SUPREME COURT OF INDIA

Kokilambal

Vs

N. Raman

Appeal (Civil) 6994 of 1999

(Ashok Bhan and A.K.Mathur)

21/04/2005

JUDGMENT

A. K. MATHUR, J.

This appeal is directed against an order passed by learned Single Judge of the High Court of Madras in Second Appeal No.1866 of 1986 on November 19, 1998 whereby learned Single Judge affirmed the judgment and order of the First Appellate Court and dismissed the second appeal filed by the appellant herein.

Brief facts giving rise to this appeal are as follows. The plaintiff- respondent instituted Original Suit No.8182 of 1980 before the XVIth Assistant Judge, City Civil Court, Chennai praying for seven reliefs. The main reliefs prayed for in the suit read as under:

"(i) Declaring that the plaintiff is entitled to the properties in plaint A & B Schedule absolutely after the life time of the lst defendant;

(ii) For a declaration that the deeds of revocation dated 27.3.1979 registered as document Nos.431 and 432 of 1979 in the office of the Sub-Registrar, Madras in respect of properties described in Schedule A and B hereunder are void in law and not valid and binding on the plaintiff;

(iii) For a declaration that the deeds of settlement dated 30.3.1979 executed by the lst defendant in favour of defendants 2 and 3 in respect of plaint A and B schedule properties are void in law and are not valid and binding on the plaintiff;

(iv) For a declaration that the deed of mortgage dated 29.9.1979 executed by defendants 1 to 3 in favour of 4th defendant in respect of the plaint A and B Schedule properties are not valid and binding on the plaintiff;

*(v) Directing the defendant to render true and correct account of the rental income from the properties described in the Schedule A and B and to pay over the half share payable to the plaintiff;" **

According to the plaintiff in the suit, schedule properties A & B belonged to one Late Manicka Mudaliyar, the husband of the first defendant. That the said Manicka Mudaliyar died in or about 1963 leaving behind Kokilambal, the first defendant as his sole legal heir. Since the deceased Manicka Mudaliyar had no issue, he showered his love and affection to his elder sister's son Varadan and had a mind to adopt him but before he could do so, he expired. Keeping in view the wishes of her deceased husband, Kokilambal got all the last rites performed through Varadan. Kokilambal, the wife of deceased Manicka Mudaliyar made settlement on June 12, 1963 of A schedule property in favour of Varadan while reserving her right and interest therein. Similarly, she also made a settlement on June 27, 1964 in respect of B schedule property and executed a deed of settlement in favour of Varadan. By virtue of these two settlement deeds, settler Kokilambal stipulated certain terms and conditions (reference shall be made hereinafter). Varadan who was a bachelor executed a will on May 22, 1978 in respect of his other properties other than those properties which were received by him from Kokilambal by way of settlement in favour of his brother(Plaintiff) . But Varadan died as a bachelor on February 1, 1979. On March 27, 1979 the settlor, Kokilambal revoked both the settlement deeds in favour of Varadan and she executed a fresh settlement deed in favour of one Babu @ Pilani and Shantha @ Shanthi, the wife of Babu. Shanti was the daughter of Kokilambal's brother.

Thereafter, Varadan's brother, N. Raman filed a suit to declare that he is entitled to the suit properties after the death of Varadan and sought a declaration that the revocation of settlement deed made by Kokilambal on March 27, 1979 be declared as null and void and likewise the fresh deed of settlement executed by Kokilambal on March 30, 1979 in favour of Defendant Nos.2 & 3 i.e. Babu and Shanthi be declared void in law.

The suit was dismissed by the trial court. The plaintiff preferred an appeal before the first appellate court which decreed the same. Against that an appeal was preferred by the appellant and the same was also dismissed by the impugned judgment of the High Court in second appeal on November 19, 1998. Aggrieved against this order dated November 19, 1998, special leave petition was filed and on grant of special leave this appeal has come up for disposal before us.

The basic question which calls for consideration is what is the effect of the earlier two settlements made by settlor Kokilambal in favour of deceased Varadan; and whether by virtue of that settlement deceased Varadan became the absolute owner and after his death whether Kokilambal reserved her right to revoke the settlement or not ? In order to appreciate the contents of the settlement of the suit schedule properties i.e. A & B it would be necessary to reproduce the recitals in the settlement deeds (A-1 & A-2) which read as under:

"Since we did not beget issues, even during my husband's life time he brought up Varadan, the younger son of his elder sister viz., Kuppammal, as his own son. He (my husband) suddenly passed away. Even during his life time he has decided to take Varadan as an adopted son. I have also decided to act according to his wishes and hence, I performed the last rites of my deceased husband through Varadan. Due to the love and affection that I have towards Varadan, I intend to make an arrangement for him, and hence I executed and delivered this Deed of Settlement.

This income derived from out of the under- mentioned Schedule property viz., Door No.43, Kakkaran Basin Road, shall be enjoyed by myself and Varadan, till my life time. After my demise, the house, more fully described in the schedule, shall be enjoyed by Varadan absolutely.

