
(2013) 04 AP CK 0054
In the Andhra Pradesh High Court
Case No : A.S. No. 760 of 1999

Nakka Parthasarathy

APPELLANT

Vs

Nakka Krishnaveni and Another

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 126, 6

Citation : (2013) 5 ALD 711 : (2013) 5 ALT 303

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; P. Veera Reddy and Sri. K.V. Subramanya Narsu, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This appeal arises out of the decree and judgment dated 31.12.1998 passed by the Additional Senior Civil Judge, Srikakulam in O.S. No. 79 of 1995. The plaintiff filed the suit for declaration of her title to the plot "A, B, C & D" site, for recovery of possession of the said property by evicting the defendants therefrom. The learned trial Court decreed the suit with costs, feeling aggrieved the first defendant filed the instant appeal.

2. I have heard Sri B. Adinarayana Rao, learned senior counsel appearing for the appellant and Sri P. Veera Reddy, learned counsel appearing for the respondents.

3. For the convenience sake, I would like to refer the parties as "the plaintiff and the defendants".

4. The plaintiff's case as set out in the plaint is like this:

The plaintiff is the wife of late Narayana Rao and defendants 1 and 2 are her sons. The plaintiff schedule property is the self-acquired property of late Narayana Rao, who became sick while in service and he executed a registered settlement deed in respect of the plaintiff schedule property on 17.09.1979 in favour of his

sons, defendants 1 and 2 thinking that the defendants would look-after him properly in his old-age. Subsequently, as the defendants failed to discharge their obligations towards their father as per the terms of the settlement deed, late Narayana Rao revoked the settlement deed on 21.08.1981 by means of a registered revocation deed. According to the plaintiff, even-after the settlement deed was executed, the property covered by the settlement deed was not put in possession of the donees i.e. the defendants and the settlement deed was only a nominal document. After the revocation deed, late Narayana Rao was paying the property tax of the house in the schedule property by getting his name recorded in the municipal records. Subsequent to the revocation of settlement deed, late Narayana Rao executed a registered Will on 09.12.1981 in favour of the plaintiff bequeathing the plaint schedule property to her and after the death of late Narayana Rao, the plaintiff became absolute owner of the property and she was in possession and enjoyment of the property, but the defendants in March, 1990 encroached the "A, B, C, & D" plaint schedule site belonging to the plaintiff by dispossessing her. Under these circumstances, the plaintiff states that she filed the suit for declaration of title and recovery of possession.

5. The second defendant remained ex-parte.

6. The first defendant resisted the suit by filing written statement contending as under:

The plaint schedule property is not the self-acquired property of his father late Narayana Rao, but, it is the ancestral property of late Narayana Rao and defendants 1 and 2. There was a partition between late Narayana Rao and his brother Ramanaiah, while the defendants 1 and 2 were minors and the said partition was effected by a registered partition deed, dated 22.02.1961. In the said partition, the plaint schedule property fell to the share of Narayana Rao and the defendants who are his minor sons and ever-since it became the joint family property of late Narayana Rao and defendants 1 and 2. As late Narayana Rao was only having 1/3rd share in the property which includes the plaint schedule property executed a registered settlement deed on 17.09.1970 in favour of the defendants 1 and 2 gifting away his 1/3rd share in the plaint schedule property and other joint family properties the defendants 1 and 2 became absolute owner of the same. Since then, the defendants 1 and 2 were enjoying the properties jointly till they partitioned their properties in the year 1972 by executing a memory list on 12.07.1976. In the said partition, according to the first defendant, "A, B, C, & D" site fell to his share and since then, he has been in continuous possession and enjoyment of the plaint "A, B, C, & D" site.

7. It is contended by the defendant No. 1 in the written statement that late Narayana Rao has no right to revoke the gift deed dated 17.09.1970 and the registered revocation deed executed by him is null and void. It is his version that the plaintiff requested the defendants in the year 1980 to give the plaint schedule property on lease for which the defendants agreed and executed a lease deed on 06.02.1980 in favour of the plaintiff wherein the plaintiff agreed to

