Sumera and ors. Vs. Mormukat and ors.

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Court : Allahabad

Decided On : Feb-27-1935

Reported in : AIR1935All632; 157Ind.Cas.256

Appellant : Sumera and ors.

Respondent : Mormukat and ors.

Judgement :

Niamatullah, J.

1. This second appeal has arisen from a suit brought by the two minor plaintiff-respondents for setting aside a sale-deed, dated 14th August 1928, in favour of the defendant-appellants by defendants 5 and 6, who are respectively the father and mother of the plaintiffs, and for possession of the property to which that deed relates. The plaintiffs' mother (defendant 6), acquires an interest, in the property in dispute under a deed of gift, dated 3rd June 1920, executed by her husband, the father of the plaintiffs. (Defendant 5). The lower Courts found that the deed of gift conferred a life interest on the donee, the plaintiffs' mother, and that the sale-deed, relied on by the appellants, validly conveyed only her life interest to them. As regards the remaining interest, the sale-deed has been declared to be invalid as against the plaintiffs, who will be entitled to recover possession from the appellants after their mother's death. The defendants assail the decree of the lower Courts, claiming an absolute interest in the property in dispute under the sale-deed. The

trial Court had held that the sale was made by the plaintiff's parents for legal necessity, as money was required for the family business, which consisted of a grocery shop, but that it did not affect the rights of the parties. The lower appellate Court has recorded no finding on this part of the case.

2. The property in dispute is a house which belonged to the ancestors of the plaintiffs' father, so that, if there had been nothing else in the case, the plaintiffs would have acquired an interest by birth and held it as a member of a joint Hindu family with their father. But on 3rd June 1920, when the father executed the deed of gift in favour of his wife, he was the sole owner of the house as none of his sons were in existence till then. Plaintiff 1 was born in 1922, and plaintiff 2 in 1924. On the date of suit they were respectively 9 and 7 years of age. The sale-deed obtained by the appellants on 14th August 1928 was executed by both the parents of the plaintiffs obviously because the mother had obtained an interest in certain property, including the house in dispute, under the deed of gift, and as the father was the original owner thereof and was probably believed to have some interest in spite of the deed of gift. The appellants obtained possession of the property purchased by them; but about three years after the sale-deed the minor sons of the vendors instituted the suit which has given rise to this appeal, challenging the validity of the alienation made by their parents. Their case, as set out in the plaint, is that the house in dispute is part of the ancestral property belonging to the plaintiffs and their father, that the deed of gift executed by the latter in favour of the plaintiffs' mother was fictitious and conveyed no ttle to the donee and that the sale-deed executed by the parents of the plaintiffs on 14th August 1926, was void, there being no legal necessity for the alienation. It-was pleaded by the appellants in defence that the gift in question was genuine and given effect to, under which the donee acquired an absolute interest in the property conveyed thereby. It was pleaded in the alternative that there was legal necessity for the sale and that, assuming the deed was fictitious, the sale is binding on the plaintiffs. Both the lower Courts have found that the deed of gift represents a genuine transaction intended to take effect and that the donee acquired thereunder the title which it purports to convey. This finding has not Tbeen. challenged by either side in this Court. In view of the finding of the trial Court that there was legal necessity for the-sale, it, is no longer to the interest of the plaintiff to maintain that the gift was

fictitious, because if that finding stands and the deed be accepted to be fictitious, the sale-deed which was executed by the plaintiffs' father must be upheld. If the deed of gift be assumed to be fictitious, the property remained with the father; and though his sons took an interest by birth, a transfer by him for necessary purposes, as found by the trial Court, is valid. As however the lower appellate Court has recorded no finding on the question of legal necessity and as both the Courts have found that the gift was genuine, I do not think it will be right to pin down the plaintiffs to their case in the plaint that the gift was fictitious. I Think this appeal ought to be disposed of on the assumption that the gift conveyed such title as it purports to transfer.

3. The principal question in the case is what right the deed of gift conferred upon the plaintiffs' mother. If she became the absolute owner under that deed the sale in favour of the appellants cannot be challenged by the plaintiffs, who could acquire no interest-by birth in the property acquired by their mother from their father before they were born. The father was the sole owner before the plaintiffs' birth and could transfer any part of the family property to anyone by sale or gift. The sons could acquire an interest by birth only in such property as remained in the family at the time of their birth.

4. The deed of gift has been found by both the lower Courts to confer only a life interest on the donee. The lower appellate Court has adopted all the conclusions of the trial Court without adding any reasons of its own. I have therefore considered the grounds on which the decision of the trial Court proceeds. Though that Court held the donee to have acquired no more than a life interest, its views on some questions arising from interpretation are not quite correct. The deed provides as follows:

(1) The donee may remain in possession of the property gifted to her as owner like myself. I and my heirs have no concern left with the property, nor will have any concern in the future.

