SUPREME COURT OF INDIA

R. Kuppayee

Vs.

Raja Gounder

(R.C.Lahoti and Ashok Bhan JJ.)

10.12.2003

JUDGMENT

BHAN, J.

Aggrieved by the judgment and decree passed by the courts below in dismissing the suit filed by the plaintiff-appellants (hereinafter referred to as the "appellants"), the appellants have come up in this appeal.

Shortly stated the facts are:

The appellants are the daughters of the defendant-respondent (hereinafter referred to as the "respondent"). By a registered settlement deed, Exhibit A-1 dated 29th of August, 1985, the respondent hereinabove settled an extent of 12 cents of land comprised in S.No.113/2, Thathagapatti Village, Salem District in favour of the appellants. As per recitals in the settlement deed, the settlement was made by the respondent out of natural love and affection for the appellants and the possession of the property was handed over to them on the day the settlement deed was executed. The schedule of settlement deed shows that the total extent of the property owned by the family was 3.16 acres. The gift was made of 12 cents along with Mangalore tiled house standing on the gifted

land. It was also stated in the settlement deed that in future neither the respondent nor any other male or female heirs would have a right over the settled property.

After nearly 5 years, on 22nd April, 1990, respondent and his associates asked the appellants to vacate the property and tried to trespass into the property. Because of the attempt made by the respondent to trespass into the property, the appellants filed the Original Suit No.451 of 1990 in the Court of District Munsif, Salem seeking relief of restraining the respondent and his associates from interfering with the appellant's peaceful possession and enjoyment of the suit property in any way by way of a permanent injunction, or, for grant of relief deemed fit in the circumstances of the case.

Respondent resisted the suit and in the written statement filed by him, he took the stand that he had not executed any settlement deed. That his son-in- law i.e., husband of appellant No.1 had purchased a house site and the respondent was taken to the Registrar's office to witness the sale deed. That he was used to taking liquor and taking advantage of his addiction to liquor the appellants and their respective husbands fraudulently by misrepresentation instead got the sale deed executed from him. The property in dispute being Joint Hindu Family property consisting of himself and his son could not be gifted under any circumstances.

In support of their respective pleas, the parties led their evidences. The appellant No.1 stepped into the witness box as PW-1. She admitted that the property was ancestral. That her father had settled the property on her and her sister of his own will out of nature love and affection for them. PW-2, the attesting witness to Exhibit A-1 stated that he knew the respondent. While he was standing on the road and talking to some persons, he was called by the respondent to witness the document. He went to Sub- Registrar's office along with the respondent. Respondent put his signatures on Exhibit A-1 after reading the same. That he (himself) and Govindawamy signed Exhibit A-1 as witnesses. Govindawamy has died. In the cross- examination he stated that he did not know the contents of the document, Exhibit A-1. He showed his ignorance as to when, where or in whose name the stamp papers were purchased. He denied having knowledge of the fact as to whether the respondent was in the habit of drinking liquor. Respondent in order to prove his case stepped in the witness box as DW-1. He stated that the property was a Joint Hindu Family property as the same had been purchased with the sale proceeds of the ancestral property. That his son-in- law who was working in TVS had purchased some property and he was taken by his son-in-law to sign as a witness. He denied having executed the settlement deed in favour of the appellants. He denied that he knew PW-2.

It was stated that the possession of the appellants was permissive as they were allowed to reside in the house to enable them to send their children to the school. He denied his signatures on the settlement deed, on the 'vakalatnama' given by him to his counsel as well as on the summons sent to him by the court. It was denied that he knew English. It was also stated by him that his signatures were obtained fraudulently on the pretext of signing as a witness on the document by which his son-in-law had purchased a house site. That the total extent of the family holding was 3.16 acres of land.

He admitted that his son was residing separately for the last 3 to 4 years but denied that he was retracting from the settlement deed on the advise of his son. That he was in the habit of drinking.

No other evidence was led by any of the parties.

The trial court believed the evidence of the respondent. It was held that the respondent was taken to the Sub-Registrar's office to witness a document whereas a deed of settlement was got executed from him.

