

Lakshmi Amma and Another

Vs

Talengalanarayana Bhatta and Another

Civil Appeal No. 156 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

10.03.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment and decree of the Kerala High Court whereby the appeal preferred by respondent No. 1 herein was allowed and the suit was dismissed. The following pedigree table will be helpful in understanding the facts :

(For pedigree see next page.)

NARASIMHA BHATTA (Plaintiff) (died 8-10-1959) | Laxmiamma (appellant-defendant 2) | -----
-----|----- || Parmeshwariamma Adithiamma (daughter) (daughter) - Ishwara
Bhatta | (husband, died 1937) || | -----|----- || | | | Iswara Bhatta daughter |-----
-----| | | | |Narayana Bhatta son son son son daughter daughter(respdt. 1-
defdt.1)##

2. The suit out of which the appeal has arisen was instituted in the name of Narasimha Bhatta who was stated to be of weak intellect by his next friend and daughter Adithiamma for a declaration that the will, dated September 30, 1955, said to have been executed by him was invalid and also for the cancellation of the deed of settlement, dated December 13, 1955, which had also been executed by Narasimha Bhatta in favour of the first respondent and for other incidental reliefs.

The case as laid in the plaint was that the plaintiff, who was of advanced age, was suffering from diabetes for a long time and his physical and mental condition was very weak. Respondent No. 1 was at first unsuccessful in getting a will executed by him by which he bequeathed almost all his properties to the said respondent. In December 1955 he was taken to Mangalore by respondent No. 1 and there the latter managed to get executed Ex. B-3 by him. By this deed of settlement the entire properties which were considerable were given to respondent No. 1, the plaintiff reserving only a life interest for himself besides making some provision for the maintenance of his wife Lakshmiamma. Respondent No. 1 was able to obtain benefits under the settlement deed for himself owing to the weak intellect and old age of the plaintiff. A declaration was thus claimed that the will and the settlement deed were null and void and were not binding on the plaintiff. Respondent No. 1 contested the suit. He denied the existence of the will and maintained that the deed of settlement was not executed under undue influence or when the plaintiff was in a weak state of mind.

3. A number of issues were framed on the pleadings of the parties. The Trial Court by its judgment, dated March 31, 1959, decreed the suit holding that the will was invalid and that the deed of

settlement Ex. B-3 was also invalid. It was held that the plaintiff was a person of weak intellect and was not in a position to take care of himself and manage his affairs properly on the date of the execution of the aforesaid documents. The respondent preferred an appeal to the High Court. After hearing the parties the High Court directed that the evidence of three persons, two of whom were doctors and the third was a document writer, should be recorded by the Trial Court and the record submitted to it. After the receipt of the record the appeal was again heard. During the pendency of the appeal the plaintiff died on October 8, 1959 and his widow Lakshmiamma and two daughters, Adithiamma and Parmeswariamma, were impleaded as legal representatives by an order, dated November 30, 1959. The High Court reversed the judgment of the Court below holding that the gift contained in Ex. B-3 was a spontaneous act of the plaintiff and he had exercised an independent will in the matter of its execution.

4. It appears that before the High Court the decision of the Trial Court relating to the will not challenged. At any rate since the will was never produced the sole question which we are called upon to decide is whether the deed of settlement Ex. B-3 was executed in circumstances which rendered it invalid and void. It was stated in this documents that on September 30, 1955 a will had been executed by the executant but he considered it advisable to execute a settlement deed in respect of his immovable and movable properties and also for the discharge of his debts etc. This, it was stated, was being done in supersession of the will. It was stated that respondent No. 1 had been nursing the executant and looking after him and therefore he was conferring full rights over his properties on him subject to certain conditions. He was to have full right to enjoy the said properties and collect their income till his lifetime. After his death Narayana Bhatta was entitled to take possession of his properties and get the Pattas executed in his name and he was to have absolute the perpetual rights in them. Lakshmiamma was to be maintained by Narayana Bhatta. If she found it inconvenient to live with him he was to pay to her annually till her death two candies of Areca which was to be the first charge on the properties. If he failed to give arecanuts on the due dates he was to pay the price thereof at the prevailing market rate together with interest @ 5 1/2% per annum. Certain debts were mentioned which were intended to be paid off by the executant but if that was not done Narayana Bhatta was to discharge them. The following portion of the deed may be reproduced.

