

Rani Vs. Sasidharan

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Court : Kerala

Decided On : Jan-31-2001

Reported in : I(2002)DMC481

Judge : P.K. Balasubramanyan and; T.M. Hassan Pillai, JJ.

Acts : [Dowry Prohibition Act, 1961](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) -
Sections 125

Appeal No. : A.S. No. 450 of 1990

Appellant : Rani

Respondent : Sasidharan

Advocate for Def. : P. Sukumaran Nayar, Sr. Adv.,; B. Radhakrishnan and; B.

Advocate for Pet/Ap. : L. Mohanan and; D. Sanjeev, Advs.

Disposition : Appeal allowed

Judgement :

P.K. Balasubramanyan, J.

1. The defendants in O.S. 405 of 1988 on the file of the Subordinate Judge's Court of Thirunananthapuram are the appellants in this appeal. O.S. 405 of 1988 was filed by the plaintiff in the suit, the respondent in this appeal, for partition and

delivery of one-half share in the plaint schedule property with profits. The defendants resisted the suit, denying the plaintiff's right to claim partition. The trial court overruled the defence contentions and passed a preliminary decree for partition. It awarded the plaintiff one-half share on the basis that he had equal right with defendant No. 1 in the plaint schedule property. It is this decree that is challenged in this appeal.

2. The plaintiff married the first defendant on 26.4.1981. The second defendant in the suit is the mother of the first defendant. On 12.3.1981, above a month prior to the marriage, the second defendant, the mother, and DW.1, the father of defendant No. 1, executed a settlement deed, Ext. A1, settling the plaint schedule property on defendant No. 1, their daughter, and on the plaintiff, their would be son-in-law or the would be husband of the first defendant. In that document, it was stated that defendant No. 1, their daughter, was the second donee. The first donee, the plaintiff, had agreed to marry their daughter, the second donee, with the full consent of the members of his family and his relatives as per the practice of the community and the marriage between the plaintiff and first defendant had been fixed. In that circumstance, with a view to secure the future life of the daughter and her husband and for their benefit, the property was being gifted for the purpose of their maintenance in consideration of the love and affection the donors had for the donees. It is after this document was executed that the plaintiff married the first defendant on 26.4.1981.

3. There was harmony in the matrimonial home for a little while. A son was born to the couple. Thereafter it is seen that the wife, the first defendant, and the husband, the plaintiff, fell apart. The wife filed a petition under Section 125 of the Code of Criminal Procedure for maintenance against her husband. The husband resisted that application. Maintenance was ordered by the Magistrate, both for the wife, the first defendant, and the son. The plaintiff, the husband, challenged that order in a revision before the Sessions Court. That revision was also dismissed. It is submitted that the order for maintenance has become final. It is submitted on behalf of the defendants that the maintenance was not being paid by the plaintiff for the last five years.

4. Obviously the parties are not now living together. The matrimonial home is broken. The child is with the mother, the first defendant. It is at that stage that the plaintiff filed the present suit for partition and delivery to him of a half share in the plaintiff schedule property, the subject matter of the gift under Ext. A1. The plaintiff claimed that he had acquired title to one-half of the property by virtue of the gift executed by the mother and father of his wife, the first defendant, and he was entitled to a partition and delivery of one-half shares out of that property in assertion of his independent right under the gift. It is seen that the marriage between the plaintiff and first defendant still subsists and it has not been dissolved. The defendants resisted the suit by denying the title claimed by the plaintiff. They pleaded that the property was gifted to the daughter, the first defendant, and her husband to be, for the benefit of the daughter and there was no intention to convey any right to the plaintiff as such. It was also contended that at best the plaintiff was included in the gift only as a trustee for his wife and the children to be born and the matrimonial home having been broken up, the plaintiff could not enforce a right to partition. It was also contended that the gift in favour of the daughter and the would be son-in-law was made by the parents of the first defendant before the marriage of the plaintiff with the first defendant and it was in consideration of that marriage and hence fell within the purview of 'dowry' as defined in the [Dowry Prohibition Act, 1961](#) and since the transaction must be deemed to be illegal, being opposed to public policy, the plaintiff could enforce no right as having been derived under the transaction. In support of the case of the plaintiff, the plaintiff got himself examined as PW1. his evidence was to the effect that the gift was made voluntarily in his favour by the parents of defendant No. 1 with the intention to confer a right on him, that it was the wife who had left him, and that he was entitled to enforce his rights under Ext. A1 gift. PW2 was examined and he gave evidence to the effect that the first defendant, the wife of the plaintiff, had developed some extra martial connection and that was the reason for the estrangement between the plaintiff and the first defendant. The father of the first defendant, one of the donors under Ext. A1, was examined as DW1. He gave evidence to the effect that in the gift Ext. A1, the name of the plaintiff was included only because the plaintiff and his relatives insisted that unless the name of the plaintiff is included as a donee, the marriage would not take place. The gift was executed after the

marriage was settled and before the marriage actually took place. The parents of defendant No. 1 wanted to benefit their daughter as the donee. It was at that stage that the plaintiff and his relatives insisted that the plaintiff must also be a donee under the gift and unless the plaintiff's name was also included, the marriage cannot go through. It was in that situation that the name of the plaintiff was also included in the deed of gift. On this part of the evidence of DW1, there was no successful cross-examination. What was sought to be brought out was that the document was executed voluntarily by the parents of the first defendant and the suggestion was that the parents of the first defendant intended to benefit the plaintiff also when they executed the deed of gift.

