Paramma Vs. Chikarangappa

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Court : Karnataka

Decided On : Oct-19-1987

Reported in : AIR1989Kant63; ILR1988KAR1949

Judge : D.P. Hiremath, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 423 of 1978

Appellant : Paramma

Respondent : Chikarangappa

Advocate for Def. : Yamuna, Sridharan and ;N.Y. Hanumanthappa, Advs.

Advocate for Pet/Ap. : S. Shivaram and ;H.K. Vasudeva Reddy, Advs.

Judgement :

1. The appellant was the second defendant 1n O.S. No. 147/75 before the Munsiff Court, Hosadurga, filed by respondents 1 to 3 against the present appellant and her father respondent 4 for a declaration that the deed dt. 15-6-1974 executed by their father first defendant in the original suit in her favour is not binding on then to cancel the same in respect of the suit property and also for permanent injunction restraining them from interfering with their possession.

2. Defendant 2 appellant is the daughter of defendant 1 and he has another daughter who is not a party to the suit and she is married. The plaintiffs allege that they and their father defendant 1 were the members of the undivided Hindu family and the suit property which is an agricultural land measuring 1 acre 18 guntas bearing R. S.No. 6/1 of Neralakeri village in Hosadurga Taluk and, other properties which are not included in the suit are the joint family properties. Their father was indulging in evil ways and squandering the family funds and was not managing the family properly. The family owns ancestral properties including the suit property of about 6 acres in all. The suit property is very fertile being in the outskirts of the village and fetched Rs.3,000/- to Rs.4,000/- per acre at the time when the suit was filed. The family was mainly depending on the income of the suit property wherein they grow ragi and jawar. For about 2 or 3 years, prior to the date of the suit, the first defendant was living with defendant 2 and defendant 2 is inimically disposed towards them and they had filed O.S. No. 164/74 for permanent injunction restraining the defendants from interfering with their possession. At that time it transpired that 1st defendant executed the gift deed in favour of defendant 2 and they maintain that this gift deed dt. 15-6-1974 in favour of the appellant defendant 2 is sham, bogus and collusive. Defendant-1 has no right to execute it, no delivery of possession was given to defendant 2, it was not acted upon and therefore they were compelled to, file the present suit as they could not get any Injunction in the previous suit. Thereafter defendant-1 filed a suit in O. S. No. 189/74 for partition and possession of his share against the plaintiffs and taking advantage of the situation defendant 2 was obstructing their possession.

3. Inter alia the defendants filed a common written statement mainly contending that the suit property is the self-acquisition of defendant-1; that defendant 1 had in fact executed the gift deed now impugned and put defendant-2 in possession, of the property. The partition suit filed by defendant-1 is admitted. Defendant 1 had got great love and affection towards defendant 2 and in token of it and also for the reason she was taking care of him in his old age, he gifted away the suit property to her and he also intended to, perform his obligation of blessing his daughter with 'Arisina7-Kunkuma' which is a custom in the community. He contended that the plaintiffs are lazy and vagabonds who have no responsibility towards the family. They even forgot their dutie5 towards defendant 1 and defendant 2 as well. With

these contentions, the trial Court raised the following issues:

1. Do the plaintiffs prove that the gift deed dt. 15-06-1974 executed by 1st defendant in favour of 2nd defendant is riot binding on the plaintiffs and void in law?

2. Do they prove that no delivery of possession was given to 2nd defendant?

3. Do the plaintiffs prove that they are in lawful possession of the suit land on the date of suit?

4. Does the 1st defendant prove that the suit land is the self-acquired property and not the joint family property and the 2nd defendant has acquired right over the suit land?

5. Are the plaintiffs entitled for relief sought in the plaint?

6. What decree or order?

4. The trial Court found that the suit land was the self-acquired property of defendant 1; that the impugned gift deed is binding on the plaintiffs and not void and holding that they are in lawful possession of the property dismissed the suit.

5. The first Appellate Court in R.A. No. 42/76 filed by the plaintiffs reversed the judgment and decree of the trial Court and found that it is the joint family property of the plaintiffs and defendant 1; that the gift deed in favour of defendant 2 is not binding upon them; that it is not the self-acquired property of defendant 1 and decreed the suit of the plaintiffs declaring their title to the suit property and also granted injunction.

6. It is now defendant 2 who has approached this Court in this second appeal.

7. According to her the first Appellate Court was wrong in holding that this is a joint family property; that there was ample evidence to show that it was the self acquisition of defendant 1 and it failed to notice the plea of defendant 1 in the partition suit 0. S. No. 189/74 that the property be allotted to his share, and that this plea would not estop him from saying that it is his self acquired property.

During admission it appears that it was canvassed that defendant 1 was performing his pious obligation towards his daughter even after the marriage and that the facts attracted the decision of the Supreme Court referred to in the substantial question of law set down and on this plea the following substantial questions of law have been set down for determination:

(i) Whether, on the facts and circumstances of the case, the finding of the Appellate Court that the property gifted to the second defendant on 15-6-1974 was ancestral property was justified ?

