(2012) 01 KAR CK 0196

In the Karnataka High Court

Case No : Regular First Appeal No. 69 of 2002 (DEC)

Sridhar and R Maruthi Since Minor rep. by His Next Friend and Guardian Sridhar — APPELLANT

Vs

N Revanna and Others — RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:
Succession Act, 1925 — Section 13, 3, 97
Transfer of Property Act, 1882 — Section 10, 14

Citation : AIR 2012 Kar 79

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : B.S. Manjunath, for the Appellant; V. Tarakaram for M/s. Tarakaram Associates, Advocates for Respondent Nos. 2(a) to 2(d), 3 and 5 and Respondent Nos. 1, 6 and 7 are Served, for the Respondent

Judgement

Anand Byrareddy

1. Heard the learned counsel for the parties. The appellants were the plaintiffs before the Trial Court. They were minors when they instituted the suit suing through their natural guardian, their paternal grandmother.

2. The case of the plaintiffs was as follows:

That the suit properties were the self-acquired properties of their great-grandfather, Muniswamappa. He had, by three separate registered Gift Deeds dated 5.6.1957 executed in favour of his wife Akkayamma and two in favour of his grandson Revanna-defendant in the suit, gifted the suit properties. It is further stated that the properties were in the occupation of tenants. Muniswamappa and his wife Akkayamma had expired in the years 1960 and 1961, respectively. It is the case of the plaintiffs that under the Gift Deeds, neither Akkayamma nor Revanna had any right to alienate the suit properties as they were conferred with a limited interest to enjoy the properties during their lifetime and thereafter the properties were to devolve on the plaintiffs.

Notwithstanding this limitation, defendant No. 1-Revanna had proceeded to alienate the suit properties under Sale Deeds dated 7.10.1985, 8.10.1985 and 10.10.1985 in favour of defendant Nos. 2 to 5. It is the case of the plaintiffs that such alienations were void and did not bind the plaintiffs. It was their case that they had a vested right immediately on their birth. The first plaintiff was born prior to the said Sale Deeds. The plaintiffs, therefore, alleged that defendant Nos. 2 to 5 in collusion with the tenants in occupation of the suit properties were seeking to occupy the properties and to illegally demolish the same and therefore the plaintiffs would be deprived of their legitimate right and had proceeded to file a civil suit in O.S.No. 7081/1995 and the said suit was withdrawn on 15.11.1995 with permission to institute a fresh suit on the same cause of action and accordingly, the suit, out of which the present judgment and decree under appeal arises, was filed.

3. In the suit, Defendant Nos. 1 to 7 had entered appearance through their counsel and filed separate written statements.Defendant No. 1 filed a written statement supporting the case of the plaintiffs contending that be was in dire need of money and bad proceeded under the bona fide belief coupled with the legal opinion, that he had obtained at the time of sale, that under the Gift Deed there was no impediment to sell the property as the condition of non-alienation imposed on him was void and pleaded that the transactions were not fraudulent and he was misled by the legal opinion in proceeding to alienate the suit properties and undertook to reimburse the defendants by paying the sale consideration received, to them. Defendant Nos. 6 and 7, who were the tenants in occupation of the properties, on the other hand, had contended that they were not aware of any of the transactions between the other defendants. They admit that defendant Nos. 2 to 5, who were the purchasers from defendant No. 1, had filed an eviction case and the same had attained finality in orders of eviction having been passed against them. Defendant Nos. 2 to 5 had filed a common written statement questioning the bona fides of the plaintiffs and their guardian and alleged that they were apparently set-up by the vendor-defendant No. 1 and were acting in tandem in seeking to avoid the sale transactions on a specious plea that there was a condition under which the property could not have been sold by defendant No. 1, apart from raising other contentions. On the basis of the said pleadings, the following issues were framed.

1) whether the plaintiff proves that plaintiffs have got absolute right over the suit schedule properties?

2) Whether the plaintiff proves that defendant No. 1 has no right to alienate suit schedule property in favour of defendant No. 2 to defendant No. 5 and that maid alienation is not binding on the plaintiffs?

3) Whether the defendants prove that condition of restraint on alienation is void in law?

4) Whether the plaintiffs are entitled to the relief sought?

