SUPREME COURT OF INDIA

Vathsala Manickavasagam

Vs.

N.Ganesan

C.A.No.1241 of 2005

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

02.07.2013

JUDGMENT

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. This appeal is directed against the Division Bench judgment of the Madras High Court dated 19.06.2003, in A.S.No.367 of 1985.

2. Originally the suit for partition was filed by one late Mrs.Nagarathnam, along with her two sons late Manickavasagam and Saravanamurthi as well as her daughter Sethulakshmi as plaintiffs 3, 2 and 4. The present first appellant is the wife of the late Manickavasagam, the third plaintiff, along with her sons, the second appellant and the third appellant. The fourth appellant is the second plaintiff and the fifth appellant is the fourth plaintiff. The first defendant who is the first respondent herein is also the son of the first plaintiff. The second respondent was the second defendant in the suit, who purchased the property from one Barnabass Nadar, to whom the first defendant earlier sold the suit property on 11.11.1978.

3. The suit was for partition. The plaintiffs claim 4/5th shares in respect of three items of the suit properties, which was decreed by the Trial Court, as against which, the first respondent/first defendant, filed the first appeal before the High Court. The High Court by the impugned judgment, modified the judgment and decree of the Trial Court and held that the decree with reference to item Nos.1 and 2 of the suit properties, cannot be sustained and that the decree of the Trial Court for partition, was confirmed only in respect of the third item of the suit property and that the preliminary decree for partition in respect of the third item of the suit

property was alone granted. It is against the said judgment and decree of the Division Bench of the High Court, the appellants have come forward with this appeal.

4. The simple case of the plaintiffs in the suit was that the plaintiffs and the first defendant, are the descendants of the late Nithyanandam, who died intestate on 22.09.1956. They filed the suit for partition for their 4/5th shares in respect of items 1 to 3. The first item of the suit property was sold by the first defendant to one Barnabass Nadar, on 11.11.1978, who in turn sold the property to the second defendant/second respondent. It was the common case that the deceased Nithyanandam had no ancestral property and that his wife, sons and daughter have got equal share in the property. Therefore, as regards the eligibility and extent of share, there was no dispute. According to the first defendant/first respondent herein, out of the three items of the suit properties, the first and second items of properties were the exclusive properties of the first defendant and therefore, others were not entitled for any share in it.

5. So far as the first item of the property was concerned, according to the first defendant, the said property was gifted to him by his father and that the second item of the property was purchased by him by selling the jewels of his wife, as well as from the money advanced by his father-in-law to him.

6. The trial Court framed as many as 8 issues for consideration. Issue Nos.1 to 3 related to the stand of the first respondent herein that the first item of the suit property was gifted in his favour by his father and that the second item of the property was purchased from the proceeds of the jewels belonging to his wife, as well as, from the money advanced by his father-in-law. The third issue related to the question as to whether items 1 to 3 of the suit schedule properties, were the joint family properties, as claimed by the plaintiffs. The question relating to limitation, with regard to the claim of items 1 and 2 of the suit properties, was the 4th issue. The 5th issue related to the question whether, proper Court Fee was mentioned in the plaint. The sixth issue related to the entitlement of equity claimed by the second defendant/second respondent herein, as regards the first item of the suit schedule property. The last two issues related to the entitlement of the plaintiff for partition and the relief to be granted.

7. The first item of the suit property is a house property, in a site measuring 10,000/- sq.ft. in T.S.No.2951/3, at Arulananda Nagar, Thanjavur. The said house site was allotted by a Housing Society called Little Flower Colony House Building

Co-operative Society, and the same was purchased by late Nithyanandam, in the name of his eldest son viz., the first defendant/first respondent herein.

8. The second item of the suit property is also a house site bearing Door No.17/35, purchased in the name of the first defendant on 21.10.1964, from one Visalakshmi Ammal, which is located in Rajappa Nagar, Thanjavur. The third item of the suit property is also a house and since there is no dispute about the status of the property as a joint family property, we need not deal with the same in detail.

9. The trial Court while answering the issues, considered the evidence both oral and documentary and reached a conclusion that even suit items 1 and 2 though were also purchased in the name of the first defendant yet they were joint family properties and therefore, the plaintiffs were entitled to claim a share in all the three items of the suit schedule properties.

