Gulam Abbas

Vs

Haji Kayyum Ali and Others

Civil Appeal No. 2134 of 1970

(A. N. Grover, M. H. Beg, A. K. Kukherjea, JJ)

18.09.1972

JUDGMENT

BEG, J. -

1. This is a Defendant's appeal by Special Leave against the judgment and decree of the High Court of Madhya Pradesh allowing a second appeal in a partition suit between members of a family governed by Muslim Law. The Defendant-Appellant and the Plaintiff-Respondent are both sons of Kadir Ali Bohra who died on April 5, 1952 leaving behind five sons, a daughter and his widow as his heirs. It appears that Kadir Ali has incurred debts so heavily that all his property would have been swallowed up to liquidate these. Three of his sons, namely, Gulam Abbas, defendant, No. 1, Abdullah, defendant No. 2, and Imdad, defendant No. 3, who has prospered, came to his rescue so that the property may be saved. But, apparently, they paid up the debts only in order to get the properties for themselves to the exclusion of the other two sons, namely, Kayyumali, plaintiff-Respondent, and Nazarali, defendant No. 4, who executed, on October 10, 1942, deeds acknowledging receipt of some cash and movable properties as consideration for not claiming any rights in future in the properties mentioned in the deeds in which they gave up their possible rights in future. The executant of each deed said :

> "I have accordingly taken the things mentioned above as the equivalent of my share and I have out of free Will written this. I have no claim in the properties hereafter and if I put up a claim in future to any of the properties I shall be proved false by this document. I shall have no objection to my father giving any of the properties to my other brothers ....."

During the father's life-time, when all chance or expectation of inheritance by either Kayyumali or Nazarali could be destroyed by disposition of property, neither of these two raised his little finger to object. The only question before us now is whether the plaintiff and defendant No. 4 are estopped by their declarations and conduct and silence from claiming their shares in the properties covered by these deeds.

2. The first Appellate Court, the final court on questions of fact, recorded the following findings, after examining the whole set of facts before it, to conclude that the plaintiff and defendant No. 4 were estopped from claiming their shares in the inheritance :

> "In the instant case, it is evident that the release deeds Ex. D/2 and Ex. D/3 were executed by the plaintiff and defendant No. 4, Nazarali, when the defendants No. 1, 2 and 3 had with their labour and money straightened the status of his father Kadarali

> and had cleared up the debts which would have devoured the whole property of Kadar Ali and the plaintiff was doing nothing and was in a way a burden to his father. In such state of things when the plaintiff and defendant No. 4 executed the release deeds in question, it can be said that it was a family settlement to prevent the future disputes that may arise and to secure the peace and happiness in the family of the parties and thereby induced the defendants No. 1, 2 and 3 to believe that the plaintiff would not claim a share in the suit properties and led them to discharge the debts due to Kadar Ali and to be in affluent circumstances themselves as they are at present and the plaintiff now seeks benefit of it against his own past undertakings."

3. The High Court reproduced the passage, quoted above, from the judgment of the first appellate Court, without any dissent from any of the findings of fact contained there. It specifically held that the Court below was correct in finding that consideration had passed to the plaintiff and defendant No. 4 for the relinquishment of their future possible rights of inheritance. It proceeded on the assumption that, if the law had not prohibited the transfer of his right of inheritance by Muslim heir, an estoppel would have operated against the plaintiff and defendant No. 4 on the findings given. It held that the rule of Muslim Personal law on the subject has the same effect as Section 6(a) of the Transfer of Property Act which lays down :

> "The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred."
>
> It pointed out that, although, Section 2 of the Transfer of Property Act provided that nothing in the second Chapter of the Act will be deemed to affect any rule of Mohammedan Law, so that Section 6(a) contained in Chapter 2 could not really be applied, yet, the effect of Mohammedan Law itself was that, "the chance of a Mohammedan heir apparent succeeding to an estate cannot be the subject of a valid transfer of lease" (See : Mulla's Principles of Mohammedan Law - 17th Edn., S. 54, page 45). After equating the effect of the rule of Mohammedan Law with that of Section 6(a) of the Transfer of Property Act, the High Court applied the principle that the estoppel can arise against statute to what is considered to be a estoppel put forward against a rule of Mohammedan Law.

4. The High Court had relied on a decision of the Madras High Court in Abdul Kafoor v. Abdul Razack, (AIR 1959 Mad 131) which had been followed by the Kerala High Court without giving fresh reasons, in Valanhivil Kunchi v. Eengayil Pattikavil Kunbi Avulla, (AIR 1964 Ker 200) in preference to the view adopted by the Allahabad High Court in Latafat Hussain v. Hidayat Hussain, (AIR 1936 All 573) followed by the Travancore Cochin High Court in Kochunni Kachu Muhammed v. Kunju Pillai Muhammed. (AIR 1956 Tra 217) The principal question for decision before us is whether the Madras or the Allahabad High Court view is correct.

