

Lingamma Vs. Basavaraju

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Court : Karnataka

Decided On : Nov-18-1987

Reported in : ILR1988KAR433

Judge : Nesargi, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(1)

Appeal No. : R.S.A. No. 604 of 1977

Appellant : Lingamma

Respondent : Basavaraju

Advocate for Def. : V. Krishnamurthy Senior Adv. and ;V. Tarakaram, Adv. for R-1

Advocate for Pet/Ap. : R.J. Babu, Adv.

Disposition : Appeal allowed

Judgement :

Nesargi, J.

1. Defendant-1 in O.S. No. 412 of 1972 on the file of the Munsiff, Srirangapatna, is the appellant. Respondent-1 is the plaintiff. Respondents 2 to 4 are the remaining defendants 2 to 4.

2. The undisputed facts are that Puttegowda, husband of Honnamma and Basavegowda, grand-father of the plaintiff were brothers living jointly and possessing joint family properties, which are enumerated in Ex.P.1 dated 6-7-1944. Puttegowda executed Ex.P.1. On 13-9-1972 Honnamma executed Ex.D.9, the gift deed gifting the suit properties to defendant No. 1.

3. Plaintiff's case is that Ex.D.9 is not binding on him. He has prayed for declaration that Ex.D.9 dated 13-9-1972 is not binding on him and for consequential relief of permanent injunction restraining the defendants from interfering with the peaceful enjoyment of the suit items of properties.

4. Defendants 2 to 4 are made parties on the basis of the averments in Ex.D.9 that they were tenants of the suit items.

5. The suit was instituted on 25-10-1972. Honnamma died on 31-5-1978 that is after the judgment dated 31-3-1977 rendered by the Principal Civil Judge, Mandya in R.A.No. 185 of 1974.

6. R.A.No. 185 of 1974 was filed by the plaintiff as his suit had been dismissed by the trial Court. The lower appellate Court has granted the declaratory decree, but has refused to grant the relief of injunction to the plaintiff.

7. The simple case of the plaintiff is that Honnamma, did not have the competence, authority or power to gift away the suit items to her daughter Lingamma - defendant-1. In view of this fact the gift evidenced by Ex.D.9 is not binding on him.

8. Defendant Nos. 2 to 4 remained exparte. Defendant No. 1 contested the suit. Her contentions are that the suit items were given to Honnamma in lieu of maintenance as recited in Ex.P. 1 and on the coming into force of the Hindu Succession Act (1956) Honnamma became the absolute owner and that gave her the competence to gift the properties to defendant-1 under Ex.D.9.

9. The trial Court framed the following issues:

1. Had Honnamma no right to settle the suit lands on any body?

2. Is settlement deed dated 13-9-1972 not binding on the plaintiff?

3. Is plaintiff in possession of the suit lands?

4. Is suit bad for non-jointer of necessary parties?

5. Has this Court no pecuniary jurisdiction to try this suit?

6. Is plaintiff entitled to the declaration sought for by him?

7. Is plaintiff entitled to perpetual injunction?

8. What relief the parties are entitled to?

10. The lower appellate Court framed the following points for determination :-

1. Whether the plaintiff has a right of action to impugn the settlements of the suit properties in favour of the first defendant?

2. Whether the plaintiff's entitled to the injunctive relief sought for by him?

11. The lower appellate Court has interpreted Section 14(1) of the Hindu Succession Act, (hereinafter referred to as the 'Act') in the light of the decision rendered by the Supreme Court in SMT. NARAINI DEVI v. SMT. RAMO DEVI, : [1976]3SCR55 and held that there was no pre-existing right of maintenance in Honnamma and as such Section 14(1) of the Act would not be applicable. Consequently it has further held that the reversionary rights of the plaintiff remained intact, because in law the gift Ex.D.9 would not be binding on him. As Honnamma was still alive when the lower appellate Court disposed of the appeal, the lower appellate Court has opined that Honnamma had better title to the suit items and therefore, the plaintiff was not entitled to the relief of injunct on against her.