10. Having heard the learned counsel for the appellants, as well as the respondents and having bestowed our serious consideration to the judgments of the Division Bench of the High Court, as well as that of the Trial Court and other material papers placed before us, we feel that the controversy, which centers around this appeal will have to be briefly stated to appreciate the respective contentions of the parties.

11. The appellants and the first respondent are the descendants of late Nithyanandham, who died intestate on 22.09.1956. His wife, the first plaintiff, along with her deceased son Manickavasagam, 4th and 5th appellants, filed a suit for partition, as against the first respondent herein. During the pendency of the litigation before the High Court, the first plaintiff viz., the wife of the late Nithyanandham, as well as one of her sons, the third plaintiff Manickavasagam also died. The wife and the children of late Manickavasagam viz., appellants 1 to 3, therefore, came to be impleaded along with appellants 4 and 5.

12. The suit was for partition in respect of three items of properties. As far as the third item of the property is concerned, the first respondent tacitly admitted the same to be a joint family property and conceded for partition of 4/5th share of the plaintiffs. As far as the first item of the suit schedule property is concerned, according to him, though funds were provided by the late Nithyanandham for purchasing the same from a Co- operative Housing Society viz., Little Flower Colony House Building Co- operative Society, it was gifted to him by his father and therefore, it was purchased in his name. The first respondent, therefore, claimed that the suit property was his absolute property.

13. As far as the second item of the property is concerned, the first respondent claims that the suit property was purchased from out of the funds provided by his Father-in-law at the time of his marriage, which he kept in a Fixed Deposit in a Co-operative Bank, which got matured in 1964 and that the balance amount was paid by disposing of his wife's jewels. The first respondent therefore, claimed that the suit property was also his own property and, therefore, the appellants were not entitled for any share in the 1st and 2nd items of suit properties.

14. As already stated, the trial Court rejected the stand of the first respondent and held that the appellants were entitled for partition in respect of all the three properties, as they were joint family properties. The High Court however, held that except the suit third item of the property, the first and second items of properties were exclusive properties of the first respondent herein and therefore, the preliminary decree was restricted to the third item of property and in other respects the judgment of the trial Court was set aside.

15. The trial Court while granting the relief in favour of the appellants, considered the oral evidence of P.W.1, the mother and Ex.A-17 in particular. The High Court while reversing the judgment of the Trial Court placed reliance upon the release deed executed by the first respondent in the year 1959 viz., Ex.A-3 and partition deed of the year 1973, which was entered into between the four plaintiffs in which document the first respondent affixed his signature. The High Court took the view that having regard to the release deed of the year 1959 viz. Ex.A-3 and the partition deed of the year 1973 viz., Ex.A-28, it was established that the first and second items of the suit scheduled properties which were purchased in the name of the first respondent were the exclusive properties of the first respondent and therefore, the appellants were not entitled for partition in those properties.

16. In light of the above factors, the question of law that arise for consideration in this appeal is as to "whether there was total misreading of evidence by the High Court by not considering or referring to Ex.A-17 while interfering with the judgment of the Trial Court and whether legal principles of gift were established in regard to the first item of the suit schedule property."

17. Mr.S.Nanda Kumar, learned counsel for the appellants vehemently contended that at the time when the first item of the suit scheduled property was purchased, the first respondent was only a student, that the evidence of the mother P.W.1, discloses that the property was purchased in his name after due deliberations by the husband and wife and in order to avoid any violation of service conditions of the

late Nithyanandham, who was then working as a Joint Registrar of Co-operative Society. The learned counsel contended that the Trial Court considered the documents relating to the said properties as per Ex.No.A-10 produced by the plaintiffs, which persuaded the Trial Court to hold that the first item of the suit scheduled property was purchased by the late Nithyanandham in the name of his son only to avoid any violation of the rules relating to his service conditions and that the first respondent failed to show that it was gifted to him by his father as claimed by him. The learned counsel contended that none of the ingredients relating to gift was neither pleaded nor proved by the first respondent.

18. As far as the second items of the suit scheduled property is concerned, the learned counsel contended that in the first place, the trial Court had specifically found that the terminal benefits, which were settled pursuant to the demise of late Nithyanandham, were sufficient enough for the purchase of the second item of the suit scheduled property, as well as, the third item of the suit scheduled property and that the claim of the first respondent that the same was purchased from the funds provided by his father-in-law and from the sale proceeds of the jewels of his wife, were not conclusively proved.

