

Khushaldas and Others Vs. Mohanarangam

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Court : Chennai

Decided On : Sep-06-1996

Reported in : [1998]93CompCas393(Mad); 1997(3)CTC707

Judge : P. Sathasivam, J.

Appeal No. : S.A. No. 1234 of 1983

Appellant : Khushaldas and Others

Respondent : Mohanarangam

Advocate for Def. : .S. Venkataramanujam and ;N. Devendran, Advs.

Advocate for Pet/Ap. : R. Subramaniam and ;S. Sadasharam, Advs.

Judgement :

P. Sathasivam, J.

1. The plaintiffs in O.S. No. 7179 of 1977, on the file of the VIth Assistant judge, City Civil Court, Madras, are the appellants in the above appeal. They filed the said suit for directing the defendants to render proper accounts for the assets kept and left by A. D. Muthukrishna Naidu, since deceased on November 13, 1976, and for a decree for declaring the properties in the plaint schedule as joint family properties of the plaintiffs.

2. The case of the plaintiffs is as follows :

One Ramaswamy Naidu was the father of Rengiah Naidu, Bangaru Naidu, Janakiram Naidu and Muthukrishna Naidu. Rengiah Naidu was the father of the plaintiffs Nos. 1 and 2, grand father of plaintiffs Nos. 3 and 4. Bangaru Naidu was the father of plaintiffs Nos. 5, 7, 8 and 9 and husband of the sixth plaintiff. Ramaswamy Naidu died without any property. Janakiram Naidu earned enormous wealth during his lifetime and died issueless in 1955. His wife also died in 1956. The plaintiffs are the legal heirs. The properties left behind Janakiram Naidu were enjoyed by the other members of the joint family. Items Nos. 1 to 5 in para. 3 of the plaint, i.e., agricultural lands 3-13 acres at Kancheepuram, house bearing Door No. 7-A, Namalwar Street, Big Kancheepuram, house property bearing Door Nos. 9 and 11, Narayanan Street, Madras, and cash amounts were taken by the members of the joint family and under the power of attorney given by the other members of the family, A. D. Muthukrishna Naidu was managing the properties. He died on November 13, 1976. He was employed at the Official Trustee's Office, High Court, Madras, and he resigned his job in or about June 1, 1957, and he did not get any provident fund, gratuity or pension. The house properties were sold and the sale proceeds were kept by A. D. Muthukrishna Naidu. The said assets are not self-acquired properties of A. D. Muthukrishna Naidu. The amounts kept in bank deposits were transferred in the name of the defendants either by nomination or under either or survivor accounts. A. D. Muthukrishna Naidu has no power to do so. The defendants have influenced A. D. Muthukrishna Naidu by illegal and improper means and committed fraud and deception on A. D. Muthukrishna Naidu and transferred his bank accounts in their name. Only on rendering proper accounts, the plaintiffs would be able to know. The plaintiffs, who are the legal heirs are entitled to get the assets left by A. D. Muthukrishna Naidu.

3. In the written statement filed by the defendants it is contended that the allegations that A. D. Muthukrishna Naidu was managing the entire properties left by Janakiram Naidu and the assets kept by Muthukrishna Naidu are the income from the properties of D. Janakiram Naidu are all baseless and denied. The plaintiffs are not the legal representatives and they are entitled to get the assets left by A. D. Muthukrishna Naidu. It is further contended that the said Muthukrishna

Naidu lost his wife long prior to his retirement. So, he was looked after only by the defendants. Whatever may be, he was investing the same and he was expressing to the defendants that he has not been cared for or looked after or enquired about by any of his relations including the plaintiffs. The savings, earnings and moneys from other income of A. D. Muthukrishna Naidu has nothing to do with the income of joint family property as these defendants understood that only the joint family property in which A. D. Muthukrishna Naidu was living. He died at the advanced age of 80 years. In the last few years prior to his death, he was expressing that he must in duty bound and according to his consciousness and free will and pleasure uninfluenced by any considerations excepting that of the gratitude he had to show for the service rendered by the defendants in attending to his comforts and looking after him as their father and father-in-law he will set apart portions of his investments in favour of the defendants and in pursuance thereof, the sums of Rs. 18,000, Rs. 102.80, Rs. 4,800, Rs. 1,200 and Rs. 24,000 were all made in either or survivor accounts respectively, and the said Muthukrishna Naidu gifted the same to the benefits of the defendants. The sums were kept in fixed deposits nominating the first defendant as the person entitled to receive the same after his death. The defendants did not promise to withdraw the amounts from the banks and pay the same to the plaintiffs. The said Muthukrishna Naidu having died, the first defendant has the sole right to draw the said sums as the monies belonging to him and none of the plaintiffs or any other imaginary heirs of A. D. Muthukrishna Naidu have any right, title or interest to the said sums. With these averments, the defendants prayed for dismissal of the suit.