5. The Madras High Court, in Abdul Kafoor's case (supra) had specifically dissented from the Allahabad view in Latafat Hussain's case (supra) on the ground that, if an estoppel was allowed to be pleaded as a defence, on the strength of relinquishment of a spes successionis for consideration, the effect would be to permit the provisions of Mohammedan Law to be defeated. Hence, it held that such as attempt would be struck by Section 23 of the Indian Contract Act. The object, however, of the rule of Mohammedan Law, which does not recognise a purported transfer of a spes successionis as a legally valid transfer at all, is not to prohibit anything but only to make it clear

what is and what is not a transferable right or interest in property just as this is what Section 6(a), Transfer of Property Act is meant to do. Its purpose could not be to protect those who receive consideration for what they do not immediately have so as to be able to transfer it at all. It could, if protection of any party to a transaction could possibly underlie such a rule, be more the protection of possible transferees so that they may know what is and what is not a legally enforceable transfer. With due respect, we are unable to concur with the view of the Madras High Court that a renunciation of an expectancy, as a purported but legally ineffective transfer, is struck by Section 23 of the Indian Contract Act. As it would be void as a transfer at all there was no need to rely on Section 23, Contract Act. If there was no "transfer" of property at all, which was the correct position, but a simple contract, which could only operate in future, it was certainly not intended to bring about an immediate transfer which was all that the rule of Muslim Law invalidated. The real question was whether, quite apart from any transfer of contract, the declarations in the deeds of purported relinquishment and receipt of valuable consideration could not be parts of a course of conduct over a number of years which, taken as a whole, created a bar against a successful assertion of a right to property when the right actually came into being. An equitable estoppel operates, if its elements are established, as a rule of evidence preventing the assertion of rights which may otherwise exist.

6. We have also examined the earlier decisions of the Madras High Court in Asa Beevi v. Karuppan, (ILR (1918) 41 Mad 365) where Macnaghtan's "Principles and Precedents of Moohumudan Law", Sir Roland Wilson's Digest of "Anglo Mohhamadan Law" p. 260, and Ameer Ali's "Mohammedan Law" have been referred to in support of the conclusion that "there is a large preponderance of authority in favour of the view that a transfer or renunciation of the right of inheritance before that right vests is prohibited under the Mohamadan Law". The whole discussion of the principle in the body of the judgment, however, brings out the real reason is not a prohibition but that there cannot be a renunciation of a right which is incohate or incomplete so long as it remains in that state. In fact, it is not correct to speak of any right of inheritance before it arises by the death of the predecessor who could have, during his life-time, deprived the prospective heir of his expectation entirely by disposition inter vivos.

7. Sir Roland Wilson, in his "Anglo Mohhamadan Law" (p. 260, Paragraph 208) states the position thus :

> "For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law, nemo est heres viventis ..... a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; see Abdul Wahid, L.P. 12 I.A., 91, and 11 Cal 597 (1885) which was followed in Hasan Ali, 11 All 456, (1889). The converse is also true : a renunciation by an exepectant heir in the life-time of his ancestor is not valid, or enforceable against him after the vesting of the inheritance."

This is correct statement, so far as it goes, of the law, because a bare renunciation of expectation to inherit cannot bind the expectant heir's conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner in to not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppel remains untouched by this statement.

8. As the Madras Full Bench pointed out, the subject was discussed more fully in Ameer Ali's "Mohammedan Law" (Vol. II) than elsewhere. There we find the reason for or the object underlying the rule. It is that there is nothing to renounce in such a case because an expectancy remains at most before it has materialized only an "inchoate right". It is in this light that the following observations in Hurmoot-Ool-Nisa Begum v. Allahdia Khan, ((1871) 17 WRPC 108) is explained by Ameer Ali :

> "According to the Mohammedan Law the right of inheritance may be renounced and such renunciation need not be express but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another."

9. Ameer Ali explained, citing an opinion of the law officers, given in Khanum Jan v. Jan Bibi : ((1827) 4 SDA Reps 210)

> "Renunciation implies the yielding up of a right already vested, or the ceasing or desisting from prosecution a claim maintainable against another. It is evident that, during the life-time of the mother the daughters have no right of inheritance and their claim on that account is not maintainable against any person during her life-time. It follows, therefore, that this renunciation during the mothers life-time of the daughters' shares is null and void it being in point of fact giving up that which had no existence."