12. While admitting this appeal on 12-7-1977 this Court has formulated the following substantial question of law:-

'Whether the lower appellate Court has rightly understood the scope and effect of Section 14(1) of the [Hindu Succession Act, 1956](#) in holding that Honnamma had

not acquired title to the property in question under Ex.P. 1 and she had no right to settle the property under Exhibit D.9?'

13. For the contesting respondent-1, as remaining three respondents have remained unrepresented, Sri V. Tarakram, learned Advocate, addressed his arguments. Later on Sri V. Krishnamurthy, Senior Advocate completed the arguments on behalf of respondent-1.

14. Sri R.J. Babu, learned Advocate for the Appellant urged that interpretation of Section 14(1) of the Act has undergone a change in view of the decisions of the Supreme Court as available in V. TULASAMMA v. SESA REDDY, AIR 1977 SC 1944 and VAJIA v. THAKORBHAI, : [1979]3SCR291 : Per contra Sri V. Tarakram relied on the decision of the Supreme Court in K. SATYANARAYANA v. G. SITHAYYA, : [1987]1SCR359 .

15. Section 14 of the Act reads as follows:-

'14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her, as full owner thereof and not as limited owner.

Explanation: In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as 'Stridhana' immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property.'

The facts in Naraini Devi-'s, : [1976]3SCR55 case are as follows:-

Hiralal, husband of Naraini Devi, died in 1925 leaving behind him Naraini Devi, Kapoor Chand, Nemi Chand and Chandra Bhan. Kapoor Chand died in 1954 leaving behind his widow Ramo Devi. Chandra Bhan died in 1930. Ramo Devi, obtained a money decree against Nemi Chand. In execution of her decree she got attached one half share in the double storeyed House situated at Agra. Smt. Naraini Devi filed an objection petition under Order XXI, Rule 58 C.P.C. That objection was dismissed by the executing Court on 16-7-1962. Thereafter she filed a suit under Order XXI Rule 63 C.P.C. The suit was decreed by the trial Court. On appeal, the District Judge reversed the judgment and dismissed the suit. Her second appeal was summarily dismissed. She filed a review petition, which was rejected by the High Court on August 23, 1967. The matter was taken up to the Supreme Court by Naraini Devi. The undisputed fact was that on 4-1-1946, there was a registered award between the parties. Under the award life interest in the suit property was given to Naraini Devi.

16. Naraini Devi's contention was that her limited interest in the house was enlarged into that of a full owner by operation of Section 14 of the Act. The Supreme Court held that Naraini Devi had no pre-existing right or interest in the property in question and had only a restricted estate by virtue of the award. The Supreme Court, in view of this conclusion laid down that the case of Naraini Devi fell under Section 14(2) of the Act and not under Section 14(1) of the Act.

17. The Judgment in Naraini Devi's, : [1976]3SCR55 case was rendered by the Hon'ble Judges R.S. Sarkaria and S. Murtaza Fazl Ali, JJ.

18. The Judgment in V. Tulasamma's, AIR 1977 SC 1944 case is rendered by a Bench of three Judges; P.N. Bhagwati, A.C. Gupta and S. Murtaza Fazal Ali JJ. The judgment is rendered by Bhagwati, J for himself and on behalf of A.C. Gupta, J and also by S. Murtaza Fazal Ali, J separately. Bhagwati, J and A.C. Gupta, J have expressed that they agreed with the conclusion reached by S.M. Fazal Ali, J, but preferred to give their own reasons also. The main fact in V. Tulsamma's case is that she had acquired property under a compromise in lieu of satisfaction of her right of maintenance and the compromise prescribed limited interest in her favour. The decision in Naraini Devi's, : [1976]3SCR55 has been over ruled. The

conclusion arrived by the Supreme Court is, as Tulsamma had acquired the properties under compromise in lieu or satisfaction of her right of maintenance, it is Subsection (1) and not Sub-section (2) of Section 14 which would be applicable and hence Tulsamma must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest for her in the properties. This principle is reiterated in Vajia's, : [1979]3SCR291 case, which is also rendered by a Bench of three Judges.

