Umakant Vishnu Junnarkar

Vs

Smt. Pramilabai and Another

Civil Appeal No. 1305 of 1967

(C. A. Vaidialingam, H. R. Khanna, Y. V. Chandrachud JJ)

06.11.1972

JUDGMENT

VAIDIALINGAM, J. -

1. The appeal by special leave is directed against the judgment and decree, dated September 9, 1966, of the Bombay High Court dismissing summarily first appeal No. 676 of 1966 filed by the plaintiff-appellant.

2. The fact leading up to the dismissal of the said appeal may be stated. The plaintiff instituted special suit No. 62 of 1964 in the court of Civil Judge (Senior Division) Thana for a declaration that the gift deed, dated March 30, 1943, executed by his adoptive father in favour of the first respondent herein was void. His father asked for a declaration that the second respondent herein was not entitled to execute the decree that he had No. 3 of 1963. The appellant was adopted by Vishnu Raghunath Jannarkar alias Baburao on February 25, 1941. The adoptive father according to the plaintiff had received cash and ornaments of the value of about Rs. 3,000/- from his father and the said assets constituted ancestral property in his hands. Baburao was also receiving some income from a family temple, apart from certain other items of income received by him as salary from the P.W.D. Department. It was the case of the plaintiff that his adoptive father, from and out of the family assets in his hands, had purchased a plot of land on May 5, 1939, for about Rs. 1,000/- and also constructed a house in 1940 for about Rs. 10,000/-. The ancestral assets having been utilised for the purchase of the land and the construction of the house, it was a further case of the plaintiff that they both constituted ancestral property which his adoptive father had no power to deal with. On adoption by Vishnu Raghunath Jannarkar on February 25, 1941, he had become a coparcener in the family of Vishnu and in consequence was entitled to a share in the assets and the properties owned by the adoptive father.

3. Nevertheless the adoptive father executed a gift deed On March 30, 1943, in favour of the first respondent, the adoptive mother. Baburao died on October 17, 1946. The first respondent executed on agreement in favour of the second respondent herein regarding the house on November 28, 1962. According to the terms of the agreement the first respondent was to convey the land and the building (the suit properties) to the second respondent for Rs. 20,000/-. As the sale deed was not executed the second respondent filed special suit No. 3 of 1963 for specific performance on March 3, 1963 and obtained a decree on April 30, 1964. The plaintiff claimed to have knowledge of the decree in the suit only when the second respondent was attempting to dispossess the plaintiff and his adoptive mother, the first respondent, from the suit premises. In view of these circumstances the plaintiff-appellant prayed for a declaration as stated above.

4. The first respondent filed a written statement accepting the allegations in the plain as correct. The second respondent contested the claim on various grounds. According to him, Baburao did not have ancestral property in his hands. On the other hand Baburao was in government service as an oversear in the State P.W.D. He was also giving assistance to various other persons in the matter of construction and as such he was getting other income. In view of the very low cost of living, he was able to put by a major portion of his income from and out of which Baburao purchased the suit plot and constructed the house thereon. The second respondent further pleaded that the present suit had been filed at the instance of his adoptive mother in order to defeat the decree in the specific performance suit. He further contended that the plaintiff had not been adopted by Baburao and that the suit was barred by limitation.

5. The Trial Court found in favour of the plaintiff and held that he had been adopted by Baburao. The contention of the second respondent that the suit was barred by limitation was rejected. But on the main question regarding the character of the suit properties, the Trial Court held that these were the self-acquired properties of Baburao which the latter was entitled to deal with in any manner that he liked. On this basis it was further found that the gift deed executed by Baburao in favour of his wife first respondent herein (the mother of the plaintiff) was valid. The Trial Court also rejected the contention of the plaintiff that the gift deed, dated March 30, 1943, was a sham and nominal transaction. On the other hand the court found that the adoptive mother obtained full the title under the gift deed and that the agreement entered into by her with the second respondent was valid. It was also found that the decree obtained by the second respondent in the specific performance suit was valid and that he was entitled to execute the sale. In consequences of the finding that the suit properties were the self-acquired properties of Baburao and that the gift deed, dated March 30, 1943, was valid and that the second respondent was entitled to execute the decree in the specific performance suit, the Trial Court dismissed the plaintiff's suit.

6. The plaintiff challenged the decree and judgment of the Trial Court in the first appeal No. 676 of 1966, before the Bombay High Court. The Court by its order, dated September 9, 1966, summarily rejected the appeal in a single word 'dismissed'.

7. Mr. B. D. Bal, learned counsel for the appellant raised there contentions before us. First - that the order of the High Court summarily dismissing the first appeal without giving any reasons is contrary to Section 96, and Order 41, Rues 11(1) and 31 of the Code of Civil Procedure. Second - the finding that the suit properties are the self-acquired properties of Baburao is contrary to the evidence adduced in the case. Third - in any event it should have been held that the gift deed, dated March 30, 1943, executed by Baburao was a sham and nominal transaction not intended to be acted upon and such the first respondent had not right to enter into an agreement to sell the same in favour of the second respondent.

8. On the other hand Mr. B. N. Lokur, learned counsel for the second respondent, pointed out that in view of the evidence adduced by the plaintiff, the High Court was satisfied that the appeal filed by the plaintiff did not even raise any arguable point to justify the issue of notice to the opposite party and that is why the appeal was dismissed summarily. The counsel urged that there has been no violation of any of the provisions of the Civil Procedure Code when the High Court dismissed such an appeal summarily. The counsel further contended that the finding that the suit properties are the self acquired properties of Baburao and the further finding that the gift deed was not a sham or nominal document are fully based upon the evidence adduced in the case.

