

Puttappa and anr. Vs. Basappa

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Court : Karnataka

Decided On : Jun-26-1952

Reported in : AIR1953Kant113; AIR1953Mys113; ILR1953KAR114

Judge : Venkataramaiya, J.

Acts : Hindu Law; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145 and 146

Appeal No. : Second Appeal No. 595 of 1948-49

Appellant : Puttappa and anr.

Respondent : Basappa

Advocate for Def. : V. Krishnamurthy, Adv.

Advocate for Pet/Ap. : B.N. Puttasiddiah, Adv.

Judgement :

1. The question raised in this case is whether an adoption by a Hindu widow affects alienation of family properties prior to the adoption when the alienor was the sole surviving coparcener. The undisputed facts of the case are that the properties specified in plaint schedules belonged to a joint Hindu family consisting of Kolli Sanna Veerappa and his only son Hanumappa. The son died on or before 1934 leaving a widow Hanumavva and his father. On 9-8-1936, the suit properties were

sold by the father Sanna Veerappa to one Subba Rao. The plaintiff relies on this sale to support his title. On 27-9-1937 Hanumavva the daughter-in-law of Sanna Veerappa sued him and his alienee for a share in the properties. The suit was dismissed.

Defendant 2 is said to have given defendant 1, his son, in adoption to Hanumavva on 23-7-1936 and on the strength of this adoption the plaintiff's claim to the properties is challenged. The proceedings under Section 145, Criminal P. C., ended with an order under Section 146, Criminal P. C., to the effect that neither party was in possession of the properties. The suit from which this appeal arises was instituted by respondent for declaration of his right to the properties. The trial Court disbelieved the adoption and decreed the suit. In appeal, the adoption was held to be true and to have taken place not on 23-7-1936 but on 16-10-1936 the date of the deed of adoption. Nevertheless, the decree in favour of the respondent was confirmed as the adoption was of a date later than that of the alienation. This finding is questioned by means of a cross-objection, which has to be dismissed.

2. Sri Puttasiddiah the learned counsel for the Appellants contends that though the adoption was subsequent to the alienation, it is open to the adopted son to attack the alienation as if he was the son of Hanumappa when he died. The theory of fiction which the argument, proceeds has no doubt been accepted in some cases and adoption given the effect of divesting properties already vested in others. (See --'Chikkavva v. Chikkappa', 54 Mys H. C. R 12 (FB) (A)). In applying the theory an exception is made in cases of alienations for lawful purposes and such alienations are held to be unaffected. In this case, the alienation is found to be valid at the time it was made and I see no reason to take a different view. On the date of the alienation, Sanna Veerappa was the sole and full owner of the properties and there was no restriction on his disposing of the properties. --'An ant Bhikkapa v. Shankar Ramchandra' , which is the leading case in support of the view that adoption will divest persons of rights vested in them over properties, lays down that 'The sole surviving coparcener's right to deal with the family property as his own would not be impaired by the mere probability of an adoption' and for this --'Veeranna v. Savanna', AIR 1929 Mad 296 (C), is referred to.

The facts of that case are fairly similar to those in this. Defendant 1 in that case and his only son formed a joint Hindu family. The son died leaving the father and his wife and giving her authority to adopt. A few days after this the father, defendant 1, settled the family properties on his daughters. Subsequently his daughter-in-law adopted the plaintiff in that case and he sued the grandfather for partition of the family properties and possession of a half share. The question raised was whether the adoption can relate back to the date of the adoptive father's death in order to defeat the grand-father's settlement -- Odgers J. said

'what authority there is with regard to alienations by a male holder is strongly and it seems to me conclusively against the contention argued for the appellant (the adopted son).'

Venkatasubba Rao J. observed

'It is a normal incident of a joint family that a bare possibility of a concurrent interest coming into existence imposes no fetter on the alienation. A sonless father enjoys power of alienation without restraint, with the son the fetter comes into being and on his death the father's full rights re-emerge.'

In spite of the settlement effected by the 1st defendant grandfather of the plaintiff being considered to be not for value and morally wrong, it was held that the plaintiff on the strength of adoption cannot challenge the settlement.

3. -- 'Subramanian v. Muthiah Chettiar', AIR 1946 Mad 187 (D), relied upon by Sri Puttasidiah does not help the Appellant as it does not state anything to the contrary.

4. The decision of the Courts below decreeing the suit is correct. The appeal is dismissed with costs. Advocate's fee Rs. 20/-.

5. Appeal dismissed.