10. In view of the clear exposition of the reason for the rule contained in the authorities relied upon by the Full Bench of the Madras High Court in Asa Beevi's case (supra), we think that it described, by oversight, a rule based on the disability of a person to transfer what he has not got as a rule of prohibition enjoined by Mohammedan Law. The use of the word "prohibited" by the Full Bench does not really bring out the object or character of the rule as explained above.

11. It may be mentioned here that Muslim Jurisprudence, where theology and moral concepts are found sometimes mingled with secular utilitarian legal principles, contains a very elaborate theory of acts which are good (because they proceed from 'hasna'), those which are bad (because they exhibit "qubuh"), and those which are neutral per se. It classifies them according to verying degree of approval or disapproval attached to them (see : Abdur Rahim's "Mohammedan Jurisprudence" p. 105). The renunciation of a supposed right, based upon an expectancy, could not, by any test found there, be considered "prohibited". The binding force in future of such a renunciation would, even according to strict Muslim Jurisprudence, depend upon the attendent circumstances and the whole course of conduct of which it forms a part. In other words, the principles of an equitable estoppel, far from being opposed to any principle of Muslim Law will be found, on investigation, to be completely in consonance with it.

12. As already indicated, while the Madras view is based upon the erroneous assumption that a renunciation of a claim to inherit in future is in itself illegal or prohibited by Muslim Law, the view of the Allahabad High Court, expressed by Suleman, C.J., in Latafat Hussain's case (supra) while fully recognising that "under the Mohammedan Law relinquishment by an heir who has no interest in the life-time of his ancestor is invalid and void", correctly lays down that such an abandonment may, nevertheless, be part of a course of conduct which may create an estoppel against claiming the right at a time when the right of inheritance has accrued. After considering several decisions, including the Full Bench of the Madras High Court in Asa Beevi's case (supra) Suleman, C.J., observed at page 575 :

> "The question of estoppel is really a question arising under the Contract Act and the Evidence Act, and is not a question strictly arising under the Mohammedan Law."

He pointed out (at pages 575-576) :

> "It has been held in this Court that contingent reversioners can enter into a contract for consideration which may be held binding on them in case they actually succeed to the estate : See 19 ALJ 799, and 21 ALJ 235. It was pointed out in 24 ALJ 873, at pp. 876-77, that although a reversionary right cannot be the subject of a transfer, for such a transfer is prohibited by Section 6, T.P. Act, there was nothing to prevent a reversioner from so acting as to estop himself by his own conduct from subsequently claiming a property to which he may succeed. Among other cases reliance was placed on the pronouncement of their Lordships of the Privy Council in 40 All 487, where a reversioner was held bound by a compromise to which he was a party."

13. Incidentally, we may observe that, in Mohammad Ali Khan v. Bisar Ali Khan, (AIR 1928 Oudh 67) the Oudh Chief Court has relied upon Hurmoot-Ool-Nisa Bagum's case (supra) to hold that "according to Mohammedan Law there may be renunciation of the right to inheritance and such renunciation need not be express but may be implied from the ceasing or desisting from prosecution a claim maintainable against another".

14. As we are clearly of opinion that there is nothing in law to bar the application of the principle of estoppel, contained in Section 115 of the Evidence Act, against the plaintiff and defendant No. 4, upon the totality of facts found by the final Court of facts which were apparently accepted by the High Court, it is not necessary for us to deal at length with the question whether the facts found could give rise to the inference of a "family settlement" in a technical sense.

15. It is true that in Latafat Hussain's case (supra) Suleman, C.J., had observed that the conclusion of the Subordinate Court, that there had been an arrangement between a husband and a wife "in the nature of a family settlement which is binding on the plaintiff", was correct. This was held upon circumstances which indicated that a husband would not have executed a deed of Wakf if the wife had not relinquished her claim to inheritance. In other words, an arrangement which may avoid future disputes in the family, even though it may not technically be a settlement or definition of actually disputed claim, was referred to broadly as a "family arrangement". It was in this wide sense that, in the case before us also, the first appellate court had considered the whole set of facts and circumstances examined by it to be sufficient to raise the inference of what it described as "a family settlement".