5. The trial court stated that going by the recitals in the document it could not be held that the document was executed in consideration of the marriage of the first defendant with the plaintiff. It was stated that the Dowry Prohibition Act could not be imported to test the validity of the transaction. Holding that it was a gift in favour of two persons and it was executed for consideration, which was love and affection, the plaintiff was entitled to enforce his right on the basis of the deed and claim his share on partition. Thus, a preliminary decree for partition was passed.

6. Learned counsel for the defendants contended that the evidence of DW1 clearly shows that the gift was made in the name of the plaintiff also only on the insistence of the plaintiff and the members of his family and because of their stand that the marriage will not take place unless the gift is made also to the plaintiff who was to marry the first defendant. Counsel pointed out that the gift was executed after the marriage was settled and before the marriage actually took place. The recitals in the deed also did not militate against the fact that this was in consideration of the marriage between the parties and the object was to benefit the couple and to enable them to meet the expenses of their life together. Counsel submitted that the transaction was one entered into in consideration of the marriage of the plaintiff with the first defendant at a point of time, just before the marriage took place and under the circumstances the transaction clearly comes within the definition of 'dowry' in the Dowry Prohibition Act and the plaintiff could not enforce his right under the deed since the payment of dowry and acceptance of it was tainted under the [Dowry Prohibition Act, 1961](#) and the gift must be held to

be a transaction opposed to public policy. In that context, counsel also contended, by relying on the decision in *Palayya v. Kochukrishnan and Anr.*, 1973 KLR 547, that the junction of the husband, the plaintiff, in the deed of gift would not make any difference and the property would continue to be the exclusive property of the wife, the daughter of the donors. Counsel in the alternative contended that in any event, the plaintiff would be constituted a trustee for the wife and the children to be born in the wedlock and in that situation, he had no right to enforce his right as against the wife or the offsprings of the marriage between himself and the first defendant. Learned counsel for the plaintiff on the other hand submitted that on a true construction of Ext. A1 deed of gift it could be seen that it was a gift supported by consideration, namely, love and affection of the donors to the donees, and there was nothing to indicate that the gift was made in consideration of the marriage between the parties. Counsel further submitted that the intention of the parties must be gathered from the words used in the document and their legal effect and if so understood, the trial court was justified in holding that the plaintiff has delivered title to the property capable of being enforced in a suit for partition.

7. The facts that are established clearly show that the gift was one made by the parents of the bride to be, namely the first defendant, in favour of their daughter and her husband to be, in consideration of the marriage of the first defendant with the plaintiff. The gift was made after the marriage between the parties was settled and before the marriage actually took place. There is the controverted evidence of DW1, not successfully challenged, to the effect that the name of the plaintiff had to be included in the deed of gift only because the plaintiff and his relatives threatened to drop the marriage if the gift was not made to both the plaintiff and the first defendant. In the circumstances of the case, the said evidence given by DW1 clearly appears to be acceptable. It is, therefore, clear that the gift was made in consideration of the marriage of the first defendant with the plaintiff. The name of the plaintiff was added not with the object of benefiting the plaintiff, but because of the insistence of the plaintiff and his people that his name must be included as otherwise no marriage would take place. We are, therefore, satisfied that the transaction Ext. A1 would come within the definition of 'dowry' contained in the [Dowry Prohibition Act, 1961](#). If it is hit by the Dowry Prohibition Act, obviously, the transaction is an illegal one and the plaintiff could claim no right based on such an

illegal transaction. This is clear from the principles settled in *Holman v. Johnson*, (1775-1802) All.E.R. Rep. 98, and various decisions that have followed the same. We are, therefore, of the view that the plaintiff is disentitled to enforce any right as derived from Ext. A1 gift.

8. We are also of the view that in any event, the plaintiff was clearly constituted a trustee for his wife and the children to be born in the wedlock. The intention behind the gift as recited in the deed of gift itself is that it was intended to make available to the couple the necessary income for their livelihood. The intention was, therefore, to benefit the matrimonial home of the spouses. The name of the plaintiff was included only with a view to ensure that the future of the daughter and her children to be born in the wedlock was secured. In that situation and in the absence of anything to show that there was any intention to benefit the plaintiff, independent of his status as the husband of the first defendant, we are of the view that the plaintiff was constituted a trustee for the wife and the children to be born to her, in respect of the property.

9. In the circumstance, we also think that the inclusion of the name of the plaintiff in the deed of gift executed by her parents to the first defendant at the time of her marriage with the plaintiff, could not by itself confer any independent right on the plaintiff. With respect, we are inclined to follow the ratio of the decision of His Lordship Mr. Justice Viswanatha Iyer in *Palayya v. Kochukrishana and Anr.*, 1973 KLR 547, in that regard. Going by that principle, it appears to us that the benefit of the gift ensures only to the wife and not to the husband.

10. Learned counsel for the defendants also argued relying on the decision of the Supreme Court in *Rashmi Kumar v. Mahesh Kumar Bhada*, (1977) 2 SCC 392, that a property could be constituted the 'stridhana' property of the wife and hence the title to it vests exclusively in her even if the plaintiff was also associated in the gift and also given joint possession of the property with the wife. On going through the decision of the Supreme Court we find that the principle stated by the Supreme Court in that decision can also have application to the case on hand.

11. Thus, looked at from any point of view, we are satisfied that the plaintiff has derived no independent right by virtue of Ext. A1 gift, even though he also figures

therein as one of the donees. In that situation, we disagree with the conclusion of the trial court and hold that the plaintiff is not entitled to a decree for partition.

We therefore, allow this appeal and reversing the judgment and decree of the trial court, dismiss the suit. In the circumstances of the case, we direct the parties to suffer their respective costs in this appeal.

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