Testimony of PW-2, the attesting witness was discarded. It was held that the deposition of PW-2 in fact supported the case put forth by the respondent to the effect that the respondent was taken to the Sub-Registrar's office to sign as a witness. The trial court further held that since the property in dispute was ancestral in nature, the respondent had no power/authority to make a gift of a part of the ancestral property in favour of his daughters. The suit was dismissed. The order of the trial court was affirmed by the First Appellate Court as well as by the High Court, aggrieved against which the present appeal has been filed.

It is submitted by the counsel for the appellant that the findings recorded by the courts below are wrong on facts as well as in law. Finding of fact regarding due execution of Exhibit A-1 is vitiated due to misreading of the statement of the attesting witness, PW-2. That the father being the Karta had the authority to make a gift of ancestral immovable property to a reasonable extent out of the Joint Hindu Family property in favour of his daughters. That such authority of the father is recognised in old Hindu Text Books as well as by the courts in recent times. Counsel appearing for the respondent has controverted the submissions made by the counsel for the appellants. It was argued that there was no misreading of evidence and that the finding recorded by the courts below on facts could not be interfered with by this Court at this stage of the proceedings. The respondent had no authority to make a gift of part of the ancestral immovable property and in any case he could not have gifted the only residential house possessed by the family.

The two points which arise for consideration in this appeal are:

(i) whether the judgment of the courts below are vitiated because of the misreading of the evidence of PW-2, the attesting witness to the settlement deed;

(ii) whether the gift/settlement made by the father in favour of his married daughters of a reasonable extent of immovable property out of the Joint Hindu Family property is valid.

The trial court believed the evidence of the respondent and dismissed the suit. For arriving at this conclusion the trial court held that if the respondent had the intention of executing a deed of settlement in respect of the suit property in favour of the appellants, then at least he would have taken his son Ramasamy for affixing his signatures as a witness to the deed.

Since it was not done the document Exhibit A-1 could not be relied on. The statement of PW-2 was construed to mean as if he had stated that the respondent was taken for affixing his signatures as a witness on the date when the settlement deed, Exhibit A-1 was executed. We have carefully perused the statements made by PW-2 as well as DW-1 and in our view the trial court misread and misconstrued the testimony of PW-2. In the course of cross-examination PW-2 had stated as follows:- "Only the defendant invited me for signing as witness.

On the way Govindasamy was also invited while he was found standing there.. While going towards the Sub-Registrar's office, the Defendant saw and invited me to sign as witness." The trial court in his judgment has misconstrued the above statement and recorded the following finding:- "PW-2 had given evidence that the Defendant was taken for affixing signature as witness on the date when the deed of settlement exhibit A1 was executed." The trial court also held that:- "If only the Defendant had executed the deed of settlement in respect of the suit property in favour of his daughters i.e. the Plaintiffs, he would have atleast taken his son Ramasamy for affixing his signature as witness.

This factor is also not in consonance with the true nature and bona fides of exhibit A1." Finding recorded by the trial court clearly shows that the court misread and misconstrued the testimony of PW-2. PW-2 in his deposition has clearly stated that he was invited by the respondent to be a witness. He has no where stated that defendant (respondent herein) was taken for affixing signatures as a witness. If respondent was to be a witness then there was no need to ask PW-2 and Govindasamy to accompany the respondent or for them to sign the document. He also deposed that respondent affixed his signatures on Exhibit A1 after reading the same. That he (himself) has signed Exhibit A1 as a witness. That he knew the respondent. Suggestion put to him that signatures of the respondent on Exhibit A1 were obtained by threat was denied. The trial court did not refer to this part of testimony of PW-2 at all. The question put to him in the cross- examination which has been reproduced above wherein PW-2 has stated that the respondent had invited him for signing as a witness has been read to him as if PW-2 had stated that the respondent was taken for affixing signatures as a witness to some documents on the date when the deed of settlement Exhibit A-1 was executed. This is a clear misreading of the testimony of PW-2. The trial court also failed to note that the evidence of respondent as DW-1 lacked total credibility especially in the light of his conduct in denying his signature on the settlement deed, vakalatnama as well as on the summons served on him. Projection made by the respondent in his testimony that the appellants taking advantage of the fact that he was a drunkard got the settlement deed, Exhibit A-1 signed fraudulently cannot be accepted. Respondent took no steps to get the settlement deed cancelled though, the appellants had been living in the house for five years after the execution of the settlement deed.