19. Sri S. Murtaza Fazal Ali J, was party to the judgment in Naraini Devi's, : [1976]3SCR55 case. Later, the learned Judge has himself, in his judgment in V. Tulsamma's, AIR 1977 SC 1944 case, referred to Naraini Devi's, : [1976]3SCR55 case in paragraph 68 of the Judgment and observed as follows:-

'This case is no doubt directly in point and this Court by holding that where under an award an interest is created in favour of a widow that she should be entitled to rent out of the property for her lifetime, it was held by this Court that this amounted to a restricted estate under Section 14(2) of the 1956 Act. Unfortunately the various aspects, namely, the nature and extent of the Hindu women's right to maintenance, the limited scope of Sub-section (2) which is a proviso to Sub-section (1) of Section 14 and the effect of the Explanation etc., to which we have adverted in this judgment, were neither brought to our notice nor were argued before us in that case. Secondly, the ground on which this Court distinguished the earlier decision of this Court in Badri Pershad v. Smt. Kanso Devi, : [1970]2SCR95 (supra) was that in the aforesaid decision the Hindu widow had a share or interest in the house of her husband under the Hindu Law as it was applicable then, and, therefore, such a share amounted to a pre-existing right. The attention of this Court, however, was not drawn to the language of the Explanation to Section 14(1) where a property given to a widow at a partition or in lieu of maintenance had been placed in the same category, and therefore, the reason given by this Court does not appear to be sound. For the reasons that we have already given, after taking an overall view of the situation, we are satisfied that the Division Bench decision of this Court in Naraini Devi's case (Supra) was not correctly decided and is, therefore, overruled.'

20. What is narrated in the preceding paragraphs shows that the reasoning of the lower appellate Court, placing reliance on Naraini Devi's case is no longer sustainable.

21. Sri V. Tarakaram, learned Counsel for respondent-1 heavily relied on the decision in K. Sathyanarayana's, : [1987]1SCR359 case, wherein a bench consisting of two Judges of the Supreme Court has dealt with the respective applicability of Sections 14(1) and (2) of the Act. in K. Sathyanarayana's, : [1987]1SCR359 case, plaintiff asked for a decree for possession after eviction of the defendants and claimed mesne profits both past and future. The relevant facts are plaintiff and one Veeraraju were brothers being sons of Ramamurthy. They amicably partitioned their properties in 1909. Veeraraju died in 1927 leaving behind his widow, Ramamurthy father of plaintiff and Veeraraju. sold certain properties from Veeraraju's share in 1928. Veeraraju's widow raised a dispute and mediators brought about a settlement by a deed of settlement dated 18-8-1937. In the said settlement Ramamurthy settled certain properties on the widow with life interest and stipulated that on her death those properties were to revert to Ramamurthy or his heirs. After the death of the widow, the plaintiff claimed the properties. Defendant-1 who is the brother of the widow set up title under a Will dated 14-5-1962 executed by the widow. The question that arose for consideration was whether the life estate created in favour of Veeraraju's widow under the settlement deed had ripened into full ownership under Section 14(1) of the Act. All the Courts below held against the life interest ripening into full ownership. Their Lordships held that the facts and circumstances, clearly attracted Section 14(2) of the Act and not Section 14(1) of the Act.

22. The facts in K. Satyanarayana's, : [1987]1SCR359 case clearly make out that the right to the suit properties were acquired by Veeraraju's widow under the settlement deed dated 18-8-1937 as the mediators decided that she should be given certain properties for life only in view of the fact that the properties that were allotted to Veeraraju's share in the partition between the brothers viz., plaintiff and Veeraraju in 1909 had been sold by Ramamurthy. It is further clear that the widow of Veeraraju did not acquire the properties under the settlement deed because of any. pre-existing right in her favour. The right arose under the settlement deed and

was granted to her. This is a clear case which excluded operation of Section 14(1) of the Act.

23. Now the question is whether the suit items were given to Honnamma in lieu of maintenance, under Ex.P.1 dated 7-7-1944. If it is held that they were given to her in lieu of maintenance, whether Section 14(1) of the Act would be applicable?

24. The question whether the suit items were or were not given to Honnamma in lieu of maintenance is to be resolved by consideration of the narration in Ex.P.1 and other evidence relied upon by the parties. It is to be remembered that Ex.P. 1 is not challenged by the plaintiff.

