

A. Sreenivasa Pai and Another

Vs

Saraswathi Ammal Alias G. Kamala Bai

Civil Appeal No. 410 of 1971

(E. S. Venkataramiah, V. Khalid JJ)

12.07.1985

JUDGMENT

VENKATARAMIAH, J. -

1. There was one K. Vasudeva Pai who was carrying on business at Quilon, which is now in the State of Kerla, Padmavathi Ammal was his wife. They had a son by name V. Sreenivasa Pai and a daughter by names S. Lakshmi Ammal (defendant 2). Saraswathi Ammal alias G. Kamala Bai (plaintiff) was the wife of V. Sreenivasa Pai. S. Lakshmi Ammal had been given in marriage to A. Sreenivasa Pai. (defendant 1). K. Vasudeva Pai was adjudged insolvent in the year 1923 by the District Court at Quilon and consequently the properties belonging to him vested in the Official Receiver. The Official Receiver conveyed some of the said properties under a sale deed in favor of one S. A. S. Ayyavu Iyer in or about the year 1926. These properties were two plots of land with some buildings and outhouses at Quilon. Later on, in the year 1930 Ayyavu Iyer conveyed the properties purchased by him in favour of A. Sreenivasa Pai, the son-in-law of K. Vasudeva Pai, under whom A. Sreenivasa Pai, was working all along. Subsequently, on December 12, 1932 A. Sreenivasa Pai executed a settlement deed transferring the said properties in favour of his mother-in-law Padmavathi Ammal. This deed is in Malayalam language. An English translation of this deed is produced before us. The relevant portion of the settlement deed translated into English reads as follows :

.... On seeing that you are now in a distress after selling in auction of all the properties belonging to your family by the Receiver in I.P. 48 of 1099 of the District Court, Quilon towards the debts recently incurred by your husband Krishna Pai, Vasudeva Pai and due to my worry over it and in view of my desire to give certain properties to be enjoyed by you and after your lifetime, by Sreenivasa Pai, the son born of you to Vasudeva Pai, from generation to generation, paramparaya, for all time on the bona fide belief that income etc. of the properties proposed to be given would be sufficient for your family life, the properties described in the schedule below purchased by me with my self-acquired funds from Subbayavayyan Ayyavayyer, the general power of attorney holder s/o Sankaranarayan Iyer Subbayavayyan, doing Hundi business in Quilon Bazar, as per sale deed No. 4026 of 1105 and held by me on absolute right, constructing additional buildings therein and holding possession of the same, and paying land tax and municipal tax and collecting rent of some of the buildings leased on rent, are surrendered to your as per this deed, relinquishing all my rights and liabilities, making my love and affection towards you and your family as consideration and as you are dependent on me subject to the condition that you and your descendants shall not execute any

document's or mortgage or Otti charging these properties and charging other debts on these properties and in case of violation of the above provisions, they will not be valid and I and my descendants from generation to generation for all time may hold the properties and enjoy the same from this day onwards effecting mutation in your name, paying government assessment and municipal tax and since the rent deeds of the buildings given on rent have been given along with this, collecting the rent etc. of the above buildings by you from today onwards and by recovering possession of the shops along with key after eviction

