L. Babu Ram

Vs

Sri Raghunathji Maharaj and Others

Civil Appeal No. 1194 of 1968

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

07.05.1976

JUDGMENT

BHAGWATI J. -

1. This appeal by certificate is directed against the judgment of the Allahabad High Court reversing a decree passed by the Civil Judge, Etah. The original decree was passed by the Civil Judge on March 31, 1953 in suit instituted on August 10, 1950. The judgment of the High Court reversing it was given on January 31, 1964. It took nearly eleven years for the High Court to dispose of appeal before it. Then followed an appeal to this Court by certificate. The certificate proceedings took about four years. It was on January 22, 1968 that the certificate was granted. The appeal which came to be filed on the strength of this certificate had then to undergo a period of incubation in this Court for about eight years before this Court could get time to take it up for hearing. At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and activise us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty-five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many others like it strongly emphasise the urgency of the need for legal and judicial reform. A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account the socio-economic realities and seeks to provide a cheap, expeditious and effective instrument for realisation of justice by all sections of the people, irrespective of their social or economic position or their financial resources.

2. The dispute in this appeal relates to a property situate in the town of Etah. The property consists of a residential house and three shops. One Sri Krishna Das was the owner of the property and by a deed dated October 18, 1884 he made a disposition of the property, in favour of his daughter-in-law Smt. Deva. Smt. Deva in her turn executed two gift deeds, one dated January 13, 1915 in respect of two shops in favour of Shri Raghunathji Maharaj, the first respondent and the other dated June 10, 1949 in respect of the residential house and the remaining shop in favour of her daughter's son Mool Chand, the second respondent. On the death of Smt. Deva, which occurred on April 12, 1950, the appellant claiming to be the nearest collateral in the family of Shri Krishna Das, filed suit No. 18 of 1950 in the court of the Civil Judge, Etah claiming that under the deed dated October 18, 1884 Smt. Deva was given only life interest in the property and she was, therefore, not entitled to gift any portion of the property in favour of the first or the second respondent beyond her lifetime and on her death, he became the owner of the property as the nearest collateral in the family of Shri Krishna

Das and hence was entitled to possession of the property from the first and the second respondents. Respondent Nos. 3 to 9 were impleaded as defendants in the suit as they were tenants in respect of certain portions of the property. There was no contest against the claim of the appellant on the part of respondent Nos. 3 to 9 were impleaded as defendants in the suit as they were tenants in respect of certain portions of the property. There was no contest against the claim of the appellant on the part of respondent Nos. 3 to 9 and they expressed their willingness to pay rent to whosoever was declared to be the owner of the property. The first and the second respondents. However, seriously disputed the claim of the appellant and contended that Smt. Deva was the full owner of the property under the deed dated October 18, 1884 and she was, therefore, entitled to gift portions of the property in favour of the first and the second respondents and convey full title to them and the appellant had no right, title or interest in any portion of the property. The main question which, therefore, arose for consideration on these pleadings was as to what was the nature of the interest conveyed to Smt. Deva under the deed dated October 18, 1884, whether it was life interest or full ownership. One other subsidiary question was also raised on the pleadings and that was whether the second respondent was the daughter's son of Smt. Deva. The trial Court held, on a construction of the deed dated October 18, 1884, that Smt, Deva was only a life estate holder and she was, therefore, not entitled to convey title to the property in favour of respondent Nos. 1 and 2 beyond her lifetime and since the appellant was owner of the property on her death and was accordingly entitled to possession of the same from respondent Nos. 1 and 2. The trial Court also found from the evidence on record that the second respondent was the son of the daughter of Smt. Deva, but on the view taken by it in regard to the construction of the deed dated October 18, 1884, it decreed the suit of the appellant. The decree was, however, reversed by the High Court in appeal at the instance of respondent Nos. 1 and 2. The High Court did not set aside the finding of the trial Court that the second respondent was the son of the daughter of Smt. Deva but, on the question of construction of the deed dated October 18, 1884, it took a different view. The High Court held that what was given to Smt. Deva under the deed dated October 18, 1884 was full ownership and the gift deeds executed by her were valid and effective and the appellant consequently did not acquire any right, title or interest in the property on her death. In the result, the suit of the appellant was dismissed by the High Court. The appellant thereupon preferred the present appeal in this Court by obtaining a certificate from the High Court.

3. It is not necessary for the purpose of this appeal to decide which of the two constructions of the deed dated October 18, 1884 is correct, whether the one adopted by the trial Court or the one which found favour with the High Court. We will assume with the appellant that the construction placed by the trial Court is correct and that accepted by the High Court is erroneous.

The deed dated October 18, 1884, so far as material, runs as follows :

> I am in proprietary possession of the property mentioned above. In order to avoid future disputes, I have, of my own accord and free will, while in a sound site of body and mind made a gift of - one house pucca and Kham, situate in Bazar Khana, Qasba Etah and two shops built pucca and Kham, situate in Main Ganj Qasba Etah, to my daughter-in-law aforesaid. I have removed my possession and occupation from the property and have put the women in possession and occupation thereof. The Musammats, aforesaid, should remain in possession and occupation of the property like myself. I shall have no claim thereto. But so long as I am alive, I shall remain the owner in possession of the said property, After my death, the musammats shall become the owners in possession of the property as specified in this document. My daughter-in-law shall have no right to make any kind of transfer in respect of the

> property given to her by me. So long as she remains alive, she shall be the owner in possession thereof. After her death the members of her family shall be the owner thereof.

4. It is clear that even on the view that Smt. Deva was given only a life interest in the property under the deed dated October 18, 1884, the disposition of the property made by the settlor after her death was that "the members of her family shall be the owner thereof". It is significant to note that the settlor did not use the words that on the death of Smt. Deva "the members of my family shall be the owners thereof", but provided that "the members of my family shall be the owners thereof. The property was, therefore, plainly and unquestionably given to the members of the family of Smt, Deva on her death and it was not to go the members of the family of the settlor. Now, the second respondent was the son of the daughter of Smt. Deva and he was, therefore, the nearest member of her her family. The appellant was merely a collateral of Shri Krishna Das and could not possibly be regarded as a member of the family of Smt. Deva. The conclusion must, therefore, inevitably follow that, even if Smt. Deva had merely a life interest under the deed dated October 18, 1884, the property, on her death, went to the second respondent as the nearest member of her family and not to the appellant. The High Court was in the circumstances right in taking the view that the appellant had no right, title or interest in the property and was not entitled to possession of the same.

5. The appeal is accordingly dismissed, but in the circumstances, there will be no order as to costs.

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