Sarupuri Narayanamma and Others

Vs

Kadiyala Venkatasubbaiah and Others

Civil Appeal No. 1353 of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

04.04.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment and decree of a Division Bench of the Andhra Pradesh High Court in a Letters Patent Appeal.

2. One Nagaiah, member of a joint Hindu family consisting of himself and his brothers, died leaving behind him his widow Raghavamma and daughter Venkatasubbamma. The brothers executed a gift deed on April 29, 1930, in favour of the widow and her daughter in the following words :

> "Raghavamma of you is our sister-in-law and Venkatasubbamma our elder brother's daughter and we have been living jointly even during the life-time of our brother and up-till-now. So we had as per your wish and that of ours given in marriage Venkatasubbamma of you, to our nephew Madanapalli Pitchaiah's son Nagaiah. Subsequent thereto, you being unwilling to remain joint with us represented to us that you would remain separate from us, to which we had agreed and so on the advice given by our relations to which both of us have agreed, we have executed this deed in your favour settling that the seri land of the extent of K. 4 - 14 described in the schedule whereunder should be taken by you towards your maintenance and after the death of Raghavamma by Venkatasubbamma towards 'Pasupu Kumkuma' and that you should have nothing to do with our joint family debts. It is, therefore, settled that you should take possession of the said property this day itself and enjoy only the income therefrom and that on the death of the said Raghavamma of you the said property should pass to Venkatasubbamma. Further, it is settled that Venkatasubbamma of you and her children (Santhathivaru) should be in enjoyment thereof with absolute powers of gift, transfer and sale etc. It is settled that Raghavamma of you should not in any manner claim any separate maintenance, etc. to be given to her during the rest of her life-time by us. So you may, subject to the aforesaid terms take possession of the aforesaid property and be in enjoyment thereof. You yourselves shall pay the sarkar cist, etc. thereon and get the said land entered in your name in the Government accounts. In respect of, hereof, we or our heirs shall not raise any dispute whatsoever either with you or your descendants. This deed is executed with the arrangement that in case no female or male issue is born to the said Venkatasubbamma, the said schedule mentioned property should on her death, pass to us or our descendants and not to the heirs of the said Venkatasubbamma."

3. The suit out of which this appeal arises was filed by the surviving brother of the family claiming possession of the plaint schedule properties. The learned Subordinate Judge, who tried the suit, as well as the Single Judge of the High Court, who heard the appeal against it, decided against him holding that the gift in favour of Venkatasubbamma was absolute and the subsequent words found in the document did not in any way limit the absolute estate conferred on Venkatasubbamma. On appeal the Division Bench of the Andhra Pradesh High Court has held to the contrary. It appears to us that the Division Bench is right.

4. It is a principle settled beyond dispute that each document has to be interpreted on the words of that document itself and the other documents interpreted in earlier decisions cannot provide a binding precedent in interpreting a document. The document in this case is executed in favour of the widow and daughter of a predeceased coparcener of a Hindu joint family. The document says :

> "We have executed this deed in your favour settling that the seri land to the extent of K. 4 - 14 described in the schedule hereunder should be taken by you towards you maintenance and after the death of Raghavamma by Venkatasubbamma towards Pasupu Kumkuma."

It refers to the maintenance not merely of the widow Raghavamma but also the daughter. Therefore, clearly as long as Raghavamma was alive the right of Venkatasubbamma (though being already married she had no right to maintenance) was also only to maintenance. That, however, was what the document provided. Her right to Pasupu Kumkuma is after the death of Raghavamma. The word "Pasupu Kumkuma" has been interpreted by various judgments of the Andhra Pradesh High Court as conferring an absolute title. Even the learned Single Judge, who heard this case, has proceeded on this basis.

5. In Jagannadha Rao v. M\s. Jatmal Madanlal, (AIR 1958 AP 662 : ILR 1957 Andh Pra 806) a Bench of the Andhra Pradesh High Court held that :

> "The phrase 'for Pasupu Kumkuma' connotes an absolute right. That is not consistent with the conferment of a limited estate.
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> An absolute estate passes to the donee when the land is settled upon her for Pasupu Kumkuma. The words are of sufficient amplitude to convey full rights of ownership. They indicate the intention of the donor to confer an absolute estate on the donee and not one which determines with her life."

