Raman Sameeranan Vs. Raman Varunan and ors.

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Court : Kerala

Decided On : Jul-20-1959

Reported in : AIR1960Ker226

Judge : Vaidialingam, J.

Appeal No. : Second Appeal No. 550 of 1957

Appellant : Raman Sameeranan

Respondent : Raman Varunan and ors.

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

Advocate for Pet/Ap. : S. Narayanan Potti and; N.K. Varkey, Advs.

Disposition : Appeal dismissed

Judgement :

Vaidialingam, J.

1. This is a plaintiffs appeal against the decree and judgment of the learned Sub-ordinate Judge of Attingal reversing the decree of the trial court

2.Plaintiff and the first defendant obtained properties from their father, under two settlement deeds namely, Ex. A dated 3-6-1112 comprising A schedule properties and Ex. B dated 8-12-1114 comprising B schedule properties,

3. The first defendant, who is the brother of the plaintiff, conveyed the entire properties comprised under Exts. A and B to the second defendant, who is the second wife of the father of the plaintiff and the first defendant for a sum, of Rs. 50 as is evidenced by Ext. C dated 20-9-1120. The second defendant in turn, conveyed these properties under two documents to two different parties. Under Ext. D dated 19-11-1120, the second defendant conveyed half of B schedule properties namely 28 cents, (B schedule being 56 cents in extent) to the third defendant and under Ext. E dated 5-8-1121, she conveyed the rest of the B schedule properties of 28 cents and the whole of A schedule properties of an extent of 56 cents to the 4th defendant. The present suit was brought by the plaintiff, the brother of the first defendant, to set aside the two sale deeds, namely, Exts. D and E on the ground that the rights conferred under the settlement deed Ext. C was a joint right in respect of all the properties in favour of the plaintiff and the first defendant and as such, the first defendant has no right to convey any properties to the second defendant.

4. The plaintiff also attacked the sale deeds on the ground that the settlements namely, Exts. A and B have been executed by their father with a specific condition that the first defendant will nor be entitled to alienate the properties during the minority of the present plaintiff.

5. It will lie seen that though the transactions' covered by Exts. D and E are directly challenged in this litigation, the plaintiff can succeed only if he is able to show that the first defendant has no right to part with any property by virtue of Ext. C because it will be seen that it is really by virtue of this assignment under Ext. C obtained from the first defendant by the second defendant that the latter has conveyed her right, title and interest in the properties under Exts. D and E in favour of the third and fourth defendants respectively. Therefore, the main point that will have to be considered in this second appeal is as regards the right obtained by the plaintiff and the first defendant under Ext. C and also the further question namely, the validity of the condition of limitation, if any, placed upon the rights of the first defendant to execute a conveyance.

6. The trial court accepted the contentions of the plaintiff and came to the conclusion that under Ext. C, both the brothers, namely, the plaintiff and the first defendant obtained a joint right in the suit properties and as such, the first defendant was incompetent to make an alienation of the properties in favour of the second defendant. In this view, the trial court also held that as Ext. C cannot be sustained, the later documents, namely, Exts. D and E cannot also be upheld.

7. On these grounds, the trial court decreed the suit as prayed for including the claim for mesne profits made in the plaint.

8. The third defendant, who is interested only in the transaction evidenced by Ext. D under which he got half of the B schedule items, allowed the decree of the first court to become final and did not challenge it in any further appeal. There was an appeal only by the other alienee, namely, the 4th defendant in respect of the decree of the trial court setting aside the transaction in his favour, namely, Ext. E. The learned Subordinate Judge, after a consideration of the various clauses in Ext. C, came to the conclusion that the view of the trial court that both the plaintiff and the first defendant obtained a joint interest was wrong.

According to the learned Judge, following the principles laid down by the decisions of the Travancore and Travancore-Cochin High Courts, the settlements conveyed a separate interest to the two parties, that is, in other words the plaintiff and the first defendant got the properties under Ext. C as tenants-in-common or co-owners. In this View, about the nature of the rights conveyed under Ext. C, the learned Judge held that the first defendant was not entitled to alienate the plaintiff's half share under Ext. E. To this extent, the learned Judge set aside the transaction covered by Ext. E, so far as the plaintiffs half shave was concerned.

