

(1946) 07 BOM CK 0020
In the Bombay High Court
Case No : Second Appeal No. 241 of 1944

Lilavati Ganpatrao Kakatkar

APPELLANT

Vs

Takappa Bhimappa

RESPONDENT

Date of Decision : 01-07-1946

Acts Referred:

Citation : (1948) 50 BOMLR 127

Hon'ble Judges : Dixit, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dixit, J.—This second appeal raises an interesting question of Hindu law, and the facts giving rise to the suit out of which the appeal arises are these.

2. Bhimappa and Ramchandrappa, two brothers, were members of a joint Hindu family. The family owned considerable property. When Bhimappa died, his son Takappa (plaintiff) was but a child. Ramchandrappa died in 1932 leaving Yellappa (defendant No. 1). In 1921, there was a partition between Ramchandrappa and the minor plaintiff with his mother as guardian when the suit property was kept joint. In the partition the eastern half of the property was specified as of the plaintiff's share. Prior to this, on July 18, 1919, during the minority of the plaintiff, Ramchandrappa executed in favor of one Jinasena Bhattaraka of Kolhapur a deed of gift of the property mentioned in paragraph 1(6) of the plaint. On October 21, 1940, defendant No. 1's natural father sold the property to Lilawati-bai (defendant No. 2).

3. On December 9, 1940, plaintiff Takappa commenced the present suit against the defendants seeking to recover possession of his share by partition in the lands mentioned in paragraph 1(a) of the plaint and for separate possession of the property mentioned in paragraph 1(b), alleging that the gift in favour of Jinasena Bhattaraka was invalid and that the alienation in favour of defendant No. 2 by defendant No. 1 was not binding upon his share. The defendants

contended that the gift was valid. There were other defenses to the suit, but they are not material for the purpose of this appeal. The learned trial Judge held that the gift in question was invalid and accordingly he made an order declaring that the plaintiff was entitled to a half share in each of the properties described in paragraph 1 of the plaint. Upon this declaration he made consequential orders which it is not necessary to mention in this place. On appeal by defendant No. 2 the learned First Class Subordinate Judge with appellate powers confirmed the trial Court's decree, holding that the gift deed was not valid in law. Defendant No. 2 appeals.

4. Now, the gift deed recites that the property had been gifted "for the meritorious action as the Swami had decided to build a Jain Boarding House at Dharwar for the convenience of the study of Digamber Jain Students." The document went on to say that the Swami was to use it "for (the) work desired by him". So the object of the gift was to build a Jain Boarding House in order to help the cause of education of Digamber Jain Students. It is common ground that the Swami never made vahiwat of it personally and made no use of it also. It is argued for defendant No. 2 that the lower Courts were wrong in holding that the gift was invalid. It is pointed out that the property covered by the gift deed represents half anna out of a rupee being the value of the whole of the property, and it is contended that as it is only a small portion of the family property, Ramchandruppa was competent to make a gift and it would be binding upon the plaintiff.

In the present case the gift was by a managing member, and the question is whether the gift comes within the expression "for pious purposes." In Mulla's Principles of Hindu Law, 10th ed., p. 250, Section 226, the statement of the law is as follows :

A Hindu father or other managing member has power to make a gift within reasonable limits of ancestral immovable property for "pious purposes". But the alienation must be by an act inter vivos, and not by will....

Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes : Mitakshara, Ch. I, Section I, vv. 28-29.

6. Similarly in Mayne on Hindu Law and Usage, 10th ed., p. 482, Section 369, the law is stated as follows :

The third ground upon which the authority of the managing member, whether a father or other coparcener, to make an alienation of family property rests, is where indispensable duties such as the obsequies of the father and the like require it. The Mitakshara indeed confines it to cases where indispensable duties make the alienation unavoidable. The phrase "and the like" in the Mitakshara I, i, 29 refers to annual sraddhas, the ceremony of upanayanam, the marriage of coparceners and of girls born in the family and all other religious ceremonies. Alienations for the purpose of meeting the expenses of or discharging the debts

contracted for these ceremonies would be justified on the ground of family necessity. In addition, it has been held that gifts for pious purposes are, within reasonable limits, valid when made by the father or other manager. The head of the family, it has been held, is competent to alienate a small portion of the joint property, by way of provision for a permanent shrine for a family idol, or to an idol in a public temple.

