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Gopal Krishna Vs. Kamta Prasad

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Court : Madhya Pradesh

Decided On : Jan-24-1972

Reported in : AIR1972MP193; 1973MPLJ11

Judge : S.M.N. Raina and ;N.C. Dwivedi, JJ.

Acts : Succession Act, 1925 - Sections 74; Transfer of Property Act, 1882 - Sections 8

Appeal No. : First Appeal No. 121 of 1966

Appellant : Gopal Krishna

Respondent : Kamta Prasad

Advocate for Def. : H.G. Mishra, Adv.

Advocate for Pet/Ap. : A.R. Naoker, Adv.

Disposition : Appeal dismissed

Judgement :

1. This is an appeal by the defendant (as Pauper) against the judgment and decree of the Second Additional District Judge. Gwalior whereby the adoption deed dated 30-6-1960 in his favour was declared null and void and the possession of the houses and lands as per paragraph 7 of the plaint was ordered to be delivered to the plaintiff.

2. The plaintiff Kamta Prasad is the son of Ramchandra (P.W. 1) while the defendant Gopal Krishna is the son of Harimohan (D. W. 2). Both of them were closely related to the deceased Gyasiram who adopted the plaintiff on 8-9-1953 and executed a registered document (Ex. P. 1) in his favour. The deceased also adopted the defendant on 30-6-1960 and executed a registered document (Ex. P.4-A) in his favour. Gyasiram died on 30-7-1960.

3. The plaintiff's case is this : Gyasiram adopted him by performing due ceremony. After adoption the plaintiff lived with Gyasiram and studied. Since Gyasiram was not able to look after him properly he sent him to Ramchandra (P.W. 1) at village Ghatigaon where he continued his studies. By a registered deed dated 30-6-1960 Gyasiram adopted the defendant but could not do so during the lifetime of the plaintiff. Further on 30-6-1960 and prior to this Gyasiram was old and sick and had lost his power of understanding. He was unable to speak and move and was incapacitated to perform the adoption ceremony. Thus the defendant was in wrongful possession of the houses and the lands in suit. The plaintiff filed this suit to claim a declaration that the adoption deed dated 30-6-1960 was null and void and also for possession of the suit property.

4. The defendant denied that the plaintiff was the adopted son or that Gyasiram validly adopted him after performing due ceremony. He contended that he was the son of the nephew of Gyasiram and was validly adopted by him. He contended that the adoption deed was executed by Gyasiram out of his free will Who was capable of understanding the nature of his act. He was neither ill nor incapacitated due to old-age or sickness. The plaintiff never lived with Gyasiram nor performed his last rites which were performed by him as his adopted son. He contended that Gyasiram made him the owner of the property after his death and the plaintiff could not claim the disputed property which was the self-acquired property of Gyasiram. He prayed for dismissal of the plaintiff's suit.

5. The trial Court after scrutiny of the evidence came to the following conclusions :

(i) Gyasiram validly adopted the plaintiff and evidenced it by the registered document (Ex. P. 1) dated 9-9-1953.

(ii) Gyasiram adopted the defendant on 30-6-1960 and executed a registered document (Ex. P. 4-A) in his favour.

(iii) The adoption in favour of the defendant was invalid as the plaintiff was previously adopted.

(iv) Gyasiram was mentally sound at the time of the adoption and the execution of the document (Ex. P. 5).

(v) Ex. P. 4-A could not be read as will or transfer deed.

6. We have gone through the evidence of the plaintiff and the defendant and agree with the conclusion that Gyasiram performed due ceremony at the time of the two adoptions; was mentally sound and consciously executed the two registered deeds. These findings were not seriously challenged before us.

7. Shri Naoker, counsel for the defendant contended that the document (Ex. P. 4-A) is a will and since Gyasiram had himself acquired the property, he was competent to execute the will in favour of the defendant. Shri Naoker, however, conceded that if the registered document (Ex. P. 4-A) could not be construed as a will, the adoption in favour of the plaintiff will stand In spite of the registered document (Ex. P. 4-A).

8. The only point for decision in this appeal is whether the registered document (Ex. P. 4-A) is an adoption deed or will.