In his statement he does not say that he did not know about the execution of the settlement deed. Plea taken by him that he was taken to the Sub- Registrar's office to be a witness to a sale deed by his son-in-law cannot be accepted as it has not been proved on record that the respondent's son-in-law had in fact purchased any house site. Findings recorded by the trial court and upheld by the First Appellate Court and the High Court based on misreading of evidence are liable to be set aside. The findings recorded on misreading of evidence being perverse cannot be sustained in law.

Coming to the second point, the trial court held that since the property was ancestral in nature, the respondent had no authority/power to make a gift of a portion of the ancestral property in favour of his daughters.

In appeal the First Appellate Court accepted that the father could give away a small portion of the ancestral property to his daughters out of the total holding of the family property but since in this case the total extent of property owned by the family had not been proved it could not be held that the property gifted by the father was of a reasonable portion of the total holding of the family. The High Court affirmed the finding recorded by the First Appellate Court.

The High Court of Madras in a series of judgments has taken the view that father could make a gift within reasonable limits of ancestral immovable property to his daughter as a part of his moral obligation at the time of her marriage or even thereafter.

In Anivillah Sundararamaya vs. Cherla Seethamma and others [1911 (21) MLJ 695], it was held that a small portion of the ancestral immovable property could be given to the daughter at the time of her marriage or thereafter and such a gift would be a valid gift. In this case 8 acres of ancestral immovable property out of 200 acres of land possessed by the family were given in gift by the father to his daughter after her marriage. Upholding the gift it was observed:- "P. Narayana Murthi for 1st respondent:- The present case is stronger than Kudutumma v. Narasimhacharyulu, as it is the father that has given the property and not the brothers. A gift made to the son-in-law belongs also to the daughter vide Ghose's Hindu Law, 2nd Edn., p.313, Footnote. There is a text of Vyasa to that effect. Se Ghose, p.389, for translation; vide p.360 also vice versa. A gift to the daughter would belong to the son-in-law. If it is proper to make gifts at the time of marriage it would be equally proper if made afterwards.

Though the texts do not require gifts to be made to daughters at the time of marriage, if made they are not invalid. Churamon Sahu v. Gopi Sahu referred to, where Mookerji J. approves of Kudutamma v. Narasimhacharyulu; Bachoo v. Mankuvarhai.

The same view was taken by the Madras High Court in Pugalia Vettorammal and another vs. Vettor Goundan, [1912 (22) MLJ 321]. In this case it was held that a father could make gift to a reasonable extent of the ancestral immovable property to his daughter. Gift made of 1/6th of the total holding of the ancestral property was held to be a valid. The same view has later been taken by the Madras High Court in Devalaktuni Sithamahalakshmamma and others vs. Pamulpati Kotayya and others [AIR 1936 (Madras) 825] and Karuppa Gounder and others vs. Palaniammal and others [1963 (1) MLJ 86]. A Full Bench of Punjab & Haryana High Court in The Commissioner of Gift Tax vs. Tej Nath [1972 PLR (74) 1] and the High Court of Orissa in Tara Sabuani vs. Raghunath [AIR 1963 Ori. 59] have also taken the same view.

The powers of the father or the managing member of the joint Hindu family vis-`-vis coparcenary property have been summarised in paragraphs 225, 226 and 258 of Mulla's Hindu Law which reads:- "225. Although sons acquire by birth rights equal to those of a father in ancestral property both movable and immovable, the father has the power of making within reasonable limits gifts of ancestral movable property without the consent of his sons for the purpose of performing 'indispensable acts of duty, and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress and so forth'.

226. A Hindu father or other managing member has power to make a gift within reasonable limits of ancestral immovable property for 'pious purposes'. However, the alienation must be by an act inter vivos and not by will. A member of a joint family cannot dispose of by will a portion of the property even for charitable purposes and even if the portion bears a small proportion to the entire estate. However, now see section 30 of the Hindu Succession Act, 1956.

258. (1) According to 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.