7. The learned advocate, who appears for defendant No. 2, contends that the gift in the present case comes within the expression "for pious purposes" and that the expression should be construed liberally. On the other hand it is contended for the plaintiff that the gift was not for a religious purpose but only for a secular purpose and in order that the gift may be valid it should be for a purpose which is obligatory. In *Kalu v. Barsu*¹ it has been held that according to Hindu law, under ordinary circumstances, a gift by a co-parcener of his undivided share in the immovable property is invalid, and a minor's share cannot be given away by a manager except in case of necessity or for certain specified purposes. There a gift of a field was made to the plaintiff as worshipper of the god Shri Sadguru and a minor brother of one of the executants of the deed was not a party to the gift. It was argued in the case that as the gift was made to the plaintiff as worshipper of god Shri Sadguru its purpose rendered it binding on the minor. The Court after citing the law on the subject at page 806 did not accept the argument.

8. In *Jinnappa Mahadevappa v. Chimmavd* 37 Bom. L.R. 485 it was held that under the Mitakshara school of Hindu law, a father has no right to make a gift even of a small portion of joint family immovable property in favour of his daughter although it is made on the ground that she looked after him in his old age. With reference to the gift in that case Rangnekar J. said as follows (p. 465) :

Undoubtedly, the gift is of a small portion of the whole of the property; but, if one were to ignore the elementary principles of Hindu law out of one's sympathy with gifts of this nature, it would be difficult to say where the line could be drawn, and it might give rise to difficulties which no attempt could overcome.

9. With respect, I think this reasoning is sound.

10. Mr. Parulekar for the appellant draws my attention to a passage at p. 28, para. 25, in *Hindu Law of Endowments* by Pandit Prannath Saraswati. This is what is stated there :

Helps to students in the shape of books and writing materials, food, clothing and ins torments, land, house, furniture, or fields,?in fact, the gift of everything that contributes to the students" Malntenance and wellbeing or is necessary for the acquisition of the special branch of learning that they study, is productive of great religious merit to the donor who is to reap the heavenly fruits of his charities in the next world.

11. No doubt this passage to some extent supports the appellant's contention.

12. He has also cited a case in *Kolandai v. Gnanavaram* A.I.R[1944] . Mad. 156.

There the managing member made a gift of a very small portion of the family property to a Roman Catholic Church, and the question was whether the gift was within the competence of the managing member, and it was held that the gift was valid. The reason for the decision was stated as follows (p. 157):

I am not prepared to take a narrow view of the pious or charitable purposes for which a Hindu manager can within moderate and reasonable limits alienate joint family property so as to bind his coparceners.

13. This case is, I think, distinguishable on facts.

14. In *Shri Thakurji v. Nanda Ahir* (1921) I.R.L. 43 All. 560 it was held that the term "pious purposes," as used in para. 28, does not necessarily mean indispensable duties, such as the obsequies of the father, etc., mentioned in para. 29. There the plaintiff's father made a gift of a portion of the family property to a deity for the purpose of a temple and the plaintiff brought a suit for a declaration that his father was incompetent to make a gift of a portion of the family property in favour of the deity. There it was contended for the respondent that having regard to the terms of para. 29 the expression "pious purposes" in para. 28 must be held to be equivalent to "indispensable duties" such as the obsequies of the father or the like as mentioned in para. 29, and the Court did not agree with the contention with the result that the plaintiff's suit was dismissed. That case cannot, I think, be an authority for the particular point with which I am dealing.

15. In the present case the gift is undoubtedly of a small portion of ancestral property, and the question is whether the gift which in this case has been made for an educational purpose comes within the expression "for pious purposes". It may be that the object in making the gift was a laudable one. It is argued that the expression should be so construed as to give to it a liberal meaning, but I am unable to accept the argument that the expression "for pious purposes" should be construed in that sense. If some of the principles of Hindu law are not in accord with changed or changing ideas of society, it is for the legislature to intervene. The duty of the Court is, in my opinion, to give effect to the letter of the rule and not its spirit. I know of no case which is precisely in point, and I take it that not all the industry of the learned advocates has been able to discover any. In the absence of clear authority I am unable to hold that the gift in this case is valid.

16. The result is that the appeal fails and must be dismissed with costs.