

ANDHRA PRADESH HIGH COURT

Chatrathi Jagannadha Rao

Vs.

Jatmal Madanlal Jakotia Firm

Appeals Nos. 7 and 556 of 1952. O. S. Nos. 10 and 96 of 1948

(Chandra Reddy and Qamar Hasan, JJ.)

19.04.1957

JUDGMENT

Chandra Reddy, J.

1. I am in entire agreement with the conclusions reached by my learned brother. However, I will add a few words on the effect of a statement by Lokeswararao in Ex. A. 84, namely, that the land bearing Demarcation No. 130 was given to Syamalamba 'for Pasupukumkum' by her father.

2. Mr. Subrahmanyam for the appellant urges that the expressions "for Pasupukumkuma" do not imply anything more than the purpose for which the gift was made. They do not in any way enlarge the estate that is ordinarily conferred upon a woman i.e. a limited estate, continued the learned Counsel. We are not impressed with this argument. An absolute estate passes to the donee when the land is settled upon her for Pasupukumkuma. The words are of sufficient amplitude to convey full rights of ownership. They indicate the intention of the donor to confer an absolute estate on the donee and not one which determines with her life.

3. The counsel for the appellant cites *Poomalai Ammal v. Subbamma*¹, in support of his contention. But that does not render any countenance to his proposition. On the other hand, some of the observations in that case go against the theory propounded by the learned counsel. It was stated there that a gift or a bequest to a woman should be construed in the same spirit as a gift in favor of a male. We are inclined to think the phrase "for Pasupukumkuma" connotes an absolute right. That is not consistent with the conferment of a limited estate. In this view of ours, we are reinforced by a Bench decision of the Madras High Court in *Musiligadu v. Nannigadu*², There the gift was made in the following terms :

"On account of pin money to you who is my daughter I have assigned and given to you an acre of land."

It was held that the donee obtained an absolute right to the land. In these

¹1952-2 Mad LJ 884

²15 Mad LJ 492

circumstances, we feel that the admission in Ex. A. 84 establishes that the father of Syamalamba made an absolute gift of the lands to her.

Qamar Hasan, J.

4. These are two appeals numbering 7 and 556 of 52 and they are directed against the common judgment and decree dated 27th September, 1951 of the 2nd additional Subordinate Judge, Vijayawada by which he decreed O. Section 10 of 1948 and dismissed O. Section 96 of 1948.

5. The property involved in O. Section 10 of 1918 was a site measuring 168 sq. yds. 3 sq. ft. and 6 sq. inches with a building of two floors bearing Door No. 6/66. The litigation in O. S. No. 96 of 1948 related to an area of Ac. 4.33 cents out of Survey No. 105 situate in the Municipal area of Vijayawada. These properties admittedly belonged to one Seetharamayya, who before his death, adopted Lokeswararao and bequeathed the subject-matter of both the suits to his daughter, Sripati Syamalamba, who remained in possession and enjoyment thereof till her death in 1922. Thereafter her daughter Suryanarayanai succeeded to her estate and enjoyed the same till 7th August, 1927. Suryanarayanai having died issueless one Sripati Vasudeva Janardhanam claimed reversion in his capacity as the adopted son of Sripati Sreeramulu who was the brother of Syamalamba's husband, Gopayya. Out of the properties claimed to have been inherited he sold the adjoining site and the house bearing door No. 6/66 to Messrs. Jetmal Madanlal Jakotia on 29th May, 1948. The said purchaser is the plaintiff in O. Section 10 of 1948. The case he set up was that on the date of sale one Ganugapati Sreenivasarao was in occupation of the house in dispute as the tenant of the vendor. In the result of the sale he attorned to the vendee and executed in his favor a separate lease deed on 26th October, 1943. The said tenant continued in peaceful possession of the demised house when defendants 1 to 4 said to be members of the Communist Party committed trespass and forcibly dispossessed him in the month of June, 1944. The trespassers coming to know that legal action was contemplated against them entered into negotiation with the plaintiff either for a lease or sale of the disputed house. The negotiations proved infructuous, but despite that, the trespassers continued in unlawful occupation of the house making themselves liable to a decree for ejectment and for damages at the rate of Rs. 50/- per month. The defendants 5 to 7 who were the sons of Chatrathi Lokeswararao were made parties since they were claiming title in themselves and denying the title of the plaintiff. The case as set up against them was that neither they nor their father even had any title to or possession of the disputed property or any other property inherited by Vasudeva Janardhanam. The 5th defendant was the person in whose favor the defendants 5 and 6 had executed a mortgage deed in respect of the plaint scheduled property with the alleged view of creating evidence of title in themselves. Defendants 9 and 10 were impleaded inasmuch as they were the creditors of the defendants 5 to 7 and had attached the property in question in execution of the decrees which they had obtained an O. Section 37 of 1944 and O. Section 29 of 1934 on the file of the Subordinate Judge, Vijayawada.