pay monthly rent of Rs. 200/-. The lease deed was for a period of 15 years. As the plaintiff fell in arrears of rent, the defendants filed O.S. No. 294 of 1982 on the file of the Principal District Munsif, Srikakulam. In the said suit, the plaintiff filed written statement admitting the fact that the plaint schedule property was leased out to her by the defendants. Therefore, the first defendant asserted before the trial Court that by virtue of the said written statement, the plaintiff admitted that the defendant No. 1 was in possession of the plaint schedule property on the date of lease in his own right and that the plaintiff is estopped from denying his title to the plaint schedule property. Subsequently, according to the first defendant, the plaintiff entered into compromise in the said suit and vacated the premises in the year 1989. It is the version of the first defendant that on account of some differences between him and the second defendant, the second defendant taking advantage of the fact that the plaintiff was staying with him got the present suit filed by her with all false averments. It is further contended by the first defendant that as the revocation of gift made by late Narayana Rao is null and void, he had no right to execute the registered will dated 09.12.1981 in respect of the plaint schedule property and the said Will does not confer any right on the plaintiff in respect of the plaint schedule property. It was also contended by him that he has two major sons, who are necessary parties and the suit is not maintainable without adding them as parties to the suit.

8. On the basis of the afore-stated pleadings, the trial Court framed the following issues:

- 1) Whether the suit schedule properties are the self-acquired properties of late Narayana Rao?
- 2) Whether the settlement deed dated 17.09.1970 is nominal and not acted upon?
- 3) Whether the revocation of document dated 17.09.1970 by way of registered document dated 21.08.1981 is valid and whether it is within time?
- 4) Whether the Will dated 09.12.1981 is valid?
- 5) Whether the suit is maintainable without adding the two sons of the first defendant as parties?
- 6) Whether the plaintiff is the owner of the plaint schedule property and she is entitled to recover possession of the same?

9. Before the trial Court, the plaintiff examined PWs. 1 and 2 and marked Exs. A1 to A. 56, whereas the first defendant examined himself as DW1 and marked Exs. B. 1 to B. 6. Upon considering the oral and documentary evidence adduced on either side, the learned trial Court answered all the issues in favour of the plaintiff and against the first defendant and decreed the suit with costs.

10. The points which fell for consideration before the learned trial Court would

also arise for consideration in this appeal on reassessment of evidence on record and on the basis of the settled legal position governing the factual scenario.

11. One of the issues, which was determined by the trial Court is whether the suit schedule property is the self acquired property of late Narayana Rao or whether it is his ancestral property. This question however, does not assume greater importance, because the adjudication of the rights of the parties to the lis is entirely dependant upon two crucial issues viz. whether Ex. A. 2-settlement deed dated 25.06.1970 executed by late Narayanarao in favour of his sons, defendants 1 and 2 is accepted by them and whether the said gift made by him can be revoked.

12. As regards the question whether the suit schedule property is the self acquired property or whether it is the ancestral property of late Narayanarao, the learned trial Court laid much emphasis on the admission made by him, who was examined as DW1 to the effect that his father mentioned in Ex. A. 3, registered revocation deed dated 20.08.1981 that the said property is his self acquired property. The learned trial Court seems to have given undue importance to the said deed, the reason being Ex. A. 3, revocation deed was executed by late Narayana Rao with a view to will away the suit schedule property to his wife. Therefore, he must have wantonly made such averment in Ex. A. 3. The averment being self-serving statement of late Narayanarao, it cannot be considered to be crucial in determining the nature of the property. In Ex. A. 2, registered settlement deed executed by late Narayanarao in favour of the defendants, he clearly mentioned that suit schedule property is the joint family property and under the said registered settlement deed he was gifting away his 1/3rd share in favour of his two sons i.e. defendants 1 and 2. In the light of the clear recitals made in Ex. A. 2, the mention made about the suit schedule property in Ex. A. 3 as his self acquired property is of no consequence as he executed the revocation deed obviously with a view to will away the properties covered by Ex. A. 2 settlement deed in favour of his wife. Admittedly, late Narayanarao and his brother Ramaiah partitioned the ancestral joint family properties which include the suit schedule property under a registered partition deed dated 22.02.1961, marked as Ex. B. 1. In the said partition deed late Narayana Rao represented his two minor sons i.e. the defendants 1 and 2 and since then all the three were enjoying the properties jointly. Thereafter, late Narayanarao executed Ex. A. 2, registered settlement deed on 25.06.1970 in favour of the defendants wherein he gifted away his 1/3rd share in the suit schedule property and some other properties in favour of the defendants. Subsequently, the defendants partitioned their properties in the year 1976 and prepared a memory list on 12.07.1976, marked as Ex. B. 2. As per the said partition, the plaint "A, B, C and D" property fell to the share of the first defendant. It is the version of the first defendant that since the date of partition between him and the second defendant, he has been in continuous possession and enjoyment of the plaint "A, B, C and D" property.

