Laxmappa and Others

Vs

Smt Balawa Kom Tirkappa Chavdi

Civil Appeal No. 383 of 1987

(M. M. Punchhi, K. Vankataswami JJ)

06.08.1996

ORDER

1. The plaintiff-respondent (who is now dead and represented by her daughter) had a brother. She adopted her brother as her son with the consent of her father. She thus became the adoptive mother of the adopted son. That relationship obligated the son to maintain his mother. On the other hand, she remained a daughter of her father. Widowed as she was, her natural father and her adopted son jointly made a gift of some agricultural land in her favour, acknowledging in the deed thereof that since she was destitute and unable to maintain herself, provision had to be made for her, for her lifetime. It was however specified therein that after her death the property would devolve upon the 'donors' which expression included their legal heirs. This deed of 31-7-1950 was claimed by the plaintiff-respondent to have matured into full ownership on the coming into force of the Hindu Succession Act, 1956 (for short 'the Act') by the thrust of Section 14(1) of the Act for which she filed a suit for declaration etc. Her suit was resisted on the ground that Section 14(2) was applicable and that the gift was conditional to be reverting back on her death to the line of the donors. The ultimate finding recorded by the High Court is that it is a gift to which Section 14(1) of the Act is attracted and therefore the plaintiff-respondent had become a complete owner of the properties gifted.

2. Mr. Devendra Singh, the learned counsel for the appellants, has candidly stated that insofar as the adopted son was concerned, he was legally bound to maintain his adoptive mother and therefore his half share in the donated land would come within the grip of Section 14(1) to which the plaintiff-respondent could legitimately claim to have become its absolute owner. Insofar as the other half donated by the father of the plaintiff-respondent was concerned, he points out that there was no such legal obligation on him to maintain her and thus that part of the gift would fall within the sweep of Section 14(2) of the Act. Sequelly, it is claimed that half of the property must return to the line of the father who has other grandsons, with whom he shared the property as ancestral.

3. The law on the subject was taken stock of by the High Court by quoting para 546 of Mulla's book on Hindu Law, 15th Edn., which provides that a Hindu father is bound to maintain his unmarried daughters, and on the death of the father, they are entitled to be maintained out of his estate. The position of the married daughter is somewhat different. It is acknowledged that if the daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. The High Court has concluded that it was clear that the father was under an obligation to maintain the plaintiff-respondent. Seemingly, the High Court in doing so was conscious of the declaration made in the gift deed in which she was described as a destitute and unable to maintain herself. In that way, the father may not have had a legal obligation to maintain her but all the same

there existed a moral obligation. And if in acknowledgment of that moral obligation the father had transferred property to his daughter then it is an obligation well-fructified. In other words, a moral obligation even though not enforceable under the law, would by acknowledgment, bring it to the level of a legal obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter, even impinging to a reasonable extent on his ancestral property. It is duly acknowledged in Hindu law that the Karta of the family has in some circumstances, power to alienate ancestral property to meet an obligation of the kind. We would rather construe the said paragraph more liberally in the modern context having regard to the state of law which has been brought about in the succeeding years. Therefore, in our view, the High Court was within its right to come to the conclusion that there was an obligation on the part of the father to maintain his destitute widowed daughter.

4. For the afore reasoning, we do not think a case is made out warranting our interference in this appeal. Accordingly, the same is dismissed but without any order as to costs.