9. The material portion of (Ex. P. 4-A) is as follows :

^^nLrkost xksn ulhuh

-------- esjh tk;nkn [kqnZcqnZ gks tk; vkSjesjh djh;k dje uk gks &&& viuk iq= nkd cukdj viuh xksn esa cSBkydjjle xksnulhuh c:, /keZ 'kkLrj vnk dj nh g SA fd xksiky fdlu vkt ls esjk yM+dnkd iq= dgyk,xk ---------- esjs ejus ij esjh djh;k dje djsxk vkSjesjh

yM+dh dks ekusxk ---------- xksn ulhuhfy[kdj jftLVh djkrk gwaA**

10. Shri Naoker specifically relied upon the following recitals in support of his contentions that the document (Exibit P. 4-A) is a will:

^^esjs ejus ij esjh dqy tk;nkn py vpy lEifkdk ekfyd gksxk vkSj ckn ejus esjs vkjkth ij viuk nkf[ky [kkfjt djus dk gDdgksxkA**

11. Islambeg (P.W. 7) is the scribe of document (Ex. P. 4-A) and stated that he had written the document as per instructions of Gyasiram. Dayachand (D. W. 1) attested the adoption deed (Ex. P. 4-A). Harimohan (D. W. 2), the natural father of the defendant testified to the giving and taking ceremonies and Havan. He further stated that he had consented to give the defendant in adoption to Gyasiram Tularam (D. W, 4) testified to the adoption ceremony in favour of the defendant. The defendant's evidence established that the intention of Gyasiram was to take the defendant in adoption and in fact he did so after observing due formalities. The question, however, will be about the interpretation of the document and of gathering the intention of Gyasiram from the con-tents of Ex. P. 4-A.

12. The expression 'will' is defined in the Indian Succession Act as the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. We will now advert to rules of interpretation of documents and construction of wills.

13. Dealing with Sections 94 to 98 of the Evidence Act. in Tikam Chand v. Babubhai, 1960 MPLJ 911 it was helds

'Where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended.'

14. In Kamla Devi v. Takhatmal, 1967 Jab LJ 1020 = (AIR 1964 SC 859) it was held:

'Sections 94 to 98 of the Indian Evidence Act afford guidance in the construction of documents; they also indicate when and under what circumstances existing evidence could be relied upon to construing the terms of a document Section 94 of the Evidence Act lays down a rule of interpretation of the language of a document when it is plain and applies accurately to existing facts. It says that evidence may be given to show that it was not meant to apply to such facts. When a Court is asked to interpret a document, it looks at its language. If the language is clear and unambiguous and applies accurately to existing facts. it shall accept the ordinary meaning, for the duty of the Court is not to delve deep into the intricacies of the human mind to ascertain one's undisclosed intention, but only to take the meaning of the words used by him, that is to say. his expressed intentions. Sometimes when it is said that a Court should look into all the circumstances to find another's intention, it is only for the purpose of finding out whether the words apply accurately to existing facts. But if the words are clear in the context of the surrounding circumstances, the Court cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document. The other sections in the said group of sections deal with ambiguities. peculiarities in expression and the inconsistencies between the written words and the existing facts.'

15. Thus while interpreting the document, the Court has to look at its language to take the meaning of the words used by the executant, that is to say his expressed intentions. The Courts Cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document.

16. Dealing with construction of wills, in M. V. Savitri Ammal v. Secy, Revenue Department, Govt. of Madras, AIR 1969 Mad 217 it is held :

'In interpreting a will the court has to ascertain the intention of the testator as declared by him and apparent in the words of his will. The testator conveys the expression of his wishes in the words employed by him in the document and all the parts of the will should be construed and read together with reference to each other, while effectuating the in-tention of the testator.'

17. Considering the same matter it was observed in Commr. of Income-tax, W. B. I v. National & Grindlays Bank Ltd., Calcutta, AIR 1969 Cal 71 :

'But the principle of construction in a will is different from that in an Income-tax statute. In interpreting the will.' what the Judge is supposed to do is to sit in the arm-chair of the testator and if not with the invalid outlook of the testator to construe the meaning of the words in the sense the testator understood and used, and therefore the popular meaning and popular connotation of a word as normally understood by men or ordinary testators, is to be adopted.'

18. In Ramautar Singh v. Sm. Ramsundari Kur, AIR 1959 Pat 585 the golden rule in interpreting will is expressed as follows :

'The golden rule in interpreting a will is to give effect to the testator's intention as ascertained from the language which he has used. The overriding duty of a court of construction is to construe the language which the testator has in fact employed giving due weight to all the words and rejecting none to which a meaning can reasonably be assigned. The Court is entitled to put itself into the testator's arm-chair'.

19. In S. Panchaksharamma v. Chinnabbayi, AIR 1967 SC 207 dealing with the same question it is stated that the question is one of intention of testator which must be ascertained from language of various clauses of will and surrounding circumstances of execution of will.

20. With regard to precedents and comparison of various wills in Rama-chandra Shenoy v. Mrs. Hilda Brite, AIR 1964 SC 1323 it was observed:

'In the matter of the construction of a will authorities or precedents are of no help as each will has to be construed in its own terms and in the setting in which the clauses occur.'