25. A reading of Ex.P. 1 and other evidence shows that as on 7-7-1944 the date of Ex.P.1, the joint family consisting of Puttegowda, his wife Honnamma, Channegowda his wife Mariamma and also the plaintiff was in existence. It was possessed of the properties narrated in 'A' and 'B' Schedules in Ex.P. 1.

26. A further reading of Ex.P.1 discloses that it is a settlement deed. In this connection it is to be noted that Ex.P-1 is described as settlement deed in Ex.D.9 also. Puttegowda, the executant of Ex.P-1, settled the 'B' schedule properties absolutely on Channegowda. So far as defendant No. 1 and the other daughter of Puttegowda are concerned, it is recited in Ex.P-1 that Puttegowda had given two lands to his other daughter and sum of Rs. 1,000/- in cash to defendant No. 1 Lingamma, who was already married and settled happily. Puttegowda has further stated in Ex.P-1 that he was suffering from some disease and was not certain that he would live long and in case of his death, his wife Honnamma and Channegowda would continue to run the affairs of the family amicably as it was being done and in case there was non-compatibility between Honnamma and Channegowda, Honnamma should continue to reside in the family house where they were already residing and enjoy the 'A' schedule properties during her life time, only by utilising the income from 'A' schedule properties for herself and also for pilgrimages and other charitable purposes. He has further stated that on the death of Honnamma, Channegowda was to take over possession of the 'A' schedule properties absolutely as owner. He has further made it clear that his daughters at any stage did not have any right, title or interest in 'A' schedule

properties.

27. Sri Babu, argued that the narration to the effect that Channegowda was at liberty to take over possession of the Exhibit p-1 'A' schedule properties on the death of Honnamma made it absolutely clear that 'A' schedule properties were given to Honnamma in lieu of maintenance and that was to take effect after the death of Puttegowda. The fact that Puttegowda died by the end of 1944 or in the beginning of 1945 is undisputed. According to Sri Babu, Honnamma got the suit properties, which are the 'A' schedule properties in Exhibit P-1, in lieu of her maintenance with effect from the date of death of Puttegowda and her right to be maintained by the joint family or from out of the joint family properties is a pre-existing right. He pressed into service the decision in V. Tulsamma's, AIR 1977 SC 1944 case.

28. Sri V. Krishnamurthy, learned Senior Advocate, argued that Exhibit P-1 'A' schedule properties were not given to Honnamma in lieu of maintenance, but what was given to her was only the usufruct of the properties and not the corpus in view of the relevant wording in Ex.P-1.

29. Exhibit P-1 is in Kannada. The relevant portion reads as follows:-

Sri V. Krishnamurthy laid emphasis on the work 'fasal' in the portion reading and argued what was given to her was the usufruct of Ex.P. 1 'A' Schedule properties and not the corpus of the Ex.P. 1 'A' Schedule properties. Sri R.J. Babu, urged that it has been expressed in the very sentence that she was to use the usufruct of the lands settled in her favour and further on it is stated in Ex.P. 1 that Channegowda was to take possession of the Ex.P. 1 A Schedule properties as absolute owner after the death of Honnamma and hence the argument of Sri V. Krishnamurthy, learned Senior Advocate would not be sound.

30. It has been already pointed out that Ex.P. 1 has not been challenged by the plaintiff and on the other hand it has been acted upon by the plaintiff, because he undisputedly took over possession of Ex.P. 1 'B' Schedule properties absolutely and commenced enjoying them as his own properties. The actual state of affairs as on 7-7-1944 the date of Ex.P-1 has already been narrated in regard to the

members of the joint family of Puttegowda and so on. They were all residing together in the family house and Exhibit P-1 'A' and 'B' schedule properties were in the possession of the joint family. It is undisputed that Puttegowda and his wife Honnamma continued to reside in the very family house till his death. It therefore, follows that Ex.P 1 'A' schedule properties, which are the suit items, remained in the possession of Puttegowda and his wife Honnamma till the death of Puttegowda. Ex P 1 'B' schedule properties continued in the possession of Channegowda, but as the absolute owner and not as member of the joint family. There is no recital in Ex.P-1 even to indicate that Ex.P-1 'A' schedule properties continued to remain as properties of the joint family after Ex.P-1. It is to be noted that Puttegowda did not reserve anything for himself under Ex.P-1. He has, under Ex.P-1, taken care to provide shelter and maintenance to his wife Honnamma that is after his death. Therefore, I have no hesitation in concluding as a fact that as on the date of death of Puttegowda Ex.P-1 'A' schedule properties were in the possession of Puttegowda and Honnamma though they might have been actually cultivated by Channegowda. Such cultivation by Channegowda would in law be for and on behalf of Puttegowda and his wife Honnamma.

