Namburi Basava Subrahmanyam

Vs

Alapati Hymavathi and Others

Civil Appeal No. 7599 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

02.04.1996

JUDGMENT

1.Leave granted.

2. We have heard the counsel on both sides. This appeals by special leave arises from the judgment and order dated July 11, 1995 of the Division Bench of the Andhra Pradesh High Court made in L.P.A. No. 124/89. The undisputed facts are that Ch. Seshamma had two daughters, namely, Hymavathy and Vimalavathy. She had bequeathed her properties to her daughters by two settlements deeds executed and registered on 1-12-1958. The appellant is the husband of Vimalavathy, who died on May 4, 1970. On August 21, 1970, Seshamma had revoked the settlement deed Ex. B-1 and executed Will Ex. A-1 giving the properties gifted in favour of Vimalavathy to her daughter Hymavathy. Seshamma died on January 26, 1976. Smt. Hymavathy filed O.S. No. 35/78 in the Court of Subordinate Judge, Tenali. The trial Judge relying on the evidence of DW 1-3, has held that Ex. B-1 is a settlement deed and that, therefore, the Will Ex. A-1 is not valid in law. Accordingly, he dismissed the suit. The learned Judge by judgment and decree dated December 13, 1988 confirmed the decree of the trial Court. The Division Bench, as stated earlier, in the impugned judgment decreed the suit as claimed by Hymavathy. Thus this appeal by special leave.

3. The only question is the interpretation of the deed Ex. B-1. It is true, as rightly contended by Smt. K. Amareshwari, learned Senior counsel for the respondents, that the nomenclature of the document is not conclusive. The recitals in the document as a whole and the intention of the executant and acknowledgment thereof by the parties are conclusive. The Court has to find whether the document confers any interest in the property in praesenti so as to take effect into vivos and whether an irrevocable interest thereby, is created in favour of the recipient under the document, or whether the executant intended to transfer the interest in the property only on the demise of the settlor. Those could be gathered from the recitals in the document as a whole. The settlement deed reads as under :

> "I am 78 years old by now. Since I have suffering from Nanju disease and breathlessness and Asthama and I feel that it would be difficult for me to live long. You happened to be my daughter. Out of great love and affection, I have for you, I, having felt strong desire got this settlement deed executed in your favour this day, settling the properties mentioned in the schedule hereunder i.e., the property I had purchased on 21-11-1935 from Sharadappa wife of Damarla Anajaiah and Vejella Veeraiah and others which is my self acquired property, and the land developed upon

> me out of the property of my husband under a decree passed by the Andhra Pradesh High Court and which has been in my absolute rights and enjoyment, to belong to you after my death to be enjoyed by you with absolute rights. Therefore, taking possession of the schedule land after my death you may enjoy the same freely and happily till the sun and moon endure together with trees, water, stones, treasures and treasure-troves with all the rights with absolute powers of disposition by way of gift, mortgage, exchange, sale etc., from your son to grand-son and so on by paying the taxes of the municipality, Government etc., from then onwards. I, heirs of my successors shall never raise any dispute against you, your heirs or successors in this behalf. Having assured you and made you to believe that the schedule mentioned properties have not been alienated and have been subjected to any attachments of Courts, securities etc., and are free from all encumbrances and which are in my absolute right and enjoyment, this deed of settlement is got executed and "delivered to you".

4. The Division Bench on its reading of the said document has construed it to be a Will. Unfortunately, it did not read the recital in the Schedule to the Settlement deed. The boundaries of the properties settled (details of which are material; hence omitted) through this settlement deed through which the rights were created in his favour.

5. The said recital clearly would indicate that the settlement deed executed on that date is to take effect on that day. She created rights thereunder intended to take effect from that date, the extent of the lands mentioned in the Schedule with the boundaries mentioned thereunder. A combined reading of the recitals in the document and also the schedule would clearly indicate that on the date when the document was executed she had created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to enjoyment, alienation etc. In other words, she had created in herself a life interest in the property and vested remainder in favour of her second daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settlee with absolute rights on settlor's demise. A reading of the documents together with the Schedule would give an indication that she had created right and interest in prasenti in favour of her daughter Vimlavathy in respect of the properties mentioned in the schedule with a life estate for her enjoyment during her lifetime. Thus, it could be construed rightly as a settlement deed but not as a Will. Having divested self thereunder, right and title thereunder, she had, thereafter, no right to bequeath the same property in favour of her daughter, Hymavathy. The trial Court and the learned single Judge rightly negatived the claim. The Division Bench was not, therefore, correct in law in interfering with the decree of the trial Court.

6. The appeal is accordingly allowed. The decree of the trial Court stands confirmed. No costs. Appeal allowed.