

Anandappa Vs. Totappa

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Court : Mumbai

Decided On : Jul-18-1911

Reported in : 33Ind.Cas.441

Judge : Basil Scott, C.J. and ;Rao, J.

Appellant : Anandappa

Respondent : Totappa

Judgement :

Basil Scott, C.J.

1. This suit was instituted by the plaintiff for a declaration that a deed of exchange, dated 15th of June 1900 was not binding on him and for recovery of possession of his one-fourth share in certain lands situated in Bailkur.
2. The deed of exchange purported to be between the plaintiff, a minor interested in his own right as the adopted son of a Vatandar acting through his natural father of the one part and the natural grandfather of the plaintiff of the other part.
3. The learned Subordinate Judge held that the transaction in dispute was not in the interests of or for the benefit of the plaintiff; but he held that as the suit had not been brought within three years of the date of the deed of exchange, it was bared by the provisions of Article 91 of the Indian Limitation Act.

4. The plaintiff preferred an appeal to the District Judge of Bijapur. The issues raised for determination were: (1) Whether the exchange effected by the deed was the interests or for the benefit of the Plaintiff, and (2) whether the suit to Cover possession of his one-fourth share in the Bailkur property was barred by time and the learned District Judge found on both issues in favour of the plaintiff affirming the lower Court on the question of fact and reversing its decision on the question of limitation.

5. The learned Subordinate Judge had been of opinion that the instrument being voidable at the option of the plaintiff on his attaining majority and effect having already been given to it it was necessary for the plaintiff to have it set aside before he could recover possession, and that relief by cancellation was only not necessary in the case of a document ab initio void.

6. The learned District Judge, in reversing this decision, considered the case to be covered by the judgment of the Privy Council in *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* 34 C. 329 : 34 I.A. 87 : 11 C.W.N. 424 : 4 A.L.J. 329 : 9 Bom. L.R. 602, 5 C.L.J. 334 : 2 M.L.T. 133 : 17 M.L.J. 154 , in which it was held that where a Hindu widow had granted a lease of her husband's property for a period extending beyond her life, a suit by a reversioner to recover the property was governed by the twelve years period of limitation provided by Article 141, for their Lordships said:

Her alienation is not, therefore absolutely void, but it is prima facie avoidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property.

7. The basis of this decision appears clearly in a previous judgment of the Privy Council reported as *Modhu Sudan Singh v. Rooke* 24 I.A. 64 : 25 C. 1 : 1 C.W.N. 433 , to which reference is made by Lord Davey in delivering judgment in *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* 34 C. 329 : 34 I.A. 87 : 11 C.W.N. 424 : 4 A.L.J. 329 : 9 Bom. L.R. 602 : 5 C.L.J. 334 : 2 M.L.T. 133 : 17 M.L.J. 154 . In the case of *Modhu Sudan Singh v. Rooke* 24 I.A. 64 : 25 C. 1 : 1 C.W.N. 433, Sir

Richard Couch said: 'It must be observed that the putni was not void, it was only voidable; the Raja might elect to assent to it and treat it as valid. Its validity depended upon the circumstances in which it was made.'

8. Whether a plaintiff must sue for cancellation of a document under which the defendant in possession claims, depends, we think, upon whether the onus of proving circumstances establishing its invalidity lies upon him or whether it lies upon the defendant to prove circumstances establishing its validity. For example, where a plaintiff sues to recover possession of property which the defendant has obtained under a document executed by the, plaintiff or one under whom he claims, the plaintiff would have to establish facts entitling him to have the instrument cancelled or set aside and would have to sue within three years of those facts becoming known to him, as provided by Article 91 of the Indian Limitation Act. On the other hand, where the defendant has acquired possession under a deed executed not by the real owner of the property but by some one having a power of disposal under certain circumstances on behalf of the real owner, the onus lies on the defendant to prove the existence of those circumstances, and the plaintiff may ignore the deed in bringing his suit for possession. These considerations are very clearly and fully stated in the judgment of Mr. Justice Woodroffe in Harihar Ojha v. Dasarathi Misra 33 C. 257 : 9 C.W.N. 636 : 1 C.L.J. 408. In that passage he refers to the judgment of the Madras High Court in Unni v. Kunchi Amma 14 M. 26 where it was said:

There is no distinction between this case and other cases where a similar charge is made in respect of an instrument of alienation executed by a person who, not being the full owner of the property, has a conditional authority only to dispose of it. Such are the cases of a guardian of a minor, the manager of a Hindu family or the sonless widow in a divided Hindu family. It is argued, however, that the existence of Article 44 of the Indian Limitation Act implies that wherever a guardian has effected a sale of his ward's property the sale is valid until it is set aside by suit.

9. We are not prepared to hold that the existence of this Article involves any qualification of the principles expressed in the judgment of Mr. Justice Woodroffe

already referred to. The Article possibly refers to cases in which a ward might sue to set aside a sale effected by his guardian With the authority of the Court which would prima facie be valid but which, on proof of certain circumstances Such as misrepresentation or fraud with regard to the guardian, might be set aside.

10. For these reasons we think that the decision of the learned District Judge was correct. We confirm his decree and dismiss the appeal with costs.

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