That decision also relied upon the earlier decision of the Madras High Court in Musiligadu v. Nappigadu, (15 MLJ 492) where the gift was made in the following terms :

> "On account of pin money to you who is my daughter, I have assigned and given to you an acre of land."

and it was held that the donee obtained an absolute right to the land. In Venkata Rama v. Rajyalakshmi, (AIR 1960 AP 509 : (1960) 1 Andh WR 318) it was held that the phrase 'Pasupu Kumkum' connoted an absolute estate and not a limited estate. The earlier decision of the Andhra Pradesh High Court in Jagannadha Rao v. M/s. Jatmal Madanlal (supra) was relied upon. Another decision in Yadeorao v. Vithal, (ILR 1952 Nag 60 : AIR 1952 Nag 55) where the gift was made under a will to a married daughter for choli and bangdi, and 'choli bangdi; or 'haldi kumkum' were interpreted as set of words having the idea that the daughter should have independent means of her

own to satisfy her personal needs, and to confer not a limited estate nor that the property would rever to the doner as soon as the woman becomes a widow, was also relied upon in this decision. There are also the further words that Venkatasubbamma and her children (Santhathivaru) should be in enjoyment thereof with absolute powers of gift, transfer and sale, etc. All these make it clear that Venkatasubbamma was to get an absolute estate.

6. The document also uses the plural "Meru" in providing that the land was to be taken possession of and they were to enjoy only the income from the property, and then goes on to provide that after Raghavamma, Venkatasubbamma was to get the property. It is, therefore clear, that as long as Raghavamma was alive the right of both the mother and the daughter was only to have possession of the property and enjoy only the income and only after her death Venkatasubbamma and her children were to enjoy it will all the rights of gift, transfer, sale, etc. Therefore the question of Venkatasubbamma getting the land for 'Pasupu Kumkuma' and she and her children enjoying the property absolutely does not arise as long as Raghavamma was alive. It was not the conferment of an absolute right on Venkatasubbamma in praesenti. This is an aspect of the matter to which the lower courts do not seem to have paid sufficient attention. Only the Division Bench has interpreted it correctly. In this case Venkatasubbamma died before Raghavamma. Of course, when the document was executed it could not have been expected that the daughter would pre-decease the mother. But the provisions in the document are quite clear that the mother and the daughter were to take immediate possession of the property for their maintenance and were to enjoy the income from the property alone and only after Raghavamma's death Venkatasubbamma was to get the property absolutely . This is not a case of an immediate conferment of absolute title on Venkatasubbamma subject to a right of maintenance for Raghavamma. It is a case of right of maintenance for both maturing into an absolute estate in favour of Venkatasubbamma on Raghavamma's death. If Venkatasubbamma had survived Raghavamma she would have got the properties absolutely and the question might have arisen whether the subsequent provision in the document is one repugnant to the earlier one and therefore void or is only a defeasance clause which came into effect on Venkatasubbamma dying childless. As it was, Venkatasubbamma died before she became the absolute owner.

7. This itself is enough to dispose of the appeal, and the question whether the document having vested an absolute interest in Venkatasubbamma, the subsequent provision therein would be a restriction which in view of the earlier absolute right conferred on her would have no effect or whether that would be a defeasance clause, do not really arise for consideration.

8. Both sides have addressed arguments to us on the principles of interpretation to be adopted in this case, one side arguing that the latter clause is to be deemed to be a defeasance clause and the other side that the latter clause is one repugnant to the earlier one conferring absolute interest on Venkatasubbamma and therefore void, and they have relied upon a number of decisions. In the view that we are taking in the matter we consider it unnecessary to refer at length either to the arguments or to the decisions relied upon.

9. In the result we uphold the decision of the Division Bench of the Andhra Pradesh High Court and dismiss the appeal.

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