6. The main contest came from the defendants 5 and 7 and their creditors, the defendants 1 to 4, 6 and 8 preferring to remain ex parte. The defendants 6 and 7 categorically traversed all the material allegations in the plaint. Their defence was that the suit house was their ancestral property which during the management of their father, Lokeswara Rao had leased out to one Pundarekasha Rao against whom a decree for eviction was obtained and executed. They further

alleged that there never existed any relationship of landlord and tenant between Vasudeva Janardanam and Srinivasa Rao nor did the latter ever attorn to the plaintiff. As a matter of fact, he was said to be the tenant under their father and he vacated the house at their father's request and he leased out the said house to defendants 1 to 4. In these circumstances, it was asserted that no question of trespass on the part of the defendants 1 to 4 or of acquisition of prescriptive title either by the plaintiff or his alleged predecessor-in-interest arose so as to entitle him to recover possession and mesne profits which were declared to be excessive.

7. The defendants 9 and 10 replied in the same strain and claimed that they were entitled to proceed against the suit property in execution of the decrees obtained by them.

8. In O. S. No. 96 of 1948 the 7th defendant was the plaintiff and the suit was primarily directed against the Managing Director of the Andhra Cement Company for possession of 4 acres and 33 cents of R. S. No. 105 referred to above. The defendants 2 and 3 were the brothers of the plaintiff who were impleaded as defendants because they were reluctant to join him in the suit. The 4th defendant is Vasudeva Janardanam, who was brought on record on the objection raised by the said company.

The plaint, in so far as the question of title to the suit property was concerned, was practically composed of the same allegations which were made in the written statement filed in O. Section 10 of 1948. He asserted that the suit property belonged to Seetharamayya. He had a daughter Syamalamba but was not blessed with a son. He adopted the plaintiff's father, Lokeswararao. According to the arrangement made by Seetharamayya at the time of his death, Svamalamba enjoyed the plaint-scheduled property for the expanse of her life and she died in 1922. On her death, the reversion opened to Lokeswara Rao but Suryanarayanai, the daughter of Symalamba, who in law could claim no interest in the property in question, managed to get herself mutated in the municipal and revenue records and remained in unlawful possession thereof till she died on 7th August, 1927. During the life-time of Suryanarayanai, Lokeswara Rao was contemplating to take legal action against her but her death enabled him to secure possession of the subject-matter of the dispute without having recourse to a court of law and getting it registered in his own name in the settlement records. Having thus come into possession he leased out the land to one Budda Jagannadham for a period of five years in the year 1928. The further allegation was that Lokeswara Rao had to file an insolvency petition in 1931 by reason of which he was adjudged an insolvent but later on 2nd August, 1941, the adjudication was annulled. The complaint on the part of the plaintiff was that the 1st defendant taking advantage of the insolvent circumstances of the plaintiff's father and the minority of the plaintiff and his brothers took unlawful possession of the property in dispute in March, 1938 and despite notice given by Lokeswara Rao on 19th May, 1938, persisted in trespass.

Lokeswara Rao died on 14th November, 1945 leaving the plaintiff and his two brothers as the persons entitled to the suit plot. He, therefore, prayed for a decree for ejection against the 1st defendant.

9. The 1st and the 4th defendants alone resisted the suit. Their written statements with necessary modifications are the replica of the plaint in O. Section 10 of 1948 in respect of the testamentary disposition in favor of Syamalamba with absolute rights and the subsequent devolution of the bequeathed property on Vasudeva Janardanam, as the adopted son of Gopayya. As a defence to the claim for possession the 1st defendant relied upon a registered sale-deed dated 14th November, 1937 by which Vasudeva Janardanam acting for himself and as the guardian of his

minor son purported to sell 4 acres out of Survey No. 105 in favor of the 1st defendant.

10. On the admissions made by the contesting parties in their respective pleadings, it would appear that there was no controversy between them as to the initial ownership of the disputed properties and the subsequent testamentary disposition in favor of Syamalamba. The point of dispute, in the first instance was whether the will created an estate of inheritance or merely a life estate. If it was the former, Suryanarayanai the daughter of the devisee would be the preferential heir and after her Vasudeva Janardanam, if it was established that he was the adopted son of the brother of Syamalamba's husband. The next point for consideration was whether Suryanarayanai after the death of her mother came into possession of the bequeathed properties and thereafter Vasudeva Janardanam enjoyed them till he made the disputed alienations or was it Lokeswararao, who outstripped Suryanarayanai and perfected his title by dint of adverse possession so as to leave no competency to sell in the alienor. As the plaintiffs in both the suits had come with the allegation that while they were dispossessed they; were in possession of the suit property, the question of limitation also fell for determination.

