PRIVY COUNCIL

Medapati Surayya

Vs.

Tondapu Bala Gangadhara Ramakrishna Reddi
P.C.A.No.12 of 1946

(Lords Simonds, Oaksey Morton of Henryton, Mr. M.R. Jayakar and Sir John Beaumont JJ.)

30.07.1947

JUDGMENT

MR. M.R. JAYAKAR J.

1. This is an appeal from a judgment and decree dated 24.1.1944, of the High Court of Madras, which reversed the judgment and decree dated 17.12.1941, of the Court of the Subordinate Judge at Rajahmundry.

2. This appeal arises out of a suit brought by respondent 1 for partition of the plaint properties and for the recovery of a share therein, after setting aside certain alienations made in respect of them by his father, respondent 2. The Subordinate Judge dismissed the suit, holding the alienations to be binding on respondent 1. The High Court reversed his decision. The main question in this appeal is therefore whether or not the alienations in question are valid and binding on respondent 1.

3. The facts of the case are as follows:

4. The respondents are members of a Hindu joint family. Respondent 2 (defendant 1) is the father, and respondents 1 and 3 (plaintiff and defendant 2 respectively) are the sons. The family became indebted and respondent 2, as father and manager of the family, made certain alienations to which the other respondents were parties. Respondent 1, however, was a minor at the time, and was represented in those transactions by his father as his guardian. The alienations were made to pay antecedent debts and they would, under Hindu law, be binding on the sons unless it was proved that the debts were incurred by the father for illegal or immoral purposes. An attempt was made to prove this but respondent 1 did not succeed in establishing it. His main contention, however, was that the father had become divided from his sons

at the dates of the alienations, because, previously thereto, he had executed a deed of settlement in respect of the disputed properties in favour of his mother, which in substance was a deed of partition effecting a disruption of the joint family.

5. Respondent 2's father, Venkata Reddi, died in 1907, having his widow Seethamma and his only son respondent 2. He left some immovable property. Respondents was the only member of the family until the birth of respondent 3 in 1908 Respondent 2 incurred certain debts and made certain alienations by way of mortgages and sales.

6. On 3.6.1914 respondent 2 executed a document called a settlement deed in favour of his mother, giving her a life interest in the land mentioned in the document for her maintenance, with a stipulation that after her death the land was to revert to the family.

7. The material portion of the document is as follows: "As you are my mother and therefore I am bound to protect" ("maintain" as translated by the trial Court)

> "you, the properties worth about ten thousand rupees . . . belonging to me . . . have been given away this day to you who are my mother and put in your possession. You shall therefore henceforth safeguard the said properties. Out of the debts contracted by me from others for the expenses of my family, the debt (specified in the document) shall be discharged by you . . . You shall as you please enjoy the said properties during your whole lifetime without subjecting the same to alienation and subject to the aforesaid conditions. It is settled that after your lifetime the said property should again pass to my family."

8. The main question in this appeal is whether this document is, as it purports to be, a maintenance deed in favour of the mother, or whether it effects a separation of respondent 2 from his sons, respondents 1 and 3, and whether by reason of this deed the property ceased to be the property of the joint family consisting of respondents 1 to 3.

9. Respondent 1 was born in 1917. Subsequently in 1918 respondent 2 applied to the Court to be adjudicated an insolvent.

10. On 8.1.1919, the mother of respondents 1 and 3, acting as guardian, brought Suit No. 6 of 1919 in the Court of the Additional Subordinate Judge of Coconada against respondent 2, the Official Receiver, the alienees and creditors of respondent 2. The suit was to obtain a declaration that the debts and alienations made by the father, respondent 2, were not binding and for partition of their shares in the properties described in the plaint. The Official Receiver attacked the settlement deed of 1914 as

a fraud on the creditors. On 8.3.1921, the Subordinate Judge held that the alienations and the debts were valid and binding on the plaintiffs in the suit, they were not contracted for illegal or immoral purposes, the settlement deed was not a fraud on the creditors, it was an arrangement made for the benefit of the sons and was in effect a partition deed giving property to the members of the family other than respondent 2, there was no property to be divided, the suit therefore failed and was dismissed. There was an appeal to the High Court by the sons. While the appeal was pending, respondent 2 entered into a composition deed with the creditors. The order of adjudication was annulled. The appeal of the sons was then withdrawn.

