

Ponnu and anr. Vs. Taluk Land Board, Chittur and ors.

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Court : Kerala

Decided On : Jul-31-1981

Reported in : AIR1982Ker330

Judge : U.L. Bhat, J.

Acts : Kerala Land Reforms Act, 1964 - Sections 84 and 84(IA); Hindu Law; Kerala Land Reforms (Amendment) Act, 1979

Appeal No. : C.R.P. No. 2755 of 1979

Appellant : Ponnu and anr.

Respondent : Taluk Land Board, Chittur and ors.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : A.P. Chandrasekharan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

1. In a suo motu ceiling case against the statutory family consisting of the first revision petitioner and his now deceased wife in which notice was also given to the son, the second revision petitioner who was a major on 1-1-1970, the Taluk Land Board determined excess land to be surrendered as 2.10 acres. This was done

overruling the contention of the revision petitioners that the land taken into account was the joint family property of the parties which was divided under a partition deed of 1972 between them. The Taluk Land Board treated the entire land as separate property of the father. Revision petitioners raised an alternative contention that in case the entire land is to be treated as separate property of the father, it must be deemed that by virtue of the partition deed the father gifted a portion of the land to the son and therefore they must be given the benefit of Section 84 (1A) of Kerala Act 1 of 1964 (for short 'the Act') introduced by the Amending Act 27 of 1979. The Taluk Land Board rejected this contention on the ground that the document in question is a partition deed and not a gift deed as contemplated under Section 84 (1A). Parties are governed by Mitakshara Law.

2. The Authorised Officer reported that the entire land is separate property of the father and there is no material available to show that it is joint family property. During the enquiry before the Taluk Land Board also the parties did not adduce any evidence; they only relied on the bare recital in the partition deed which came into existence as late as 1972. The Taluk Land Board rightly declined to act on this uncorroborated recital. In the normal course a Hindu family must be presumed to remain joint; but there is no presumption that because a family is joint it possesses any property. Merely because a family is joint and there is property in the name of one or other of the members of the family, law does not draw a presumption that the property is joint family property. The person asserting that any property is joint family property should prove that it is so. In the absence of such proof, the finding of Taluk Land Board that the entire land is separate property of the father cannot be interfered with.

3. The more important contention is that since the land is to be treated as separate property of the father, the partition deed whereunder he allotted a portion of this land to his son, the second revision petitioner must be treated as a gift deed for the purpose of Section 84 (1A) of the Act.

4. Section 122 of the T. P. Act defines a gift as a transfer of property made voluntarily and without consideration by the donor to the donee and accepted by or on behalf of the donee. Section 123 states that a gift of immovable property must

be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. A gift is essentially a transfer. A transfer as defined under Section 5 of the T. P. Act is an act by which a living person conveys his property to another living person or persons; to transfer the property is to perform such act. It necessarily follows that a donee could not have any pre-existing right in the subject matter of the gift.

5. Partition is a transaction by which an adjustment of mutual rights of joint owners or co-owners in common property is effected. Partition involves a conversion of joint ownership and joint enjoyment into one in severally. Parties to a partition have preexisting title to the property dealt with therein. That being so, a partition does not involve conveyance of right or transfer of property. This is made clear by a Full Bench of this Court in the decision in *Ramaswamy Pattamali v. Lakshmi* (AIR 1962 KER 313) and by the Supreme Court in *Controller of Estate Duty, Andhra Pradesh v. Kancharla Kesava Rao* (AIR 1973 SC 2484).

6. The partition deed in this case was not between joint owners or co-owners but between a person who owned the land exclusively and another person who had no pre-existing title or right. Though the transaction is called 'partition' by the parties thereto, it did not involve any mutual adjustment of rights between joint owners or co-owners and therefore, in effect and in reality it was not a partition. Whatever be the nomenclature given by the parties to a transaction, a Court or Tribunal is entitled to go behind it and look into the real nature of the transaction.

7. I am supported in this conclusion by a number of precedents. In *Made Gouda v. Chenne Gowda* (AIR 1925 Mad 1174) the Madras High Court had to consider a transaction described by the parties as a partition. A person who was not a co-owner was also a party to the transaction and the property in which he had no right at all was allotted to him. It was held that the transaction in regard to that particular item of property was really a gift and the requirements of a gift deed such as registration etc. cannot be avoided by calling the transaction by some other name. In *Wajid Ali v. Ganga Din* (AIR 1938 Oudh 97) the Court had to consider a transaction styled as family arrangement, wherein a father gifted a half share in his exclusive property to his son. It was held that the transaction really involved a