"Besides, only the right of enjoying the properties till my lifetime and collecting their income and using the same for myself, I have no other right, title or interest whatsoever over the properties. I have no right to cancel this deed for any other reason, and such right also I have completely lost and to this intent this deed of settlement has been executed by me out of my free will and pleasure."

5. The first noticeable feature is that the deed of settlement on the face of it was an unnatural and unconscionable document. Narasimha Bhatta made negligible provision for his wife who was his third wife, the first two having died before he married her. She was left mainly to the mercy of respondent No. 1. Admittedly there was a residential house and no provision was made regarding her right to reside in that house till her death. Apparently there was no reason why he should have left nothing to his two daughters or to his other grant-children and give his entire estate to only one grandson namely respondent No. 1.

6. The circumstances leading to the execution of the deed may next be considered. It is common ground that Narasimha Bhatta was in his seventies at the time of its execution. He was suffering from diabetes which had rendered him weak in body. He was living in his house in a village called Sodhankur. He was taken in a taxi accompanied by his wife by respondent No. 1 to Mangalore.

There he was got admitted into Ramakrishna Nursing Home where he remained from December 10 to December 18, 1955. An application was made to the Joint Sub-Registrar, Mangalore, for registering the document at the Nursing Home on December 15, 1955, apparently on the ground that Narasimha Bhatta was not in a fit condition to go to the office of the Registrar. The deed of settlement was then presented to the Joint Sub-Registrar on that very day between 5 and 6 p.m. and the registration proceedings took place there. It was subsequently registered in the book kept by the Joint Sub-Registrar on December 16, 1955.

7. According to the Trial Court Upendra Naik D.W. 5 was the brain behind respondent No. 1 in the matter of getting Ex. B-3 executed and registered which contained dispositions in favour of respondent No. 1 Upendra Naik was an attesting witness and according to him and respondent No. 1 it was Narasimha Bhatta himself who gave the instructions to draft the document; a draft which was read over to him and Ex. B-3 was written only after the draft had been approved by him and that respondent No. 1 was not even present at the time the draft was prepared or the document was registered. The scribe had originally not been examined in the Trial Court. Under the directions of the High Court his statement was recorded on July 12, 1961. According to him no draft was prepared and that he wrote out the document Ex. B-3 at his own house. He put his own signature also as an attesting witness at his own house. He deposed that he wrote out the document Ex. B-3 on December 13, 1955, when certain documents of title were handed over to him. Respondent No. 1 and another person Adakala Ramayya Naik who was his friend came to him and it was Ramayya Naik who asked him to write out Ex. B-3. He further stated that he met Narasimha Bhatta only on the date of the registration and not on the date when he wrote out Ex. B-3. He had known Narasimha Bhatta from a long time and used to write out documents for him. He stated that normally he consulted the person on whose behalf the documents was to be written but in this particular case Ramayya Naik told him that Narasimha Bhatta was in the Nursing Home and that Naik himself would give instructions for preparing the document.

8. It would, therefore, appear that Narasimha Bhatta was not even consulted by the scribe nor was any draft made with his approval which was given to the scribe from which he prepared the document Ex. B-3. The Trial Judge did not place any reliance and in our opinion rightly on the evidence of K. Shaik Ummar, D.W. 4, the Joint Sub-Registrar of Mangalore. His statement has not impressed us as reliable. He said that the wife of Narasimha Bhatta, namely, Lakshmiamma was present during the proceedings for registration and she raised no objection to the document being registered. He admitted that the hands of the executor were trembling at the time he appended signature. There had been a number of complaints against him and with regard to one of them it was stated by him. "I was Sub-Registrar, Kasaragod between 1946 and 1948, at the time I registered a deed authorising adoption. It was an authority given by Mr. K. P. Subba Rao to his wife. It was registered at the residence of the executant in the evening hours. A little earlier the same day I had attended another house registration at Kumbla about 8 to 10 miles from here. To go there one has to cross a river also. There was a complaint against me that Subba Rao's registration took place at night at a time when he was unconscious. I do not know whether the said Subba Rao died the next day. The District Registrar held an enquiry in the matter".

