

(1952) 09 KL CK 0012
In the High Court Of Kerala
Case No : Second Appeal No. 22 of 1125

Subramanian Asari Subramanian Asari and Another	APPELLANT
Vs	
Kanni Ammal Velamma	RESPONDENT

Date of Decision : 25-09-1952

Acts Referred:

Transfer of Property Act, 1882 — Section 126

Citation : (1952) 09 KL CK 0012

Hon'ble Judges : Sankaran, J

Bench : Single Bench

Advocate : N.K. Narayana Pillai, for the Appellant; N. Varadaraja Iyengar, for the Respondent

Judgement

Sankaran, J.—The question raised in this second appeal, is as to the nature of the estate created in favour of the donee under a gift deed which has been produced and marked as Ex. II in the case. This gift deed was executed on 3-6-1101 by the 2nd Defendant, the father of the Plaintiff, in favour of her mother. These parties are Hindus governed by the Mitakshara Law. The Plaintiff is the only daughter of the donee under Ex. II. According to the Plaintiff, the donee under Ex. II had become the absolute owner of the property conveyed under the document and on her death in the year 1109 the property has devolved on the Plaintiff, the only daughter and sole heir of her mother. Soon after the execution of Ex. II the donor and the donee together had executed a hypothecation bond in favour of the 1st Defendant on 22-3-1103, securing the property covered by Ex. II for the loan received under that bond. Ex. I is copy of that bond. After the death of the donee, the 1st Defendant sued on the bond and obtained a decree in O.S. 919/1114 on the file of the District Munsiff's Court at Trivandrum. Ex. A is copy of that decree. The present Plaintiff was not made a party to that suit. The present 2nd Defendant and his son were the only persons impleaded as Defendants in that case. The Plaintiff has impeached that decree as not binding on her or on the suit property. Her suit is to set aside that decree as well as the execution proceedings taken out on the basis of that decree. The 1st Defendant

resisted the suit and maintained that by virtue of a special provision contained in the gift deed, Ex. II, the title of the property re-vested in the donor himself on the death of the donee and that the Plaintiff did not acquire any title to or interest in that property. The trial court repelled this contention and held that the absolute estate created under Ex. II could not re-vest in the donor and that on the death of the donee the property devolved on her daughter the present Plaintiff. On the strength of this finding, the decree Ex. A was set aside so far as the Plaintiff and her interests in the suit property are concerned. That decree was confirmed by the lower appellate court. The 1st Defendant and his assignee have therefore come up in second appeal questioning the construction put upon Ex. II by the lower Courts.

2. It is not disputed that if an absolute and indefeasible estate was created in favour of the donee under Ex. II, the sole heir to succeed to that estate on the death of the donee, is the Plaintiff. But it is argued on behalf of the Appellants that the document read as a whole will show that only a life estate was intended to be created in favour of the donee. This contention does not gain any support from the clear and definite expressions used in Ex. II. The donor has unequivocally stated in the document that he is transferring all his rights over the property to the donee and that she is being put in possession of the property forthwith. It is also stated that from the date of the gift the donee is to enjoy the property for ever with absolute powers to deal with the same and that she is to obtain Pattah for the property in her own name and to pay the tax due in respect of the property. No rights of any kind have been reserved in favour of the donor. Thus there is no scope for contending that only a life estate was created in favour of the donee. On the other hand, it is clear that the demise under Ex. II was absolute. The gift was accepted by the donee and she obtained Pattah for the property and continued to pay the tax in her own name. Reference to these facts is made in the hypothecation bond Ex. I to which the donor was also a party and as such it is clear that the gift came into effect.

All the same it is seen from the gift deed Ex. II that after conveying the property absolutely to the donee, the donor has inserted a clause in the document intending to regulate the devolution of the property on the death of the donee. That clause is to the effect that on the death of the donee, the property shall not devolve on any of her heir but that it is to revert back to the donor himself. It is argued on behalf of the Appellants that this provision amounts to a condition subsequent and that a demise subject to such a condition can be validly made. Section 126, Transfer of Property Act, is relied on in support of this contention. That section lays down that

the donor and the 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.

In order to attract this provision, the conditions to be satisfied are: (1) that the donor and the donee must have agreed that the gift shall be suspended or

revoked on the happening of a specified event, (2) such event must be one which does not depend on the will of the donor, (3) that the donor and the donee must have agreed to the condition at the time of accepting the gift and (4) that the condition should not be illegal or immoral and should not be repugnant to the estate created under the gift.

3. The gift deed Ex. II in the present case does not satisfy any of these conditions. There is nothing to show that the donee had agreed at the time of the acceptance of the gift that on the happening of the event contemplated by the document, the gift may be suspended or revoked. In fact the demise in favour of the donee under Ex. II was not made subject to any condition. On the other hand, the demise was absolute and unconditional and the donee is seen to have accepted such a gift granted in her favour. The second clause in the document only contains a direction that on the death of the donee, the property shall revert to the donor. This is a course which was intended to follow subsequent to the coming into effect of the gift. Such a provision cannot be said to be an agreement for the suspension or revocation of the gift.

It is obvious that the provision is one directing the devolution of the estate which has already become vested in the donee. A direction to that effect is repugnant to the absolute estate created in favour of the donee under Ex. II. After conferring an absolute estate in favour of the donee, the legal incidents of such an estate cannot be controlled or regulated by the donor. Any such provision in the deed of gift will be repugnant to the absolute estate created in favour of the donee and to the legal incidents of such an estate and as such the provision will be ineffective and wholly void. This is a well-settled proposition of law. Vide the decisions in - Bai Kevli Vs. Dalsukhram Sakarchand, ; - "Krishnaswami v. Srinivasan" AIR 1945 Mad 362 and - "Pugaluperumal Pillai v. Thangathammal" AIR 1949 Mad 690 . In each of these cases the document which came up for construction was found to contain provisions meant to regulate the devolution of the properties on the death of the individual in whose favour an absolute estate had been created under the same document. The provision directing such a devolution was held to be void as being repugnant to the legal incidents normally to follow the absolute estate that had been created. Consistent with this view, it has to be held that the provision contained in Ex. II. that on the death of the donee the property shall not devolve on her legal heirs but shall revert to the donor, is absolutely void and devoid of all legal effect. The result is that the death of the donee, the property devolved" on her sole heir the present Plaintiff. She is not a party to Ex. A decree and as such it cannot bind her on her interests in the suit property. The lower courts were therefore right in allowing the suit and in setting aside Ex. A decree as also the execution proceedings taken out on the basis of that decree, so far as the Plaintiff and the suit proper are concerned.

4. This appeal fails and it is accordingly dismissed with costs.