11. The learned Subordinate Judge after an exhaustive survey of all the documentary and oral evidence adduced on behalf of the contestants found all the material issues in favor of the plaintiff in O. Section 10 of 1948 and decided them against the plaintiff in the other suit.

12. After hearing the learned advocate for the appellant in both the appeals at great length we do not find sufficient reason to differ from the findings of fact arrived at by the learned Subordinate Judge. Seetharamayya died on 23rd March, 1901. Having regard to the lapse of time when the will was made and proof had to be tendered in support of it, it would hardly be expected that any direct evidence would be forthcoming nor any such evidence had been adduced in the case. The evidence to show the character of the will consists of admissions and conduct of the parties who would be interested in denying the estate of inheritance as being conferred upon Syamalamba. It would appear that three days after the death of Seetharamayya i.e. on 23rd March, 1901 Lokeswara Rao passed a letter in holograph Ex. 4 (a) to Syamalamba wherein he admitted that his adoptive father had by his will conferred upon her an estate of inheritance. Ex. A. 5(a) is the application made by Lokeswara Rao to the Municipal Chairman on 23-3-1901 for mutation of names stating inter alia the properties mentioned in the application

"were given away by our late father to my elder sister, Sripathi Symalamba Garu for being enjoyed by her, her sons, her grandsons and so on in succession with powers of gift, transfer and sale."

These documents are more than 30 years old. Besides that, P.W. 7 Vempati Seshagirirao who served Seetharamayya as a clerk while he was practising as a lawyer swore that Ex. A. 4(a) and Ex. 5 (a) are in the handwriting of Lokeswararao and bear his signatures. Ex. A. 84 is the statement of Lokeswararao recorded by the Tahsildar. In this it is stated that land bearing demarcation No. 130 was given to Syamalamba for "pasupukumkuma" by his father.

13. It has been held by the Privy Council in the case of *Chandra Kunwar v. Chaudhri Narpat Singh*³, and the same proposition has been laid down in *Nathoo Lal v. Durga Prasad*⁴, that what a party himself admits to be true may reasonably be presumed to be true and until the presumption was rebutted the fact admitted must be taken to be established.

14. Apart from these admissions, there is documentary and oral evidence on the record in the form of Ex. A. 84 and Ex. A. 120 series to establish that Syamalamba's name stood mutated in the revenue and municipal registers and she had been paying taxes until her death. Ex. A. 88 dated 17th March, 1919 and Ex. A. 89 dated 23rd February, 1920 are sale deeds by which she conveyed some of the bequeathed properties to Vempati Sheshagirirao and B. Venkatramayya. There is no evidence to show that Lokeswararao ever challenged the sale as not binding upon him or sought to recover possession of the alienated properties. Ex. A. 80 is a notice dated 15th August, 1939 which was addressed to Vasudeva Janardanam. On that notice, Lokeswararao inter alia stated that Syamalamba in pursuance of the oral arrangement made by her father enjoyed the bequeathed property till her death in 1922 and after that her daughter Suryanarayanai continued to be in possession till her death. The same allegations find place in the plaint in O. Section 96 of 1948. The 5th defendant in O. S. JO of 1948 in his written statement had asserted that Syamalamba was never in possession of the property and that his father alone was in occupation of it but in the witness-box D.W. 1 admitted that Syamalamba was in possession upto the time of her death. The continuous possession of Syamalamba and her daughter covering a period of nearly 27 years cannot be doubted on the material as it stands on the record. We need not go into the question as to whether that possession was adverse to any one since the same can be referred to a legal tide emanating from a testamentary disposition by a competent person.

15. The question next in importance relates to the course of devolution which the property ought to take in law after the death of Suryanarayanai. The property in dispute being the absolute property of Syamalamba as it appears to be, it would devolve on her husband's reversioner and not to her father's reversioner. It is for this reason that the controverted fact of the adoption of Vasudeva Janardanam to Syamalamba's husband's brother assumes importance. The oral evidence in this respect consisted of the testimony of Vasudeva Janardanam, his aged mother, purohit

³ ILR 29 All 184

⁴ AIR 1954 SC 355

and P.W. 7 who attended the ceremony. These witnesses have been believed by the learned Subordinate Judge and in the absence of effective rebuttal we would not be justified in differing from the Court below as to the credibility of these witnesses. The documentary evidence which dates back to the period when no dispute between the parties to the suit or predecessor-in-interest had arisen, also amply bears out the factum of alleged adoption. As this aspect of the case has not been seriously contested before us, it is not necessary that the disputed point should any further be elaborated.

