

Thirumathi Ramayammal and ors. Vs. Thirumathi Mathummam and ors.

Thirumathi Ramayammal and ors. Vs. Thirumathi Mathummam and ors.

SooperKanoon Citation : sooperkanoon.com/793547

Court : Chennai

Decided On : Aug-09-1973

Reported in : AIR1974Mad321

Judge : Ramanujam, J.

Acts : Registration Act - Sections 17; Hindu Marriage Act - Sections 16

Appeal No. : Second Appeal No. 989 of 1971

Appellant : Thirumathi Ramayammal and ors.

Respondent : Thirumathi Mathummam and ors.

Judgement :

1. Defendants 1, 3 and 4 in O. S. No.72 of 1967 on the file of the District Munsif, Dindigul are the appellants. The first and second plaintiffs in the suit, claiming to be the third wife and daughter respectively of the second defendant, filed the suit for declaration of their title to the suit properties and for a permanent injunction restraining the appellants from interfering with their possession and enjoyment of the same. They claimed title to the suit properties on the basis of a family arrangement said to have been entered into and evidenced by Ex. A.1 dated 25-5-1964, between the second defendant, the then owner of the suit properties, the plaintiffs and the appellants. According to the plaintiffs the suit properties have been given to them absolutely under the family arrangement and that the appellants to whom other properties have been allotted under the said family

arrangement have been wrongfully asserting title to the suit properties and interfering with their possession.

2. The appellants resisted the suit contending that they were not willing parties to the said family arrangement, that their thumb impressions have been obtained in Ex. A.1 by deceit and that in any event Ex. A.1 is not admissible in evidence for want of registration. They also denied the status of the first plaintiff as the third wife of the second defendant and the status of the second plaintiff as his legitimate daughter. The first defendant is the daughter of the second defendant through his first wife and the third defendant is his second wife and it is claimed that by a settlement deed Ex.B-1 dated 26-10-1966 the suit properties had been settled on them by the second defendant and that, therefore, the plaintiffs cannot claim any title to the suit properties. The second defendant died pending the suit.

3. On these rival contentions, the trial Court held that the marriage of the first plaintiff with the second defendant is void as the second wife was then alive and that therefore, the second plaintiff is not the legitimate daughter of the second defendant. The trial Court held that even then the family arrangement pleaded by the plaintiffs was valid, that in pursuance of the said arrangement the suit properties had been allotted to the second defendant and the plaintiffs and that on the death of the second defendant it was the plaintiffs who became entitled to the suit properties. It was also held that Ex. B-1 on which the appellants relied was not valid.

4. On appeal the lower appellate Court also agreed with the view of the trial Court that the marriage of the first plaintiff with the second defendant was void and that the second plaintiff cannot be treated as the legitimate daughter of the second defendant. It however, held that the plaintiffs are entitled to claim title to the suit properties on the basis of the family arrangement, Ex. A.1. On the question whether the family arrangement is inadmissible in evidence for want to registration, it held that it is merely a record of what had already been done and that the actual allotment of the properties was not under Ex.A-1, but had been done orally earlier at the mediation of panchayatdars. It however disagreed with the view of the trial court that under the terms of the family arrangement the

plaintiffs became entitled to the entirety of the properties after the death of the second defendant, and held that after the death of second defendant plaintiffs and defendants 1 and 3 will be entitled to inherit his one-third share in the suit properties and that, therefore the plaintiffs will be entitled only to a 5/6 share and not to its entirety.

5. In this appeal the learned counsel for the appellants makes three submissions : (1) that the family arrangement contained Ex. A-1 is invalid and inadmissible in evidence for want of registration, (2) that even if it is valid and admissible in evidence, it will not confer title to the suit properties on the plaintiffs who are not members of the family of the second defendant and (3) that even if the plaintiffs are entitled to claim title to the suit properties on the basis of the family arrangement, they cannot claim to succeed to the second defendant's 1/3rd share in the suit properties.