5) What order or decree?

4. Issues Nos. 1 to 3 were decided together by the Trial Court. After discussing the rival contentions, the Court below had extracted the terms of the Gift Deeds in favour of Revanna, which was as follows:

The Donor covenants with the Donee that on the ____ date of these presents, the property that is now ____ endowed as a gift is free from all encumbrances, liens, charges, attachments from Courts and lispendens and that ha has absolute and unimpeachable right to grant it as a gift and that no one else has any right to question the same.

The Donor has this day put the Donee in possession of the said gifted property in accordance with law, which the latter shall enjoy on and from this date either solely or in equal shares with his younger brothers who may be born hereafter, over which he or they can exercise all rights of ownership subject to the conditions detailed hereinafter namely:-

1) The Donee or his younger brothers who may be born hereafter have no right to alienate the said schedule mentioned property in any manner whatsoever by way of sale, gift, mortgage or otherwise.

2) The Donee or his younger brothers who may be born hereafter shall enjoy the property during his or their life time as the case may be and on his or their demise it shall devolve on his or their male children then surviving who shall be at liberty to deal with the property mentioned in the Schedule hereunder in any manner he or they choose to do, with unrestricted rights.

3) In case the Donee or his younger brother or brothers to be born hereafter die issueless, the said property hereby gifted shall devolve on SRI SOMESWARASWAMI of Someswara Temple, Ulsoor, Civil Station, Bangalore, for the benefit of the said Temple_

The Court below held that a plain reading of the relevant portion of the Gift Deeds would indicate that the properties Here gifted by Muniswamappa, out of love and affection, in favour of Revanna and his unborn brothers, for enjoyment, without any right of alienation, and on their demise, it was to devolve on the male children of Revanna and his unborn brothers. Since Revanna did not have any brothers, it is the plaintiffs, on whom the property devolved in terms of the condition. The Lower Court found that in terms of the condition, Revanna had no right to alienate the property as only a life interest was created in favour of Revanna and considered the contention on behalf of the plaintiffs and held that insofar as the absolute restraint being placed on Revanna from alienating the property would be contrary to Section 10 of the Transfer of Property Act, 1882, (hereinafter referred to as ''the Act'', for brevity) since the absolute restraint placed on the part of the Revanna would be void with reference to the express terms of Section 10of the Act. The Trial Court also accepted the contention on behalf of the defendants that Section 97 of the Indian Succession Act would make the Gift in favour of Revanna an absolute gift and the alienation made by Revanna would be binding on his children. The Trial Court also found favour with the contention that the first part of the Gift Deed wherein it was bequeathed by the Donor that Revanna and his unborn brothers can exercise all rights of ownership. Thus, according to the Trial Court, absolute ownership was conferred on Revanna since there was an express term under the Gift Deeds itself which conferred such power and the second part of the Gift Deed indicating that Revanna would have only a life interest and that it was to devolve on the plaintiffs, on their birth, absolutely; would have to be read down in view of the bar under the provisions of the Act. Insofar as the further contention of the plaintiffs as to the application of Section 3 and Section 16 of the Act is concerned, the conclusion of the Court below was that as on the date of the Gift, Revanna had no brother, hence the gift in favour of an unborn brother of Revanna is not valid because it would offend Section 13 of the Act. In that, the whole of the interest remaining in the transferor was not given to the unborn brother. Thus the gift in favour of an unborn brother is bad in law. It is this reasoning which has been reiterated by the Court below in holding that the condition imposed on Revanna, that he had no power to alienate the suit property as being bad in law. This runs through the judgment and in the Court concluding that the suit of the plaintiffs is bad and that it be dismissed. It is this, which is under challenge in the present appeal.