16. The point that was seriously canvassed before us was whether the plaintiffs in both the suits were in possession of the respective disputed properties within 12 years of the dates of the institution of the two suits. The learned Subordinate Judge has collected all the material evidence in this respect in paras 45 to 55. After an examination of this evidence, we apprehend that we do not find sufficient reason to differ from him. We find that Syamalamba, and after her, Suryanarayanai had been in continuous undisturbed possession of all the properties bequeathed from 1901 to 1927. Despite the fact some properties were alienated by these two ladies, there was no attempt on the part of Lokeswara Rao to challenge these alienations. It was only after the death of Suryanarayanai the scramble for possession began. We need not go into detailed survey of the entire evidence admirably dealt with by the Court below. We would refer to some salient features of the evidence to show that the conclusions arrived at by the learned Subordinate Judge are unassailable. Exs. A. 22, 23 and 24 are documents which show that when Lokeswara Rao

was adjudged an insolvent, he included the suit properties and some other properties of Syamalamba in the schedule and allowed the Receiver to bring them to sale but on the successful intervention of Vasudeva Janardanam they were excluded. In O. Section 38 of 1935 it appears that the portion which Vasudeva Janardanam had leased to one Pundareekaksha Rao was included by the person who purchased Lokeswararao's property. Pundareekaksha Rao contested the inclusion and succeeded to have it excluded on the allegation that they belonged to Vasudeva Janardanam and he was in possession of the same as the latter's tenant. Ex. A. 44 is the copy of the plaint filed by a creditor of Syamalamba against Vasudeva Janardanam and Suryanarayanai's husband. Ex. A. 45 is the copy of the decree passed against Janardanam and it is in evidence that the judgment-debtor sold away a portion of the property he got from Syamalamba and discharged the debt. Lokeswara Rao in order to furnish evidence of his possession granted lease to certain persons and they instituted O. Section 572 of 1944 for a permanent injunction to restrain Vasudeva Janardanam from interfering with their possession. The evidence is that that suit was dismissed and even the temporary injunction pending the suit was refused. Vasudeva Janardanam took a registered lease from Budda Jagannadham on 17th Feb. 1928 in respect of R. S. No. 105 which the land in O. Section 96 of 1948 formed part of. It appears that the same person passed another lease in favor of Lokeswara Rao in the month of November, 1928. But Vasudeva Janardanam filed a suit against Jagannadham and obtained a decree for rent. After the death of Jagannadham, his brother Challayya paid the decreed rent and continued in possession of the demised land by executing a fresh lease, Ex. A. 110. All this documentary evidence supported by oral evidence is relevant under Section 11 and Section 13 of the Evidence Act to show with whom the possession of the property left by Syamalamba was. On behalf of the appellant no such evidence has been adduced. As already hinted above, Lokeswama Rao had never taken the trouble to have recourse to a court of law for the establishment of his title or possession. The evidence produced by the sons of Lokeswararao either oral or documentary is not of sufficient cogency or weight to countervail the effect of the overwhelming evidence adduced on behalf of the purchasers from Vasudeva Janardanam. As against Exs. A. 2, A. 11-14, A. 15-17 (lease-deeds, some of them registered) and A. 3 and A. 9 series which are tax receipts paid by Vasudeva Janardanam and his tenants, there were Exs. B. 9, 10 and 11. These exhibits purport to be letters addressed to Lokeswararao by K. Sitapati Rao, Nerella Suryanarayana Rao and V. Seshacharyulu in the month of September, 1928. The recitals in the letters show as if they recognised for the first time, the title of Lokeswararao, because as they say, they were satisfied with the proof placed before them by the addressee that he was the owner of the property and that therefore they delivered the property to him. In regard to these letters, the Subordinate Judge rightly observes that the very nature of the letter shows that Lokeswararao obtained the same in order to create material about his possession. Ex. B. 17 is a letter passed by Sreenivasa Rao on 20th March, 1930 acknowledging that he had to pay a sum of Rs. 24/- towards rent for four months to Lokeswararao. How can this letter be of any avail when it is on the record that the same Sreenivasa Rao executed leases in favor of Vasudeva Janardanam in 1935, 1936 and 1940. The other evidence led on behalf of the appellants cannot stand comparison with the evidence adduced by the contesting respondents. This aspect of the case has been critically dealt with by the learned Trial Judge and no useful purpose would be served if we cover the same grounds. In our considered view, the evidence as it stands on the record, amply justifies the conclusions of law and fact arrived at by the court of first instance and we hardly find any occasion to differ from them.

17. In the result, the appeals fail and are hereby dismissed with costs of Respondents 1 and 4 in

A. S. No. 556 of 1952.
Appeals dismissed.