11. It appears from the evidence, which is collected in the trial Court judgment, that, after the deed of 3.6.1914, respondent 2, his sons, his wife and mother, all continued, as before, to live as members of an undivided Hindu family, with respondent 2 acting as its manager. In 1924 they all joined in executing a mortgage, treating the properties now in suit as joint family properties in which respondent 2 had coparcenary rights. In 1925 respondent 2's mother, Seethamma, died. The remaining members continued to live as a joint family. From 1926 to 1932 several alienations (by way of mortgages and sale) were made by the father and the sons. In all these transactions the family was treated as an undivided family, respondent 2 as its manager, and respondents 1 and 3 as his "undivided sons." Respondent 3, the adult son, joined in the execution of the documents relating to these alienations which were made for necessary purposes. Respondent 1 attained majority on 23.12.1935.

12. On 23.11.1937, he brought the present suit in the Court of the Subordinate Judge Rajamundry in forma pauperis against his father as defendant 1, his elder brother as defendant 2, and the alienees as defendants 3 and 4 and 6 to 9 (appellants before this Board). In his plaint he referred to the deed of settlement of 1914 and submitted that it effected a division in status between the father and the sons, that under that settlement deed the mother held the properties as trustee for the plaintiff and his brother, that the properties belonged to them as tenants - in - common, that their father, respondent 2, had no right to alienate the property, that the alienations made by the father were not binding on him. He prayed for division of the properties into two shares and for delivery to him of one such share, after declaring that the alienations were not binding on it. Defendant 1, the father, put in no statement. The appellants, who represent the alienees, defendants 3 and 4 and 6 to 9, filed a written statement alleging, inter alia, that respondent 2 acted as the manager of a joint Hindu family, consisting of himself and the two other respondents, and had made the alienations for family necessity, and

they were therefore binding on respondent 1.

13. The Subordinate Judge framed certain issues, of which the following alone are now material :

> "(1) Whether the plaintiff and defendants 1 and 2 were divided in status at the date of the alienations in the suit.
> (2) Whether the mortgages and sales mentioned in the plaint are binding on the plaintiff."

14. On 17.12.1941, the Subordinate Judge delivered judgment. He considered the question whether the settlement deed of 1914 created a division between the father and his sons and whether the words "my family" in the deed meant the son, respondent 3, who was then in existence, as also the issue the father might subsequently have. His view was that the expression of opinion of the Subordinate Judge in the previous suit of 1919 to the effect that the settlement deed was in the nature of a partition was neither correct nor relevant, that the deed did not have the effect of causing the division in status between the father and his sons, that the words "the said property should again pass to my family" did not mean that the property should pass to his issue only but meant that the property should revert to the joint family consisting of the father and his issue, that the father was not excluded by the use of the words "my family." He also stated that the parties understood the deed in that sense and acted on that basis. As for the alienations, he held, on the documentary and oral evidence in the case, that they were for consideration and were made to discharge antecedent and other debts incurred for the benefit of the family: they were therefore binding on respondent 1. He further held that respondent 1 would be entitled to share in the equity of redemption in respect of the mortgages along with the other respondents but as he had not filed the suit for partition on that basis he could not grant him any relief. In the result he dismissed the suit with costs to the contesting defendants. On 17.12.1941, a decree was made accordingly.

15. Respondent 1 appealed against the said decree to the High Court at Madras, and that Court (Krishnaswami Ayyangar and Somayya JJ.) delivered a judgment on 24.1.1944. It stated that

> "it is common ground that if respondent 1 (respondent 2 before this Board) was the joint family manager and the properties in suit belonged to the joint family, the alienations in question could not be questioned as they were supported by antecedent debts of the father."

On the question of the construction of the settlement deed of 1914, the High Court held that the word "family" meant only the rest of the family, excluding the father; that the object of the deed was to provide for the sons; and that the provision in the deed that the properties given to the mother were to revert to the family meant that the father was excluded from participating in them and therefore had no right to alienate them. They also considered an alternative case which was not argued before their Lordships and need not therefore be referred to. The High Court passed a preliminary decree for partition of the property into two shares and gave respondent 1 one share after setting aside the alienations in respect of it. A decree accordingly was made on 24.1.1944. The appellants appealed to His Majesty in Council against the said decree of the High Court.