2. K. Vasudeva Pai died in the year 1932 and his son V. Sreenivasa Pai died in the year 1935. Padmavathi Ammal, the widow of K. Vasudeva Pai, in whose favour the settlement deed had been executed, died on June 27, 1951. After her death Saraswathi Ammal alias G. Kamala Bai, the widow of V. Sreenivasa Pai filed a suit in the year 1952 in O.S. 153 of 1952 on the file of the District Judge, Quilon for possession of the properties described in plaint 'A' and 'B' Schedules, the plaint 'A' Schedule properties being the properties which had been settled in favour of Padmavathi Ammal under the settlement deed referred to above and plaint 'B' Schedule properties being certain other properties said to have been purchased from out of the rents and other incomes realised from the plaint 'A' Schedule properties as A. Sreenivasa Pai and his wife S. Lakshmi Ammal had denied the right of Saraswathi Ammal alias G. Kamala Bai. The case put forward by her in the plaint was that the plaint 'A' Schedule properties had been purchased in the name of A. Sreenivasa Pai for the benefit of Padmavathi Ammal and here family and they stood only nominally in the name of A. Sreenivasa Pai. The said suit was dismissed by the District Judge, Quilon on September 16, 1957 holding that the benami nature of the purchase of the plaint 'A' Schedule properties of the name of A. Sreenivasa Pai had not been established. Saraswathi Ammal allies G. Kamala Bai filed an appeal against the judgment of the District Court before the High Court of Kerala in A.S. 297 of 1959. The High Court was of the opinion that on the evidence on record there was no reason to interfere with the decree of the trial court dismissing the suit holding that the benami nature of the transaction had not been established by it was, however, of the view that since the true effect of the settlement deed had not been considered by the trial court an opportunity should be given to the plaintiff to amend the plaint suitably and the issue arising out of such amendments should be tried again by the trial court. Accordingly, the High Court by its judgment dated January 18, 1961 remanded the case to the District Court. After remand, the plaint was amended raising an alternative plea stating that under the settlement deed Padmavathi Ammal had been conferred only a life estate and the properties had been given absolutely to V. Sreenivasa Pai to enjoy them after the lifetime of Padmavathi Ammal. It was further pleaded that on the death of Padmavathi Ammal who was only a life estate holder, the properties devolved on Saraswathi Ammal alias G. Kamala Bai who was the sole heir of V. Sreenivasa Pai. A Sreenivasa Pai and Lakshmi Ammal pleaded that Padmavathi Ammal had been conferred absolute title in respect of the plain 'A' Schedule properties and on her death the said properties being Streedhana properties of Padmavathi Ammal had devolved on her daughter Lakshmi Ammal. On the basis of a the fresh pleadings filed by the parties, three additional issues were framed by the trial court and of then we are convened with the following two issues :

(i) What is the nature of the estate obtained by the deceased Padmavathi Ammal as per the settlement deed executed by the first defendant in her favour ?

(ii) Is it a documents creating only a limited interest in her favour with a vested remainder in favour of plaintiff's husband which on latter's death devolved on plaintiff as his heir ?

3. The trial court after hearing the parties again dismissed the suit on July 30, 1962 holding that Padmavathi Ammal had been conferred an absolute estate under the settlement deed and on her death her daughter Lakshmi Ammal had inherited them. Aggrieved by the judgment of the trial court Saraswathi Ammal alias G. Kamala Bai again filed an appeal in A.S. 327 of 1964 on the file of the High Court of Kerla. On appeal the High Court reversing the judgment of the trial court held by its judgment dated January 28, 1970 that under the settlement deed Padmavathi Ammal had been conferred a life estate only in the properties settled under the document in question and that V. Sreenivasa Pai, the husband of Saraswathi Ammal alias G. Kamala Bai had been conferred an absolute estate in those properties to be enjoyed by him after the death of Padmavathi Ammal. It accordingly held that Saraswathi Ammal alias G. Kamala Bai was entitled to the properties described in plaint 'A' Schedule which were the subject matter of the settlement deed, she being the sole heir of V. Sreenivasa Pai on the termination of the life estate on the death of Padmavathi Ammal. Her claim as regards the plaint 'B' Schedule properties were however negated by the High Court. In this appeal by certificate. A. Sreenivasa Pai and S. Lakshmi Ammal have questioned the correctness of the decision of the High Court insofar as the plaint 'A' Schedule properties are concerned.

4. The only contention urged before us in this appeal by the appellants is that under the settlement deed Padmavathi Ammal became the absolute owner of the properties described in the plaint 'A' Schedule and that on her death her daughter S. Lakshmi Ammal acquired title to the said properties under the law of inheritance applicable to Streedhana properties, she being the sole heir to the properties owned by Padmavathi Ammal. The decision in this case depends upon the true construction of the recitals in the settlement deed. In construing a document, whether in English or in any Indian language, the fundamental rule to be adopted is to ascertain the intention from the words employed in it. The surrounding circumstances may be considered for the purpose of ascertaining the intended meaning of those words, specially when there is some ambiguity in the words used in the document. There is no doubt that if the properties transferred under the settlement deed had become the absolute properties of Padmavathi Ammal, S. Lakshmi Ammal alone would be entitled to the said properties. The question, however, for determination is whether Padmavathi Ammal acquired an absolute estate in the properties covered by the settlement deed or whether she had only a life estates in them. The crucial words in the settlement deed which have a bearing on the question before us are : "in view of my desire to give certain properties to be enjoyed by you and after your lifetime, by Sreenivasa Pai, the son born of you to Vasudeva Pai, from generation to generation, paramparaya, for all time I hereby agree that you, and after you, your son, and his descendants from generation to generation for all time may hold the properties and enjoy the same from this day onwards".

