Vijayakumari Vs. Devabalan

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Court : Kerala

Decided On : Jul-17-2003

Reported in : AIR2003Ker363; I(2004)DMC667; 2003(3)KLT695

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 2(3) and 5

Appeal No. : A.F.A. No. 66 of 1990

Appellant : Vijayakumari

Respondent : Devabalan

Advocate for Def. : S. Prakasam,; M. Balagovindan and; P.V. Ramesh Shankar

Advocate for Pet/Ap. : Thottathil B. Radhakrishnan and; G. Unnikrishnan, Advs.

Disposition : Appeal allowed

Judgement :

K.S. Radhakrishnan, J.

1. Defendants 1 and 2 are the appellants. Suit was instituted by the plaintiffs for declaration of title and for consequential reliefs.

2. Plaintiffs case can be briefly stated as follows: Plaintiffs, first defendant and Santhakumari are the children of fourth defendant. Plaint schedule property was obtained by Adichan Nadar, father of the fourth defendant, under partition deed of the year 1079. They are Hindu Nadars governed by Hindu Mitakshara Law. Second defendant is the husband of the first defendant. The property obtained by Adichan Nadar devolved on the fourth defendant and he was in possession of the same as Manager of the joint family. Plaintiffs obtained right over the properties of the joint family by their birth. On 13.3.1975 fourth defendant representing himself as the sole owner of the property, executed a gift deed in respect of the plaint schedule property in favour of defendants 1 and 2. According to the plaintiffs, properties are co-parcenary properties and hence fourth defendant is not competent to execute any document. Consequently first defendant did not get possession of the property. Later fourth defendant cancelled the gift deed and plaintiffs are in possession of the property and getting income therefrom. Defendants 1 and 2 executed sale deed in favour of the third defendant. However, third defendant did not get any title to the property since he is not 'a bona fide purchaser. On the strength of the sale deed third defendant attempted to trespass upon the property. Suit was instituted stating that in case court finds that third defendant is in possession of the plaint schedule properties plaintiffs may be allowed to recover the same from him with mesne profits. They also prayed for partition and separate allotment of their share in the plaint schedule properties.

2. Defendants 1 and 2 in the written statement contended that gift deed was valid. According to them, plaintiffs and defendants are all Christians and not Hindus. Plaintiffs 2 to 4 are under the guardianship of the father of the fourth defendant and are residing with them. They are not under the guardianship of the first plaintiff. After the death of Adichan Nadar fourth defendant inherited his properties as his only son. He was in possession of the properties as the absolute owner and not as Manager of a joint family. Plaintiffs did not get any right over the plaint schedule property by their birth. It was also contended that parties are not Hindus governed by the Hindu Mitakshara Law. It was contended that gift given to a daughter at the time of her marriage is really in lieu of share of the daughter and as such it was quite valid under the Christian Succession Act. Third defendant also filed written statement supporting the contentions raised by defendants 1 and 2. It

was stated by the third defendant that he obtained possession from defendants 1 and 2 under the sale deed taken by him and that he was in absolute possession of one acre and 25 cents out of the plaint schedule properties. In order to establish the case PW.1 was examined on the side of the plaintiffs and Exts.A1 to A18 were marked. On the side of the defendants D.Ws.1 to 6 were examined and Exts.B1 to B15 were produced and marked.

