

Rama Setty Vs. Ibbanna Setty

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Court : Karnataka

Decided On : Dec-01-1952

Reported in : AIR1954Kant56; AIR1954Mys56; ILR1953KAR486;
(1954)32MysLJ95

Judge : Mallappa, J.

Acts : Hindu Law

Appeal No. : Second Appeal Nos. 452 of 1949-50 and 59 of 1950-51

Appellant : Rama Setty

Respondent : Ibbanna Setty

Advocate for Def. : M.P. Somasekhara Rao, Adv. in 59 of 1950-51 and ;V. Krishnamurthy, Adv. in No. 452 of 1949-50

Advocate for Pet/Ap. : M.P. Somasekhara Rao, Adv. in No. 452 of 1949-50 and ;V. Krishnamurthy, Adv. in No. 59 of 1950-51

Judgement :

1. The property in dispute in this case belonged to the joint family of which the deceased father of plaintiff was the manager. After the death of the father, the property belonged exclusively to his son, the surviving coparcener. During his minority his mother made a gift of property now in dispute to her step daughter for

what is referred to as 'Arisina Kunkama', in accordance with the wishes of her husband as stated in the document Exhibit 18. The appellant in S.A. 452 of 49-50 is a purchaser of the interest of the daughter Veeramma under Exhibit 21. The plaintiff filed a suit for declaration of his title and possession of the plaint schedule properties together with mesne profits.

2. The short point for consideration is whether the guardian of a minor can make a gift of the minor's property to his sister in connection with her marriage and this point of law has been answered by the Courts below in favour of the plaintiff and I am inclined to think they are right. It is unnecessary to consider what powers a limited owner has in cases of this kind as that point has not come up for consideration in this case and in fact that point has not come up for consideration in any reported decision of this Court. Though the decision in -- 'Ramasami Ayyar v. Vengudisami Ayyar', 22 Mad 113 (A) dealing with that point has been referred to in -- 'Chenna v. Kempanna', 14 Mys LJ 456 (B), that case has been referred to in order to support the decision in that case that a father has ample powers to make a gift of a small portion of the joint family property about which there is now no difference of opinion. The decisions in --Palaniammal v. Kothandarama Goundan' AIR 1944 Mad 91 (C), which refers to the earlier Madras case makes it clear that:

'Although a marriage gift can be made by the manager of a joint family or by a widow succeeding to the property, it cannot be made by the guardian of the only person constituting the family. Such a gift can be validated only if it is made for purposes binding upon the minor'.

This decision has been followed with approval in -- 'Rangaswami Goundar v. Marappa Gounder' : AIR1953 Mad230 (D). It may not be safe to extend the power the father or brother has to make a gift of a small portion of the joint family to a daughter or a sister, to the guardian of a minor when the property belongs to the minor as the obligation of the father or brother to make a gift of the property at the time of the marriage of a daughter or a sister is a moral obligation and not an obligation which could be enforced under the law.

3. Agreeing with respect therefore with the decision of the Madras High Court, I dismiss the appeal in S.A. 452 of 49-50.

4. The connected appeal S.A. 59/50-51 is by the plaintiff for getting mesne profits which the Courts below have refused to grant. As the plaintiff's right to the plaint schedule property has been declared, the Courts had no option to refuse mesne profits. This appeal is therefore allowed. No enquiry however has been held with reference to the quantum of mesne profits prior to suit. But both parties agree that there may be a decree for a sum of Rs. 150/- in respect of mesne profits prior to suit. In the result the judgment dismissing the claim for mesne profits is set aside and there will be a decree for a sum of Rs. 150/- towards mesne profits prior to suit and there will be an enquiry with respect to mesne profits subsequent to suit on an application under Order 20, Rule 12. No order as to costs in this Court.

5. Ordered accordingly.

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