5. It is seen from the portions of the settlement deed, extracted above, that A. Sreenivasa Pai desired to give the properties mentioned in the said deed to V. Sreenivasa Pai absolutely subject to the life interest conferred on Padmavathi Ammal. It is difficult to agree with the submission made on behalf of the appellants that the said document conferred an absolute title on Padmavathi Ammal because the document does not show that the properties were being given to her to be enjoyed by her and by her heirs from generation to generation. It may be noted that V. Sreenivasa Pai admittedly was not an apparent heir to the properties of Padmavathi Ammal on the date of the document as her daughter Lakshmi Ammal was alive on that date. If A Sreenivasa Pai intended that his wife S. Lakshmi Ammal should succeed to the properties transferred under the settlement deed after the death of Padmavathi Ammal he would have stated in the document that the properties should on her death go to her heirs but on the other hand he stated "I hereby agree that you, and after you, your son, and hum descendants from generation to generation for all time may hold the properties and

enjoy the same from this day onwards". These words clearly point out that A. Sreenivasa Pai never intended that the properties transferred under the deed of settlement should on the death of Padmavathi Ammal go to her heir at law. Acceptance of the contention of the appellants in the circumstances would render "and after you, your son and his descendants from generation to generation" meaningless. Any such construction should ordinarily be avoided. Having regard to the recitals in the document and the circumstances in which it came to be executed, we are of the view that the above words of disposition conferring title on V. Sreenivasa Pai do not constitute a subordinate clause in the deed. We do not agree that these words have been used in the document merely as a defeasance clause attached to the absolute estate conveyed in favour of Padmavathi Ammal. Nor do these words appear to our mind to create a different mode of succession to the absolute estate of Padmavathi Ammal after her death. They treat V. Sreenivasa Pai as a direct beneficiary under the deed itself. The document read as a whole leaves no doubt in our mind that V. Sreenivasa Pai was given under it the absolute estate in the properties subject to the life estate created in favour of Padmavathi Ammal. The object of executing the settlement deed was obviously to confer the benefit on the family of V. Sreenivasa Pai which was in distress and not that Padmavathi Ammal should alone be benefited. The document conferred, as observed by the High Court, a vested interest in favour of V. Sreenivasa Pai but his right to enjoy the property only was however postponed to the death of Padmavathi Ammal. Since V. Sreenivasa Pai had acquired a vested right in the properties on December 12, 1932, i.e. the date of the settlement deed it could not be defeated by his death before he obtained possession. His widow Saraswathi Ammal alias G. Kamala Bai being his sole heir was, therefore, entitled to the said properties on the termination of the life estate of Padmavathi Ammal. Our view is also in conformity with the rule of construction adopted by this Court in *Ramachandra Sengupta v. Mrs. Hilda Brite* ((1964) 2 SCR 722 : AIR 1964 SC 1323) at pages 735-736 where this Court has observed thus :

It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. It is for this reason that where there is a bequest to A even though it be in terms apparently absolute followed by a gift of the same to B absolutely 'on' or 'after' or 'at' A's death. A is prima facie held to take a life interest and B an interest in remainder, the apparently absolute interest of A being cut down to accommodate the interest created in favour of B.

6. The High Court was, therefore, right in decreeing the suit in favour of Saraswathi Ammal Alias G. Kamala Bai insofar as the plaint 'A' Schedule properties were concerned.

7. Before concluding the judgment, we should refer to one other submission made by the learned counsel for the appellants. A. Sreenivasa Pai and S. Lakshmi Ammal regarding claim made by them in respects of the improvements said to have been made by A. Sreenivasa Pai on the properties described in plaint 'A' Schedule. We do not find any substance in this submission because Padmavathi Ammal died on June 27, 1951, and the plaintiff had instituted the suit on September 10, 1952 and it is not shown that any improvements had been made in good faith during the period between the said two dates.

8. In the result this appeal fails and it is dismissed with costs.

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