
(1961) 03 AP CK 0012

In the Andhra Pradesh High Court

Case No : Second Appeal No. 185 of 1958

Sripati Panditharadhyulu saraba Salvalingam and Another	APPELLANT
Vs	
Mudigonda Lingamurthy and Others	RESPONDENT

Date of Decision : 10-03-1961

Acts Referred:

Citation : AIR 1962 AP 173

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : K. Krishnamurthy, for the Appellant; M. Suryanarayanamurthy, for the Respondent

Judgement

(1) This second appeal arises out of a suit by reversioners. Defendants 4 and 5 are the appellants before me and the property in dispute in this appeal is item No. 3 of the "A" schedule attached to the plaint.

(2) The suit (O. S. No. 12 of 1952 on the file of the Sub Court, Tenali, was filed by the 1st respondent for a declaration that he and defendants 1 to 3 are the nearest reversioners to the estate of Mudigonda Seshamma and lingamurthi for partition of the plaint schedule properties into four equal shares and allotment of one share to each of the plaintiff and defendants 1 to 3 and other ancillary reliefs as to profits.

(3) One Mudigonda Mallayya was possessed of properties described in the A schedule. He had a son by name veerabhadrayya, & a grandson, Lingamurthi. The three of them were living as members of an undivided family. Under Ex. A-5, dated 3-1-1929 Mallayya gifted an extent of 91 cents of wet land in favour of his minor grandson Lingamurthi represented by his mother Seshamma, as the guardian. Mallayya died leaving surviving his son veerabhadrayya and his grandson Lingamurthy. Lingamurthy pre-deceased veerabhadrayya. On 2-7-1948 veerabhadrayya executed a will (Ex. A-1) bequeating his entire property absolutely to his widow Seshamma. Seshamma in her turn executed a gift deed

on 31-5-1950 under Ex. B 10 in favour of defendants 4 to 5, the present appellants. The fourth defendant is the daughter of Seshamma's sister. The 5th defendant is the husband of the 4th defendant to both of whom Seshamma is alleged to have been greatly attached. Seshamma also left a will dated 11-4-1951 and marked as Ex. B-1, bequeathing her sister, the 10th defendant for life and after her death to the 4th defendant with absolute rights. Seshamma devised her moveable properties absolutely to her sister the 10th defendant. The plaintiff in the action challenged among other things the truth of Seshamma's will marked as Ex. B-1.

(4) The two courts below found that the plaintiff genealogy was true, and if so the plaintiff and defendants 1 to 3 are the nearest reversioners to the estate of Seshamma. That finding is not challenged before me. The learned Subordinate judge held that E. B-1 the alleged will of Seshamma was not true and on that footing gave a decree in favour of the plaintiff with respect to his share in the plaintiff A schedule properties and also the item in C and D schedules excepting the item 3 of A schedule covered by Ex. B-10, which has been found to be true and valid.

(5) Against the decision of the learned Subordinate judge, the plaintiff filed an appeal (A. S. No. 9 of 1957). Defendants 10 and filed A. S. No. 64 of 1957. Both the appeals were heard together and the learned District judge reversed the finding of the trial court as to the truth or genuineness of Ex. B-1, the will of Seshamma. In that view, he allowed A. S. No. 64 of 1957 filed by the principal legatees under Seshamma's will. He allowed also A. S. No. 9 of 1957, by holding that the plaintiff is entitled to his proportionate share in item 3 of the A schedule which has been gifted by Seshamma under Ex. B-10 dated 31-5-1950. The donees under the gift, defendants 4 and 5, have now appealed.

(5a) The question that falls to be determined is whether the gift dated 3-1-1929 marked as Ex. A-5 executed by Mallayya in favour of Lingamurthy is valid in law.

(6) The learned Subordinate judge has taken the view that Mallayya being a member of an undivided family along with his son and grandson had no right to gift away either the whole or a portion of his undivided interest and that such a gift is inoperative in law. The learned District judge following the observations of Bhimasankaram J. in *G. Suryakantham v. G. Suryanarayana Murthi*, 1955-1 Andh WR 944 : (AIR Andh Pra 1012) held that a gift of an undivided share by a coparcener is void only in the sense that it is not binding on the other coparceners and that where the members of the family subsequently recognised and acted upon the gift, it cannot be attacked. It seems to me that this view of the learned District judge cannot be upheld. It is now settled law that a coparcener cannot make a gift of his undivided interest in the family property, moveable or immovable either to a stranger or to a relative, except for purposes warranted by special texts.