3. Trial court after examining the oral and documentary evidence came to the conclusion that plaintiffs and the fourth defendant are not Hindus and that the plaint schedule property is the joint family property. It was also held that the gift deed dated 13.3.1975 is valid. Court also held that plaint schedule property cannot be taken as self acquisition of the defendants and that it is joint family property registered in the name of the fourth defendant for the benefit of the joint family. The court did not accept the argument of the counsel for the defendants that plaint schedule property is not joint family property and that it belongs to fourth defendant. After upholding that the gift deed was valid trial court dismissed the suit. Aggrieved by the same plaintiffs preferred appeal before this Court as A.S. No. 52 of 1982. Learned Single Judge held that the marriage between the fourth defendant and Mariya Augustine is valid and that plaintiffs and fourth defendant are Hindus and that they have to be treated as members of co-parcenary family. Fourth defendant was only a Manager or Karma of the joint family and he had only restricted rights recognised by law in respect of disposal of the property by a kartha and manager of a Hindu undivided family. Learned Single Judge however concluded that there was no application of mind by the trial court on the question whether the gift exceeded the permissible limits. Learned Single Judge also found the question as to whether there was any compelling necessity to dispose of the joint family properties to raise further funds to gift the property to defendants 1 and 2 was also not considered by the trial court. In such circumstances learned Single Judge set aside the judgment and decree of the trial court and remitted the matter back to the trial court to consider the question whether gift made in favour of defendants 1 and 2 under Ext.B 17 is a reasonable provision permitted under law. The appeal was disposed of accordingly. Defendants 1 and 2 are aggrieved by the judgment and decree of the learned Single Judge.

4. Heard counsel on either side.

5. Ext.B 17 gift deed was mainly attacked on the following grounds.

(1) The properties are co-parcenary properties and hence the fourth defendant is not competent to execute any document without family necessity or consideration.

(2) The gift deed was executed as dowry for the marriage of the first defendant which is prohibited under the Dowry Prohibition Act and therefore no legal right follows to defendants under the document.

(3) Even if the fourth defendant had any right to execute the gift deed in respect of the properties within the reasonable limits, he has exceeded the limits in the execution of the document.

The cardinal question to be considered in this case is whether fourth defendant was competent to execute gift deed dated 13.3.1975 in favour of defendants 1 and 2 and whether such a document is valid in law. There is no dispute that fourth defendant had married a Christian lady by name Mariya Augustine. Counsel for the plaintiff submitted that first defendant and Santhakumari are the children of fourth defendant. Second defendant is the husband of the first defendant. It has also come out in evidence that fourth defendant is the only son of Adichan Nadar. Counsel submitted that on 13.3.1975 fourth defendant had executed gift deed in favour of defendants 1 and 2. PW.1 stated that his mother Mariya Augustine was Christian at the time of her marriage and that his father married her in Hindu form and that after marriage her mother had never gone to church, that they are living as Hindus and that none of the children of his parents was baptised in any church. PW.1 has also deposed that his mother was Christian and had never converted as Hindu. D.W.3 also deposed that he and fourth defendant were classmates and that fourth defendant got himself converted as Christian before the marriage. He further deposed that he attended the marriage of the fourth defendant which took place at Kappikkad church. D.W.4, the first defendant deposed that her father, fourth defendant Was a Christian and that he attended the Syrian Catholic church at Kanjiramkulam regularly and that her marriage with the second defendant was conducted at the C.S.I. church. D.W.5 Priest of Kanjiramkulam was cited by the

defendant to produce the baptism register of the church which contained the entry relating to the baptism of the fourth defendant before his marriage. However, no evidence was adduced by the plaintiff to prove that fourth defendant had married Mariya Augustine in the Hindu form. Overwhelming evidence in this case would show that fourth defendant was a Christian. The further question as to what would happen if the fourth defendant had not converted as Hindu after the marriage. There is no case for the parties that marriage was solemnised on the basis of the Special Marriage Act. Plaintiffs case all along was that though Adichan Nadar married Christian lady by name Mariya Augustine parents continued to be governed by Hindu Mitakshara Law and consequently they had constituted joint family. Hindu Marriage Act, 1955 came into effect on 18.5.1955. In this case, admittedly the marriage was solemnised on 26.5.1955. Plaintiffs claim that the marriage is to be recognised under the Hindu Marriage Act. Admittedly no marriage was solemnized under the Special Marriage Act. We may examine as to whether marriage between the fourth defendant and Many a Augustine is valid one under the Hindu Marriage Act. Section 5 of the Hindu Marriage Act provides conditions for a Hindu marriage, which reads as follows:

5. Conditions for a Hindu marriage:- A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage; (ii) at the time of the marriage, neither party -

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity or epilepsy;

(iii) the bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage.