(ii) Whether the gift in favour of the second defendant could be upheld notwithstanding the fact that the property was the ancestral property of the first defendant in view of the decision, of the Supreme Court in Ammathayee v. Kumaresan, : [1967]1SCR353 ?

8.The learned Counsel for the appellant did not appear to be on firm ground as far as the character of the property is concerned, because even from the evidence he was not able to satisfy this Court that the first Appellate Court went wrong in holding that this was the joint family property. Admittedly this is an agricultural family. There was division among the first defendant and his brothers over 30 to 40 years ago. Some properties fell to his share and even though he stated that debts were contracted for purchasing this property two coconut gardens and a house were sold for satisfying the debt. Thus undisputedly the family properties are alienated for the purpose of discharging the debts. Secondly there is absolutely no material to show that he had any other source of income apart from the income from the joint family lands. Therefore, on this question of fact, the first Appellate Court having re-assessed the entire evidence found that the property is the joint family property and I do not find any reason to interfere with that finding which is purely a finding of fact based on proper appreciation of evidence and not perverse. Hence, the finding that this is the joint family property of the plaintiffs and defendant 1 is concluded.

9. The main argument advanced on behalf of the appellant is that has obligation even towards his daughters and for that purpose he has power to gift away the reasonable portion of the joint family property and this pious purpose has been

recognized under Hindu Law and in discharge of this pious purpose gift of the suit property measuring 1 acre 18 guntas has been made and therefore the plaintiffs cannot question its validity. As urged during admission reliance is placed on the aforesaid decision of the Supreme Court in the case of Ammathayi v. Kumaresan , : [1967]1SCR353 of the Report their Lordships of the Supreme Court clearly observed in unambiguous terms that Hindu law on the question of gifts of ancestral property is well settled. So far as movable ancestral property is concerned a gift out of affection may be made to a wife to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection. But so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for 'pious purpose'. Now what is generally understood by 'pious purposes' is gift for charitable and /or religious purposes. But the Supreme Court has extended the meaning of 'pious purposes' to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfillment of an ancestral property to his daughter in fulfillment of an ante-nuptial promise made on the occasion of the settlement of the terms of her marriage and the same can also be done by the mother in case the father is dead.

10.In the case before the Supreme Court according to the done-appellant , the value of the immovable property was about one-tenth of the entire property left by Rangaswamy Chettiar. The argument on behalf of the done-appellant is that the gift was valid as it was of a reasonable portion of the immovable property placing reliance on an earlier decision of the Supreme Court in the case of Guramma Bharatar v Malappa Chanbasappa , : [1964]4SCR497 in which it was reiterated that :

' The Hindu law texts conferred a right upon a daughter or a sister as the case may to have a share in family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift by way of reasonable provision for the

maintenance of the daughter , regard being had to the financial and other relevant circumstances of the family. By custom or by convenience such are made at the time of marriage to make such a gift is confined to the marriage occasion. Marriage is only a customary occasion for such a gift. But the moral obligation can be discharged at any time, either during the lifetime of the father or thereafter.'

11.In the instant case it was disclosed that purpose for which the gift was made was for her 'Harishina-Kunkum ' as averred in the gift deed Ext. D-1 and it is undisputed that it came into being only about 15 years after the marriage he stated therein that every year he was calling his daughter to the house and providing her 'Harishina-Kunkum' as he calls it and he wanted that the same should be continue even after his lifetime which he was not sure his sons would do. This is the purpose for which the gift has been made .

12. The learned Counsel for the appellant has urged that this pious purpose is attracted by the decision of the Supreme Court referred to above . Smt Yamuna Sridharan, learned Counsel for the respondents 1 and 3 has attacked it on the ground that firstly there was no ante-nuptial agreement alleged or proved , secondly that this is the only fertile land of the family on which the family depends for livelihood and maintenance and thirdly the father had got bias against his sons and the father himself was not treading the path of morality. The plaintiffs even allege that he had become wayward and he was keeping a concubine by name Smt. Kariyamma. There is also another daughter who is not a party to the suit and if this gift is recognized on the ground that the appellant wants it to be recognized then the family properties would be liquidated and the sons will have nothing to fall back upon. According to her the gifts is not within reasonable limit. Undisputedly it appears that both Courts below did not advert to this aspect of the case, though a pleas has been raised that the gift was made for the purpose of 'Harishina-KunKum' in the written statement. It is perhaps for this reason it was canvassed during admission, whether there should be ante-nuptial agreement to make such a provision as discussed in the case of Guramma by the Supreme Court referred to above and to repeat the observations of the Supreme Court, though such gifts are made at the time or marriage, right of the father to make such gift is not confined to marriage alone. Therefore even thereafter such gifts could be made. It is further

pertinent to note that the Supreme Court in the case of Ammathayi : [1967]1SCR353 has emphasized on what it terms 'reasonable limits'. Therefore , there should not be a gift of substantial portion of the property in favour of the daughter even if it is for the purpose of 'Harishina-Kumkum' as it is now called pious purpose .Therefore even though it assumes the nature of question of fact this Court has to look to the evidence to see if this gift of 1 acre 18 guntas of the joint family property by the father 'is within reasonable limits' as laid down by the Supreme court.