13. All these facts which are crucial to determine the nature of the property held by late Narayana Rao whether ancestral or self acquired have been totally ignored by the learned trial Court. It is true that there is an admission in the cross examination of the first defendant that his father and his father's brother Ramaiah purchased the suit property in the year 1961. However, since the purchase made by them, of the said property and other properties obviously being with the aid of joint family nucleus of the family properties which fell for partition between late Narayanarao and Ramaiah it has to be necessarily construed as ancestral properties.

14. Next question requires consideration is whether the settlement deed dated 25.06.1960, Ex. A2 was accepted by the defendants 1 and 2 and whether it was acted upon. Much reliance has been placed by the plaintiff on Exs. A. 7 to A. 56, tax receipts. The contention of the plaintiff is that even though late Narayana Rao executed Ex. A. 2, settlement deed in favour of the defendants 1 and 2, the settlement deed was in his possession and he continued to pay the taxes and therefore, the gift was never accepted by the donees and it was never acted upon.

15. In support of his contention that the gift in the instant case was not accepted, Sri Veera Reddy, learned counsel appearing for the plaintiff relied on Bancha Bhol and Others Vs. Saria Bewa and Others, wherein the learned Single Judge of Orissa High Court held that while mere possession by or on behalf of the donee may amount to acceptance of gift, where the subject matter of the gift was enjoyed jointly by the donor and the donee, mere possession cannot be treated as evidence of acceptance. He further relied on for the same proposition on Lakshmi Amma Kalliyani Amma Vs. Kunji Pillai Amma Kutty Amma and Others wherein the learned Single Judge held that the question whether the gift was accepted by the donee will have to be decided, upon the evidence and circumstances of the case. One such circumstance is the fact that the original gift deed was produced in Court by him. Further the fact that the donee paid the tax for the property from that year is sufficient to show that he accepted the gift.

16. The learned counsel submits that since in this case the gift was with the donor himself and he was paying the property tax till his death, it has to be construed that the gift was not accepted by the donees.

17. To appreciate the contention urged by the learned counsel, the entire evidence forthcoming in this case has to be examined in the factual background, apart from knowing the correct legal position on the subject.

18. The contention of the first defendant is that under Ex. A. 2 settlement deed his father relinquished his 1/3rd share in his favour and in favour of the second defendant, the suit schedule property fell to his share and since then he has been in exclusive possession and enjoyment of the suit schedule property in his own right. It is also his version that in the year 1980 his mother, the plaintiff herein requested him and the second defendant to give the suit schedule

property on lease. The defendants accordingly, leased out the said property to her on a monthly rent of Rs. 200/-. The lease period was for a period of 15 years, subsequently, she fell in arrears of rent and thereafter, the defendants filed O.S. No. 294 of 1982 on the file of Principal District Munsif, Srikakulam. In the said suit, the plaintiff filed written statement specifically admitting therein that she took the suit schedule property on lease from the defendants. Therefore, according to the first defendant, from the admission made by the plaintiff in O.S. No. 294 of 1982 alone, the learned trial Court ought to have given a finding in his favour to the effect that the suit schedule property was his absolute property. It is also his version that the suit ended in compromise and in view of the compromise, the plaintiff vacated the suit schedule property in the year 1989. According to the first defendant, the plaintiff has been living with the second defendant and on his instigation, she filed the present suit on false grounds. Therefore, evidently, the learned trial Court overlooked overwhelming evidence forthcoming in favour of the defendant No. 1 which was to the effect that the defendant No. 1 had been enjoying the suit schedule property in his own right as absolute owner.

19. Further, when once the gift is voluntarily made without there being any coercion or undue influence the acceptance of the gift by the donee would be complete even though the deed of gift is not delivered to the donee and the gift property continues to be in the donor's possession.

20. Sri B. Adinarayana Rao, learned senior counsel appearing for the first defendant, in support of his contention that the title and ownership in the property can be gifted without possession and right of enjoyment relied on K. Balakrishnan Vs. K. Kamalam and Others, wherein the Supreme Court held that it was open to the donor to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. The Supreme Court clarified that there is no prohibition in law that ownership in property cannot be gifted without its possession and right of enjoyment. The view was taken by the Supreme Court having recourse to the language in Section 6 of the Transfer of Property Act which lays down that the property of any kind may be transferred except those mentioned in a to I in Section 6 of the Transfer of Property Act.