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

Under the Hindu Marriage Act, marriage can be solemnised only between two Hindus.Hindu Marriage Act applies to any person who is a Hindu by religion in any of its formsor developments, including a Virashaiva, a Lingayat or a follower of the Brahmo,Prarthana or Arya Samaj. Section 2(3) states that the expression 'Hindu' in any portion ofthe Act shall be construed as if it included aperson who, though not a Hindu by religion,is, nevertheless, a person to whom this Act applies by virtue of the provisions containedin the Section. Plaintiffs have not adduced any evidence to show that the fourthrespondent had by custom or usage signify any part of the law in respect of any of thematters dealt with under the Hindu Marriage Act.

6. The Apex Court in Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. (AIR 1988 SC 644) pointed out that S.5 of the Hindu Marriage Act specifically says that marriage can be solemnised only between two Hindus. Admittedly in this case Adichan Nadar is a Christian. Therefore, the finding of the learned Single Judge that the marriage is valid cannot be sustained. We hold that the marriage in question is not a valid one under the Hindu Marriage Act. We are therefore inclined to set aside the judgment of the learned Single Judge that the marriage between the fourth defendant with Mariya Augustine is valid.

7. The next question to be considered is whether children born in that marriage could form members of the joint family as per the Hindu Law and whether the children have to be treated by the religion of the father or mother. N.R. Raghavachary's Hindu Law at page 21 states as follows:

'Illegitimacy is no bar to the applicability of the Hindu Law, but in that case either both the parents must be Hindus, or at least the mother must be a Hindu and the child brought up as a Hindu, though the father is a Christian. If the mother is a non-Hindu, for instance, a Christian, or a Mohammedan, Hindu Law has no

application to the illegitimate child, the reason being that the religion of such children is to be fixed by the religion to which the mother belongs.'

In view of the above mentioned legal proposition we are of the view children born out of that marriage are Christians. Therefore concept of co-parcenary joint family is not applicable. In view of the above legal position, on the death of Adichan Nadar fourth defendant had become absolute owner of the plaint schedule property. Consequently he is competent to execute the gift deed dated 13.3.1975 in favour of defendants 1 and 2. We hold such a gift is valid. We also hold that the decision of the trial court that the property is a joint family property cannot be sustained. We also endorse the view that even if it is joint family property fourth defendant was competent to gift portion of the joint family property to the first defendant who is his daughter, at the time of marriage. We are not prepared to say that fourth defendant exceeded his limits by executing the gift deed. The Apex Court in Kamala Devi v. Bachulal Gupta (AIR 1957 SC 434) and Gurumma Bhratar v. Mallappa Chembasappa (AIR 1964 SC 510) held that the manager of a Hindu family can make a gift of a reasonable portion of the joint family property to a daughter. The Apex Court held that the father or his representative can make a valid gift by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. The court held that it is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances.

8. We find on facts that as per Ext.B71 acre and 25 cents of land was gifted by the fourth defendant to the first defendant at the time of her marriage. It is seen from Ext.B7 that first defendant was also given gold ornaments worth Rs. 8,000/- at the time of her marriage. Santhakumari, the youngest sister of the first defendant was given 1 acre and 2l cents of land as per Ext.P13 gift deed at the time of her marriage which took place nearly three months after the marriage of the first defendant. There is no case for the plaintiffs that fourth defendant has exceeded the permissible limits in executing Ext.B 13 gift deed in favour of another daughter

Santhakumari. In the above mentioned facts we find that the gift deed executed by the fourth defendant is valid.Above being the position, we are of the view, learned Single Judge was not justified in setting aside the judgment and decree of the trial court. We therefore set aside the, judgment and decree of the learned Single Judge and allow this appeal. In the facts and circumstances of the case parties would bear their respective costs.