

Kuppuswamy Chettiar

Vs

A.S.P.A. Arumugam Chettiar and Another

Civil Appeal No. 521 of 1964

(K. N. Wanchoo, R. S. Bachawat, J. C. Shah JJ)

06.09.1966

JUDGMENT

BACHAWAT, J.

In this appeal, the question is whether a deed of release was vitiated by misrepresentation, and if not, whether it operated as a conveyance of the suit properties in favour of the respondents. By a will dated August 9, 1931, their grandfather Ponnuswami bequeathed the immovable properties to his paternal uncle's daughter, Kannammal. In January, 1952, the respondents instituted O.S. No. 24 of 1953 against several persons including Kannammal challenging inter alia the validity of the bequest made by Ponnuswami. On February 1, 1952, Kannammal died leaving as her heir the appellant who was her husband's brother's son. On February 25, 1952, the appellant executed a deed, Ex. B-1, in favour of the respondents releasing the suit properties including certain outstanding due from third parties. On February 26, 1952, the deed was registered. On the same date, the respondents filed an application in O.S. No. 24 of 1953 asking for an order that in view of the release deed the properties be removed from the scope of the suit and the plaint be amended accordingly. This application was allowed by the Court. On January 22, 1953, the respondents instituted O.S. No. 174 of 1953 for the recovery of one of the outstandings mentioned in the release deed against the debtors. They impleaded the appellant as a defendant to the suit, and stated that in view of the release deed they were entitled to recover the debt. The appellant filed a written statement alleging that the release deed was invalid and the suit was not maintainable. The suit was decreed by the Munsif. On January 31, 1955, the appellant, instituted the present suit asking for a decree for setting aside Ex. B-1, recovery of the suit properties and accounts. He alleged that Ex. B-1 was vitiated by misrepresentation, fraud, deceit and undue influence. His main contention was that he was induced to execute the deed on the representation that it was a power-of-attorney authorising the respondents to manage the properties on his behalf. He also submitted that Ex. B-1 being a deed of release could not take effect as a conveyance. The respondents disputed these contentions. The trial Court held that though the release deed was not vitiated by fraud, deceit or undue influence, it was procured by misrepresentation and also that it did not effectively convey the properties. On these findings, the trial Court decreed the suit. The High Court set aside the findings of the trial Court and dismissed the suit. The appellant now appeals to this Court on a certificate granted by the High Court.

The High Court held, and in our opinion rightly, that Ex. B-1 was not vitiated by misrepresentation and the appellant was well aware of the nature of the deed when he executed it. The appellant is somewhat deaf of hearing. But he is a wealthy and shrewd moneylender and capable of managing his affairs. He took the draft of the deed to his own lawyer and after obtaining legal advice, executed it. He himself presented the deed for registration. He received no consideration for the

release, but the motive for the release was the pending litigation and the fact that the properties originally belonged to the family of the respondents. Having regard to the release, the respondents immediately applied in the pending suit for removal of the properties from the scope of the suit and for the consequential amendment of the plaint. After the execution of the deed, the appellant never asked for accounts, nor cared to ascertain how the respondents were managing the properties. In the written statement filed in O.S. No 174 of 1953, he took the plea that the deed of release did not effectively pass title to the outstanding, but he did not then say that it was vitiated by misrepresentation. His present plea that the deed was induced by misrepresentation is an afterthought. In agreement with the High Court, we accept the testimony of the respondents' witnesses and we reject the evidence of the appellant and P.W. 2. The onus is upon the appellant to establish the plea of misrepresentation. He has failed to establish this plea.

Counsel next submitted that Ex. B-1 being a release deed could not operate as a conveyance. Exhibit B-1 was styled a deed of release. The Paper Book does not show whether it was stamped as a release or as a conveyance. After reciting that Kannammal was the owner of the properties and she died leaving the appellant as her heir, the operative part of the deed stated :

"I hereby execute a release deed in your favour to the effect that I do not claim any huq or right whatever in the immovable properties mentioned hereunder valued at about Rs. 12,000 and in the outstandings to the tune of Rs. 8,000 due by others in all Rs. 20,000 (twenty thousand) and all the rights that have been accrued to me under the Hindu law. You yourself shall hold and enjoy undisputedly with absolute rights under the huq release deed executed by me the entire movable and immovable properties belonging to the aforesaid Kannammal and all the outstanding due to her from outsiders. I have not received any consideration whatever for the said release deed."

The question is whether EX. B-1 on its true construction conveyed properties to the respondents. In *T. Mammo v. K. Ramunni* (A.I.R. 1966 S.C. 337, 340.); this Court held :

"a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer".

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under s. 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.

There were two sets of attesting witnesses to Ex. B-1. At first, the deed consisted of four sheets, and it was then attested by eight witnesses. Later, a fifth sheet mentioning the boundaries of the properties was added, and this sheet was attested by four witnesses. Five of the first eight witnesses

gave evidence at the trial. Counsel submitted that none of the last four attesting witnesses gave evidence and having regard to s. 68 of the Indian Evidence Act, 1872, the execution of Ex. B-1 was not proved. There is no force in this contention. The point was not raised in the Courts below. There is nothing to show that any of the last four attesting witnesses was alive, or was subject to the process of the Court during the trial of the suit. The name of one of these witnesses cannot be read, and it is not clear whether he figured as a witness at the trial. Moreover, in his deposition, the appellant clearly admitted that he signed Ex. B-1 and the attestors attested the document. We are satisfied that Ex. B-1 was duly proved.

Counsel next submitted that a release can only enlarge an existing title of the releasee, and there can be no release in favour of a releasee who has no interest in the property. He relied on the following observation in *Hutchi Gowder v. Bheema Gowder* ([1959] 2 M.L.J. 324, 337.) "A release deed can only feed title but cannot transfer title" and another observation in *S.P. Chinnathambiar v. V.R.P. Chinnathambiar* ([1953] 2 M.L.J. 387, 391.), "Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in a person a title where it did not exist..." Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with a release in favour of the holder of a limited estate. Here, the deed was in favour of a person having no interest in the property, and it could not take effect as an enlargement of an existing estate. It was intended to be and was a transfer of ownership. A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. The cases relied upon by counsel are not authorities for the proposition that the operative words of a release deed must be ignored. In *S.P. Chinmathambiar's case* ([1953] 2 M.L.J. 387, 391.), the document could not operate as a transfer, because a transfer was hit by s. 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the releasee. In *Hutchi Gowder v. Bheema Gowder* ([1959] 2 M.L.J. 324, 337.), the question was whether a covenant of further assurance should be enforced by directing the defendant to execute a release deed or a deed of conveyance, and the Court held that the defendant should execute a deed of conveyance. These decisions do not lay down that a deed styled a deed of release cannot, in law, transfer title to one who before the transfer had no interest in the property.

In the result, the appeal is dismissed with costs.

R.K.P.S.

Appeal dismissed.

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