Thamma Venkata Subbamma (Dead) By Lr

Vs

Thamma Rattamma and Others

Civil Appeal No. 258 of 1974

(S. Natarajan, M. M. Dutt JJ)

06.05.1987

JUDGMENT

DUTT, J. -

1. The only point that is involved in this appeal by special leave is whether a gift by a coparcener of his undivided coparcenary interest to another coparcener is void or not.

2. In order to consider the point it is necessary to state a few relevant facts. Two brothers, Rami Reddy and Veera Reddy and the sons and daughters of the latter being respondents 2 to 7 herein, constituted a joint Hindu family governed by the Mitakshara School of Hindu law. On May 4, 1959, Rami Reddy executed a deed of settlement (Ex. A-1) in favour of his brother, Veera Reddy, conveying his entire undivided interest in the coparcenary reserving a life interest to himself and also providing that after his death, his brother should maintain his wife. Rami Reddy died in January 1965 and shortly thereafter his brother Veera Reddy also died in March 1965. It appears that after the death of Rami Reddy differences arose between his widow and respondent 1, as a result of which the widow of Rami Reddy (since deceased) demanded a partition of her husband's share which was gifted by her husband to his brother Veera Reddy. Thereafter, she filed a suit out of which this appeal arises for partition and recovery of her husband's share after cancelling the deed of settlement (Ex. A-1), inter alia on the ground that it was a void document under the Hindu law. The suit was contested by respondents 1 to 7. Respondent 3 filed a written statement denying the plaint allegations. The other respondents adopted the written statement of respondent 3.

3. The trial court, on a consideration of the evidence adduced on behalf of the parties held, inter alia, that the deed of settlement was void and inoperative under the Hindu law in the absence of consent of the other coparceners. Further, it was held by the trial court that even assuming that the deed of settlement was valid and binding on the plaintiff, the plaintiff was entitled to the alternative relief of maintenance and separate residence under Section 39 of the Transfer of Property Act, as the plaintiff's husband was legally bound to maintain his wife and the plaintiff was entitled to enforce her maintenance claim with a charge on the properties in suit. In that view of the matter, the trial court held that the plaintiff was entitled to a sum of Rs. 1200 per annum towards her maintenance and separate residence with a charge on the A and B Schedule properties of the plaint. The suit was, accordingly, decreed by the trial court.

4. The defendant-respondents filed an appeal before the Andhra Pradesh High Court. The High Court, however, did not agree with the finding of the trial court that the deed of settlement was void. It was held by the High Court that the deed of settlement was valid. The judgment and decree of the trial court was set aside and the suit was dismissed insofar as it related to the cancellation of the

deed of settlement and recovery of possession of the suit properties by way of partition. But the decree passed by the trial court awarding maintenance to the plaintiff at the rate of Rs. 1200 per annum, that is to say, at the rate of Rs. 100 p.m. from the date of filing of the suit and creating a charge for the amount of maintenance on the suit properties was upheld by the High Court. The appeal was allowed in part. Hence this appeal by special leave.

5. During the pendency of this appeal in this Court the plaintiff, the widow of Rami Reddy, died and the present appellant, who is her heir and legal representative, has been substituted in her place.

6. It is not disputed that the deed of settlement (Ex. 1-A) is really a deed of gift. It has been strenuously urged by Mr. Krishnamurthy Iyer, learned counsel appearing on behalf of the appellant, that in holding that the gift in question was legal and valid, the High Court committed an error of law in the face of the legal position particularly prevailing in the erstwhile State of Madras of which the present State of Andhra Pradesh was a part, as recognised in several judicial decisions that a gift of coparcenary property by a coparcener without the consent of the other coparceners is void.

7. The parties are admittedly governed by the Mitakshara School of Hindu law. The essence of a coparcenary under the Mitakshara School of Hindu law is community of interest and unity of possession. A member of Joint Hindu Family has no definite share in the coparcenary property, but he has an undivided interest in the property which is liable to be enlarged by deaths and diminished by births in the family. An interest in the coparcenary property accrues to a son from the date of his birth. His interest will be equal to that of his father.

8. So far as alienations of coparcenary property are concerned, it appears that such alienations were permissible in eighteenth century. Indeed, in Suraj Bunsi Koer v. Sheo Proshad Singh ((1878-79) LR 6 IA 88), the Privy Council observed as follows :

> ... it has been settled law in the presidency of Madras that one coparcener may dispose of ancestral undivided estate, even by contract and conveyance, to the extent of his own share; and a fortiori that such share may be seized and sold in execution for his separate debt.

