

Kuppala Obul Reddy

Vs

Bonala Venpata Narayana Reddy (Dead) through Lrs.

Civil Appeal No. 138 of 1971

(Amarendra Nath Sen, R. B. Misra JJ)

27.04.1984

JUDGMENT

AMARENDRA NATH SEN, J. -

1. This appeal has been preferred by the plaintiff in the suit with leave granted by this Court against the judgment and decree of the High Court of Judicature of Andhra Pradesh at Hyderabad delivered on September 23, 1969 dismissing the suit of the plaintiff by affirming the judgment and the decree of the Lower Appellate Court which had reversed the judgment and decree passed by the trial court.

2. The facts material for the purposes of this appeal may be set out. One Bonala Thimma Reddy of village Chinna Kudala in Palivendala Taluk in the District of Cuddapah had two wives, Bonala Naramma was the senior wife and by this wife Bonala Thimma Reddy had a son Bonala Yella Reddy and a daughter Nagamma. This daughter Nagamma had a daughter Venkata Lakshamma. By the junior wife Bonala Thimma Reddy had no child. After Thimma Reddy had married for the second time, the first wife Naramma had apprehended that she might be neglected and she had expressed her unhappiness and apprehension as to her future and the future of her on Yella Reddy. On November 8, 1930, Thimma Reddy executed a deed of gift in respect of the properties mentioned in the deed. This document which was exhibited in the suit being Ex. A-6, reads as follows :

Gift deed executed for property worth Rs. 500 by Bonala Thimma Reddy, son of Pedda Yella Reddy, of Chinnakudala Village in favour of Bonala Naramma, wife of Thimma Reddy of Chinnakudala village.

You are my senior wife and you have got a minor son by name Yella Reddy. I have got a junior wife. As you are complaining that I am showing better affection over my junior wife and not treating you properly and you wanted me to show a living for you and the minor son, out of affection to you I hereby make the gift of the scheduled property worth Rs. 500 and handed over the same to you. Since now you enjoy the property with absolute rights.

Venkata Lakshamma, the daughter of Nagamma and the grand-daughter of Thimma Reddy and Naramma, was married to Yella Reddy, son of Thimma Reddy and Naramma and the brother of Nagamma. It appears that the married life of Venkata Lakshamma with her husband Yella Reddy was not happy and disputes had arisen between them and ultimately Venkata Lakshamma left her husband Yella Reddy and remarried. At the time when Thimma Reddy executed the deed of gift dated November 8, 1930, her son Yella Reddy was minor and had not been married. Nearly thirty

years after the execution of the gift deed by Thimma Reddy, Naramma in whose favour deed of gift was executed by Thimma Reddy, executed a deed of gift on October 10, 1960 in favour of Venkata Lakshamma, her granddaughter as well as her daughter-in-law. This gift deed which is Ex. A-2 in the suit, is in the following terms :

Gift deed dated October 10, 1960 executed by Bimala Naramma wife of Thimma Reddy in favour of Bimala Venkata Lakshamma, wife of Yella Reddy.

You are my son Yella Reddy's wife and thereby my daughter-in-law. Further, you are my daughter Nagamma's daughter and thereby my granddaughter. Out of love and affection towards you, I hereby make a gift of property worth Rs. 500 belonging to me with all rights and hand over the possession to you the same day. Since, now, you and your successors have full rights of sale, gift etc. over the property and you should enjoy the property in your own right. This deed of gift is executed of my own accord.

3. By this deed Naramma gifted away all the properties given to her by her husband under the deed of gift dated November 8, 1930 and after this gift deed had been executed by Naramma in favour of Venkata Lakshamma, a deed of exchange was executed by and between Venkata Lakshamma and her husband Yella Reddy on January 20, 1961. This Exchange deed dated January 20, 1961 (Ex. A-5) may be set out :

Exchange deed dated January 20, 1961 for the value of property worth Rs. 200 by Bimala Yella Reddy, son of Thimma Reddy.

Bimala Venkata lakshamma wife of Yella Reddy belonging to village Chinna Kudala in Pulivendala Taluq.

