

# SUPREME COURT OF INDIA

Ganeshi & Ors.

Vs.

Ashok & Anr.

C.A.No.5514 of 2005

(Markandey Katju and Gyan Sudha Misra, JJ.,)

04.04.2011

## JUDGMENT

### **Markandey Katju, J.,**

1. This appeal has been filed against the judgment and order dated 29.3.2005 of the Punjab & Haryana High Court at Chandigarh in Regular Second Appeal No. 476 of 1984.

2. Heard learned counsel for the parties and perused the record.

3. The respondents herein filed a Civil Suit being No. 58 of 1980 with a prayer that the judgment and decree passed in Civil Suit No. 476 of 1978 titled Jagbir and others vs. Ganeshi and others dated 27.10.1978 relating to the suit land be declared null and void and a declaration be given that the plaintiffs have a right to inherit the suit land on the death of defendant No. 1 and in the alternative for declaration that the alienation of the suit land made by defendant No. 1 in favour of defendants 2 to 5 by the aforesaid judgment and decree dated 27.10.1978 is null and void being against the custom and will not operate against the right for succession of the plaintiffs and other heirs of defendant No. 1 on his death. Plaintiffs Nos.1 and 2 were minors and the suit was filed on their behalf by the mother Smt. Padam Devi who was also one of the plaintiffs.

4. The case of plaintiff Nos.1 and 2 was that they are the sons of one Ramgopal and Padam Devi, widow of deceased Ramgopal. It was alleged that the plaintiffs as well as the other defendants were the descendants of defendant No. 1 as given in the pedigree table given in para of the plaint. The plaintiffs Nos. 1 and 2 are minors and they filed the present suit through their mother Smt. Padam Devi. It was alleged that defendant No. 1 is a Hindu Jat and is governed by the agricultural custom according to which ancestral immovable property cannot be alienated except for legal necessity and consideration.

5. It was alleged that defendant No.1 Ganeshi had three sons, being Ramgopal, Dharambir and Jugal. Ramgopal , father of the plaintiffs died some years ago. It was also alleged that defendant No. 1 was under the influence of his surviving sons namely, Dharambir and Yugal

Kishore @ Jugal Singh. Defendant No. 2 is the son and defendant No. 3 is the wife of Dharambir. Defendant No. 4 is the son and defendant No. 5 is the wife of Yugal Kishore @ Jugal Singh.

6. It was alleged that a month before filing of the plaint, the plaintiffs came to know that in order to deprive them of their right to inherit the suit land on the death of defendant No. 1, defendant Nos. 2 to 5 filed a collusive suit against defendant No. 1 bearing suit No. 476 of 1978 in the Court of sub-Judge, IIInd Class, Palwal for declaration that they are owners of the suit land. Defendant No. 1 suffered that decree against him on his admission on 27.10.1978. It was alleged that the said decree could not extinguish the rights of ownership of the plaintiffs in respect of the suit land, and it was null and void and would not operate against the plaintiff's right of succession on the death of defendant No.1. It was further alleged that plaintiffs Nos.1 and 2 are sons of Ramgopal and the land is ancestral property. According to agricultural custom defendant No.1 could not transfer the suit land in favour of defendant Nos.2 to 5 who were not his heirs to the exclusion of the plaintiffs who were his heirs. It was further alleged that, in the alternative, the said decree amounts to alienation and without consideration and legal necessity. It was alleged that defendants Nos.6 & 7 have colluded with defendant Nos.1 to 5.

7. The defendants contested the suit. It was alleged in the written submissions that defendant No. 1 did not transfer and alienate the land in suit in favour of the answering defendants, but the suit land was settled on them by way of family settlement arrived at between the defendants. Some agricultural land was already gifted by defendant No.1 in favour of plaintiffs Nos.1 and 2. It was because of that reason that the family settlement was arrived at in order to avoid family dispute.

8. It was alleged that since defendant No.1 gifted some of his land in favour of plaintiff Nos.1 & 2, this resulted in a family unrest and hence defendant No. 1 pacified all the members of the family by way of a family settlement. It was denied that the land was ancestral. It was also denied that defendant No.1 was under the influence of his surviving sons.

9. The trial court decreed the suit holding that the judgment and decree dated 27.10.1978 amounts to alienation and without consideration and legal necessity. It was held that the decree created new rights in defendants Nos.2 to 5, and it cannot be said to be based on family settlement. Any alienation of immovable property of value of Rs. 100/- had to be registered and in the present case, the alienation is not by a registered document.

10. The trial court held that the suit land was ancestral property of Ganeshi qua the plaintiffs. This finding is based on admission of Ganeshi that he has inherited the property from his father Pran Sukh. The trial court also held that defendant No.1 was governed by the custom in the matter of alienation, and under that custom ordinarily ancestral immovable property is inalienable except for legal necessity or with the consent of the male lineal descendants.

11. The defendants filed an appeal which was allowed by the first appellate court by the judgment of the District Judge, Faridabad dated 2.11.1983. The first appellate court held that plaintiffs Nos.1 & 2 (respondents in the first appeal) was given land in 1969 by way of gift by Ganeshi and because of this there was some unrest in the family, and hence the family settlement was made. The first appellate court relied upon the judgment of this Court in *Kale & Ors. vs. Deputy Director of Consolidation*<sup>1</sup> which held that in order to sustain a family settlement it is not necessary that there must be evidence of antecedent title of the parties.

12. The first appellate court held that the land was not ancestral property of Ganeshi because there was no proof that the land had descended from the father of Ganeshi. It was held that Ganeshi held the land in question along with some co-sharer's who acquired the same in whatever manner after the death of Bhim Kaur.

13. In second appeal, the High Court has set aside the judgment of the first appellate court and restored the judgment of the trial court. In our opinion, the judgment of the High Court cannot be sustained. It is well settled that the High Court in second appeal cannot interfere with the findings of fact of the first appellate court.

14. A family settlement is not a transfer of property, as rightly held by the first appellate court. The first appellate court held that the family settlement was bona fide to avoid disputes in the family. The decree in Civil Suit No.476 of 1978 was only in pursuance of that family settlement, and hence it could not be interfered with.

15. We have carefully perused the judgment of the first appellate court which was the last court of facts and we are of the opinion that the findings of fact given by it are based on relevant evidence. Hence the High Court was not justified in interfering with those findings.

16. For the foregoing reasons, the appeal is allowed. The impugned judgment and order of the High court is set aside and that of the first appellate court is restored. There shall be no order as to costs.

<sup>1</sup>*AIR 1976 SC 0807*