5. The learned counsel for the appellants, would therefore, concentrate on the reasoning of the Trial Court in having held that the condition imposed on Revanna was bad in law as being erroneous, having regard to plain interpretation of the Gift Deeds and the position of law as is evident from a reading of the provisions of the Act. Firstly, the learned counsel would submit that insofar as the Gift Deeds are concerned, recitals therein ought not to be read in isolation and if the recitals are read together, the intention is clear that though Revanna could exercise all rights of ownership, it was subject to a further condition that he had only a life interest and could not alienate the property. Hence, the right of ownership, which is seemingly conferred, does fall short of affording the power of alienation by Revanna. The fact that Revanna had no brothers as on the date of Gift Deeds nor were the plaintiffs born on the date of the Gift Deeds, was immaterial. Insofar as Section 10 of the Act is concerned, he would point out that, it pertains to a transfer of property in favour of a living person. ''Transfer of property'' is defined under the Act, as an act by which a living person transfers the property, in present or future, to one or more living persona. Transfer of property to unborn persons is not contemplated u/s 10 of the Act. It is contemplated u/s 13 of the Act.

6. The learned counsel would seek to draw attention to the text of Section 13 as well as the illustration appended thereto, which read as follows:

S.13 - Transfer for benefit of unborn parson - Mature, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration: A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A''s second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A''s remaining interest in the property.

7. He would then point out that a prior interest is created in favour of Revanna under the Gift Deeds and without such prior interest, the property devolving in favour of an unborn person cannot be contemplated. Since the Act contemplates only a transfer in favour of a living person, it was therefore necessary to create a prior interest in favour of Revanna and thereafter to state that the property would devolve on such other persons who may be born in the future. This is in accordance with Section 13 of the Act. The Trial Court, while interpreting the said Section, has been misled by the text of the Section and has expressed its view in an inchoate manner. It is contended that in the present facts and circumstances of the case, it is evident that an absolute right is conferred ultimately on the plaintiffs. The prior interest created in favour of Revanna would stand absolutely transferred in favour of the plaintiffs. It is only if the remainder of the interest in the property is not transferred in favour of unborn person that it would not take effect. Such is not the case in the present case on hand, since the absolute ownership of the property was to devolve on the plaintiffs. There was a condition and the condition of non-alienation imposed on Revanna could not be held to be void. If this reasoning is denied, the condition imposed on Revanna while holding that the property was to devolve on unborn persons, would be rendered nugatory. Hence, the transaction cannot be negated on that footing.

8. Insofar as Section 16 is concerned, it would be wholly irrelevant since it is only if the prior interest does not take effect that the subsequent interest created would fail. Since the prior interest has taken effect in view of Revanna succeeding to the property but he could not transfer the same during his lifetime since he had only a life interest and remainder of the interest being transferred under the terms of the Gift Deeds in favour of the plaintiffs. He would also contend that it is the case of the defendants that they had obtained a legal opinion before entering into the sale transaction with Revanna and that they had been advised by their Legal Advisor to the effect that the condition imposed on Revanna was void. If this is an admitted fact, and they had proceeded on the basis of a mistake of law, it does not lie in the mouth of the defendants to contend that the equities should be read in their favour and hence the right to property which stood vested in the plaintiffs cannot be deprived on the footing that defendant No. 1 had alienated the property in favour of defendant Nos. 2 to 5 and they had entered into the transaction on a wrong view of the law but that

they should yet be absolved of the same and the transaction should be saved is not available to the defendants and therefore, he would contend that the suit be decreed as prayed for.

9. The learned Senior Advocate, Shri. V. Tarakaram, appearing for the learned counsel for the contesting defendants, would contend that defendant Nos. 2 to 5 are bonafide purchasers, for value. It is denied that the plaintiffs have established that they were born as on the date of the alienation. There is no material evidence available to indicate that they were born prior to the transaction. In the absence of which, the very foundation of the plaintiffs'' case that the properties stood vested on then on their birth is not available to the plaintiffs. Even otherwise, Section 10 of the Act is a clear bar where there cannot be an absolute restraint on the transferee or any person claiming under him from disposing of his interest in the properties when a condition or limitation is void in terms of the said Section and even the rule against perpetuity would come into play in the present circumstance and therefore, such a condition cannot bind the transferee under the Gift Deeds. It is contended that defendant No. 1 had exercised a right in alienating the property and even if the plaintiffs are in possession to establish their claim over the suit property, their remedy is against defendant No. 1 and the suit having been filed seven years after the sale transaction cannot be sustained on equities as defendant Nos. 2 to 5 who had purchased the property had to fight a sustained battle to evict the tenants who were in occupation of the properties at their cost and effort and had finally secured possession of the property which the plaintiffs, who have been apparently set-up by their father, grandmother and the tenants, have ventured to prefer the present suit which is not bona fide and is apparently prompted by illegal motives and hence would seek that the suit be dismissed.