The A Schedule property worth Rs. 200 belongs to Yella Reddy and the B Schedule property worth Rs. 200 belongs to Venkata Lakshamma. As the second of us has no house, we have decided to exchange the lands belonging to second (B Schedule) for the house (A Schedule) belonging to first of us and the transfer is thus effected. Since now, we have to pay the taxes on the exchanged properties and have rights of sale and gift and all other rights. We have executed this exchange deed by consent :

1. Thumb impression of Bimala Yella Reddy,
2. Thumb impression of Bimala Venkata Lakshamma.
4. As a result of this deed of exchange, part of the properties gifted to Venkata Lakshamma under the deed of gift dated October 10, 1960 executed by Naramma, was given to Yella Reddy and part of the house properties which belonged to Yella Reddy came to Venkata Lakshamma.
5. On July 20, 1963 Venkata Lakshamma sold to the appellant the properties which were retained by her out of the properties gifted to her by Naramma after exchange of a part of the properties with her husband Yella Reddy. These properties are included in Schedule B to the plaint. The sale deed dated July 20, 1963 by Venkata Lakshamma in respect of B Schedule properties in favour of the appellant Kuppala Obul Reddy is Ex. A-11 in the suit. It, however, appears that Yella Reddy under a sale deed dated July 2, 1962 sold to Bonala Venkata Narayana Reddy, the

defendant in the suit and the original respondent in the appeal, since deceased, now represented by his legal representatives, all the properties in Schedule A including the properties in Schedule B which were retained by Venkata lakshamma and which she subsequently sold to the appellant Kuppala Obul Reddy.

6. As the properties which had been sold by Venkata Lakshamma to the appellant Kuppala Obul Reddy, had earlier been sold by her husband Yella Reddy to the respondent Bonala Venpata Narayana Reddy, since deceased, disputes naturally arose between Kuppala Obul Reddy and Venpata Narayana Reddy with regard to ownership and possession of these properties. Kuppala Obul Reddy, the vendee from the wife Venkata Lakshamma, filed a suit in the District Munsiff's Court, Cuddapah being Suit No. 415 of 1963. This suit filed by Kuppala Obul Reddy proceeded on the basis that he was the owner in possession of the properties as purchaser of the properties from Venkata Lakshamma and Venpata Narayana Reddy, an influential person, was trying to interfere with his right, title, interest and possession in the property and he prayed for a permanent injunction restraining Venpata Narayana Reddy, the defendant in the suit, and his men and all those claiming under him from interfering with the possession and enjoyment of properties in Schedule B of the plaint. In the written statement filed by Venpata Narayana Reddy, the defendant in the suit, the title of the plaintiff Kuppala Obul Reddy in the suit properties and his possession thereof were disputed. It was pleaded by the defendant Venpata Narayana Reddy that he had purchased the properties from Yella Reddy who was the owner of the properties and Venkata Lakshamma, the wife who had left the husband, had illegally and collusively transferred the properties to the plaintiff. The plea of the defendant was that the plaintiff was neither the owner nor in possession of the properties. In the suit before the Munsiff evidence, oral and documentary, had been led. The wife Venkata Lakshamma gave evidence on behalf of the defendant. Other witnesses had also been examined. The learned Munsiff had framed the following issues in the suit :

- (1) Whether the gift by Nagamma's husband in favour of Namma was in respect of the A Schedule properties or only a half portion thereof?
- (2) Whether the plaintiff has title to and possession of the suit property within the statutory period.
- (3) Whether the sale-deed in favour of the plaintiff is a nominal transaction not supported by any consideration ?
- (4) Whether the exchange-deed is true, valid and binding on the defendant's vendor?
- (5) To what relief, is the plaintiff entitled?

On a consideration of the entire evidence, the learned Munsiff decreed the suit with costs in favour of the plaintiff.

7. The defendant filed an appeal against the judgment and decree passed by the learned Munsiff in the Court of the Subordinate Judge, Cuddapah. The learned Subordinate Judge allowed the appeal and dismissed the suit mainly on the basis of his findings that Namma who made the gift of

properties to Venkata Lakshamma did not have any title to the properties and the gift by Naramma in favour of Venkata Lakshamma was not valid and as Venkata lakshamma did not have any title to the properties sold by her to the plaintiff, the plaintiff acquired not title to the properties.