16. As our law relating to family arrangements is based on English Law, we may refer here to definition of a family arrangement in Halsbury's Laws of England, (Halsbury's Laws of England, 3rd Edn., Vol.17, pp. 215, 216) where we fin : "A family arrangement is an agreement between members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour". We also find there : "The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied. It is pointed out there : "Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

17. As we have already indicated, it is enough for the decision of this case that the plaintiff and defendant No. 4 were estopped by their conduct, on an application of Section 115, Evidence Act, for claiming any right to inheritance which accrued to them, on their father's death, covered by the deeds of relinquishment for consideration, irrespective of the question whether the deeds could operate as legally valid and effective surrenders of their spes successionis. Upon the facts and circumstances in the case found by the courts below we hold that the plaintiff and defendant No. 4 could not, when rights of inheritance vested in them at the time of their father's death, claim these as such a claim would be barred by estoppel.

18. The result is that we allow this appeal, set aside the Judgment and the decree of the High Court, and restore that of the first appellate court. In this circumstances of this case, we order that the parties will bear their own costs. THE STATE OF TAMIL NADU, APPELLANT v. MADURAI SOUTH INDIA CORPORATION (P) LTD., RESPONDENT.

Civil Appeals Nos. 1845-1847 (NT) of 1969 (Appeals by certificate from the Orders, dated July 3, 1967, of the High Court of Madras in Writ Petitions Nos. 2684 to 2686 of 1966), decided on September 1, 1972.

(FROM MADRAS HIGH COURT)

JUDGMENT

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J. - These three appeals by certificate under Article 133(1)(c) of the constitution are against the judgment of the Madras High Court which allowed the three writ petitions filed by the Respondent under Article 226 of the Constitution of India by which it challenged the proceedings proposed to be taken by the Sales Tax Officer under the Madras General Sales Tax Act, 1959 (hereinafter called the Act) and the rules thereunder in respect of sale transactions in the assessment years 1960-61 to 1964-65 and 1966-67 (up to October, 1966).

2. The first petition was for quashing the summons issued under the Act and requiring the respondent to furnish certain vouchers of cotton yarn, branch transfer accounts and particulars relating to the years 1960-61 to 1964-65 and 1966-67 (up to October, 1966). The second petition was for directing the appellant to forbear from taking any steps for verification and in disallowing the exemption for the second and subsequent sales of yarn purchased by the respondent company from the Madurai Mills Limited in respect of the aforesaid period. The third petition prayed for the issue of Mandamus to the appellant to forbear from disallowing the exemption for the second and subsequent sales of yarn estimated at Rs. 5,08,247/- for the assessment year 1965-66. The High Court of Madras allowed all the three petitions and quashed the proceedings as prayed for.

3. The respondent is a registered dealer with its head office at Madras and branches in Madurai, Rajapalayam and Salem inside the State of Tamil Nadu and also in certain places in the States of Kerala and Andhra Pradesh including Hyderabad. During the years 1960-61 to 1964-65 and 1966-67 (up to October, 1966) it was dealing in various goods including cloth, yarn, etc. and was being assessed to tax under the Act on the turnover of the business. The gross turnover of the respondent included sales of yarn the Madurai Mills Limited to the respondent to its head office in Madras and also to its branches. The method which was followed by the head office of the respondent was that it would place orders from Madras on Madurai Mills Limited pursuant to which the supplies would be

made by the Madurai Mills Limited either to the respondent's head office or to its branches in accordance with the instructions given by the head office. Where deliveries were made to the respondent inside the State the seller collected the tax due under the Act with reference to Item 3 of the second Schedule to the Act. But in respect of deliveries made to the respondent's branches outside the State, the Madurai Mills collected tax under Section 3 of the Central Sales Tax Act (hereinafter called the Central Act). During the year 1965-66 the respondent transferred to Madras State certain quantities of yarn from the stock so purchased at its branches in the State of Andhra Pradesh and Kerala and sold the same to local dealers. The appellant thereupon called upon the respondent to produce accounts and certain other documents on the assumption that the sales so effected were chargeable to tax as first sales in the State. The respondent objected to these proceedings on the ground that the sales were second sales not liable to tax and filed three writ petitions which are subject of these appeals.

4. It was not disputed that the sales by the Madurai Mills to the respondent in which deliveries were made to branches in the State of Andhra Pradesh and Kerala have been charged to tax under the provisions of the Central Act. The only question in controversy is whether the sales made locally of yarn transferred to the Madras State from the stocks of yarn in the States of Andhra Pradesh and Kerala in respect of Sales Tax which had already been charged as inter-state sales are again liable to tax as first sales in the State of Madras.

