SUPREME COURT OF INDIA

Boddu Venkatakrishna Rao

Vs.

Boddu Satyavathi

C.A.No.245 of 1965

(K. N. Wanchoo, C.J.I., R. S. Bachawat and G. K. Mitter, JJ.)

23.11.1967

JUDGEMENT

MITTER, J.:-

1. This is an appeal by special leave from a judgment and decree of the High Court of Andhra Pradesh confirming the decree passed by the Subordinate Judge at Eluru in O. S. No. 112 of 1955. The only question involved in this appeal is, whether, under the terms of the will of one Boddu Adilakshmi, defendants 4 and 5 took her properties as joint tenants or tenants in common.

2. The facts leading to the litigation may be stated as follows. The testatrix, Adilakshmi, who was childless herself brought up defendants 4 and 5, Boddu Ramarao and Kosury Lakshmamma, from their infancy. At the date of the will executed on June 28, 1913 the girl (defendant 5) had been with her for 15 years and the boy (defendant 4) for 10 years and both were minors at the time. In order to provide for them after her death she executed a will covering all her properties, movable and immovable. The translation of the relevant portion of the will which was in vernacular is as follows :-

" ....my entire property, should hereafter my lifetime pass to both these minors, Lakshmamma and Ramarao, that until their minority period is over, Banda Ramaswamy Garu ...... should act as their guardian and deal with all the affairs, that after their minority period is over the entire property should be in possession of both of them, that both of them should enjoy throughout their lifetime the said property without powers of gift, transfer and sale and that after their death the children that may be born to them should enjoy the same with powers of gift, transfer and sale".

3. The testatrix died within a few days after the execution of the will. Defendants 4 and 5 divided the properties left by the testatrix by a registered partition deed dated December 27, 1929 by which those mentioned in Schedule A to the plaint fell to the share of the 4th defendant while the others mentioned in Schedule B fell to the share of the 5th defendant. The 4th defendant married the 1st defendant, Boddu Satyavathi who is the daughter of the 5th defendant. The 2nd defendant is the daughter born out of this wedlock. Some years thereafter, the 4th defendant married one Boddu Manikyam, the plaintiffs 1 to 4 being the issues of the marriage of the 4th defendant with her. The 5th defendant and the. 1st defendant mortgaged the B schedule properties with the 3rd defendant who brought a suit on the mortgage and obtained a decree. The plaintiffs filed the suit against ah the defendants, in 1955 praying for a declaration that after the death of defendants 4 and 5, the 1st defendant and the children of the 4th defendant or such of them as may be alive at the time would be entitled to share the properties in suit equally between them and that any alienation made by defendants 4 and 5 or their assignees or alienees would not bind the interests of the ultimate reversioners beyond their lifetime and further that the mortgage decree mentioned above was not binding on the plaintiffs or the ultimate reversioners. In the trial court a number of issues were framed but the only question canvassed before the High Court on appeal related to the effect of the will of Adilakshmi. The trial court came to the conclusion that defendants 4 and 5 were only the holders of life estate and that they had succeeded to the estate of Adilakshmi as tenants in common. The High Court held that :

"the right of the children of defendants 4 and 5 to step into the shoes of the parents has been expressly mentioned in the instrument. The residuary estate has been given to the children that may be born to the legatees who, it is provided, should enjoy the properties with powers of gift, transfer and sale. A life estate has been given to defendants 4 and 5 and an absolute estate to their children. On a fair construction of the language, it is difficult to exceed to the contention of the appellants that the children of defendants 4 and 5 who may be actually alive at the time of the death of defendants 4 and 5, would take the properties per capita."

The High Court further held that the conduct of the defendants in partitioning the properties went to fortify the above conclusion. The ultimate conclusion of the High Court was :

"the bequest in favour of defendants 4 and 5 was that of a life estate with a vested remainder in favour of their children and that the children should take the vested remainder per stirpes and not

per capita."