(2) As to disposition by will after the coming into operation of the Hindu Succession Act, 1956, see section 30 of the Act." Combined reading of these paragraphs shows that the position in Hindu law is that whereas the father has the power to gift ancestral movables within reasonable limits, he has no such power with regard to the ancestral immovable property or coparcenary property. He can, however make a gift within reasonable limits of ancestral immovable property for "pious purposes". However, the alienation must be by an act inter vivos, and not by will. This Court has extended the rule in paragraph 226 and held that the father was competent to make a gift of immovable property to a daughter, if the gift is of reasonable extent having regard to the properties held by the family.

This Court considered the question of extended meaning given in numerous decisions for "pious

purposes" in Kamla Devi vs. Bachulal Gupta [1957 SCR 452]. In the said case a Hindu widow in fulfilment of an ante-nuptial promise made on the occasion of the settlement of the terms of marriage of her daughter, executed a registered deed of gift in respect of 4 houses allotted to her share in a partition decree, in favour of her daughter as her marriage dowry, after two years of her marriage. The partition decree had given her the right to the income from property but she had no right to part with the corpus of the property to the prejudice of the reversioners. Her step sons brought a suit for declaration that the deed of gift was void and inoperative and could not bind the reversioners. The trial court and the High Court dismissed the suit holding that the gift was not valid. This Court accepted the appeal and held that the gift made in favour of the daughter was valid in law and binding on the reversioners.

This point was again examined in depth by this Court in Guramma Bhratar Chanbasappa Deshmukh and another vs. Malappa 1964 (4) SCR 497 and it was held:- "The legal position may be summarized thus: The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family.

By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by Courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift anytheless a valid one." (Emphasis supplied) Extended meaning given to the words "pious purposes" enabling the father to make a gift of ancestral immovable property within reasonable limits to a daughter has not been extended to the gifts made in favour of other female members of the family. Rather it has been held that husband could not make any such gift of ancestral property to his wife out of affection on the principle of "pious purposes". Reference may be made to Ammathayee Ammal & Another vs. Kumaresan & Others [1967 (1) SCR 353]. It was observed 'we see no reason to extend the scope of words "pious purposes" beyond what has already been done in the two decisions of this Court' and rejected the contention that a husband could make any such gift of ancestral property to his wife out of affection on the principle of pious purposes.

On the authority of the judgements referred to above it can safely be held that a father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage.

The only other point, which remains for consideration, is as to whether a gift made in favour of the appellants was within the reasonable limits, keeping in view, the total holding of the family. The total property held by the family was 3.16 acres. 12 cents would be approximately 1/26th share of the total holding. The share of each daughter would come to 1/52nd or 1/26th share of the total holding of the family which cannot be held to be either unreasonable or excessive under any circumstances. Question as to whether a particular gift is within reasonable limits or not has to be judged according to the status of the family at the time of making a gift, the extent of the immovable property owned by the family and the extent of property gifted. No hard and fast rule prescribing quantitative limits of such a gift can be laid down. The answer to such a question would vary from family to family.

This apart, the question of reasonableness or otherwise of the gift made has to be assessed vis-`-vis the total value of the property held by the family. Simply because the gifted property is a house, it cannot be held that the gift made was not within the reasonable limits. As stated earlier, it would depend upon a number of factors such as the status of the family, the total value of the property held by the family and the value of the gifted property and so on. It is basically a question of fact. However, on facts, if it is found that the gift was not within reasonable limits, such a gift would not be upheld. It was for the respondent to plead and prove that the gift made by the father was excessive or unreasonable, keeping in view, the total holding of the family. In the absence of any pleadings or proof on these points, it cannot be held that the gift made in this case was not within the reasonable limits of the property held by the family. The respondent has failed to plead and prove that the gift made was to unreasonable extent, keeping in view, the total holding of the family. The first appellate court and the High Court, thus, erred in non-suiting the appellants on this account.

For the reasons stated above we accept the appeal, set aside the judgments and the decrees passed by the courts below. It is held that the respondent had the capacity to make a gift to a reasonable extent of ancestral immovable property in favour of his daughters. The gift was not vitiated by fraud or misrepresentation. The appellants are held to be the absolute owners of the suit property and the respondent is injuncted from interfering with the peaceful possession and enjoyment of the suit property by the appellant perpetually. Parties shall bear their own costs.