*From now on, the aforesaid Varadan himself, shall collect the rental income of the aforesaid house and pay the corporation and land tax, repairs etc., and the reminder rental amount shall be enjoyed by me and Varadan in moiety. Hereafter, I have no right to alienate the property. But, both of us have right to alienate the same jointly." **

Learned Single Judge of the High Court of Madras came to the finding after review of various decisions of this Court as well as the said High Court, that by instruments of settlement i.e. A-1 & A-2, a vested right was created in favour of deceased, Varadan and since vesting has taken place in favour of Varadan, the settlor cannot subsequently revoke that settlement and execute a fresh settlement in respect of the suit schedule property in favour of Babu & Shantha. Learned Single Judge affirmed the finding of the trial court that the order of revocation of the settlement was bad and likewise the execution of a fresh settlement in favour of the appellant Nos.2 & 3 was also consequently bad.

Learned counsel for the appellant has submitted that both the courts below have not correctly approached the matter because the settlement deed does not create a vested right in favour of Varadan so long as Kokilambal was alive and as per the terms of the settlement the vesting of the suit schedule property i.e. A & B would only arise after the death of Kokilambal. Therefore, there is total mis- reading on the part of both the courts of the contents of the settlement deeds. As against this, learned counsel for the respondent submitted that by virtue of the aforesaid settlement, a vested right was created in favour of the deceased settlor, Varadan and therefore, by way of succession the suit property should come to his brother plaintiff and the settlor Kokilambal cannot revoke the settlement deeds and issue a fresh settlement in favour of appellant Nos. 2 & 3.

Settlement is one of the recognized modes of transfer of moveable and immovable properties under

Hindu law. The Courts have accepted such mode as legal and valid mode of transfer of properties. Courts have emphasized that in order to find out the correct intent of the settlor the settlement deed has to be read as a whole and draw their inference of its content. Therefore, it has always been emphasized that the terms of the settlement should be closely examined and the intention of the settlor should be given effect to. Sometimes there is absolute vesting and sometimes there is contingent vesting as contemplated in Sections 19 and 21 of the Transfer of Property Act, 1882. In order to ascertain the true intention of the settlor one has to closely scrutinize the settlement deed, whether the intention of the settlor was to divest the property in his life time or to divest the property contingently on the happening of certain event. In this connection, reference may be made to a decision of this Court in the case of Rajesh Kanta Roy vs. Santi Debi reported in 1957 SCR 77. Their Lordships observed that the determination of the question as to whether an interest created is vested or contingent has to be guided generally by the principles recognized under Sections 19 and 21 of the Transfer of Property Act, 1882 and Sections 119 and 120 of the Indian Succession Act, 1925. Their Lordships quoted a passage from Jarman on Wills (8th Ed. , Vol II at page 1390 which states as follows :

" So, where a testator clearly expressed his intention that the benefits given by his will should not vest till his debts were paid, the intention was carried into execution, and the vesting as well as payment was held to be postponed." *

Their Lordships in the case of Rajesh Kanta Roy (Supra) have observed as follows:

"Apart from any seemingly technical rules which may be gathered from English decisions and text-books on this subject, there can be no doubt that the question is really one of intention to be gathered from a comprehensive view of all the terms of a document." *

Their Lordships have clearly observed that in order to decide the issue one has to closely go through the terms of settlement and the intention of the settlor.

In this connection, our attention was invited to a decision of this Court in the case of Usha Subarao vs. B.N.Vishveswaraiah & Ors. Reported in 8 wherein it was observed as follows:

"An interest is said to be a vested interest when there is immediate right of present enjoyment or a present right for future enjoyment. An interest is said to be contingent if the right of enjoyment is made dependent upon some event or condition which may or may not happen. On the happening of the event or condition a contingent interest becomes a vested interest." *

Their Lordships also relied upon an observation made in Halsbury's Laws of England, 4th Edn., Vol. 50, paras 591, 592 which read as under :

"Although the question whether the interest created is a vested or a contingent interest is dependent

*upon the intention to be gathered from a comprehensive view of all the terms of the document creating the interest, the court while construing the document has to approach the task of construction in such cases with a bias in favour of vested interest unless the intention to the contrary is definite and clear. As regards Wills the rule is that " where there is a doubt as to the time of vesting, the presumption is in favour of the early vesting of the gift and, accordingly, it vests at the testator's death or at the earliest moment after that date which is possible in the context." **

Their Lordships also relied upon Halsbury's Laws of England, 4th Edn., Vol.50, Para 589 at page 395 which reads as under :

*"It is necessary to construe the Will to find out the intention of the testator. With regard to construction of Wills the law is well settled that intention has to be ascertained from the words used keeping in view the surrounding circumstances, the position of the testator, his family relationship and that the Will must be read as a whole" **