6. On the question as to whether Ex. A-1 has been duly executed, both the courts below have held that the defendants 1 and 3 were consenting parties thereto and that it was not brought about by deceit as alleged by them. I have no reason to disagree with the said finding.

7. As regards the question as to whether Ex A-1 is admissible in evidence for want of registration, the learned counsel for the appellants contends that the document itself creates a gift in praesenti in favour of the parties to the document and that, therefore, it has to be registered. In this connection, reference is invited to the decision of the Supreme Court in Tek Bahadur Bhujil v. Debi Singh : AIR 1966 SC292 . In that case it was held that when a family arrangement is brought about by a document, such a document requires registration as it would amount to a document of title declaring for future what rights and in what properties the parties possess. But the very case has laid down that if a document is no more than a memorandum of what had been agreed to by the parties earlier, it does not require compulsory registration under Section 17 of the Registration Act, for a family arrangement as such can be recorded in writing as a memorandum of what has been agreed upon.

In this case, both the courts below have held that Ex. A-1 is a record of the family arrangement which had been orally arrived at between the parties in the presence of mediators and that, therefore, it does not require registration. They also referred to the evidence adduced by the plaintiffs to show that the Panchayat went on for a number of days, that taking into consideration the rival contentions the Panchayatdars finally decided what properties should be allotted to defendants 1 and 3 and the plaintiffs along with the second defendant and that only after such an allotment had been made, Ex. A-1 was prepared in accordance with such an arrangement. They also referred to the evidence of defendants 1 and 3 as D.Ws. 1 and 2 where they had admitted that such a Panchayat was in fact held, though they had denied that any arrangement was finally arrived at. They further referred to the evidence of P.Ws. 4 to 6, the Panchayatdars, who had stated that the properties had been allotted in pursuance of the oral arrangement entered into before them, that the suit properties came to be possessed and enjoyed by the plaintiffs along with the second defendant ever since the date of the arrangement, and that Ex. A-1 was subsequently prepared merely to serve as a record of the allotment that had been made earlier. The question therefore is whether Ex. A-1 is merely a record of a past transaction or whether it creates rights in praesenti. It is well established that a family arrangement can be made orally, and if made orally, there being no document no question of registration arises, that if the family arrangement is reduced to the form of a document registration is necessary when the value covered by the document is Rs. 100 or upwards. But whether the family arrangement is reduced to the form of document is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purposes with which it was written. In this case Ex. A-1 merely sets out the items allotted to each of the parties. Though it does not refer to the earlier arrangement said to have been entered into before the Panchayatdars on a perusal of the terms of Ex. A-1 it could be clearly inferred that there should have been some arrangement by which the properties came to be allotted as the document itself does not set out the circumstances under which the second defendant who is the exclusive owner gave up his rights in respect of the properties allotted to defendants 1 and 3 also to the plaintiffs. It is clear that something should have happened before Ex. A-1 was written and attested by

Panchayatdars. In this view the oral evidence is quite material. As already stated, the oral evidence indicates that there was an arrangement entered into by the parties before the Panchayatdars and it is that arrangement which came to be recorded under Ex. A-1. I have to, therefore, hold that Ex. A-1 is merely a memorandum recording the arrangement entered into earlier in order that there may not be hazy notions about it in future. As a matter of fact, even defendants 1 and 3 have admitted that there was in fact a Panchayat, but they say that no final arrangement was arrived at. Their version that no final arrangement was arrived at before the Panchayatdars cannot be accepted, for Ex. A-1 shows that they were willing parties to the family arrangement and that such an arrangement was made long before Ex. A-1 came to be written. I have to, therefore, agree with the courts below that Ex. A-1 is not invalid for want of registration and that it is admissible in evidence.