transfer of right and was governed by Section 123 of the T. P. Act. In *Ramgopal v. Tulasi Ram* (AIR 1928 All 641) a Full Bench of the Allahabad High Court had to deal with a compromise entered into by parties in mutation proceedings by which it was agreed that mutation of portions of the estate should be made in the names of the contending parties. It was observed that a transaction though in the form of a family arrangement could involve a transfer of ownership qua the party who had no preexisting right. In *Ramaswami Pattamali v. Lakshmi* (AIR 1962 Ker 313) a partition deed among two branches took in property belonging to one branch exclusively and it was allotted to another branch. It was held that on a proper understanding of the transaction, it has to be treated as a composite deed of partition and of assignment, and the document in so far as it affected the exclusive property of one branch acted as an assignment since the consideration for the same was the excess share allotted to the other branch out of the common property. It was also observed that though the document may be styled as partition, the name is very often a deception and at any rate not conclusive. In *Kuppuswami Chettiar v. A. S. P. A. Arumughan Chettiar* (AIR 1967 SC 1395) the Court had to deal with a document styled as 'release'. Under the document, the executant relinquished her rights to a person who had challenged her title. The document recited that no consideration had been paid. It was a registered document attested by two persons. The Supreme Court held that on a true construction the document operated as a transfer by way of gift since it showed an intention to effect a transfer and the operative words sufficiently conveyed title. In *Paul Ponnusami Nadar v. Jayaprakash* (AIR 1974 Mad 92) the Court had to deal with a document styled as a gift deed executed by a Mitakshara father in favour of his son. The document dealt with property belonging to the joint family of which the donor and the donee alone were members. It was held that in effect there was no gift involved and that what was done was only to specify the portion that was to be allotted by the father to his son out of the, joint family property. It was, therefore, treated as a partition and not as a gift.

8. It is clear that too much importance should not be attached to the nomenclature of a document. Nomenclature of the document may at times conceal the real transaction. Nomenclature may be given with or without any motive or under a wrong understanding of the rights of the parties or of the law applicable to them.

When the question regarding construction of such a document arises for consideration, one may have to look behind the facade or the covering and identify the essence and reality of the transaction. That will depend on a variety of circumstances such as real rights of the parties, intention of the parties entering into the transaction, the terms of the document and the surrounding circumstances.

9. Viewing the partition deed in this case in the light of the above principles, it is clear that in effect and in reality it is not a partition. Though it purports to deal with joint, family property it has been held that the property was really separate property of the father. That being so, there was no question of the property being partitioned between the father and the son. The transaction in reality was not one of adjustment of mutual rights of common owners or conversion of a joint right into a right in severalty. The real intention behind the document was to secure to the son a portion of the land dealt with therein. This intention was sought to be given effect to in the form of a partition deed. On the finding that the son had no pre-existing right and in view of the clear intention of the father that exclusive right in a portion of the land dealt with therein must vest in the son and in view of the fact that there was no consideration for the transaction other than natural love and affection arising out of relationship between the parties, the inference that the partition deed was in effect a transaction of gift is inescapable. Hence the transaction will attract the operation of Section 84 (IA) of the Act.

10. It is further contended by the learned Government Pleader that the expression 'gift deed' has been deliberately used in Section 84 (IA) to ensure that only transactions purporting to be and styled as gift deed are attracted by that provision and that the legislative use of the expression 'gift deed' would contraindicate the application of the section to documents which are not styled as 'gift deeds'. Though in the body of Section 84 (IA) what is referred to is 'gift deed', in Clauses (a) and (b) of the section what is referred to is 'gift' and not 'gift deed'.

11. I may refer to some other sections of the Act. Section 7-B of the Act is a deeming provision in cases of persons in occupation of land on the basis of a registered deed 'purporting to be lease deed'. Section 10 (b) of the Act states that

certain persons in certain areas of the State holding land under a transaction 'described in the document' evidencing it as Otti, bhogya, nattotti, arwar, etc. will be deemed to be tenants if the other conditions laid down therein are satisfied. Section 11 states that where in a document a person is described as sambalapattamdar, sambalachittudar or coolipattamdar he shall be presumed to be the tenant for the purpose of the Act if the other conditions are satisfied. Whenever the legislature wanted the operation of a particular provision to be restricted to documents bearing a particular name or style, it has taken care to state so. So it can be legitimately inferred that whenever the legislature did not want such a restricted approach to be made in regard to any section, it has refrained from using phrases and clauses indicative of such a restricted approach.

12. The legislature has refrained from using words indicative of such a restrictive approach in Sections 84, 84 (1-A) and the Expln. to Section 85(1). While Section 84 refers to certain types of transfers or transfers by way of gift as by way of partition, and the expln. to Section 85 (1) also refers to transfer by way of partition, etc., Section 84 (1-A) refers to transfers by means of gift. There is nothing in these provisions to indicate that the legislature wanted the provision to be applicable only if the documents are styled in a particular way. That is because the legislature wanted the real intent and nature of the transaction and not the apparent tenor of the transaction to be looked into. Therefore we are entitled to look behind the nomenclature of the transaction and the apparent tenor of the document in order to find out whether the document in question is in reality a gift deed. This approach has been approved by this Court in regard to a sale deed in the decision in *Thomman v. Taluk Land Board, Mukundapuram* (1976 Ker LT 840) and *C. R. P 2200/1977* and in regard to a partition deed in *C. R. P. Nos. 2407/80 and 262/79*.

13. The Taluk Land Board was therefore in error in holding that merely because the document in this case is styled as partition deed and not as gift deed, Section 84 (IA) of the Act is not attracted. The document is in effect a gift deed. The Taluk Land Board did not consider if the other conditions requisite in Section 84 (IA) are satisfied in the instant case and for that limited purpose the case has to go back.

In the result, the impugned order is set aside. The case is remitted back to the Taluk Land Board for fresh disposal in accordance with law and in the light of the observations made above. This revision petition is allowed, but without costs.

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