

(1934) 04 AHC CK 0028
In the Allahabad High Court

Ramratanlal and Others

APPELLANT

Vs

Gangotri Prasad and Others

RESPONDENT

Date of Decision : 12-04-1934

Acts Referred:

Citation : AIR 1935 All 73 : 152 Ind. Cas. 19

Hon'ble Judges : Bajpai, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Bajpai, J.—This is a second appeal by the defendants against whom the plaintiffs suit for recovery of possession of the plaint property has been decreed by the Courts below. The facts are that one Mt. Anjora Kuar was the widow of Ram Rachha Lal and was, as a Hindu widow, possessed of a certain zamindari property and a house. On 18th February 1878, she executed a document which purported to be a perpetual lease in favour of her brother's son by which she leased out the zamindari property to him. Mt. Anjora Kuar died in October 1925. The plaintiffs who are the reversioners of Ram Richha Lal brought the present suit in 1929 for recovery of possession over the leased property and the house owned by Mt. Anjora Kuar. It is conceded by the appellants that so far as the house is concerned, the appellants cannot, in view of the findings of the Courts below, lay any claim and the suit has been rightly decreed regarding the same. It has however been strongly contended that the plaintiffs are not entitled to recover possession of the leased property. There is a pedigree given at the foot of the plaint and it is said that a perusal of the pedigree will show that when the lease was executed in 1878 the entire body of presumptive reversioners, namely Pyare Lal, Jagdamba Sahai, Naubat and Jawahar Lal consented to the lease. Pyare Lal who was the next reversioner actually drew up the document, presented it for registration and identified the lady before the Sub-Registrar. Naubat, Jawahar Lal and Jagdamba Sahai were attesting witnesses to the document. A translation of the lease has been given to me and from that it

appears that the facts stated above are correct. There is a slight error in the names of the attesting witnesses inasmuch as Mohan Lal has been put down for Naubat, but there can be no doubt that Mohan Lal is a mistake for Naubat. It is then argued that the transaction, inasmuch as it was consented to by the entire body of presumptive reversioners, cannot be challenged at the instance of "the reversioners who happen to be alive at the time of the Hindu widow's death.

2. The first question that arises for determination is to find out exactly the nature of the transaction evidenced by the document of 1878. The plaintiffs styled it a deed and the Courts below have come to the conclusion that the document is not supported by any consideration. The Court of first instance at issue 8 says as follows:

It is obvious that the lease in question is without consideration and that the lady had no necessity to execute it.

3. The lower appellate Court on issue 2 says:

In this case there was no valuable consideration paid at the time of the lease and hence the question of legal necessity did not arise.

4. I am also of the opinion that the document is not supported by consideration and is for all practical purposes a deed of gift. There is intrinsic evidence in the document itself for this conclusion. The lady after reciting her right in the property says:

Chandi Prasad, my own brother's son of Bhiku Lal has been living with me like a son since the death of my husband. I have brought him up like a son and educated him. Having regard to the transitory state of life, it is necessary that I should execute an absolute document in his favour.... I covenant that the said lessee shall remain in possession of all the rights aforesaid and out of Rs. 30 the fixed amount he shall pay Rs. 23-5-3 the Government revenue every year and pay Rs. 6-11-0 (the balance) of the assessed rent to me and my heirs and representatives year after year and he shall bring to his use the balance of the profits, produce or income.... I or my heirs and representatives shall have no kind of right or claim or dispute as regards the property, except realising the fixed amount of rent aforesaid nor shall we have a right at any time to make any enhancement or alteration in the fixed jama or cause any interference. If we do so, it shall be unlawful in Court.

5. The above passages in the document clearly indicate that the intention of the lady was to execute a permanent document in favour of her brother's son because of her natural love and affection for him and to bind herself and her heirs from ever obtaining reentry and to allow the lessee to appropriate the balance of the profits. The Government revenue of the property in a permanently settled District was Rs. 23-5-0 and the rent that was reserved exclusive of this Government revenue was only Rs. 6-11-0, the obvious inference is that there were appreciable profits in the year 1878, and considerable profits at the present

moment. The defendants in their written statement alleged that the value of the leased property should at least be fixed at Rs. 2,700. No premium was paid for the transaction. The finding of the Courts below that the transaction is not supported by consideration is therefore a perfectly sound finding.

