

B. T. Govindappa

Vs

B. Narasimhaiah

Civil Appeal No. 979 of 1973

(N. M. Kasliwal, K. Ramaswamy JJ)

01.08.1991

JUDGMENT

KASLIWAL, J-

1. This appeal by special leave is directed against the judgment of the Karnataka High Court dated March 11, 1973 in a suit for declaration and possession.
2. The whole case now hinges on the effect of recitals made in the registered adoption deed (Ex. D-1) dated May 15, 1940 on a sale deed (Ex. P-1) dated January 22, 1958 made in favour of the appellant. In order to appreciate the controversy we would narrate facts which are now held proved by lower courts and are binding on the parties. The respondent B. Narasimhaiah was adopted by Chikkahanumiah and his wife Smt. Thimmamma by a registered adoption deed (Ex. D-1) dated May 15, 1940. By this document both Smt. Thimmamma and her husband conferred not only right of co-ownership in all the properties, on B. Narasimhaiah but also agreed that none of the parties will make any alienation of the properties mentioned in the schedule annexed to this deed. Thus the adopting parents gave a right of co-ownership in favour of the adopted son and also put a restriction that they will not transfer any property during their lifetime. The relevant recitals of Ex. D-1 are reproduced as under :

"You must enjoy along with us as a title holder the immovable properties detailed in the schedule hereto which are in our name and possession and all the immovable properties held by us. You have complete title after our death to all the immovable and movable properties held by us and you and your progeny can enjoy it happily. We have not transferred the properties mentioned in the schedule to anyone in any way so far nor we going to do hereafter. During our lifetime you should also not transfer the scheduled properties to others in any way but continue to improve them. You should make us happy by getting wife and children and should not neglect us."

3. After the death of Chikkahanumiah, it appears that the relations between Smt. Thimmamma and the adopted son B. Narasimhaiah became strained. Smt. Thimmamma executed a sale deed of the property in question vide Ex. P-1 dated January 22, 1958 in favour of the appellant B.T. Govindappa. The appellant filed a suit for declaration and possession on the strength of the above sale deed. The respondent contested the suit on the ground that in the face of Ex. D-1, Smt. Thimmamma had no right to alienate the property in suit favour of the appellant. The suit was dismissed by the trial court. On appeal, learned District Judge reversed the judgment of the trial court and decreed the suit. The High Court in second appeal reversed the judgment and decree of the first appellant court and dismissed the suit. The plaintiff appellant has come in appeal to this

Court.

4. It was contended on behalf of the appellant that the suit house was the stridhan property of Smt. Thimmamma and she had full right to deal with such property and the sale made in favour of the appellant was valid and binding against the respondent. It was also submitted that during the lifetime of Chikkahanumiah, Smt. Thimmamma was not competent to adopt and as such any recitals in Ex. D-1 were not binding on Smt. Thimmamma. The appellant was the bona fide purchaser for consideration and the suit for declaration and possession ought to have been decreed in his favour.

5. The controversy in the present case is not that Smt. Thimmamma had any right or not to adopt a son during the lifetime of her husband. The controversy is whether the adoptive mother can put any restriction or curtailment in respect of her own stridhan property at the time when a son is adopted in their family, though by her husband. Learned counsel for the appellant was unable to show any law or authority laying down that a Hindu woman was not entitled, to put any restriction or relinquish her own rights in the stridhan property, even by her own consent and free will at the time when a son is adopted by her husband. It is established beyond any manner of doubt that Smt. Thimmamma in the present case was a consenting party in the adoption of B. Narasimhaiah. Possibly, the natural parents of B. Narasimhaiah might not be willing to give their son in adoption unless such adopted son was given a right of co-ownership and restriction on the alienation of the properties of the adoptive family. If that condition was accepted and such restrictions were put in the registered adoption deed itself, we do not find any valid objection in doing so by Smt. Thimmamma in respect of her stridhan property.

6. The High Court did not find favour with the contentions raised on behalf of the appellant. The High Court held that the sale deed in favour of the appellant was clearly in contravention of the restriction imposed on Smt. Thimmamma in Ex. D-1 and as such the sale deed Ex. P-1 was invalid in law and conferred no title in the suit property on the appellant. In our opinion the High Court was right in taking the aforesaid view on account of the contents of Ex. D-1. There can be no manner of doubt that a Hindu woman is the full owner and entitled to deal with her stridhan property as she likes. She can also put any restriction or curtailment of her rights by her own consent and free will in her stridhan property. In the present case B. Narasimhaiah came by adoption in the family of Chikkahanumaiah and as a consequence of which he lost his right in the property of his natural father. At the time of adopting B. Narasimhaiah not only Chikkahanumaiah but Smt. Thimmamma also agreed to grant the right of co-ownership in all the properties mentioned in the schedule which admittedly included the stridhan property of Smt. Thimmamma also. Smt. Thimmamma also put a restriction on her rights in the immovable properties detailed in the schedules and agreed that B. Narasimhaiah will have complete title after their death over all the immovable and movable properties and they will not transfer any property mentioned in the schedule in future and B. Narasimhaiah will also not transfer any property during their lifetime. The above recitals unmistakably go to show that Smt. Thimmamma had agreed not to transfer the property in question and as such the sale made in favour of the appellant is invalid. Learned counsel for the appellant was unable to show any infirmity in the judgment of the High Court. We are happy to note that on our suggestion learned counsel for the respondent was able to persuade the respondent to pay an amount of Rs 15,000 to the appellant as a gesture of goodwill two weeks from today.

7. In the result, we find no force in this appeal and the same is dismissed with no order as to costs.

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