8. Against the judgment and decree passed by the Subordinate Judge on March 21, 1967, the plaintiff Kuppala Obul Reddy preferred an appeal to the Andhra Pradesh High Court. The High Court by its judgment and order dated March 31, 1969 directed the Lower Appellate Court to submit fresh findings on the following two points on the basis of the evidence already on record :

(i) Whether the deed of exchange Ex. A-5 was nominal and not acted upon as contended by the defendant, and

(ii) Whether the plaintiff was in possession of the B Schedule property on the date of the suit ?

Pursuant to the order and directions given by the High Court, the Lower Appellate Court on consideration of the entire evidence on record held on point No. 1 - "Under these circumstances in my opinion, it can be said that the exchange deed, the original of Ex. A-5 was acted upon by the parties to the document and I decide the point accordingly". The Lower Appellate Court on second point held - "Under these circumstances the plaintiff's possession over the suit lands on the date of suit is established. Hence I decide the point No. 2 accordingly". The learned Subordinate Judge duly forwarded the aforesaid findings to the High Court by his report dated July 14, 1969.

9. The High Court by its judgment dated September 3, 1969 dismissed the appeal of the plaintiff. The High Court held that Venkata Lakshamma did not get any title to the property and Yella Reddy became entitled to the entire properties and the deed of exchange between the husband and the wife was not of any material consequence.

10. The correctness of the decision of the High Court has been challenged in this appeal by the plaintiff with special leave granted by this Court. During the pendency of the appeal the original defendant Venkata Narayana Reddy died and his heirs and legal representatives who have been brought on record, have contested this appeal.

11. The unfortunate dispute between the husband and the wife has resulted in this long drawn dispute between the parties.

12. The real question which requires consideration in this appeal is whether the gift by Thimma Reddy in favour of his wife Naramma was valid and whether Naramma acquired title to the properties gifted to her under the said deed. The High Court appears to have held that all the properties gifted by Thimma Reddy were joint family properties and the gift by him in favour of his wife Naramma was not valid. The High Court further appears to have approved of the finding of the Lower Appellate Court that the deed of gift executed by Thimma Reddy in favour of his wife Naramma should be regarded as a conveyance of Thimma Reddy's share in favour of his son Yella Reddy. The High Court in its judgment dated March 31, 1969 has held :

But the learned Judge has not satisfactorily considered the effect of the subsequent exchange deed, Ex. A-5. In the trial court, there is a separate issue on the question whether the exchange deed is nominal. The trial court, on thorough consideration of the entire evidence in the case including the recitals in the exchange deed and other

evidence of possession, held that the deed of exchange was acted upon between the parties and that as a result of the exchange transaction, Yella Reddy's wife became entitled to the suit B Schedule property which she sold to the plaintiff. A reading of the judgment of the Lower Appellate Court shows that the learned Judge has not given due consideration to the finding relating to the truth of the exchange transaction. It is therefore necessary that there should be a raised finding on the question covered by issue No. 4. I therefore direct the Lower Appellate Court to submit fresh findings on the following points :

(i) Whether the deed of exchange Ex. A-5 was nominal and not acted upon as contended by the defendant; and

(ii) Whether the plaintiff was in possession of the B Schedule property on the date of the suit.

Notwithstanding the aforesaid findings, the High Court however had remanded the matter to the Lower Appellate Court on the questions noted below, as the High Court was of the opinion that the Lower Appellate Court had not given due consideration to the deed of exchange executed by and between Yella Reddy and his wife Venkata Lakshamma and also the question of possession :

(i) Whether the deed of exchange Ex. A-5 was nominal and not acted upon as contended by the defendant; and

(ii) Whether the plaintiff was in possession of the B Schedule property on the date of the suit?

Though the Lower Appellate Court after remand had found in favour of the appellant on both these points, yet the High Court mainly on the basis of the view earlier expressed by the High Court in the first judgment dismissed the appeal, ignoring the findings of the Lower Appellate Court on these two points and without attaching any importance to the same.

13. The learned counsel appearing on behalf of the appellant has raised the following principal contentions :

1. The approach of the Lower Appellate Court and of the High Court in considering the issues involved in the suit was wrong and erroneous.