19. The learned counsel pointed out that while the first respondent in his submission claimed that for purchasing the second item of the suit schedule property, he utilized a sum of Rs.10,000/- advanced by his father-in-law at the time of his marriage and for the balance, he utilized the sale proceeds of his wife's jewels, in the oral evidence let in on his side was to the effect that the balance sale consideration was paid by his father-in-law and his brother-in-law in several installments, which was contradictory to his earlier stand in the written statement.

20. The learned counsel further contended that having regard to his prevaricating stand, one in the written statement and the other in the oral evidence, the trial Court rightly rejected the claim of the first respondent and chose to decree the suit. He further pointed out that de hors the above glaring contradiction in the written statement and the oral evidence let in by the first respondent, there was a tacit admission in Ex.A-17, which was relied upon by the Trial Court to conclude that all the three properties of the suit schedule were the joint family properties in which the plaintiffs and the first respondent were entitled for equal share. The learned counsel further contended that the High Court miserably failed to examine the above relevant material piece of evidence namely Ex.A17, while reversing the judgment of the trial Court.

21. As against the above submissions, Mr.A.T.M.Sampath, learned counsel appearing for the respondents contended that the Division Bench of the High Court was well justified in relying upon Exs.A-3 and A-28 apart from Ex B- 11 viz. the sale deed which stood in the name of the first respondent, to hold that items 1 and 2 of the suit scheduled properties exclusively belonged to the first respondent. The learned counsel pointed out that if really items 1 and 2 of the suit scheduled properties were also part of the joint family properties, it was not known as to why they were not part of the release deed executed by the first respondent under Ex.A-3 and also part of Ex.A-28 the partition deed, as between the four plaintiffs, in which document, the first respondent also affixed his signature.

22. The learned counsel further contended that the parties were well aware by 1959, as well as by 1973 that items 1 and 2 of the suit schedule properties, were the exclusive properties of the first respondent and, therefore, the parties never intended to include those two properties, either for the purpose of the release to be executed by the first respondent nor for the purpose of partition, as between the plaintiffs and the first respondent in the year 1973.

23. Having heard the learned counsel for the respective parties, we are of the considered opinion that at the forefront, it will be necessary to consider the effect of Ex.A-17, in as much as, the said document is fully controlled by Section 17 of the Evidence Act. Section 17 of the Evidence Act reads as under:

> "S.17. Admission defined:- An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

24. As far as the principle to be applied in Section 17 is concerned, the Section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein. When once, the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in Union of India Vs. Moksh Builders and Financiers Ltd. and others - AIR 1977 SC 409 wherein it is held as under:

> "…It has been held by this Court in Bharat Singh v. Bhagirath [1966] 1 SCR 606 = AIR 1966 SC 405 that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions." In taking this view this Court has noticed the decision in Ajodhya Prasad Bhargava v. Bhawani Shanker - AIR 1957 All 1 (FB) also."

25. Keeping the said statutory provision in mind, when we consider the contents of Ex.A-17, which is in Tamil, is a letter written by the first respondent himself on 24.06.1974. The said letter was addressed to the third plaintiff Mr.Manickavasagam. The contents of the said letter read as under:

> "The second plaintiff Saravanamurthi, came to my house the day before yesterday at around 09.30 p.m. He stated that something should be immediately arranged, as regards the house properties. He also asked what is the justification in all the three house properties in my name. I told him that you can be called and some arrangement can be made. I am not able to explain everything in this letter. He was in a very rash mood and was behaving in an unruly manner. At one stage, I was driven to the position that he can do whatever he likes. At 10.00 clocks in the night, I told him what arrangement could be made. But he was not in a sane mood. However much I told him that it was not my fault in purchasing all the three properties in my name and that I am not keen to have all the three properties. I was terribly upset by his behavior. At one stage, I asked him to get out. While going out, he expressed that the relationship cannot be continued thereafter. About this you need not inform mother or murthi himself."

26. While examining the contents of the said letter, the Trial Court concluded that the three house properties, referred to therein, only related to the suit scheduled properties. Going by the statements made by the first respondent himself in the said letter Ex.A-17, it was explicit and apparent that the first respondent was fully aware that even though the properties were in his name, he was not responsible for purchasing the same in his name and that he was not interested in having all the three properties for himself.