6. It was contended by the appellants that as the document was executed with the concurrence of the entire body of presumptive reversioners, it cannot be avoided by the present plaintiffs. It is well settled that one reversioner does not claim through another and even if I were to hold that the transaction was consented to by all the reversioners then living, I cannot hold that the plaintiffs are estopped owing to the conduct of the consenting reversioners, even if they happened to be the ancestors of the present plaintiff. It is argued on behalf of the respondents that a look at the pedigree will show that there were quite a number of other persons who have not figured as attesting witnesses to the document and it cannot therefore be presumed that the entire body of presumptive reversioners attested the document. The reply of the appellants is that those persons were dead. There is no evidence on this point and the burden obviously was on the appellants to show that the other persons figuring in the pedigree were dead and the entire body of living reversioners consented to the transaction. Further on the authority of *Har Kishen v. Kashi Prasad Singh* 1914 P.C. 90, and the case of *Pandurang Krishnaji v. Markandaya Tukaram* 1922 P.C. 20, it is submitted on behalf of the respondents that mere attestation of a deed by itself does not estop any person from denying anything except that he has witnessed the execution of the deed, and knowledge of the contents of the deed ought not to be inferred from the mere fact of the attestation and mere attestation does not necessarily impart concurrence. The contention of the appellants however is that the share of the lady was partitioned about the time when the document was executed and the other co-sharers, when they figured as attesting witnesses, must be deemed to have knowledge of the contents of the documents and must be considered to have consented to the transaction, more so when the next reversioner Pyare Lal went so far as to scribe the document and to present it before, the Sub-Registrar. There is considerable force in the contention of the respondents, but even if I were to assume that the concurrence of the reversioners has been proved, I am of the opinion, in view of what I have said before, namely, that the document was for all practical purposes a gift, the defendants are not entitled to resist the plaintiffs' suit.

7. If a sale or mortgage or any other alienation supported by consideration is effected by a Hindu widow with the concurrence of the entire body of presumptive reversioners then it cannot be challenged by the reversioner who might be living at the time of the death of the Hindu widow not on the simple ground of the consent, but on the ground that that consent affords evidence of legal necessity or propriety of the transaction, and the alliance is relieved from the necessity, of proof, the burden being cast upon the reversioner to show that in fact there was no legal necessity for the transaction. Mr. Pandey on, behalf of the appellants drew my attention to a passage in "Principles of Hindu Law" by Sir

D.F. Mulla, Edn. 6, p. 189, where the learned author, while discussing the powers of a Hindu widow to execute a lease, says that she has no power to grant a permanent lease or a lease for long term so as to bind the reversioner unless it is justified by "legal necessity" or it is for "the benefit of the estate" or "made with the consent of the next reversioners," and relying upon that passage the argument has been that the third head "with the consent of the next reversioners" is distinct from the head of "legal necessity" and the head of "the benefit of the testate." With all respect for the learned author I am of opinion that this statement of law is a little loosely expressed, and the authorities which have been cited in support of this proposition in the book do not support the same. The ordinary rule is that a Hindu widow is entitled to alienate the property of the last male owner for legal necessity, that term not necessarily implying only a pressure or danger to the estate which has got to be averted, but also embracing possibly within its scope benefit to the estate. A Hindu widow therefore according to my view, is entitled to alienate the property when there is a danger to the estate and that danger has got to be averted or when in the exercise of due husbandry she finds it necessary to make the alienation in question. The consent of the next reversioners can only be evidence of the fact that there was such necessity or benefit to the estate and by proving such consent the transferee is not compelled to prove legal necessity aliunde. In the case of *Bijoy Gopal v. Girinda Nath* 1914 P.C. 128, their Lordships of the Privy Council observed that:

as against them (the reversioners) it is a fair inference from their conduct that they believed that the arrangement had been made in good faith, and that under such circumstances of necessity as would give it validity according to Hindu Law, and it has always been a feature of Hindu Law as administered by this Board to attach great weight to the sanction by expectant reversioners of an alienation of property by a Hindu woman as affording evidence that the alienation was under circumstances which rendered it lawful and valid.

8. Again in the case of *Rangasami Goundan v. Nachiappa Goundan* 1918 P.C. 196, their Lordships of the Privy Council said as follows:

The result of the consideration of the decided cases may be summarised thus:

(1) An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a bona fide surrender, not a device to divide the estate with the reversioner. (2) When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then, if such necessity is not proved aliunde and the transferee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioner as might fairly be expected to be interested in the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate

the transaction as a right and proper one.

9. It is therefore impossible to argue that mere consent would validate the transaction irrespective of the nature of the transaction. Indeed in *Rangasami Goundan v. Nachiappa* 1918 P.C. 196, their Lordships said at p. 537 that:

Being a deed of gift it cannot possibly be held to be evidence of alienation for value for purposes of necessity. It follows therefore that the deed taken by itself cannot stand.

10. As stated before, the document of 1887, is not an alienation for value because no premium was paid for property of the value of Rs. 2,700 on the defendants own showing and the profits which were to go to the lessor were out of all proportion to the profits that were to go to the lessee, and the entire phraseology of the document goes to show that it was intended to benefit the transferee for whom the lady had great affection.

11. It was then argued that the transaction of 1878 might be looked at from a different point of view. It might be said to be a surrender in favour of the next reversioner Pyare Lal and then a document of lease by Pyare Lai. There are two obvious answers to this contention. First of all the document is not couched in that manner. It is not a surrender of the next reversioner and then a lease by him in favour of the defendants' ancestors. Secondly, the lady obviously had other property, namely, the house, and it cannot be said that there was a complete effacement by the widow; the surrender in order to be effective must be of the entire rights of the Hindu widow. For the reasons given above I dismiss this appeal with costs. Leave to file an appeal by way of Letters Patent is granted.