9. We may next advert to the evidence of Lakshmiamma, the wife of Narasimha Bhatta who was also present at the Nursing Home at the time of the execution of document Ex. B-3. According to her statement in the beginning of 1955 Narasimha Bhatta who was suffering from diabetes had a fall after which his left arm and left leg could not be moved by him. His mental faculties were also affected. Since then his condition was getting worse. Five or six months before he fell down respondent No. 1 managed to get a will executed by him in which the dispositions were mainly in

his favour. When the will was executed Narasimha Bhatta was not in a condition in which he could understand what he was doing. As regards the registration proceedings in the Nursing Home, she stated, that it was the first respondent who gave the document into the hands of an officer who asked Narasimha Bhatta to sign the document and also to affix his thumb impression. Narasimha Bhatta looked scared but respondent No. 1 shouted "sign this and give your thumb impression, grandfather". According to her she protested against the document being executed in this matter but respondent No. 1 told her to keep quiet. In spite of a lengthy cross-examination nothing was brought out to show why this lady who is the grandmother of respondent No. 1 and who would be expected to be impartial in the dispute between her children and grand-children should perjure herself and make a false statement. It is true that she would be interested, to a certain extent, in getting the document cancelled or set aside but we see no reason to brush aside her statement with regard to the condition of Narasimha Bhatta at the time the document was executed and the circumstances in which it was got registered. It may be mentioned that the Trial Court also relied on her evidence. He do not find any cogent or convincing reasons in the judgment of the High Court for disbelieving Lakshmiamma nor are we satisfied that the reasons given for accepting the evidence of Upendra Naik D.W. 5 and discarding the testimony of the Scribe C.W. 1 are satisfactory. It is also difficult to comprehend how the High Court thought that the terms of Ex. B-3 were not unconscionable enough as to raise a fair amount of suspicion in the matter. In view of the unnatural character of the dispositions made in Ex. B-3 coupled with the other facts and circumstances mentioned above the burden shifted to respondent No. 1 to establish that Ex. B-3 was executed by Narasimha Bhatta voluntarily and without any external pressure or influence while he was not of infirm mind and was fully aware of the dispositions of gifts which he was making in favour of respondent No. 1.

10. On behalf of respondent No. 1 main reliance has been placed on the evidence of certain doctors who were the attesting witnesses. The first was Dr. K. P. Ganessian D.W. 1. He was a highly qualified doctor and according to this statement he was taken to the house of Narasimha Bhatta in the village (Sodhankur) to examine him accompanied by Dr. Vishwanath Shetty. It was stated by Dr. Ganessian that he was not suffering from partial paralysis and was able to understand the questions put to him. This was towards the end of 1955. He examined him against in the Nursing Home at Mangalore where he found him mentally healthy. He had also attested the documents Ex. B-3. He could not produce any record of the examination made by him nor was any record of the Nursing Home produced at the trial. He admitted that he had never attested any document like Ex. B-3 before and he attested the same at the request of respondent No. 1. He admitted that he did not conduct any examination of Narasimha Bhatta with a view to discovering his capacity to execute the document nor did he know the contents of the documents. The impression he got was that it was a will. The evidence of Dr. Ganessian was not accepted by the Trial Court in view of the discrepancy between his statement and that Dr. U. P. Mallayya D.W. 7 as also the lack of responsibility shown by the doctor in attesting a will or a document of the nature of Ex. B-3 in the manner enjoined by certain books on medical jurisprudence and in particular Taylor's Medical Jurisprudence. The view of the Trial Court was that these doctors had not given any satisfactory explanation as to why they did not properly examine the mental condition of Narasimha Bhatta at the time he executed the document and that they had merely done the attestation and had never cared to ascertain whether the signature had been subscribed by the executant while he was of a sound disposing mind. Now Dr. Ganessian was a consulting physician of the Nursing Home. He was quite guarded in his statement relating to the metal condition of Narasimha Bhatta because he stated that when he first examined him towards the end of 1955 in the village which was only a short time before he was taken to Mangalore Nursing Home he found him mentally alright to the best of his knowledge. He further stated that there was no reason to suspect any mental deformity in the executant at the time he