4. The first plaintiff was examined as PW-1 and the fifth plaintiff as P.W.-2. They also examined two more witnesses as PWs. 3 and 4 apart from marking exhibits 'A-1' to 'A-47' in support of their case. On the other hand, the first defendant himself was examined as DW-1 and one Seshachalam was examined as D.W.-2. They also marked exhibits 'B-1' to 'B-4' in support of their defence.

5. The learned VIth Assistant Judge, City Civil Court, after framing necessary issues and in the light of the evidence available on record, decreed the suit as prayed for with costs.

6. Aggrieved by the judgment and decree of the trial court, the defendants have filed an appeal in A.S. No. 237 of 1982, before the VIth Additional Judge, City Civil Court, Madras. The lower appellate court after framing necessary points for determination, allowed the appeal in part and reversed the decree of the trial court in so far as the amount lying in 'either or survivor' accounts.

7. Against the order of the lower appellate court, partly modifying the decree with regard to the amounts lying in the bank 'either or survivor' account, the aggrieved plaintiffs filed the present appeal before this court. While entertaining the appeal, this court has framed the following substantial question of law for consideration :

'When the amount deposited in 'either or survivor' account is under the full control of the depositor, till his death, will it mean that the depositor has gifted the same to the survivor, in the absence of any specific gift ?'

8. In the light of the substantial question of law framed earlier, Mr. R. Subramaniam, learned counsel for the appellants submits that the lower appellate court mainly relying on exhibits 'A-20' and 'A-21' erroneously came to the conclusion that handing over the two fixed deposit receipts to the first defendant by the deceased Muthukrishna Naidu will amount to a gift. He also submits that the reason given by the lower appellate court, with regard to the term 'either or survivor' is erroneous and cannot be sustained. On the other hand, Mr. Venkataramanujam, learned counsel for the respondents, submits that in view of the assistance rendered by the defendants as seen from the oral evidence, coupled with the recitals in exhibits 'A-20' and 'A-21', the conclusion reached by the lower appellate court is in accordance with law and prays for dismissal of the second appeal.

9. I have carefully considered the rival submissions.

10. In the present appeal the only question that is to be decided is whether Muthukrishna Naidu had intended to give two fixed deposit receipts lying in 'either or survivor' account to the defendants for their benefit. In view of the limited controversy, I am not traversing the other factual aspects. It is seen that the deceased, Muthukrishna Naidu, had kept two accounts. A sum of Rs. 1,200, Rs.

1,200, Rs. 12,000 were kept in fixed deposit and the deceased, Muthukrishna Naidu, has nominated the first defendant as the person entitled to receive the sums after his death. It is pertinent to note that on this aspect, the deceased had consciously made the first defendant as nominee to collect the amounts. In those circumstances, the defendants admitted that after collecting the amounts as per the directions of the deceased, Muthukrishna Naidu, they had to pay the amounts to the heirs of Muthukrishna Naidu. However, it is their case that in so far as the other amounts, viz., Rs. 18,000 invested on November 17, 1973, Rs. 102.50, Rs. 4,000 invested on January 5, 1976, Rs. 1,200 invested on February 5, 1976, and Rs. 25,000 deposited on July 5, 1976, the deceased, Muthukrishna Naidu had written a letter exhibit 'A-21' to the bank to convert that account into 'either or survivor' account. On this aspect, it is useful to refer exhibit 'A-21' and the same is herewith extracted.

