed with costs.

Broomfield, J.

12. In view of the fact that the trial Court has found that the land with which we are concerned is inalienable and in view of the fact that thin finding was not challenged in the Court of first appeal, the only point before us now is whether the consideration for the sale should be repaid to the appellants " on the ground that the sale was effected for legal necessity. Both the Courts have held that there was legal necessity but only as regards part of the consideration, namely,

Rs. 640, The contention in this second appeal relates to the balance.

13. Mr. Thakor has contended that the consent of Basava to the Alienation raises a presumption that the transaction was a proper one, and that if the evidence on the question of necessity for the sale be considered in the light of this presumption we might come to a different conclusion from the one arrived at by the lower Courts. Several cases have been cited before us as to the presumption arising from the consent of the next reversioners. I prefer not to express any opinion as to the precise effect of the Full Bench ruling of this Court in *Akkava v. Sayadkhan* upon such cases as *Tuljaram Morarji v. Mathuradas*. The material point here seems to me to be that in all the cases to which we have been referred it was proved or admitted or taken for granted that the consent was a bona fide consent without any question of collusion or fraud. That cannot be said to be so in the present case. Both the lower Courts have found that Nagava at the time she entered into this transaction was under the influence of Basava and Basava's husband, and the circumstances do undoubtedly raise a strong suspicion that the transaction was collusive and fraudulent especially in view of the fact that only two years after the sale by Nagava the bulk of the property came into the possession of Basava's husband. It was contended by Mr. Thakor that there had been no issue raised on the question of fraud. But it is Mr. Thakor himself who wishes to rely on a particular presumption; and he cannot therefore expect that we should not look at the evidence relating to the circumstances under which the transaction took place. The circumstances must obviously affect the value which should be attached to the consent of the next reversioner. In the circumstances of this particular case I consider that we cannot attach any importance to that consent at all, I agree with my learned brother that the appeal should (c) dismissed with costs.