
(1909) 10 BOM CK 0007
In the Bombay High Court

Pilu Appa Nalwade

APPELLANT

Vs

Babaji Naru Mang and Others

RESPONDENT

Date of Decision : 01-10-1909

Acts Referred:

Citation : 4 Ind. Cas. 584

Hon'ble Judges : Basil Scott, C.J;Batchelor, J

Bench : Division Bench

Judgement

1. In this second appeal the facts are these. One Appa died in or about the year 1899 leaving two widows, Kondai and Chima, and a daughter by Chima, namely, the second defendant. The second defendant has a son, Narayan. In February 1903 the two widows made a deed of gift of four-fifths of their husband's property in favour of the second defendant, reserving the other fifth for their own maintenance. In October 1904 Kondai adopted the plaintiff, who is the son of Appa's separated nephew.

2. The question is whether the plaintiff is bound by the alienation made prior to his adoption. The gift was consented to by the defendant No. 2, the actual donee, and by her son, Narayan. The Court below have accepted this consent as a sufficient consent on behalf of the reversioners likely to be interested in disputing the gift, and upon this ground have dismissed plaintiff's suit. But we are of opinion that this ground cannot serve to sustain the decree.

3. The general principle which prohibits a Hindu widow's alienation of immovable property otherwise than for legal necessity is, no doubt, relaxed in cases where the consent of the whole body of persons constituting the next reversion has been obtained; see the judgment of the Judicial Committee in Bajrangi Singh v. Manokarnika Bakhsh Singh 9 Bom. L.R. 1348; 6 C.L.J. 766; 12 C.W.N. 74: 3 M.L.T. 1; 5 A.L.J. 1. which refers with approval to the decision of this Court in Vinayak Vithal v. Govind Venkatesh 2 Bom. L.R. 820. Now in Vinayak's case 2 Bom. L.R. 820 the reason of the relaxation, as the law has always been understood in this Presidency, is referred to this principle, that the consent of the

persons who would be interested in disputing the transfer affords good evidence that the transfer was in fact made for justifying cause, that is, for legal necessity. If that is the reason of the rule, it is clear that its operation must ordinarily be limited to transfers for consideration, and cannot appropriately be extended to voluntary transfers by way of gift, where there is no room for the theory of legal necessity. We may add that we have been referred to no case where the Courts have applied the rule to a gift.

4. That is one reason why, in our opinion, the rule upon which the Courts below have relied is inapplicable to the present facts. And upon another ground also it seems to us that this case falls outside the rule. For, whether the consent required be more accurately defined as the consent of the whole body of persons constituting the next reversion, as it was expressed in Bajrangi's case 9 Bom. L.R. 1348; 6 C.L.J. 766; 12 C.W.N. 74; 3 M.L.T. 1; 5 A.L.J. 1 or as the consent of all those persons who would be likely to be interested in disputing the alienation, as it is put in other decisions, it is clear that the requirements of the rule have not been satisfied here. For the only consent which the present defendants can call in aid is that of the second defendant and of her son, Narayan. But the second defendant, in addition to being the actual recipient of the gift; is a Hindu woman, and the presence or absence of her consent is, in the words of Jenkins, C.J. in *Vinayak v. Govind* 2 Bom. L.R. 820 "absolutely immaterial"; nor can the acquiescence of her son carry the defendants' case any further. That being so, it is not possible to hold that we have here the consent of such kindred, the absence of whose opposition raises a presumption that the alienation was a fair and proper one": that is how the rule was put by Ranade, J. in *Vinayak v. Govind* 2 Bom. L.R. 820 and the passage was cited without disapproval by Sir Andrew Scoble in delivering their lordships' judgment in Bajrangi's case 9 Bom. L.R. 1348; 6 C.L.J. 766; 12 C.W.N. 74; 3 M.L.T. 1; 5 A.L.J. 1. Applying this principle we find that there is nothing in the consent of the second defendant and her son which can properly deprive the plaintiff another reversioner, of the right to question the alienation.

5. Then it was sought to save the decree by reference to the rule which allows the Hindu widow to accelerate the succession by relinquishing her own interest to the next reversioner. But here again it appears that an essential condition of the rule is absent in this case, where the widows relinquished only a four-fifths part of the estate. Such a relinquishment does not satisfy the requirement of the rule, which was expressed in the following words by the Privy Council in *Behari Lal v. Madho Lal Ahir Gayawal* 19 C. 236; 19 I.A. 30.

6. "It may be accepted", said Lord Morris, "that, according to Hindu Law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life-estate. It was essentially necessary to withdraw her own life-estate, so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life-estate is a practical check on the frequency of such conveyances". Here the retention of the one-fifth part of

the estate in the widow's hands takes the case out of the rule, and not the less so because the retention of 1/5th part of the life estate is described as a provision for maintenance. It was suggested by the defendants' pleader that Mr. Justice Chandavarkar's decision in *Hunsraj v. Bai Moghibai* 7 Bom. L.R. 622 proceeded on a different principle, but if that case be examined, we think that it will be found to lend no support to the defendants. For, so far from diverging from the rule in *Behari Lal's* case 19 C. 236; 19 I.A. 30, the learned Judge expressly cites that case as his authority and in conformity with it holds no more than that the widow can, during her life-time, convey the estate absolutely to him who is the next reversioner." The question, indeed; there was, not whether a partial relinquishment of the estate would be binding on the reversioner, but whether the widow had authority to convey more than the estate she has"; and that question was decided on the ground that the widow there was bound by the special agreement of which specific performance was sought against her. The decision is, therefore, no authority for extending the carefully guarded rule laid down by the Privy Council to cases where the widow has made only a partial relinquishment of the estate.

7. For these reasons we reverse the decree of the lower appellate Court, and decree the plaintiff's suit with costs throughout.