.... But it appears ... that, in order to support the alienation by one coparcener of his share in undivided property, the alienation must be for value. The Madras courts, on the other hand, seem to have gone so far as to recognise an alienation by gift. There can be little doubt that all such alienations, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided Hindu family; and the law as established in Madras and Bombay has been one of gradual growth, founded upon the equity which a purchaser for value has to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition.

9. Thus, the Privy Council also noticed that in Madras alienations by gift were recognised. Such alienations were held by their Lordships to be inconsistent with the strict theory of joint and undivided Hindu family. It is, however, a settled law that a coparcener may alienate his undivided interest in the coparcenary property for a valuable consideration even without the consent of other coparceners. As has been observed by the Privy Council in Suraj Bunsi Koer case ((1878-79) LR 6 IA 88), such recognition of alienations of coparcenary property for valuable considerations has been one of gradual growth founded upon the equity which the purchaser for value has to be allowed to stand in his vendor's shoes and to work out his rights by means of a partition.

10. After the above Privy Council decision, there has been a gradual growth in Madras of a particular legal position in regard to alienations by way of gift. Although at the time of the judgment of the Privy Council in Suraj Bunsi Koer case ((1878-79) LR 6 IA 88), the Madras courts recognised alienations by gift, as time passed the courts of law declared alienations by gift of undivided interest in coparcenary properties as void. The leading decision on the point is the case of Baba v. Timma (ILR 7 Mad 357 (FB), where it has been held that a Hindu father, if unseparated, has no power, except for purposes warranted by special text, to make a gift to a stranger of ancestral estate, movable or immovable. In that case, the gift was made by the father to a stranger to the detriment of the sons' right in the property gifted. In Ponnusami v. Thatha (ILR 9 Mad 273), the gift was made by a brother to the children of his daughter. It was held that under the Hindu law a voluntary alienation by gift of joint family property could not be made by an undivided coparcener, unless permitted by an express text. Thus, the cumulative effect of Ponnusami case (ILR 9 Mad 273) and Baba case (ILR 7 Mad 357 (FB) is that a coparcener cannot make a gift of his undivided interest in the coparcenary property either in favour of a stranger or in favour of his relations.

11. In Ramanna v. Venkata a Hindu made a gift of certain land which he had purchased with the income of ancestral property, and a suit was brought to recover the land on behalf of his minor son, who was born even seven months after the date of the gift. It was held that the gift was invalid as against the plaintiff, and that he was entitled to recover the land from the donee. Thus, a son, who was born to the family after the gift was made, was held entitled to recover the property from the donee. In other words, he would not be bound by such an alienation. Again, in Rottala Runganatham Chetty v. Pulicat Ramasami Chetti (ILR 27 Mad 162), it has been held that it is not competent to an individual member of a Hindu family to alienate by way of gift his undivided share or any portion thereof; and such and alienation, if made, is void in toto.

12. There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions. Instead, we may refer to the following statement of law in Mayne's Hindu Law, eleventh edn., Article 382 :

It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid .... A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purpose warranted by special texts.

13. We may also refer to a passage from Mulla's Hindu Law, fifteenth edn., Article 258, which is as follows :

> Gift of undivided interest. - (1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.

14. It is submitted by Mr. P. P. Rao, learned counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a

coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

15. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property. The most significant fact which may be noticed in this connection is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by a will the interest of a male Hindu in a Mitakshara coparcenary property. The legislature did not, therefore, deliberately provide for any gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara School of Hindu law, is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest.

16. Again, it may be noticed in this connection that under the proviso to Section 6 of the Hindu Succession Act, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the Act and not by survivor-ship. The devolution of interest in coparcenary property by survivorship has been altered to testamentary or intestate succession, as enjoined by the proviso to Section 6 relating to a female relative or a male relative claiming through such female relative. The substantive provision of Section 6, however, enjoins that the interest of a male Hindu in a coparcenary property will devolve by survivorship upon the surviving members of the coparcenary and in accordance with the provisions of the Act.