27. When we examine the said document, we find that the conclusions arrived at by the trial Court based on the contents of Ex.A-17, cannot be found fault with. In

fact, Ex.A-17, came into existence only on 24.06.1974. It is not as if the first respondent disowned the said document. The contents of the said document were also not disputed by the first respondent. It is not the case of the first respondent that the three houses referred to in the said document, related to any other properties other than the suit- scheduled properties. It is also not his case that the name and persons mentioned therein, related to somebody else other than his own brother, the second plaintiff and his mother. The first respondent had also not lead any evidence to disprove Ex.A-17.

28. Keeping the above factors in mind, when we apply Section 17 of the Evidence Act, we find that Ex.A-17 is a statement and the details contained therein, which pertains to the suit scheduled properties, constituted a tacit admission at the instance of the first respondent. If after Ex.A- 3, release deed of 1959 and the partition deed, Ex.A-28 of 1973, in 1974, the first respondent on his own, came forward with the said letter to the third plaintiff admitting in so many words as to the status of the suit scheduled properties, vis-à-vis the concerned parties themselves, we fail to understand as to what wrong was committed by the Trial Court in placing reliance upon the same to decree the suit. If in reality, the first respondent had his own reservations as to the ownership of the suit scheduled properties, in particular items 1 and 2, no one prevented him from stating so in uncontroverted terms, while communicating the same in the form of writing, to one of his own brothers. In fact, the grievance of the second plaintiff Saravanamurthi, was that since the properties were purchased in the name of the first respondent and he being the eldest son of the family, was having an upper hand over all the others and was trying to snatch away the properties. The tone and tenor of the letter viz., Ex.A- 17, authored by the first respondent, discloses that he too was not very keen to grab all the three properties, simply because those properties were purchased in his name. He went to the extent of stating that he was not responsible for purchasing all the three house properties in his name. He went one step further and stated that he did not want to possess all the three properties all time to come. If, such a clear-cut mindset was expressed by the first respondent though Ex.A-17, it was futile on his part to have come forward with any other story after the suit came to be filed by the plaintiffs.

29. As rightly pointed out by the learned counsel for the appellants, the stand of the first respondent in his statement as regards the second item of the suit schedule property, was that the sale consideration of Rs.18,200/- was paid partly from a sum of Rs.10,000/-, paid to him by his father-in-law and the remaining sum by disposing of his wife's jewels. The Trial Court has noted that in support of the said stand, no piece of evidence was lead before it. On the other hand, giving a go-by to

the said stand that the balance sale consideration was met by disposing of his wife's jewels, evidence was lead to show as though the remaining sale consideration was paid by his father-in-law and brother-in-law in installments. The above stand contained in the written statement and lead by way of oral evidence, were fully contradictory and, therefore, the one belied the other.

30. The specific case of the first respondent, as regards the first item of the suit property was that his father gifted the said property to him. Except for the said plea ipse dixit, there was nothing on record to support the said stand. Reliance was placed upon Exs.B1 to B6, which were the communications between Nithyanandam and Little Flower Colony House Building Society Ltd., Thanjavur in the year 1955-56. Ex.B4, was a letter by the said Society dated 24.02.1955, which informed Nithyanandam about the allotment of plot in his favour and also asking him to deposit the sale value of Rs.300/- and a sum of Rs.150 for reclamation and charges for transfer of land in his favour. On the same day, under Ex.B5, he wrote a letter expressing his acceptance. Under Ex.B6, he deposited a sum of Rs.150/- towards charges for transfer of the land in his favour.

31. P.W.1, the wife of Nithyanandam, the first plaintiff, deposed that both of them discussed together and ultimately decided to purchase the first item of the suit property in the name of the first respondent. Through her, Exs.A1 and A2 were produced to show that the house tax were paid in the year 1971-72, 1972-73 and 1973-74 by the family members, in respect of the said property though it stood in the name of the first respondent.

32. It has also come in evidence that at that point of time, the first respondent was undergoing his graduation. There was no gift deed by the late Nithyanandam in favour of the first respondent. Till the lifetime of Nithyanandam, no evidence was placed before the Court to demonstrate that Nithyanandam gifted away the said property in favour of the first respondent, absolutely and that the first respondent expressed his acceptance of the said gift.

33. Keeping the above facts in mind, when we examine the law relating to gift, under Section 122 of the Transfer of Property Act, a "gift" is defined as 'transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee". The section also mandates that "such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void."