Our attention was also invited to a decision of this Court in the case of Namburi Basava Subrahmanyam vs. Alapati Hymavathi & Ors. reported in 2. In this case also the question was whether the document is a will or settlement. Their Lordships held that the nomenclature of the document is not conclusive one. It was observed as follows:

"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 intra 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 document in this case described as 'settlement deed' was to take effect on the date on which it was executed. The settlor created rights thereunder intended to take effect from that date, the extent of the lands mentioned in the Schedule with the boundaries mentioned there under. 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 in praesenti and vested the 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 the settlor's demise. Thus the document in question could be construed rightly as a settlement deed but not a s a Will. The settlor, having divested herself of the right and title there under, had, thereafter, no right to bequeath the same property in favour of her first daughter. " **

In this background, we have to examine the settlement deeds created by Kokilambal in favour of the deceased Varadan. The recitals of the settlement deeds i.e. A-1 and A-2 as reproduced above, clearly says that since Kokilambal had no son and her husband Konicka Mudaliyar during his life time has bestowed his love and affection on Varadan, the son of his elder sister, and therefore, out of love and affection, she has settled that the income derived from the properties i.e. Door No.43, Kakkaran Basin Road, shall be enjoyed by herself and Varadan, till her life time and after her demise, it shall be enjoyed by Varadan absolutely. She further authorised him to collect the rental income of the aforesaid house and pay the corporation and land tax, repairs etc. and the remainder rental amount shall be enjoyed by herself and Varadan in moiety.

The appellant No.1 further settled that she would not alienate the property but both of them reserve the right to alienate the property jointly. Therefore, this settlement in no uncertain terms lays down that the properties in question will vest absolutely after the death of the appellant No.1 and during their life time, both will enjoy the usufructs but Varadan would collect the rental income of the aforesaid property. It is further mentioned that both will have the right to alienate the property in question jointly.

These conditions are very clear, Varadan would have acquired the absolute right over the property after the death of Kokilambal. Even during their life time if the property was to be alienated then the same would be alienated by them jointly meaning thereby that the appellant No.1 continued to hold the property during her life time and both of them were permitted to enjoy the usufructs of that property. These settlement deeds in our opinion, clearly make out that Varadan was not made absolute owner of the property during the life time of the settlor, Kokilambal.

Learned counsel for the respondent has tried to interpret this document that since the appellant No.1 had already divested her right to alienate the property that should be enough to show that the entire property stood vested in favour of Varadan. Learned counsel for the respondent tried to seek support from a decision in the case of Turlapaty Rajeswara Rao & Anr. vs. Kamarajugadda Rangamma & Ors. reported in 1949 (1) MLJ 480 (Vol.96) In that case also it as observed that the wife got the life estate in the properties and the nephews got the vested interest in the same although they are postponed till her death. In this case also it was held that the fundamental rule of construction of a will is that the intention of the testator should be gathered from a reading of the will as a whole.

Learned counsel for the respondent also invited our attention to a decision in the case of P.Ram Mohan vs. Lalitha Raghuraman & Ors. reported in 1976 AIR(Madras) 333. In that case, on the facts Their Lordships came to the conclusion that where a settlor by a deed of settlement created a life interest in favour of himself, his wife, his foster son, it was held that the two sons of the settlor acquired a vested interest in the property on the date of execution of the deed.

Therefore, this depended on the construction of the settlement deed. But in the present case, **we have quoted above the recitals in the settlement deeds i.e. A-1 and A-2 and have also interpreted the same that the settlor Kokilambal had not completely divested her right in favour of the deceased Varadan but it was a contingent one that it would vest after her death. Therefore, the intention of the settlor was very clear that the settlement was to come into**

effect after the death of settlor, Kokilambal. #

There is an additional factor for coming to this conclusion. Vardan who was a bachelor and had certain property inherited from his real parents, he executed a will in favour of his brother, the plaintiff. But he did not include this property, that shows that at the relevant time it was also clear that the property which would come to him by way of settlement had not come to be vested in him and therefore, that property was not included in his will when he made the same with regard to the property which was received by him from his father or from his ancestors. Therefore, from this we have no hesitation in our mind to hold that the view taken by the leaned Single Judge of the High Court of Madras as well as by the first appellate Court was not correct and it was totally misreading of the deed of settlement.

Since Kokilambal survived after Vardan, she revoked the settlement deeds and issued a fresh settlement in favour of Appellant Nos.2 & 3. On account of the death of Varadan Kokilambal who was the settlor remained the sole owner of the suit property because settlement deed had come to an end on account of the death of settlee, Varadan. Therefore, she had the right to execute fresh deed of settlement in favour of appellant Nos.2 & 3. Thus, we do not find that subsequent settlement made by the appellant No.1 in favour of Appellant Nos.2 & 3 suffers from any illegality.

Hence, as a result of our above discussion, we allow this appeal and set aside the impugned order dated November 19, 1998 passed by learned Single Judge of the High Court of Madras in Second Appeal No.1866 of 1986 as well as the order of the first appellate court whereby the order of the trial court dismissing the suit was reversed. There would be no order as to costs.