4. In our view, the High Court came to the correct conclusion. Before examining the principles of law involved, we may consider the intention of the testatrix giving her properties to defendants 4 and 5. She brought them up like her own children but she did not want them to have the power of sale or alienation and desired that the properties be preserved for the benefit of their children. It would be reasonable therefore for her to make provision in such a way that the foster children would enjoy the income of the properties for their lives and that their children should inherit the properties as full owners on the death of their parents. The donees of the life estate were minors at the date of the will and there was no knowing when they would get married and how many children each would have. It would therefore reasonable to expect that the testatrix would so arrange her affairs that each of the foster children should get half of the income of the property for life and that their children should succeed to the respective interest of their parents. It is hardly likely that to testatrix would know the difference between joint tenants and tenants in common and she would naturally be eager to treat the foster children as her own children so that the heirs of the foster children would take share and share alike the properties being divided per stirpes among them.

5. Let us now consider the position in law. The law has been summarised in Mulla's Transfer of Property Act (Fifth Edition) at page 226. As early as 1896 it was held by the Judicial Committee of the Privy Council in Jogeswar Narain Deo v. Ram Chandra Dutt, (1896) 23 Ind App 37 at p. 44 (PC) that

"The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided family."

and that it was not right to import into the construction of a Hindu will an extremely technical rule of English conveyancing. Many years later the principle was reiterated in the case of Mt. Bahu Rani v. Rajendra Baksh Singh, 60 Ind App 95 at p. 101: (AIR 1933 PC 72 at p. 75)

6. It was argued before us that there were indications in the will that the intention of the testatrix was that the foster children should take as joint tenants and that this was apparent from the clause in the will which provided that

"the entire property should be in possession of both of them and that both of them should enjoy throughout their lifetime the said property and that after their death the children that may be born to them should enjoy the same.

We do not think that from this one can spell out a joint tenancy which is unknown to Hindu law

except as above stated. The testatrix did not expressly mention that on the death of one all the properties would pass to the other by right of survivorship. We have no doubt on a construction of the will that the testatrix never intended the foster children to take the property as joint tenants. The foster children who became tenants in common partitioned the property in exercise of their right.

7. As by the will the foster children were to have a life interest with a vested remainder to their children, the latter could only take per stirpes and not per capita. As

Halsbury points out (Volume 39 - Third Edition) at page 1106, Art. 1638 that a stirpital distribution would be adopted.

"where the gift was to a number of parents and their children in such a manner that the children were substituted for, or took on the death of, their respective parents; and gifts to several parents and at, or after, their deaths to their children, or to their issue, have received this construction as meaning at or after their respective deaths." It is not necessary to cite many instances where this construction has been adopted. In re Hutchinson's Trusts, (1882) 21 Ch D 811 the testatrix bequeathed personality in trust for A. B. for life and after his decease for his issue, and on failure of his issue to F. H. S. and R. S. share and share alike, and after the decease of the said F. H. S and R. S. to their children share and share alike, and to their heirs for ever. Kay, J. felt that he was bound by authority to say that the words

"after the decease of the said 'Francis Hutchinson Synge and his brother Robert Synge' mean after their respective deaths, or after the decease of each of them, and that there is a disposition of the share of each which was an absolute interest in the first instance upon his death." (See at page 816). This rule was further amplified by Romer, J. in Errington, In re, Gibbs v. Lassam, 1927-Ch 421 where he said (at. 425).

"The rule, stated in its simplest way is this : Where a testator gives the income of his estate to two people, A and B, for their lives and follows that gift by a direction that at their death, or at their deaths, or at or after the death or deaths of A and B, the property is to go to their issue, the Court does not construe the gift as a gift only to take effect on the death of both in favour of the issue of both, but construes it as a gift, to take effect on the death of each, of the share to the income of which the deceased was entitled, to the issue of the deceased." In Mcdonnell v Neil, 1951 AC 342 the Judicial Committee referred to the dictum of Kay, J. in (1882) 21 Ch D 811 (supra) and observed that the construction was borne out by a long line of authority.

8. In the result, the appeal will stand dismissed with costs. The appellant must pay the Court-fees.

Appeal dismissed