31. Plaintiff himself has stated in his evidence that too in his examination in chief as follows:-

'The suit schedule lands are lands given by Chikkaputtegowda for the maintenance of Honnamma'.

32. The aforementioned conclusions, facts and circumstances show that Ex.P.1 'A' Schedule properties remained in possession of Puttegowda and his wife Honnamma and it was not settled that they should remain as joint family properties. On the death of Puttegowda, Honnamma's right to be maintained as settled materialised by enjoying Ex.P.1 'A' Schedule properties, It, therefore, follows that it is not possible by any kind of reasoning to hold that Honnamma did not continue to be in possession of Ex.P. 'A' Schedule Properties, i.e., the suit properties on the death of her husband Puttegowda. These facts coupled with the admission of the plaintiff himself in his evidence, as already stated, show that words Ex.P.1 cannot be understood in their restricted meaning. They should be

understood as enjoyment of Ex.P.1 'A' Schedule properties by Honnamma. It is then only that the remaining portion relevant in Ex.P. 1 -- already adverted to in one of the preceding paragraphs -- can be understood in proper light for concluding what was the intention of Puttegowda when he executed Ex.P.1. That intention has been understood by Channegowda and his son, the plaintiff, and the affairs of the family have been carried on pursuant to that understanding. That is very well clarified by plaintiff himself by stating in his examination in chief that the suit lands were given by Chikkaputtegowda for maintenance of Honnamma. Therefore, I am unable to agree with the contention of Sri V. Krishnamurthy.

33. The foregoing reasons lead to the conclusion that on the death of Puttegowda Honnamma acquired these suit properties in lieu of maintenance as stated in Ex.P.1 and continued to be in possession. Therefore, Sri V. Tarakaram pointed out that as per the revenue records possession of Channegowda and thereafter, of the plaintiff is shown in regard to these lands and in fact Honnamma herself has stated in her evidence to the effect that as on the date of her evidence, plaintiff was in possession because he had taken possession. I am unable to attach much importance to this state of affairs, even if assumed to be a fact, because as per the settlement Honnamma acquired the properties and she was in possession. She had full right to enjoy the properties. Channegowda and the plaintiff were aware of her right. Therefore, even in case Channegowda and thereafter the plaintiff were to be in actual possession of the properties, they were accountable to Honnamma, who had a right to the income from the properties. Therefore, actual possession of Channegowda and plaintiff would not come in the way of applicability of Section 14(1) of the Act in favour of Honnamma's right. It is no doubt true that the lower appellate Court has not adverted to this aspect of possession as it proceeded to dispose of the appeal on the question in view of the decision in *Naraini Devi's*, : [1976]3SCR55 case. But as already pointed out this aspect would not be of much consequence.

34. When it is found that Section 14(1) of the Act applies to the facts and circumstances of this case, the contention of defendant No. 1 that Honnamma had become the absolute owner of the properties as from 17-6-1956 has to stand. Honnamma, as absolute owner of the suit schedule properties had every right to

gift away the properties to defendant No. 1. In that view of the matter defendant-1 becomes the absolute owner of the suit properties by virtue of the gift Ex.D.9. executed by Honnamma in her favour. The declaration sought by the plaintiff cannot be granted. Consequently, the relief of injunction also cannot be granted, though Honnamma by now is dead.

35. In view of the foregoing this appeal is allowed. The judgment and decree passed by the lower appellate Court are set aside. The suit of the plaintiff-respondent-1 is dismissed. There will be no order as to costs throughout, under the facts and circumstances of the case.

36. Sri V. Tarakaram, pointed out at this stage that the respondent-1 has filed cross-objections and also I.A. seeking for possession of the suit schedule properties. They cannot survive and hence they are dismissed.

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