2. There was no pleading that the properties covered by the deed of gift executed by Thimma Reddy in favour of wife Naramma were joint family properties and no issue as to the properties being joint family properties was raised in the suit. In the absence of any pleadings and any issue there could be no finding that the properties were joint family properties.

3. There may be a presumption in Hindu Law that there was a joint family but there could be no presumption that the properties were joint family properties.

4. The findings of the Lower Appellate Court which was approved by the High Court that the gift executed in favour of his wife Naramma was for the benefit of Yella Reddy and the construction put on the deed of gift to the effect that the deed created a beneficial interest in favour of the son Yella Reddy and was in the nature of a

conveyance of the half share of Thimma Reddy's properties in favour of his son who became owner of the said properties, were clearly erroneous and unwarranted on the facts and in law.

5. The deed of exchange executed by and between Yella Reddy and his wife Venkata Lakshamma clearly established that Yella Reddy had accepted the gift made by his father in favour of his mother and the gift executed by his mother in favour of his wife and had acted on the same. Yella Reddy in view of his conduct was clearly estopped from questioning the validity of the gift by his mother in favour of his wife and the respondent who seeks to derive his title from Yella Reddy must be held to be estopped.

6. The High Court clearly erred in ignoring the finding of the Lower Appellate Court made after remand on the question of the deed of exchange being acted upon between the parties and also on the question of possession of the properties. The High Court should have held that the deed of exchange and the conduct of the parties clearly established that the properties gifted by Thimma Reddy in favour of his wife Naramma were not joint family properties and the deed of gift in favour of Naramma was valid.

14. In answer to the contentions raised by the learned counsel for the appellant, the learned counsel for the respondent has submitted that as there was a joint family, the finding that the properties were joint family properties should be held to be correct and in that view of the matter the gift by the husband Thimma Reddy in favour of his wife Naramma must be held to be invalid. It is his submission that as the gift by Thimma Reddy in favour of Naramma was not valid, there could be no valid gift of the properties by Naramma to Venkata Lakshamma and she acquired no title to the properties. He, therefore, contends that as Venkata Lakshamma did not acquire any title to the properties, the deed of exchange cannot have the effect of creating or conferring any title of the said properties on Venkata Lakshamma. He has further argued that on a proper construction of the gift deed executed by Thimma Reddy in favour of Naramma, the said deed was really in the nature of trust for the benefit of Yella Reddy and Naramma had no right to make any gift of those properties to Venkata Lakshamma.

15. We find considerable force in the submissions made by the learned counsel for the appellant. No case is made out in the pleadings with regard to the properties gifted by Thimma Reddy to his wife Naramma being joint family properties. No issue with regard to the properties being joint family properties was raised and no such issue could possibly have been raised in the absence of any pleading. The evidence of Yella Reddy in the suit does not mention that the properties gifted by his father to his mother under the deed of gift belonged to the joint family. In the absence of any pleading and any issue and further in the absence of any proper evidence, the view expressed by the learned Judge of the High Court that the properties were joint family properties is clearly unwarranted. There may be presumption that there is a Hindu joint family but there can be no presumption that the joint family possesses joint family properties. The findings of the Lower Appellate Court that the deed of gift executed by Thimma Reddy in favour of his wife Naramma "should be regarded as conveyance of the father's half share in favour of the son who is also entitled to half share of A Schedule properties" accepted and approved by the High Court in its judgment is clearly erroneous. It is indeed difficult to understand and appreciate how the Lower Appellate Court and the High Court could construe a clear deed of gift by Thimma Reddy in favour of his wife Naramma to be a conveyance of half share of Thimma Reddy in favour of his son Yella Reddy. The