5. In order to resolve this controversy, it would be useful to notice the relevant provisions of the Act and Central Act. Section 3(1) of the Act imposes a multi point tax, while sub-section (2) provides that notwithstanding anything contained in sub-section (1) in the case of sale of goods mentioned in the first Schedule the tax under the Act shall be payable by a dealer at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever may be the quantum of turnover in that year. Section 4 deals with levying of tax in respect of declared goods, while Section 4-A, which was introduced by Madras Act 6 of 1963, provides for refund of tax in certain cases. Section 6 enjoins that the tax under the Act is in addition to the tax under the Central Act of any other law.

6. Sections 4 and 4-A are as under :

"4. Notwithstanding anything contained in Section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the state of declared goods at the rate and only at the point specified against each in the Section Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year.

4-A. (1) Where a tax has been levied and collected under Section 4 in respect of the sale or purchase of declared goods and such goods are sold in the course of inter-state trade or commerce the tax so levied and collected shall be refunded to such person in such manner and subject to such conditions as may be prescribed.

(2) Where a tax at the point of last purchase in the State has been levied and collected under this Act in respect of goods liable to tax at such point and where the said purchase ceases to be the last purchase in the State by reason of a subsequent purchase of such goods by another dealer in the State, the tax so levied and collected shall be refunded to the dealer concerned in such manner and subject to such conditions as may be prescribed."

The declared goods are specified in the second schedule to the Act of which cotton yarn, excluding

cotton yarn waste, is liable to tax under the Act at the point of first sale in the State at the rate of 2 per cent. The Central Act defines 'declared goods' as those declared under Section 14 to be of special importance in inter-state trade or commerce. Section 3 lays down the principles for determining when a sale or purchase of goods is said to take place. In the course of inter-state trade or Commerce under Section 14(ii)(b) cotton yarn, but not including cotton yarn waste, has been declared to be of special importance in inter-state trade or commerce. Section 15 ensures that in the case of declared goods they should in all circumstances bear only a single burden a specified stage and at the prescribed rate. This section as amended in 1958 is as follow :

> "Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchases of declared goods be subject to the following restrictions and conditions, namely -
>
> (a) The tax payable under that law in respect of any sale or purchase of such goods inside the state shall not exceed two per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-state trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

7. The High Court of Madras on the interpretation of the aforesaid provisions and having regard to the modus operandi of the respondent in respect of the inside sales or inter-state sales of cotton yarn was of the view : "Where the terms of a first sale are such that it may well be said to be an inside sale but it bears also the characteristics of an inter-state sale, and, therefore, it has been tax under the Central Act, that sale being physically a first sale inside the State out of which the inter-state sale has been carved out, it should follow that as the tax levied on the inter-state sale must prevail, there will be no tax liability on the same sale under the local Act on the ground that it is an inside sale". In this view it held that when the goods pursuant to the inter-state sale have been delivered outside the State but brought back into the State and then sold, that sale cannot in fact or in law be regarded as the first sale within the meaning of the second schedule to the local Act. It did not, however, think it necessary to consider on the facts of the case "what the position will be when a sale is an inside sale within the meaning of Section 4 of the Central Act and is also an inter-state sale, because it occasioned the movement of the goods to another State and out of the goods delivered outside the State pursuant to the interstate sale, a part has been brought into the State and sold again as an inside sale, in the sense that every incident including delivery is in the State". In our view, this question does not arise because what we have to consider is having regard to the course of transactions of sale which has not been traversed by the appellant, appellant, whether the sale by the Madurai Mills pursuant to the orders placed by the respondent, the cotton yarn sold to its branches in Andhra Pradesh and Kerala in respect of which the price was paid in the State of Madras, is an inside sale, and also a first sale in the State. It appears to us that when the cotton yarn was sold to the respondent in Madras as the goods were in the State of Madras when the contract of inter-state sale was entered into, it will be a first sale in the State. Once that sale has taken place, and the goods were delivered in the State of Andhra Pradesh and Kerala, pursuant to that inter-state sale, there was no further sale to the respondent when it transferred to its branches those goods which have already been subject to tax in Madras nor can such sales if they were sold in Madras be subject to tax.

8. Whether the provisions of Section 15 makes an inroad into the texture of the local law, so that Section 6 of the local Act will have to be read subject to and in conformity with the provisions of Section 15 and to policy underlining that section and whether Section 6 will be inapplicable to sale of declared goods, need not be considered in this case because are clearly of the view that the sale of cotton yarn sold to the branches the respondent in Andhra Pradesh and Kerala though they were inter-state sales of declared goods, were the first sales inside the State of Tamil Nadu and that being so if those goods are transferred to Madras and sold Madras, they are exempt from being taxed again since they have already been subjected to tax on the first sale inside the State. We are, therefore, in agreement with the conclusions of the Madras High Court.

9. The appeal, is accordingly, dismissed with costs.

</html