17. It is, however, a settled law that a coparcenary can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid.

18. The High Court has noticed most of the above decisions and also the legal position that a gift by a coparcener of his undivided interest in the coparcenary property without the consent of the other coparceners is void. The High Court as also noticed the provisions of Sections 6 and 30 of the Hindu Succession Act. The learned Judges of the High Court have, however, placed much reliance upon its previous Bench decision in G. Suryakantam v. G. Suryanarayanamurthy (AIR 1957 AP 1012 : 1955 Andh WR 944). In that case, it has been held that the law is not that a gift of an undivided share is void in the sense that it is a nullity, but only in the sense that it is not binding on the other coparceners. No authority has, however, been cited in support of that proposition of law. On the contrary, there is a long series of decisions since the decision in Baba v. Thimma (ILR 7 Mad 357 (FB)) some of which have been referred to above, laying down uniformly that a gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparceners is void. In the circumstances, it is very difficult to accept the proposition of law laid down in G. Suryakantam v. G. Suryanarayanamurthy (AIR 1957 AP 1012 : 1955 Andh WR 944) that a gift by a coparcener of his undivided in interest in the joint family property is not void, but is only not binding on the other coparceners. When a particular state of law has been prevailing for decades in a particular area and the people of that area having adjusted themselves with that law in their daily life, it is not desirable that the court should upset

such law except under compelling circumstances. It is for the legislature to consider whether it should change such law or not. It may be legitimately presumed that before the passing of the Hindu Succession Act, 1956, the Legislature must have taken into consideration the prohibition against making of gifts by a coparcener of is undivided interest in the coparcenary property, but the legislature has not, except permitting the coparcener to make a will in respect of his undivided interest by Section 30 of the Hindu Succession Act, altered the law against making of gift by a coparcener of is undivided interest. While considering whether the strict rule against alienation by gift should be interfered with or not, the court should also take into consideration the legislative inaction in not interfering with the rule against alienation by gift, while enacting the Hindu Succession Act. In the circumstances, we are unable to accept the proposition of law that has been laid down in G. Suryakantam case (AIR 1957 AP 1012 : 1955 Andh WR 944).

19. In the instant case, the High Court has also noticed a decision of this Court in Ammathayee alias Perumalakkal v. Kumaresan alias Balakrishnan (AIR 1967 SC 569 : 1967 All LJ 354 : (1967) 1 Mad LJ (SC) 164), that a gift of a coparcenary property is not valid under the Hindu law except for specified purposes. That case has been distinguished by the High Court on the ground that the question of validity of such a gift on the ground of consent of other coparceners did not arise for consideration. We do not think that it was a reasonable distinction that could be made of the law laid down by this Court merely because the question of consent of other coparceners did not arise. This Court, therefore, also has laid down against validity of a gift of an undivided share in the coparcenary property.

20. Coming back to the facts of the case, we find that Rami Reddy made the gift for the common benefit of the donee as well as his sons as held by the High Court. It is submitted on behalf of the respondents that really it is a case of renunciation or relinquishment by Rami Reddy of his interest in favour of his brother and is sons. It was the intention of the donor that the property might be enjoyed by his brother and his sons and, excepting that the donor had reserved to himself a life interest, presumably for his maintenance, he gifted his entire interest in the coparcenary property to his brother. There is some force in the contention of the learned counsel for the respondents that the gift should be construed as relinquishment or renunciation of his undivided interest by the donor in favour of the other coparceners. Although the gift is ostensibly in favour of Veera Reddy, but really the donor meant to relinquish his interesting the coparcenary in favour of Veera Reddy and his sons. In this connection, we may refer to the following passage from Mulla's Hindu Law, fifteenth edn., Article 264 at page 357 :

Article 264. (1) Renunciation or relinquishment of his share. - A coparcener may renounce his interest in the coparcenary property in favour of the other coparceners as a body but not in favour of one or more of them. If the renounces in favour of one or more of them the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. Such renunciation is not invalid even if the renouncing coparcener makes it a condition that he would be paid something towards maintenance. The renunciation or relinquishment must, of course, be genuine. If fictitious and not acted upon it would not be operative as between the parties and partition can be claimed.

21. Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons who were the remaining coparceners. The gift was therefore,

valid construing same as renunciation or relinquishment by Rami Reddy of his interest in the coparcenary and, accordingly, the consent of other coparceners was immaterial.

22. In the result, the conclusion arrived at by the High Court is affirmed though on a different ground. The appeal is dismissed. There will, however, be no order as to costs.

</html