21. As to the core issue whether the gift Ex. A. 2 made by late Narayana Rao in favour of his two sons, defendants 1 and 2 can be revoked, we have to look into Section 126 of the Transfer of Property act. It reads as follows:

Section 126 in the Transfer of Property Act, 1882

126. When gift may be suspended or revoked.- The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the

cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice. Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10, 000 out of the lakh. The gift holds good as to Rs. 90, 000, but is void as to Rs. 10,000 which continue to belong to A.

22. From the language of the section, it is clear that there must be "condition subsequent" attached to the gift on the happening of which the gift shall determine. But, such condition shall not depend on the mere will and pleasure of the donor. If it is to be understood that if such "condition subsequent" is governed by the mere wish of the donor, he can revoke the gift at any time and in the strict sense there would be no gift at all. If the legal position concerning revocation of gift is examined in the context of the present case, even if late Narayanarao made gift in favour of the defendants 1 and 2 thinking that the defendants 1 and 2, who are his sons would look after him properly and later they did not take care his welfare, he could not have revoked the gift on the ground that he was neglected by his sons. In the absence of any specific recital that on the happening in a specific event the gift would be cancelled, it is irrevocable so long as the gift was not made under coercion or undue influence. In the instant case, from the evidence there is no doubt as to the fact that late Narayana Rao voluntarily made gift in favour of his sons, defendants 1 and 2. There is no condition of any kind in Ex. A. 2, gift deed got recited by late Narayana Rao, according to which he and the donees, the defendants 1 and 2 agreed that on the happening of any specific event, the gift would be suspended or revoked.

23. The other contention raised by Sri Veera Reddy, learned counsel appearing for the plaintiff is that late Narayana Rao had no right to gift away his share in the coparcenary property and therefore, the gift deed is invalid. I must say, there is no amount of force in the contention. In Ex. A. 2, gift late Narayana Rao is the donee and his sons defendants 1 and 2 are the donors. In *Tamma Venkata Subbamma (Dead) by Lr Vs. Tamma Rattamma and Others*, the Supreme Court held that the gift by a coparcener in the interest of other coparcener with the consent of the remaining coparceners is valid. According to the Supreme Court where joint Hindu family comprising the donor, his brother and the brother's sons and daughters, a gift of the donor's undivided coparcenary interest to his brother reserving his life interest, held, amounts to renunciation or relinquishment of his share in favour of other coparceners which is valid.

24. In the instant case, late Narayana Rao gifted his 1/3rd share in the ancestral

property in favour of the other coparceners viz. his sons defendants 1 and 2, therefore, it is not open to the plaintiff to contend that late Narayana Rao has no such right.

25. To sum up the suit schedule property is the joint family property of the defendants 1 and 2 and his father late Narayana Rao, Late Narayana Rao gifted his 1/3rd share to defendants 1 and 2 under Ex. A. 2 gift deed voluntarily. There is no condition subsequent in the said gift indicating that the donors and the donees agreed that on the happening of any specific event the gift shall be suspended or revoked. Since the gift was made voluntarily without there being any coercion or undue influence, it could not have been revoked by late Narayana Rao on the ground that the defendants 1 and 2 were not looking after him property. Therefore, the revocation deed Ex. A. 3 as contended by first defendant is null and void. The mere fact that the gift deed was in position of late Narayana Rao is no ground to contend that the gift was not accepted by the donees. The evidence on record more particularly the admission of the plaintiff that she was tenant under the defendants 1 and 2 in the earlier civil proceedings clearly shows that the defendant 1 and 2 took possession of the property and leased out the same to the plaintiff. The findings recorded by the learned trial Court both legal and factual are not only erroneous but also misconceived. The decree and judgment passed by the Additional Senior Civil Judge, Srikakulam in O.S. No. 79 of 1995 on 31.12.1998 is therefore, liable to be set aside in the present appeal. The suit filed by the plaintiff deserves for dismissal.

26. The appeal therefore, succeeds. The decree and judgment passed by the Additional Senior Civil Judge, Srikakulam in O.S. No. 79 of 1995 on 31.12.1998 is set aside and the suit filed by the plaintiff is dismissed. In the result, the appeal is allowed without any order as to costs.