21. Dealing with the same question in AIR 1969 Mad 217 it is stated :

'On a question of true interpretation of a will, decisions on the construction of other wills are useful only for the limited purpose, in so far as they lay down the

principles of law which have to be observed in the construction of wills, Courts should not form any pre-conceived notions about the intention of the testator, based upon some decision apparently containing similar language and then enquire, how far the will in question resembles the will or wills referred to in the judicial decisions.'

22. Thus the legal position is that in determining the construction of a will what we must look to, is the intention of the testator. Primarily the words of the deceased are to be considered and the intention must be ascertained from the language used in the document it-sell The document must be read as a whole to ascertain the intention of the executant. Keeping in view the rules for construction of documents and will, we will proceed to consider the document (Ex. P. 4-A) to find out whether the intention of Gyasiram was to execute an adoption deed or the will.

23. The document (Ex. P. 4-A) is styled as 'Dastavj God Nashini'. The recitals are that the defendant was made an adopted eon by seating him in his lap and since that date he would be called his adopted son. aS such he would perform his last rites and respect his daughter. In the end it was mentioned that the document of God Nasihini was being registered.

24. The above recitals established that the executant of Ex. P. 4-A was conscious that he was adopting the defendant as a son who will perform his last rites and that he was conscious of the ceremony of keeping the defendant in his lap.

25. The words on which much stress is laid for treating the document as will are :--

^^esjs ejus ij esjh dqy tk;nkn py vpy lEifkdk ekfyd gksxk vkSj ckn ejus ij esjs nkf[ky [kkfjt djus dk gDd gksxkA**

26. The recitals have to be read in conjunction with the earlier recitals which gave a clue to the intention of the executant that the succession to the property was intended to be in consequence of a validly performed adoption. Ex. P. 4-A is to be read as a whole and the entire tenure indicated that the predominant intention was to clothe the defendant with the status of an adopted son after having performed the requisite formalities. The words about the succession to the property could not

be separated from the rest of the language of the document in this particular case; otherwise other recitals would become superfluous. If the intention of Gyasiram was purely to execute a will and give the property to the defendant without adopting him. he could do so without adoption because it was within his competence to will away his self-acquired property but Gyasiram did not adopt this course. Gyasiram's intention is clear that he consulted the defendant's father, got his assent went through the ceremony of giving and taking performed Havan and not to leave anyone in doubt executed a registered document evidencing his intention to treat the defendant as an adopted son. Thus beginning with the adoption, he incidentally mentioned that the defendant would become the owner of the property after his death and this was intended to be purely as a consequence of the adoption.

There is another circumstance to denote the intention of the executant. In Ex. P. 1 Gyasiram expressed that the person dying without a son will not attain peace (Sadgati) and that dominated his desire to have an adopted son. Likewise in Ex. P. 4-A he expressed that as the adopted son the defendant would perform his last rites. Gyasiram could secure the passing of the property to the defendant by solitary recital that the defendant would be the owner of the property after his death. The objects of adoption are twofold: the first is religious, to secure spiritual benefit tp the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of water to the manes of the adopter and his ancestors. The second is secular, to secure an heir and perpetuate the adopter's name. (Section 447 Mulla's Hindu Law Thirteenth, Edition, page 478). By a mere declaration that the defendant would get his property after his death, the devolution of property could be achieved but having an heir competent for the purpose of offering funeral cakes and libations of water was the spiritual consideration and the devolution of the property was only of secondary importance. It is important that in both the adoption deeds Gyasiram was keen to secure the spiritual object. This consideration was upper most in the mind of the deceased who detailed with clarity the ceremony of adoption accompanied by the declaration of the defendant being an adopted son having the right to perform his last rites. Prior to the execution of Ex. P. 4-A Gyasiram performed due adoption ceremony and not to leave nothing in doubt he confirmed it by a registered

instrument. Thus the dominant intention of Gyasiram as expressed in Ex. P.4-A was to evidence the factum of adoption.

27. I will refer to the case relied! upon by Shri Naokar in support of his contention that Ex. P. 4-A is a will and nothing else. His main reliance was on Krishna Rao v. Sundara Siva Rao. AIR 1931 PC 109 in which the material portion of a document executed by a Brahman Karmam was as follows :

'As I have had no issue I have brought you up while you were young and have adopted you and celebrated your Upanayanam etc. and have chosen you as a son. so I have communicated this fact to the revenue authorities and got your name registered for the office of the karnam held by me. Further, you shall be my son and you shall be entitled to my entire property as a son.'

The executant was ill at the time he executed the document and died four months later. In this case it was held that the document did not purport to convey anything de presenti, and further it could not be read either as being itself intended as an act of adoption or as being an authority to adopt. But the last sentence of the document clearly refer-ed to succession to the writer's entire property on his death, and has testamentary effect in favour of the person alluded to in the document.

