

L. Subbiah Gowder and ors. Vs. Ramayya Gowder and anr.

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Court : Kerala

Decided On : Oct-20-1965

Reported in : AIR1967Ker79

Judge : T.C. Raghavan, J.

Acts : [Succession Act, 1925](#) - Sections 173

Appeal No. : Second Appeal No. 1487 of 1961

Appellant : L. Subbiah Gowder and ors.

Respondent : Ramayya Gowder and anr.

Advocate for Def. : T.S. Venkiteswara Iyer, Adv.

Advocate for Pet/Ap. : D.A. Krishna Warriar, Adv.

Disposition : Appeal allowed

Judgement :

T.C. Raghavan, J.

1. The second appeal is by the legal representatives of the first defendant and by the second defendant, the plaintiff being the contesting respondent. The contesting respondent filed the suit, giving rise to the second appeal, claiming that he was entitled to an annuity of 100 paras' of paddy per year from item Nos. 1 to 6,

12 to 26 and 31 to 38, in schedule B appended to the partition deed, Ex. A-2, of 1895. His further claim was that the annuity was originally due to his mother and that the mother executed a will in his favour. The defendants' main contention was that the annuity was personal to the mother of the plaintiff; and that after her death, there remained no further right to be willed away by her to the plaintiff. Both the lower Courts have dismissed this contention and have decreed the suit. The question in second appeal whether that decision requires any variation.

2. Under Ex. A-2 the D Schedule properties were kept in common; and 20 items of expenses were mentioned in the E-schedule, of which I am concerned with items 12 to 20 incidentally and with item 17 in particular. The person mentioned in item 17 was the mother of the plaintiff. Items 12 to 19 were eight women members of the family, in whose favour annuities were provided. Item 20 was the son of a deceased woman member, in whose favour also a provision for annuity of 100 paras of paddy per year was provided. I may at this stage point out that out of the nine persons only two brought the matter before courts, the person named in item 15 being the other.

That matter was decided in favour of the heir of the person named in item 15 by the trial court; but on appeal the decision was reversed, which was confirmed in second appeal by the Madras High Court. Ex. B-3 is the judgment of the High Court. It was held therein by King J. that the annuity enured only as a maintenance right or a life interest, which lasted only during the lifetime of the annuity-holder, and that the person who claimed that right by inheritance was not entitled to the same. The only difference in the case before me is that the present claim is based on a will. It is obvious that this difference is not of any consequence.

3. In the decision of the Madras High Court, King J. has held that although it was not impossible to create permanent annuities and that they were not unknown to law, in practice they were very uncommon, and that the annuities provided in Ex. A-2 were very like the ordinary provision for maintenance of women in Hindu families. At this stage it will be instructive to note Section 173 of the Indian Succession Act. I may say that this provision was not brought to the notice of King J. and has been brought to my notice for the first time. However, the principle

underlying or embodied in Section 173 of the Indian Succession Act must apply to the present case as well. That section provides that where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears in the will. This principle appears to be quite reasonable, because if a permanent annuity is contemplated, as pointed out by King J., though such a permanent annuity is not unknown to law, there should be clear words to indicate the permanent nature of the annuity. In the absence of such clear indication of intention, it is only reasonable to think that the annuity is to enure only for the life of the annuity-holder.

4. It is argued and this argument appears to have found favour with the lower courts that there is indication in this case that the annuities were intended to be permanent. In this case six registered debt bonds, evidenced by Exts. A-3, A-4, A-6, A-7, A-11 and A-12, were produced. Five of the bonds were for Rs. 571 and odd each and the sixth was for Rs. 1142 and odd. The recitals in these bonds are similar; and they all bear the same date. It is recited that these amounts were stridhanom amounts paid to the women; and that the amounts were taken by the then kartha of the joint family with the undertaking that the amounts would be invested in immovable properties within six years. It is further recited that if such investments were not made within six years, the amounts would be returned to the respective women. The argument is that the annuities created were in consideration for these amounts taken from these women by the then kartha of the joint family and that it must therefore be presumed that the annuities were permanent.

For one thing, there is no indication in the document that the annuities were created in consideration for these debts. Secondly, the debt bonds were of 14th July 1877; and they all contain a term of six years, so that on 14th July 1883 they became payable. The lower courts say that thereafter limitation for the return of the amounts was 12 years and that Ex. A-2 came within the said time. I am afraid the lower courts have erred in the view that limitation is 12 years from 14th July 1883. It is really six years from 14th July 1883, so that all the bonds were barred by limitation when Ex. A-2 came to be executed.

5. It is then argued that even though the bonds got barred, the executants of Ex. A-2 might have thought it fit to return the amounts by creating the annuities. If that was the intention, I reiterate, there would have been some indication in the document itself that the annuities were created in consideration for those debts. I may also point out that even if annuities were created in consideration for those amounts, unless there is indication that those annuities were to be permanent, it has to be presumed that the annuities were intended only to enure for the lives of the annuity-holders. Again, another circumstance may be pointed out to indicate that the annuities could not have been in consideration for the debts.

In five of the debt bonds the amounts mentioned were Rs. 571 and odd and the interest provided was 100 paras of paddy per year. In one of the cases in schedule E, where the annuity is 175 paras of paddy per year, the amount payable under the bond was Rs. 1142 and odd, so that the annuity should have been 200 paras of paddy per year. In the other case in schedule E, where the annuity provided is 175 paras of paddy per year, the amount payable under the debt bond was only Rs. 571 and odd. How the annuity came to be raised to 175 paras of paddy per year is not explained. As rightly urged by Mr. D.A. Krishna Warriar, on behalf of the appellants, the annuities might not have been in consideration for the debt bonds produced in the case.

6. As a result of the foregoing discussion, I come to the conclusion that the annuities could have enured only during the life of the annuity-holders and that the contesting respondent could not have obtained any right under the will.

7. The second appeal is allowed, the decision of the lower courts is set aside and the suit is dismissed. The appellants will get their costs throughout from the plaintiff-respondent.