Madras14-7-1976.FromA. D. Muthukrishnan,9, Second Narayanan Street,Seven Wells, Madras-1.ToThe Secretary,Madras Central Co-op. Bank Ltd.,Madras-1.Sir, Sub : Adding of name in fixed deposits - Regarding. I have invested a sum of Rs. 6,000 under two fixed deposits with your bank as per details given below :

No.	F.D.	Amount (Rs.)	Due date	Date of investment	F.D.R.
5-2-1976	001205	1,200	5-2-1977	5-1-1976	001123
5-1-1977		4,800			

As I am unable to come to the bank often for transaction purpose due to my agedness, I request you to kindly add the name of Sri. V. Mohanarangam, my brother's son-in-law along with my name in the above two fixed deposits and convert both as payable to 'either or survivor' accounts. I have furnished herewith a consent letter received from Sri. V. Mohanarangam in this regard. I also submit herewith 'E' or 'S' application form duly filled in by me and Sri V. Mohanarangam for the purpose mentioned above. I request you to kindly do the needful in this regard. Thanking you,

Yours faithfully,

(Sd.)

D. Muthukrishna Naidu.

14-7-1976. Encl. : Two

This is followed by exhibit 'A-20', wherein the first defendant has given consent for becoming a co-depositor in the two fixed deposits referred to under exhibit 'A-21'.

11. A careful scrutiny of exhibit 'A-21' clearly shows that as the deceased, Muthukrishna Naidu was unable to go to the bank often for transactions, due to his age, he has requested the Secretary, Madras Central Co-op. Bank, Madras-1, for inclusion of the first defendant in the two fixed deposits mentioned therein. Except stating his old age, the deceased, Muthukrishna Naidu has not mentioned anything in the said letter. No doubt, in pursuance of the request made by the deceased, Muthukrishna Naidu, the first defendant has given consent for becoming a co-depositor. A perusal of the above-referred two documents clearly show that except to assist the deceased, Muthukrishna Naidu in order to attend to the bank transactions, I do not find any other purpose as contended by the defendants or as concluded by the lower appellate court. No doubt, it is true that the lower appellate court has very much relied on a decision of this court in *Avis Fitzalan Cowdrey v. Imperial Bank of India* [1955] 25 Comp Cas 457 (Mad). In the said decision, the Division Bench of this court has held as follows :

'Where the surrounding circumstances in converting a personal account into an 'either or survivor' account show that the deceased intended to make a gift or provision for the survivor, the latter would be entitled to the balance standing to the credit of the joint account.'

12. This passage has made the lower appellate court to come to the conclusion that the inclusion of the first defendant in the two fixed deposits by the deceased, Muthukrishna Naidu and handing over the said fixed deposit receipts would amount to a gift. In the said decision, it has been held thus :

'That was a case, where one Katherine Mary Jones, who had a current account in her name with the Bangalore branch of Imperial Bank of India, addressed a letter to the bank asking the bank to arrange to have her current account in which an

amount of Rs. 17,683-15-7 stood to her credit changed to a joint account with Mrs. Esme Folkes. Mrs. Jones and Mrs. Folkes filled up the necessary form for opening a current account in their joint names and both of them also filled up what is called 'either or survivorship' form. The learned Chief Justice who rendered the judgment has referred to the fact that Mrs. Jones was weak and lost her eyesight and on that account, Mrs. Jones had to rely on Mrs. Folkes. The learned Chief Justice has indicated that that circumstance would justify the case of Mrs. Folkes that Mrs. Jones intended to reward Mrs. Folkes for her service. The conversion of the individual current account into a joint either or survivor account according to the learned Chief Justice in that case would operate to vest the title to the amount in the account in both Mrs. Jones and Mrs. Folkes subject to the condition that on either of them surviving the other, the balance is taken by the survivor absolutely.'

13. On my perusal of the said Judgment, it is seen that in that case apart from the evidence of Mrs. Folkes that Mrs. Jones clearly manifested an intention that whatever balance was left in the Joint account should be taken by Mrs. Folkes, it is further seen in that case that two respectable witnesses have filed affidavits to the effect that Mrs. Jones intended to give the benefit of the amount lying in the joint account at the time of death of Mrs. Folkes. In view of the definite intention of Mrs. Jones as well as solemn affidavits from two respectable witnesses filed in support of Mrs. Jones and after concluding that surrounding circumstances, viz., that Mrs. Jones did intend to make a provision for Mrs. Folkes in case she died before Mrs. Folkes, the learned judges in the said decision came to the conclusion that Mrs. Folkes became entitled to the balance standing to the credit of the joint account in the name of both. The said decision shows that there must be strong surrounding circumstances to convert the personal account into 'either or survivor' account. It also shows that the intention of the deceased should be explicit to make a gift or provision for the survivor. As pointed out by me, exhibit 'A-21' does not contain any such statement as found in the Division Bench decision referred to above. Since I have also extracted the entire contents of exhibit 'A-21', I am not repeating the same. Hence, by applying the principles enunciated in the above referred Division Bench decision and in the light of exhibits 'A-20' and 'A-21', I am unable to sustain the conclusion reached by the lower, appellate court in this regard.