In *Babu v. Timma*, 7 Mad 357, after a review of the leading Hindu law texts a

Full Bench of the Madras High Court held that it was incompetent for a coparcener to convey either by gift or by devise his undivided share or a portion thereof. That decision of the Full Bench was followed and applied by Muttuswami Iyer J. in *Ramanna v. Venkata*, ILR 11 Mad 246. The same principle was again reiterated by a Full Bench of the Madras High Court in *R. Ranganatham Chetty v. P. Ramaswami Chetty*, ILR 27 Mad 162 at p. 166 (FB), where the learned Judges observed as follows:

"It has now been definitely settled by Judicial decisions that it is incompetent to an undivided member of a Hindu family, to alienate by way of gift his undivided share or any portion thereof and that such alienation is void in toto and this principal cannot be evaded by the undivided member professing to make an alienation for value, when such value is manifestly inadequate and inequitable".

(7) In *Kavuru Venkatappayya Vs. Kavuru Raghavayya*, , *Raghava Rao J.* following the decision in ILR 11 Mad 246 held that except in special cases recognised by the Hindu Law texts and judicial authority a coparcener in a Mitakshara family cannot convey by gift or devise his undivided share and that such an alienation is wholly invalid. In *Peramanayakan v. Sivaraman*, 1952 1 M L J 308 : (AIR Mad 419) (FB), a Bench of five Judges had to consider the question of the equity of an alienation for value of an undivided share of a Hindu coparcener. There are several observations in the judgment of *Satyanarayana Rao* and *Visvanatha Sastry JJ.* affirming the rule laid down in the full Bench case in ILR 27 Mad 162.

(8) Mr. Suryanarayana Murthy learned counsel for the respondent contended that in *Jatindra Mohan Tagore v. Ganendra Mohan Tagore*, 9 Beng Lr 377 396 (PC) the Judicial Committee made an observation that an undivided share can be alienated with the consent of the coparceners and that in the circumstances of this case the gift under Ex. A-5 can be sustained as a family arrangement. For the latter contention he has placed strong reliance upon certain observations of the Privy Council in *S. Lakshmi Chand v. Mt. Anandi*, AIR 1926 PC 54.

(9) Even if the solitary sentence of the judgment of their Lordships in Tagore's case 9 Beng LR 396 is to be taken as a considered opinion, it must be established that there was a concurrence of the other coparceners for the gift. In this case there is not even an allegation that the gift under Ex. A-5 was preceded by the assent of the other coparcener, *veerabhadrayya*. Mr. Suryanarayanamurthy very strenuously argued that the recitals of the will, Ex. A-1 would indicate that *veerabhadrayya* has by implication assented to the gift though admittedly it is long after the gift. I am unable to accept this contention. On the contrary, it seems to me that *Veerabhadrayya* proceeded upon the footing that the property was his and that he could devise it by will in favour of his wife *Seshamma* absolutely.

(10) In the view I have taken above it follows that the gift under Ex. A-5, being invalid *veerabhadrayya* must be deemed to have been fully possessed of it at the time of Ex. A-1 and that under the said devise *Seshamma* had absolute rights in

item 3 of the A schedule such that she could convey it by gift under Ex. A-10 to defendants 4 and 5. That being so I hold that the plaintiff cannot succeed to item 3 as the heir of her Seshamma inherited item 3 as the heir of her deceased son Lingamurthi and being a limited owner she could not assign the property by absolute gift to defendants 4 and 5, such that the plaintiff as a reversioner to the estate of veerabhadrayya and Seshamma could claim a share therein. I hold that as the gift under Ex. A-5 was invalid, it must be deemed as non est and, therefore, veerabhadrayya was in law entitled to bequeath that property absolutely by will to Seshamma under Ex. A-1. Seshamma in her turn was in law entitled to gift away item No. 3 of the A schedule to defendants 4 and 5.

(11) For the above reason I hold that this appeal must succeed. The judgment and decree of the learned District judge are aside with respect to item 3. Defendants 4 and 5 are entitled to their costs. Leave refused.

(12) allowed, leave refused.