9. We felt that in the particular circumstances of this case it was not necessary to consider the larger

question raised by Mr. Bal that in no circumstances can a High Court dismiss a first appeal summarily with out giving reasons.

10. It is enough to state that, as pointed out by this court in Mahadev Tukaram Vetale and Others v. Smt. Sugandha and Another, (AIR 1972 SC 1932) an appeal raising trial issues should not be summarily dismissed. Though a fairly large volume of evidence, oral and documentary, had been led by the parties, it was mentioned to us, particularly by the learned counsel for the appellant, that he proposes to rely only on very few items of evidence on record. We also felt that both sides were anxious that a very early end should be given to this litigation and that the matter should be disposed of by this court itself on merits.

11. In the above view we requested the counsel for both the parties to refer to the items of evidence bearing on the two question : (a) the character of the suit properties in the hands of Baburao and (b) the sham and nominal nature of the gift deed.

12. On the question regarding the character of the suit properties in the hands of Baburao, it must be stated at the outset that the plaintiff himself, who was very young on the date of his adoption, had no personal knowledge. It is only necessary to refer to the evidence adduced by the plaintiff himself which, in our opinion, will show that Baburao did not receive any assets his father which would enable him to acquire the suit properties.

13. There is evidence on record of P.W. 6, the paternal uncle of the appellant. While the appellant claimed that his adoptive father, Baburao, was getting income from a family temple, P.W. 6 had stated that Baburao was in service and was getting salary. He further deposed that Baburao went to Thana in or about 1938 and after that he was not getting any share from the income of the family temple. Even prior to 1939, it is evidence of P.W. 6 that there were several shares in the family who were entitled to share the income from the temple. His evidence clearly shows that the income from the temple was only about 1 to 4 seers of rice and the cash income was about Rs. 100/- or 150/- per year. Even accepting in full the evidence of this witness, it is clear that the finding of the Trial Court that Baburao did not get any assets from his father and that he did not get income from the temple which could have been utilised for the purchased of the plot and building the house is correct. It is significant to note that P.W. 6 admits that the period from 1925 to 1940 was one of a low cost of living and that food stuffs and other articles were available at a very cheap price.

14. We may state that the appellant's plea was that Baburao obtained in or about 1922 in the family partition a sum of Rs. 3,000/- in the from ornaments and cash and this according to the plaintiff provided a nucleus for Baburao later on for purchasing the plot and building the house. There was absolutely no evidence which is worth considering, led by the plaintiff to sustain this pleas. P.W. 6, who is none else than the brother of Baburao, does not at all speak of any sharer having obtained this amount in the family partition. We are of the opinion that the finding that the suit properties were acquired by Baburao from and out of his own earning as an oversear in the Public Works Department is correct. If so, it follows that the claim of the plaintiff that the suit properties were ancestral properties in the hands of his adoptive father Baburao in which he obtained a right as a consequence of adoption on February 25, 1941, has to be rejected. Inasmuch as the existence of a family nucleus in the hands of Baburao having blended his own income with any ancestral assets in his hands does not survive.

15. The Second contention of the plaintiff that the gift deed, dated March 30, 1943, executed by Baburao was a sham and nominal transaction does not require, in our opinion, any serious

consideration. The plea of the plaintiff-appellant was that he having been admitted in the family in 1941, Baburao would not have had any intention of conferring full title in the first respondent so as to deprive the appellant of his rights in the property. According to the appellant the gift deed was executed only for the purpose of safeguarding the property and to see that the appellant does not behave improperly towards his adoptive mother, the done. While we do sympathies with this claim made by the appellant, it is in our opinion, devoid of any merit. One of the circumstances that has been relied upon in support of this contention was that even after the execution of the gift deed, the property stood in the names of both Baburao and the first respondent and that mutation was effected in the name of the first respondent only after 1946, when Baburao died. We are not inclined to accept this contention of Mr. Bal. The plaintiff has no doubt attempted to find support in this regard from the evidence given by the first respondent, the adoptive mother of the appellant. In our opinion the evidence of the mother has to be rejected as she is only trying to help the appellant after a decree had been obtained against her in the specific performance suit by the second respondent. The criticism that has been levelled by Mr. Bal against the judgment of the Trial Court is that it has acted illegally in relying upon the evidence given by the mother in the specific performance suit. We do agree that the evidence given by the first respondent in the specific performance suit is not itself substantial evidence in the present litigation. The Trial Court has only referred to her evidence in the previous suit to show that she was giving conflicting versions to suit the occasion. But it is pertinent to note that the adoptive mother giving evidence as P.W. 5 in the present litigation has stated that she has executed a registered Will on October 20, 1949, in respect of the suit properties. She has further deposed that in the said Will she had claimed that the suit properties were acquired by her husband (the adoptive father of the plaintiff) from and out of his salary, supervision work and consultation work. But her evidence before Court was totally different, namely, that her husband had ancestral assets in his hands which were utilised for the purchase of the plot and construction of the house. She has again significantly admitted that in 1949, when she executed her Will, she was very friendly with the plaintiff. She had also stated that she was a right to dispose of the property, which she had acquired, under the Will as she pleased. These answers make it very clear that the plea of the appellant that the gift deed was a sham and nominal transaction cannot be accepted. In consequence the appeal fails and is dismissed. The parties will bear their own costs in this Court.

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