16. The question before their Lordships relates to the interpretation of the deed of 3.6.1914 (Ex. P - 2). On considering its terms in their plain and natural meaning, their Lordships have no difficulty in holding that it is a pure maintenance grant of the property to the mother. It begins by saying:

> "As you are my mother and therefore I am bound to protect (maintain) you, the properties (mentioned in the document) have been given away this day to you who are my mother and put in your possession."

After mentioning what debts are saddled on the properties and making her liable for the satisfaction of those debts, the document proceeds to state:

> "You shall as you please enjoy the said properties during your own lifetime without subjecting the same to alienation .... It is settled that after your lifetime the said properties should again pass to my family."

From these clear terms employed in this deed, their Lordships entertain no doubt that this document is a pure maintenance grant, purporting, as it does, to make a provision for the mother's maintenance in consonance with what would be her rights under the general principles of Hindu law. A maintenance grant to a female member of a Hindu family is ordinarily for the life of the grantee. She has no right to alienate the property and after her death the property comes back to the joint family out of whose assets it was carved. Consequently, the words "after your lifetime the said property should again pass to my family" are capable of a plain and natural interpretation in keeping with the ordinary notions of Hindus, and the principles of Hindu law. Their Lordships, therefore, do not find any reason why this plain and natural meaning of these words should be discarded in favour of another, based on conjectural considerations, which the High Court has accepted. There are no words in the deed denoting any idea of

partition or severance between any members of the family. The words of the document, being plain and unambiguous, the fact that the parties had interpreted them in a sense different from that which the words themselves plainly bore could not affect the construction. As was observed by the Earl of Halsbury L. C., see 1900 AC 2601 at p. 263:

> "the words of a written instrument must be construed according to their natural meaning, and it appears to me that no amount of acting by parties can alter or qualify words which are plain and unambiguous."

The opinion of the High Court that the real object of the transaction must have been something other than the maintenance of the mother, namely, to save some property for the son then existing and for the children to be born thereafter, and that the object of the parties could not be that defendant 1 should continue to be a member of the joint family and to have the power to alienate those properties, and that the word "family" means only the rest of the family excluding the executant, in their Lordships, opinion was purely conjectural and based upon evidence the admissibility of which was open to objection. In one part of the judgment the High Court appears to be aware that extraneous evidence was irrelevant to control the terms of this deed and that the plain words thereof must govern its interpretation, and yet in arriving at its conclusion the High Court appears to have departed from this principle and embarked on considerations which were conjectural and hypothetical. There is the further fact that this plain and natural meaning of the deed accords with what the members of the family appears to have understood to be the nature and effect of this document.

17. This really disposes of the appeal, for both the Courts below agree that if the family was joint, the alienations were made for purposes which were binding on the family and its properties including the share of respondent 1. The finding on this issue has not been challenged and there is ample evidence to support this concurrent view.

18. In the course of the respondent's argument, several cases were cited which do not appear to their Lordships to touch the question at issue. If the nature and effect of the deed of 1914 has to be judged by the terms employed in it, it is obvious that other rulings, e. g., those cited before their Lordships, can hardly throw any light upon the construction of this document or provide any useful guidance for the decision of this question. These rulings went on their own facts and do not furnish any general principles which can help in the construction of the document.

19. In conclusion it was argued by the respondents' counsel that the question whether

the deed of 1914 was a partition deed or not was *res judicata* by reason of the decision on this point in the previous suit No. 6 of 1919. The facts relating to that case and the present one (for instance, that the suit of 1919 was ultimately dismissed and the claim was later on com - promised) make it difficult to apply to this case the principles of res judicata. But, apart from that, it is enough, in their Lordships' opinion, to dispose of this matter to say that there was no issue on this point and the question of *res judicata* has to be specially pleaded. The record shows that this question was not argued before the High Court, and before the trial Court respondent 1's pleader argued exactly the contrary of his present argument, namely, that the decision in the previous suit could not operate as res judicata. That was obviously because two of the findings in that suit were in favour of the alienees. Their Lordships are therefore unable to accept this argument.

20. For all these reasons, the preliminary decree of the High Court directing partition of the property and giving other reliefs will be reversed, the decree of the Subordinate Judge restored, and the suit dismissed. Their Lordships will humbly advise His Majesty accordingly. Respondent 1 will pay the costs of the appellants both here and in the High Court.

Appeal allowed.