(2) But the condition is that my wife shall have no power to mortgage or sell, or otherwise transfer the property, and if my wife dies son-less in my lifetime, I shall be the owner of the property.

(3) And if a son is born to my wife, he will have a right of transfer in the gifted property; and if no son is born to her, no one will have a right of transfer. But the gifted property shall not devolve on anyone belonging to the family of my wife (i.e., her father's family).

(4) If my wife dies issueless after my death, the gifted property shall go to the people of my family.

(5) If I die in the lifetime of my wife, who is issueless, then my wife shall enjoy the usufruct of the gifted property; and if misled by others she does anything against my interest which may occasion loss to me, then I shall have a right to have the gift cancelled.

5. The various clauses are not numbered in the deed. I have numbered them according to the numbering adopted by the trial Court except in respect of the last two clauses. The interpretation, which has been accepted by the trial Court and by the lower appellate Court, is that the first clause confers an absolute estate on the donee, and other clauses, e.g., Nos. 2 and 4, being in restraint of alienations and an attempt to alter the legal course of succession, are invalid. The trial Court then considers Clause 5 and holds that it confers a life interest only. In my opinion this is a very unsatisfactory mode of interpreting a document. It should be read as a whole, and the intention of the executed ascertained from all the clauses considered together and not individually. It is not permissible to take the first clause as if it stood by itself, arrive at the conclusion that it confers an absolute estate, and then proceed to reject the clauses which follow it as repugnant to the absolute estate previously conferred. It is perfectly clear that the words 'malik' and 'like myself' read with what follows confer no more than a life estate on the donee. This, is also the conclusion of the lower Courts as a result of Clause 5 taken by itself.

6. None of the lower Courts considered the question whether - assuming the donee had only a life interest - the interest in remainder continued to be vested in the donor. This question is, important in considering the validity of the sale-deed impugned in this case. Ordinarily an estate cannot remain in abeyance and must rest in someone. Ex. hypothesi the deed of gift merely carves out a life estate and

makes a gift of it to the donee. The deed does not expressly dispose of the remainder of the property. The power of transfer, which is given to a son, it born to the donee, does not, effectively deal with the interest in remainder. In the first place, no son was in existence at that date; and the only person, in whom it would be vested in the interval between the dates of gift and the birth of a son, was the donor himself. The trial Court is apparently of opinion that the son took only a contingent interest, by which it meant that if one is born, he would become the owner. Taking it in the most favourable light the trial Court's view seems to be that in whomsoever the remainder may be vested at the time of the birth of a son his interest is divested and is vested in the son. There is however nothing in the deed to justify such an assumption. The last clause, which reserves to the donee the right to have the deed of gift cancelled, further strengthens the view that the remainder continued to be vested in the donor after the gift. Such remainder was ancestral property, as before; and as each son was born, he took an interest by birth. Such son, of course, takes an absolute estate, like every male member of a joint Hindu family, and the power of transfer, given by the deed confers no more than such a right. It cannot be said that the father had no interest in the remainder of the estate, which remained in abeyance and became vested in the sons when they were born. In my opinion the interest in remainder was joint family property belonging to the father and the sons.

7. The sale-deed in favour of the appellants was executed by the mother, who was the owner of a life estate, and the father, who at that time owned the remainder as a member of joint Hindu family with his sons. The alienation, so far as it was made by the mother, did not require legal necessity for its validity; but so far as it conveyed the interest in remainder belonging to the joint family consisting of the plaintiffs and their father, the alienation was not valid unless there was legal necessity for it. The lower Courts have upheld the sale-deed so far as the life interest of the mother is concerned, but have set aside the sale as regards the rest. Both the Courts did not consider the question on the hypothesis that the interest in remainder was joint family property. The trial Court found that money was needed for family business; and if it had held the interest in remainder to be joint family property, it would have upheld the sale in its entirety. The lower appellate Court has recorded no finding on the question of legal necessity.

8. The question of legal necessity has two aspects. If the interest in remainder, be considered to belong to the joint family consisting of the father and the sons, the question will take the form, in which it is put in issue 3 framed in this case. Another aspect of it is that, if the interest in remainder be considered to belong to the plaintiffs alone, as held by the lower Courts, the sale thereof may be still valid if money was needed arid was spent for the benefit of the plaintiffs themselves, who were minors, the executants of the sale-deed being their natural guardians. In view of the possibility of a Letters Patent appeal I think it is necessary to have all aspects of this considered and to remit the following two issues to the lower appeal late Court for findings: (1) Whether the sale in favour of the appellants, so far as it affected the interest in remainder, assuming the saint to be joint family property was justified by legal necessity; and (2) Whether, assuming the interest in remainder to be the property of the plaintiffs, in which their father had no interest, the sale thereof was necessary or for their benefit.

9. Findings shall be returned within three months. Parties shall be at liberty to adduce fresh evidence. On return of the findings ten days shall be allowed for objections, if any.