14. It is also relevant to refer to the decision in *Indranarayan v. Roop Narayan*, : AIR 1971 SC1962 , wherein the apex court has held as follows (headnote) :

'In the case of transfer made by a Hindu of his money in a bank to the joint names of himself and his son on the terms that it is payable to either himself or the survivor, the son can successfully put forward a plea of advancement in his favour if he proves that the transfer is genuine and that the father intended that the money should go to the son exclusively after his death.'

15. The Supreme Court has further held as follows (page 1969) :

'The transfer with which we are concerned in this case cannot be gift because Dr. Pandit continued to be the owner of the amounts in question till his death. There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfers in question are genuine and further that Dr. Pandit intended that the amounts in question should go to the first defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted.

It was for the first defendant to establish that there was a general intention on the part of Dr. Pandit to benefit him and in pursuance of that intention he transferred the deposits to the joint names of himself and the first defendant. If he had proved those facts, he would have made good his plea - see *Young v. Sealey* [1949] 1 All ER 92, *Avis Fitzalan Cowdrey v. Imperial Bank of India* [1955] 25 Comp Cas 457 : AIR 1956 Mad 56 and *Dalavayi Nagarajamma v. State Bank of India*, : AIR 1962 AP260 .

In *Guran Ditta v. Ram Ditta*, AIR 1928 PC 172, the Judicial Committee held that the deposit made by a Hindu of his money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife. There is resulting trust in his favour in the absence of proof of a contrary intention, there being in India, no presumption of an intended advancement in favour of a wife. The same view was expressed by the judicial Committee in *Shambhu Nath Shivpuri v. Pushkar Nath*, .

But the difficulty in this case is, firstly, that there is no satisfactory proof of the alleged letter sent by Dr. Pandit to the Bank of Indore. Secondly, there is no evidence of the general intention on the part of Dr. Pandit to give those amounts exclusively to the first defendant. In the letter said to have been sent by Dr. Pandit to the bank all that is said is that he wanted to put the amount in the joint names of himself and the first defendant as he was seriously ill. There is nothing in that letter to show that he intended to make over that amount to the first defendant. As noticed earlier, Dr. Pandit was in his death bed. Therefore, he might have thought it prudent to transfer the deposits to the joint names of himself and the first defendant to facilitate collection. That being so we are unable to uphold the plea of the first defendant regarding those deposits.'

16. In the light of the decision of the apex court referred above, in our case also there is no satisfactory proof with regard to general intention on the part of the deceased, Muthukrishna Naidu, to give those amounts (fixed deposit) exclusively to the first defendant. In exhibit 'A-21' letter sent to the bank all that is said is that he wanted to put the amount in the joint names of himself and the first defendant as he was aged. There is nothing in that letter to show that he wanted to make over that amount to the first defendant. Inasmuch as the deceased, Muthukrishna Naidu, was more than 80 years, at the time of exhibit 'A-1' he might have thought it prudent to transfer the deposits to the joint names of himself and the first defendant to facilitate collection. In those circumstances, in the light of the conclusion reached by the Supreme Court, the finding of the lower appellate court cannot be sustained and is liable to be set aside. A similar view has been taken by the Bombay High Court in *Krushanadas Nagindas Bhate v. Bhagwandas Ranchhoddas*, : AIR1976 Bom153 .

17. In these circumstances, in the light of the law laid down by the apex court in the decision referred to above and in the light of the exhibits 'A-20 and 'A-21' as well as the oral evidence let in by the parties, I am unable to sustain the conclusion reached by the lower appellate court viz., 'inclusion of the first defendant in the two fixed deposit receipts along with the deceased, Muthukrishna Naidu and having the said fixed deposit receipts signed by the first defendant would amount to gift' cannot be sustained and the same is accordingly set aside.

On the other hand, the trial court has rightly granted a decree in favour of the plaintiffs directing the defendants to render proper accounts for the assets kept and left by the deceased A. D. Muthukrishna Naidu.

18. Accordingly, the second appeal is allowed, the judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court are restored. However, in the circumstances of the case, there will be no order as to costs.

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