34. We are not concerned with the last part of the section. Going by the facts placed before the Court as stated earlier, except the ipse dixit statement made in the written statement, that late Nithyanandam gifted away the first item of the suit property in his favour, there was no other evidence lead in support of the said claim of gift.

35. In fact, at that time, when the property was purchased, the first respondent was a college going student. Merely because the property was purchased in the name of the first respondent, it cannot be held that there was a valid gift in his favour, without any other evidence supporting the said claim.

36. Per contra, his own mother P.W.1, made it clear that since her husband Nithyanandam, was in the service of the State and was aware that a purchase of property would result in a direct violation of the rules relating to his service, the husband and wife viz., the father and mother of the first respondent, discussed about it and after great deliberation, decided to purchase it in the name of the first respondent. If the property as contested by the first respondent had been gifted away to him in the year 1955, then it was not known, as to why he was not able to produce any other document connected with the property, such as tax receipts or other revenue records to show that he was enjoying the property absolutely, without any hindrance from the other heirs of late Nithyanandam.

37. Per contra, Exs.A1 and A2, tax receipts, were produced by the plaintiffs to show that the property was managed and maintained by the family and not by the first respondent. That apart, under Ex.A17, the first respondent himself admitted that purchase of the said property, along with the other two properties in his name, was not his fault. In the said document, he also made it abundantly clear that he was not interested in retaining the property, simply because the property stood in his name. Therefore, the claim of gift relating to the first item of the suit property was not proved to the satisfaction of the Court, both on law as well as on facts.

38. Having regard to such a prevaricating stand taken by the first respondent, as compared to his tacit admission made in Ex.A-17, we are of the considered view that the Trial Court was fully justified in holding that all the three items of the suit scheduled properties, were joint family properties, in which the plaintiffs and the first respondent were entitled for equal share.

39. Having regard to our above conclusions, when we examine the judgment of the Division Bench impugned in this appeal, we find that the Division Bench has completely omitted to examine the implications of Ex.A-17 which has relevance in

respect of all the three suit schedule properties. As noted by the Trial Court, Ex.A-17 was a very crucial piece of evidence, in as much as, it contains the tacit admission voluntarily made by the first respondent, while also establishing as to why the veracity of it's nature was never questioned by him. Since, there was no contra evidence to disprove Ex.A-17, the first respondent was totally bound by the said document. Since every ingredient of Section 17 of the Evidence Act, relating to the said document, Ex.A-17 was fully complied with, the non- consideration of the same by the Division Bench of the High Court, in our considered opinion, would certainly amount to total misreading of the evidence, while interfering with the judgment of the trial Court. Similarly, the Division Bench miserably failed to examine the issue relating to gift as regards the first item of the suit scheduled properties. Though, such a claim was made by the first respondent, there was no iota of evidence to support the said claim. The ingredients of Section 122 of the Transfer of Property Act relating to gifts were not shown to have been complied with in order to support the said claim.

40. In fact, while considering the relevance of Ex.A-17 and its application to the case on hand, the Trial Court noted the contradictory statement of the first respondent made in his written statement, vis-à-vis the oral evidence. The Trial Court has specifically noted the funds, which were available with the first respondent pursuant to his father's demise, which was to the tune of Rs.20,887.93/- and which was kept in deposit in two accounts in the name of the first respondent himself. One account was under Ex.A-25, which was a current account in which a sum of Rs.10,919.44/- was available and the other one was under Ex.A.26, which was a savings bank account, where a sum of Rs.9,968.49/- was available. Both put together a sum of Rs.20,887.93/- was available and therefore, even after the purchase of the third item of the suit schedule property, the first respondent had a further sum available with him. The trial Court has also noted that except the ipse dixit of D.W.2 and 3 that a sum of Rs.10,000/- was paid to the first respondent by way of gift at the time of marriage of the first respondent with his daughter, there was no other evidence to support and provide credence to the said version. Unfortunately, the Division Bench of the High Court completely omitted to examine the above material piece of evidence, which was considered in detail by the trial Court, while decreeing the suit.

41. In the light of our above conclusions, the judgment of the Division Bench cannot be sustained. The appeal stands allowed and the judgment of the Division Bench is set aside and the judgment and decree of the Trial Court shall stand restored.