13. The evidence adduced both on behalf of the plaintiffs and defendants amply established that the entire joint family lands consist of 6 or 7 acres (P.W. 1). According to this witness for the plaintiffs the suit land is a fertile land which feeds the family. The other lands are pieces measuring half acre or three fourth acre each which are not fertile. In the partition 1st defendant got 40 coconut trees by way of his share, whereas the plaintiffs together got 100 coconut trees. They also planted 60 more coconut trees. But no agricultural produce is taken from the coconut garden land. 8 or 10 bags of ragi would be raised per acre in the suit land and the family of the plaintiffs consists of 10 members. Practically there was no cross-examination on this evidence with regard to the extent of the family lands and the income. The evidence of other witnesses for the plaintiffs is also similar and P.W. 6 is the plaintiff. He deposed that this family owns 6 acres and odd of lands. He and lst defendant were enjoying the properties jointly. The suit land is the only fertile land which is feeding the family. It measures 1 acre 18 guntas. They also own 2 acres of garden land and are not raising any crop in the coconut garden land. The other lands are pieces measuring 10 guntas each. They have been raising ragi crop in the suit land, getting 12 to 13 bags of ragi. In their family 6 to 9 persons are living. After the death of his mother, his father had a concubine by name Kariyamma. He is however not aware if his father had sold away two garden lands and a tiled roof house. But it has come in the evidence that there are debts incurred by his father. He then admits that it is a fact that his father had sold away one ancestral garden land.

14. First witness for the defendants (D.W. 1) also deposed that the suit land is situated at the outskirts of the village, but fetches Rs. 500/- and not Rs. 3000/- per

acre as contended by the plaintiffs. At that time defendant 1 was residing in the house of one Giriyajja. Defendant 1 himself deposed as D.W. 3 that they discharged the family debts about 2 years after incurring the share by selling 3 properties of the family, that is, two coconut garden lands and a house. He asserted that he has not purchased the suit land out-of the family income. He admits at the same time that the income of the family was not sufficient to maintain the family. Last year his daughter had raised ragi in the suit land. But in the year in which he has given evidence it was lying fallow. Defendant 2 (D.W. 4) gave evidence that the plaintiffs' family owns more than 51/2 acres of land, but she does not know the extent of the suit land; they are getting l or 3 bags of ragi. She denies that the plaintiffs had raised white jawar in that land..

15. Considering this evidence on record, it may be pointed out that none of the witnesses have stated that the joint family has any other land for their maintenance by raising food crops like ragi or jawar as the case may be. Emphasis has been laid on the yield taken from the land. As for the other property, 100 coconut trees have fallen to their share together. But the Court while determining if this gift is within reasonable limits cannot totally ignore the extent of the family properties on which they have to fall back upon for their maintenance and income derived from other lands. Admittedly even though the total extent of the land is 51/ 2 or 6 acres as the case may be the evidence that they are small bits comprising of 10 guntas or little more cannot be considered as sufficient to sustain the family. On this total extent these three plaintiffs with their wives and children have to live and there is no other land admittedly, on which food crops could be grown. Hence gift of I acre 18 guntas is not within reasonable limits as laid down by the Supreme Court. In my view it is certainly a very substantial portion of the entire family properties, whereas in the case before the Supreme Court only 1/10th of the total extent of the property was gifted away. If the father under this excuse of discharging the pious purpose makes such substantial gift of the family property then it is quite likely, as contended by the learned counsel for the respondents, that the family properties be liquidated and nothing may be left to the other coparceners. It appears that the relations between the plaintiffs and defendant 1 were not as they should be and he was admittedly living in the house of defendant 2 when this gift deed came into existence. Perhaps defendant 1

might have had his own aversion and apathy towards his sons when he describes them as lazy and vagabonds. With such disposition towards his sons, it might have impelled defendant 1 in bringing into existence this gift in favour of his daughter who was looking after him. It is also pertinent to note that admittedly defendant 1 has filed a suit for partition and if this property is excluded as having lost to the family due to the gift again he would be entitled to his own share in the coparcenary properties, in which event the properties that may be available for partition would be further reduced.

16. It is urged by the, learned Counsel for the appellant that in the partition suit, it is the prayer of the father that the very property may be allotted to his share. That however is a matter that may be taken note of in that suit and nothing need be said in the instant suit. In my view, judged from the evidence on record, I find that this gift is not within reasonable limits. But on the other hand it is a substantial portion of the family property and if the gift is allowed to stand the other members of the joint family certainly will be left with no land from which they can raise food crops -for their maintenance. In that view of the matter the finding of this Court is that the gift is not justifiable on the ground of pious purpose, The first Appellate Court was justified in giving decree though it did not consider this aspect of the matter which perhaps was not urged before the first Appellate Court, I find no merit in the appeal, the same is liable to be dismissed and it is dismissed. The parties to bear their respective costs.

17. Appeal dismissed.