conduct of Yella Reddy in entering into the deed of exchange with his wife Venkata Lakshamma furnishes clear proof that the properties were not joint family properties and that the gift executed by his father Thimma Reddy in favour of his wife Naramma and the gift executed by Naramma in favour of her granddaughter and also daughter-in-law Venkata Lakshamma, the wife of Yella Reddy with whom she entered into an exchange deed, were valid and Venkata lakshamma had acquired title to the properties gifted to her by Naramma. The clear findings recorded by the Lower Appellate Court after the further hearing on the basis of the order of remand of High Court are that the deed of exchange had in fact, been acted upon and on the basis of the deed of exchange parties had taken possession and Venkata Lakshamma remained in possession of the remaining properties after execution of the deed of exchange and also came into possession of the portion of the house which was allotted to her as a result of the exchange between herself and her husband Yella Reddy. These clear findings went unchallenged and were final. The High Court went wrong in ignoring these findings on the ground that by mere recognition Venkata Lakshamma did not get any title to the property and the mere fact that the parties were under the impression that the properties belonged to Venkata Lakshamma could not confer upon her any title under the law. Apart from the question that there were no pleadings as to the properties being joint family properties and no issue as to joint family had been raised and there was no proper evidence to make out any case of the properties being joint family properties, the High Court should have appreciated that the deed of exchange by and between Yella Reddy and his wife Venkata Lakshamma which was acted upon between the parties established that the properties could not be and were not joint family properties.

16. We have earlier set out the deed of gift executed by Thimma Reddy in favour of his wife Naramma. The document clearly establishes that the properties were gifted by Thimma Reddy to his wife Naramma absolutely. This document cannot be interpreted to construe a trust in favour of Yella Reddy and cannot be construed by any process of construction to be a conveyance in respect of the donor's half share to the son Yella Reddy. The mere reference to the son in the recital of the document does not indicate any intention of creating any trust or of making any conveyance of the properties in favour of the son. The recital only indicates that as Naramma was complaining that her husband Thimma Reddy who had taken a second wife was showing greater affection for the second wife and as Naramma who had a son wanted to be suitably provided, the deed of gift was being executed by Thimma Reddy. The recital only indicates the circumstances which prompted Thimma Reddy to execute the deed of gift. The document clearly and unequivocally shows that this was a deed of gift in favour of the wife and by the document the properties mentioned in the deed of gift were being given to Naramma absolutely. We have no hesitation in coming to the conclusion that the deed of gift executed by Thimma Reddy in favour of his wife Naramma was a valid deed of gift and under this deed of gift Naramma acquired full and complete title to the properties mentioned in the deed of gift. As Naramma had perfect title in the properties gifted to her by her husband and she was the full owner of the said properties, she was perfectly competent to make gift of the said properties to her granddaughter who also happened to be her daughter-in-law, Venkata Lakshamma. The facts and circumstances of the case indicate that Yella Reddy was frittering away the various other properties which had come to him from his father and were also not pulling on very well with his wife Venkata Lakshamma who was also the granddaughter of Naramma (daughter's daughter), Naramma wanted suitable provision to be made for Venkata Lakshamma. Venkata Lakshamma, therefor, became complete owner of the properties gifted to her by Naramma and as full owner of the properties she was free to deal with and dispose of the same in any manner she chose. Asserting and exercising her right of ownership she had executed the deed of exchange with her husband, transferring part of the properties for obtaining the portion of the house

from her husband and retaining the other properties which she subsequently sold to the appellant. Venkata Lakshamma as true owner of the properties for obtaining the portion of the house from her husband and retaining by her out of the properties gifted to her by Namma after transferring a portion thereof to the husband in exchange of the portion of the house, could and did validly sell the remaining properties to the appellant; and the appellant, therefore, acquired proper title to the properties which were sold to him by Venkata Lakshamma and which were mentioned in Schedule B to the plaint. As in our view Venkata Lakshamma had proper title to the properties which she could and did lawfully and validly transfer to the appellant by the sale-deed executed by her in favour of the appellant, the appellant and acquired proper title to these properties and had become the lawful owner thereof. In that view of the matter it does not become necessary for us to consider whether Yella Reddy by entering into the deed of exchange became estopped from challenging the validity of the title of his wife Venkata Lakshamma and the respondent who seeks to drive title from Yella Reddy, is also so estopped.

17. The appeal, therefore, succeeds. The judgments of the Lower Appellate Court and of the High Court are set aside and the judgment of the Munsiff dated April 23, 1965 decreeing the suit of the plaintiff, the appellant before us, is restored. In the peculiar facts and circumstances of this case, and taking into consideration that the parties were driven to this litigation because of the dispute between the husband and the wife and the further fact that the original defendant is dead and is now being represented by his legal representatives we propose to make no order as to cost and we direct that parties will pay and bear their own costs throughout irrespective of any order of costs passed by any court.

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