10. The short question, that would arise for consideration, is whether the condition imposed under the Gift Deeds against Revanna that he shall have only a life interest in the suit property and the property would devolve on the unborn male children of Revanna, absolutely, was a condition which was void in law and further whether the first part of the Gift Deed conferring ownership rights on Revanna had the effect of watering down the condition of non-alienation. In interpreting the Gift Deeds, as rightly pointed by the learned counsel for the appellants, the same would have to be read comprehensively and that any one of the recitals cannot be read in isolation. If the several recitals have to be reconciled, what would emerge is that Revanna had only a life interest in the suit property and that he had no right to alienate the same. The second contention whether the condition imposed that he shall not alienate the suit property and the plaintiffs were not born at the time of Gift Deeds, whether the same would be rendered void would have to be answered in the negative. ''Transfer of property'', as pointed out by the learned counsel for the appellants, is defined under the Act as transfer of property by a living person, in present or future, to one or more living persons. Section 10 of the Act would apply insofar as such a transfer by a person to another living person. Section 10 of the Act does not contemplate the

transfer to an unborn person. It is only Section 13 of the Act, which provides for transfer of benefit to an unborn person. This is again because of the rider that if persons in whom limited interest is created and if he should transfer the same without a remainder of the property that would not take effect. In the present case on hand, the same would not be a bar insofar as the vesting of property in the plaintiffs is concerned, notwithstanding that they may have been born after the Gift Deeds were executed, is immaterial. Since there was no issue as to the correctness of the age of the plaintiffs, it ought to be presumed that they were born well prior to the sale transactions. If that be so, the property stood vested in the plaintiffs on their birth. In that view, the property devolved on the plaintiffs immediately after the lifetime of Revanna, since there were no other persons, who were capable of deriving such interest. At least, the plaintiffs were born well prior to the date of sale. Revanna would lose the right to alienate the property as an interest is created in favour of the plaintiffs under the Gift Deeds which would be a prohibition for Revanna to alienate the property. The contention that Revanna and other defendants had obtained a legal opinion and had acted on the basis of the same would not absolve the defendants of their conduct as being illegal since it was clearly against the law and there can be no estoppel against Statute nor the defendants can plead equities on that ground. The reference to Section 14 of the Act by the learned Senior Advocate for the defendants is not relevant as it pertains to the rule against perpetuity which is to the effect that on no transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some persons who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong. The question that would arise for consideration in the present case on hand is whether the condition imposed on Revanna on whom the life interest was given was void in law which would certainly have to be answered in the negative, for reasons as already stated. In that view of the matter, the Trial Court was clearly in error in holding that the condition imposed on Revanna was void. Then the next question that arises is as to the relief that the plaintiffs would be entitled to, at this point of time. In the opinion of this court, though in law, defendant No. 1 is precluded from claiming that he had obtained a wrong legal opinion and therefore he is amenable to making good the loss that may have occasioned to the plaintiffs by such an act of his, as undertaken in the written statement, would have to be accepted. In which event, the benefit that Revanna received by virtue of the Sale Deeds, have to be given to the plaintiffs. The plaintiffs'' contention that the property was worth multiple times the sale price for which it was sold, is an unfortunate circumstance. The interest of justice would demand that the plaintiffs be entitled to nothing more than what Revanna had received under the Sale Deeds. It is this alone which the plaintiffs shall be entitled to and it is accordingly decreed that the plaintiffs are entitled to the sale consideration received by Revanna under the Sale Deeds. The plaintiffs are entitled to recover the same from defendant No. 1. Further, since defendant Nos. 2 to 5 were equally responsible for creation of this circumstance, it would meet the ends of Justice if nominal costs are imposed on them, which in the opinion of this Court would be in the order of ` 25,000/- payable to the plaintiffs, jointly; Though in law, the condition was not to be held void, in which event, though the plaintiffs could then claim ownership to the property, having regard to the sequence of events and the present circumstance, the claim of the plaintiffs to recover the property necessarily has to be denied. The order of temporary injunction granted earlier stands vacated.