attested the document. Dr. M. Subraya Prabhu C.W. 2 who was working as a doctor in the Nursing Home in 1955 deposed that case sheets were maintained in the hospital and that the case sheet relating to Narasimha Bhatta had been taken by Dr. U. P. Mallayya at the time the latter was examined as a witness. According to Dr. Prabhu Narasimha Bhatta would sometimes answer questions put to him and sometimes his wife used to answer the questions put by the doctor. The case sheets, if produced, would have shown what were the except ailments from which Narasimha Bhatta was suffering when he was in the Nursing Home and what treatment was given to him under the directions of Dr. Ganessan who maintained that his suspicion was that a liver abscess had ruptured into the lung due to dysentery. In the absence of the record of the Nursing Home or any over record we find it difficult to accept what Dr. Ganessan has stated about the mental condition of Narasimha Bhatt at the time when the document Ex. B-3 was executed and registered. Dr. U. P. Mallayya's evidence was also not believed by the Trial Court and after going through his evidence we are not satisfied that his statement could be relied upon with regard to the true condition, physical as well as mental, of Narasimha Bhatta at the time Ex. B-3 was executed.

11. On behalf of the plaintiff certain doctors were produced. The Trial Court had, while deciding the question whether the suit should be permitted to proceed in forma pauperis, recorded an order on March 15, 1957. In those proceedings Dr. Kambli had been examined as a witness. That doctor treated Narasimha Bhatta from March 6, 1956 to March 12, 1956 and he had issued a certificate Ex. A-1 wherein it was stated that Narasimha Bhatta was in a weak condition and was subject to loss of memory attended by mental derangement and dotage. The observation of the Trial Court itself was that when Narasimha Bhatta, under its directions, was brought to the Court on March 11, 1957, he looked blank and did not answer when the Court asked him what his name was. According to what Narasimha Bhatta stated he was 25 or 30 years of age, at that time. He could not tell the name of his wife and he was bodily carried by two persons to the Judge's chamber. It was, therefore, found that he was a person of weak mind and was incapable of making his own decisions and conducting his affairs. It may be that the condition of Narasimha Bhatta on March 11, 1957 may not throw much light on what his condition was in December 1955 but the evidence of Dr. Kambli who had examined him only a couple of months after the execution of the document shows that Narasimha Bhatt was suffering from various symptoms which are to be found in a case of advanced senility particularly when a person is also suffering from a disease like diabetes - a wasting disease.

12. We are satisfied that Narasimha Bhatta who was of advanced age and was in a state of senility and who was suffering from diabetes and other ailments was taken by respondent No. 1 who had gone to reside in the house at Sodhankur village a little earlier in a taxi along with Lakshmiamma to the Nursing Home in Mangalore where he was got admitted as a patient. No draft was prepared with the approval or under the directions of Narasimha Bhatta nor were any instructions given by him to the Scribe in the matter of drawing up of the document Ex. B-3. An application was also made to the Joint Sub-Registrar, Mangalore for registering the document at the Nursing home by someone whose name has not been disclosed not has the application been produced to enable the Court to find out the reasons for which a prayer was made that the registration be done at the Nursing Home. Lakshmiamma, the wife of Narasimha Bhatta who was the only other close relation present has stated in categorical terms that the document was got executed by using pressure on Narasimha Bhatta while he was of an infirm mind and was not in a fit condition to realize what he was doing. The hospital record was not produced nor did the doctor who attended on Narasimha Bhatta at the Nursing Home produce any authentic data or record to support their testimony. Even the will was not produced by respondent No. 1 presumably because it must have contained recitals about the weak state of health of Narasimha Bhatta. The dispositions which were made by Ex. B-3, as already pointed out before, were altogether unnatural and no valid reason or explanation has been given why

Narasimha Bhatta should have given everything to respondent No. 1 and even deprived himself of the right to deal with the property as an owner during his lifetime. All these facts and circumstances raised a grave suspicion as to the genuineness of the execution of the document Ext. B-3 and it was for respondent No. 1 to dispel the same. In our opinion he has entirely failed to do so with the result that the appeal must succeed and it is allowed with costs in this Court. The decree of the High Court is set aside and that of the Trial Court restored.

</html