28. According to Shri Naokar, counsel for the defendant the above case is exactly on par with this case. The facts of that case are clearly distinguishable because in that case it was undisputed that there was in fact no valid adoption of the defendant No. 2 by the deceased. The material observations in that case are on page 110.

'In their Lordships' opinion the document does not purport to convey anything de presenti, and further, an act of adoption or as being an authority to adopt. The writer, a Brahmin and a Karnam, must have been well aware that the document could not of itself constitute the adoption a formal ceremony being essential for that purpose and its terms refer to adoption in the past tense and cannot be read as an authority to adopt in the future. Moreover, it is reasonable to assume that the writer must have been fully aware of the fact, now admitted, that no actual adoption had taken place, and also to assume that his anxiety was to do all he

could to secure the succession of defendant 2 whom he had brought up and treated as a son, to his office as karnam, which would open on his death. The writer was ill at the time and died about four months later. Their Lordships are of opinion that the last sentence of the document clearly refers to succession to the writer's entire property on his death, and has testamentary effect in favour of defendant 2, who is now dead, and is represented by the appellant.'

29. The above observations are the outcome of the circumstances -- (i) the writer must have been fully aware of the fact, now admitted, that no actual adoption had taken place; (ii) his anxiety was to do all he could to secure the succession of defendant 2 whom he had brought up and treated as a son. to his office as Karnam, which would open on his death; and (iii) the writer, a Brahman and a Karnam, must have been well aware that the document could not of itself constitute the adoption a formal ceremony being essential for that purpose.

30. These facts gave a clue to the intention of the writer that he was keen to secure succession of the defendant No. 2 to the office of Karnam which would open on his death. There was in fact no adoption with due ceremony and the cumulative effect of these circumstances brought about the view that the document clearly referred to the succession of the entire property on his death and had testamentary effect. This is not the position of the defendant before us. There is unimpeachable fact that Gyasiram performed the ceremony of giving and taking and himself gave instructions for' an adoption deed. The adoption ceremony was complete with due formalities and was confirmed by a registered instrument. The language employed was to reflect the intention of the writer that he was keen to have the defendant as an adopted son. Thus the ruling in AIR 1931 PC 109 does not advance the defendant's case.

31. In AIR 1959 Pat 585 it was held that the two characteristics of a will are (i) that it must be intended to come into effect after the death of the testator and (ii) that it must be revocable. It may also be mentioned that there can be no objection to one part of an instrument operating in praesenti as a deed and another in future as a will. This case is again distinguishable inasmuch as a valid adoption cannot be cancelled by the adoptive father or other parties thereto, nor can the adopted son

renounce his status as such and return to his family of birth. (Section 493, Hindu Law by Mulla 13th Edition, page 507). The fact of adoption cannot be revoked by the adoptive father. Ignoring this, Gyasiram adopted the defendant, capable of performing his last rites which indicated his determination to have a son for his spiritual benefit.

32. In Garib Shaw v. Sm. Patia Dassi, AIR 1938 Cal 290 dealt with a will which amongst other things provided that on the testator's demise his wife and daughter-in-law would get equal share in his property for their lives without any right to transfer either by way of gift or sale. It was held that those provisions in the will clearly satisfied the requirements of the will contained in Section 2(n) of the Succession Act. In this case no question of valid adoption came up for consideration.

33. In Taio Ram Nath v. Baneswar Nath, AIR 1962 Assam 106 it was observed that there can be no objection in law if one part of an instrument is operative as will and another part of the same instrument operates as a document giving possession and management. It was held that the desire of the testator to give up the ownership of the property to the devisee only on his death was quite clear and in such circumstances, the document fell within the statutory definition of a will. The document at page 107 has been reproduced in which it was mentioned -- 'I have adopted the above person as my son' --But there is no discussion whether there was a valid adoption with due formalities or not. This case is also distinguishable.

34. Having considered the contents of Ex. P. 4-A in the light of the law as referred to above, we are of the view that the intention of Gyasiram was to evidence an adoption and the recital that the property would pass to the defendant after his death was as a consequence of a valid adoption and not independent of it. Since there was a previous adoption in favour of the plaintiff, the subsequent adoption of the defendant was invalid.

35. Shri H. G. Mishra, counsel for the plaintiff-respondent, contended that even if the document is construed as a will Gyasiram was not competent to will away the agricultural lands in view of the specific provisions of the Madhya Pradesh Land

Revenue Code. This contention has force but in view of our finding that the document is an adoption deed the plaintiff's right as an adopted son is not in any way marred. We hold that the Court below rightly decreed the plaintiff's suit.

36. In view of the above, the appeal fails and is hereby dismissed. The defendant shall pay costs of the plaintiff in this appeal. He will also be liable to pay court-fee amount of this appeal. Costs in the lower Court shall be borne as ordered therein. Hearing fee Rs. 150/-.

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