9. Regarding the claim for mesne profits the learned Judge chose to accept the evidence of the 4th defendant and fixed a sum of Rs. 17-8-0 per year as mesne profits in respect of the half share of the plaintiff in the transaction, evidenced by Ex. E. The learned Judge accordingly passed a decree allowing the plaintiff to have the partition of his share of the properties decreed by the learned Judge.

10. There is no appeal by the 4th defendant regarding that portion of the decree of the learned Subordinate Judge setting aside the transaction so far as the plaintiff's rights are concerned. In the second appeal, Mr. Varkey, learned counsel for the plaintiff, has contended that the construction placed on the document by the learned Judge is not correct. So far as the actual interest created in favour of the plaintiff and the first defendant under Ext. C was concerned, the learned counsel was not able to satisfy me that the construction placed by the learned Judge is in any way wrong. On a perusal of the various clauses in Exts. A and B. which are in my view, almost identical, the interest that has been created in favour of the plaintiff and the first defendant is, as rightly held by the lower appellate court, a tenancy-in-common and not a joint tenancy as held by the first court. In this view, it follows that the first defendant and the plaintiff ore entitled to equal halves in their independent rights.

11. Then the question is whether the first defendant was entitled to alienate his share of the properties obtained by him under Exts. A and B. So far as this point is concerned. Mr. Varkey contended that a reading of Exts. A and B will clearly show that the father intended to convey the properties to the plaintiff and first defendant only subject to certain conditions mentioned therein. According to the 1earned counsel, one of the conditions is that the first defendant should not alienate the properties till the plaintiff attains majority. From this, the learned counsel further argued that as Ext. C was executed by the first defendant during the minority of the plaintiff, it is invalid as being opposed to the clear conditions specifically laid down by the father in Ext. C. It is not passible for me to accept this contention of Mr. Varkey that the settlement itself is only subject to those conditions. Both Exts. A and B, as mentioned by me earlier and as rightly pointed out by Mr. T.S. Krishnamurthy Ayyar, learned counsel for the 4th defendant, specifically, convey the properties absolutely in the operative portion of the respective documents. The father having conveyed the properties absolutely in favour of the plaintiff and the first defendant, further down says that both of them are entitled to enjoy the property themselves taking Pattas and paying revenue and other taxes due on the properties. No doubt, the father expresses an intention that he will continue to be in possession and management of the properties during the lifetime of the first defendant who was then a minor, and this is further followed by a later expression

that the first defendant should not convey any properties during the minority of the plaintiff. This, in my opinion, is nothing more than a pious wish expressed by a well-intentioned father that the properties given by him to his two sons must be preserved for the benefit of both. This, in my view, cannot certainly put any restriction in the disposing power of the first defendant in respect of the properties given to him, and which have been clearly expressed in the earlier portions of the document. Even if this is considered to he a restriction, in my opinion that restriction cannot operate in the face of unequivocal disposition in full of all his rights in favour of the two sons. As stated earlier, this is nothing more than a pious wish by a well-intentioned father. Therefore, the contention of Mr. Varkey based upon the construction of the document fails.

12. The last contention of Mr. Varkey is that the lower appellate court erred in fixing the rate of mesne profits at Rs. 17-8-0 per year in respect of the plaintiff's half share in the E-schedule properties without any basis. This aspect of the matter has been discussed by the learned Judge in paragraphs 6 and 7 of his judgment. The learned Judge did his best under the circumstances because the evidence on the side of the plaintiff was totally interested testimony, It will also be seen that the learned Judge was not prepared to accept in full the estimate of mesne profits given by the 4th defendant. He has considered all aspects and fixed the annual mesne profts in the sum of Rs. 35/- and from this he has further arrived at the conclusion that Rs. 17-8-0 per year will he the reasonable rate of mesne profits in respect of the plaintiffs share in Ext. B. This aspect of the matter also does not call for any interference by this court.

13. In the result, the second appeal fails andis dismissed with costs of the fourth defendant inthis court. No leave.