8. With reference to the second question, it is contended that the first plaintiff's marriage with the second defendant being admittedly void, herself and the second plaintiff who is an illegitimate daughter cannot be the members of the family of the second defendant and as such they cannot claim any rights under the family arrangement. It is stated that a family arrangement can take place only between the members of the family, that therefore, the share allotted to the second defendant and the plaintiffs as a group should go to the benefit of the second defendant alone and that the plaintiff cannot claim any benefit thereunder. What is in effect contended is that it is only those persons who are entitled to a share in the property who can be parties to a family settlement and that persons who cannot, in law, claim a share in the property cannot take the benefit under a family settlement. But it is well established that a party who takes benefit under a family settlement need not necessarily be shown to have, under the law, a share in the property and all that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or even a semblance of claim on some ground or other. This is clear from the decision of the Judicial Committee in *Rangaswami Gounden v. Nachiappa Gounden*, AIR 1918 PC 196, and the decision of the Supreme Court in *Ramcharan v. Girija Nandini* : [1965]3SCR841 . The evidence in this case is clear that there were disputes between the second defendant and the plaintiffs on the one hand and the first and

third defendants on the other, and the family arrangement was that the second defendant is to part with some of his properties in favour of defendants 1 and 3 and retain the rest of the properties for the benefit of himself and plaintiffs 1 and 2. The above arrangement entered into between the second defendant and defendants 1 and 3 who are admittedly members of his family is admittedly valid as a family settlement though as part of the arrangement certain rights have been conferred in favour of the plaintiffs in relation to the properties retained by the second defendant. The plaintiffs are therefore entitled to claim rights in the suit property on the basis of the said family settlement.

9. Coming to the third question it is seen that the plaintiffs had claimed exclusive title to the suit property on the basis of the family settlement and the trial court had upheld the claim presumably on the basis that the allotment of the suit property was joint and that the plaintiffs as survivors are entitled to have the benefit of the entirety of the property on the death of the second defendant. But the lower appellate court took the view that there is no question of survivorship arising even if the allotment has been made jointly in favour of the plaintiffs and the second defendant in the family settlement and that the plaintiffs as well as defendants 1 and 3 are entitled to succeed to the second defendant's 1/3rd share in the suit property. It therefore held that the plaintiffs are entitled only to a 5/6th share in the suit property. The lower appellate court has stated that the plaintiffs can also succeed to the second defendant's share as heirs along with defendants 1 and 3 even though it has held earlier that the marriage of the second defendant with the first plaintiff is void and therefore the second plaintiff is only an illegitimate child of the second defendant. It is not clear as to how the lower appellate court proceeded to consider the plaintiffs as heirs of the second defendant for the purpose of inheritance. Before me it is not disputed that the first plaintiff will not be a heir of the second defendant as her marriage with the second defendant is void. The learned counsel for the respondents would however contend that even if the first plaintiff's marriage with the second defendant is void, the second plaintiff born of such void marriage will be taken to be legitimate in view of Section 16 of the Hindu Marriage Act, hereinafter referred to as the Act. But the learned counsel for the appellants would contend that on a strict construction of the said section it is only when there is a decree of nullity in respect of a marriage under Section 11 or

Section 12 of the Act the child begotten or conceived before that decree, can be considered to be legitimate child of the parties to the marriage and not in a case where a decree of nullity had not been passed and that the operation of that section should be confined only to cases where the court has granted a decree of nullity Section 16 of the Act is as follows-

'Where a decree of nullity is granted in respect of any marriage under Section 11 or Section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity.

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity any rights in or to the property of any person other than the parties in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.'

10. The learned counsel for the appellants appears to be right when he says that the language employed in S. 16 is such that while children born of void marriage will be legitimate if a decree of nullity had been granted under Section 11, and they will be illegitimate if no decree of nullity had been granted. But that certainly cannot be the legislative intention. The wording of Section 16 so far as it is relevant to a marriage void under Section 11 leads to an anomalous and startling position which could have hardly been contemplated by the legislature. The position and status of children of void marriage should obviously be the same either the marriage is declared a nullity under Section 11 or otherwise. It is seen that the legislature has borrowed in this section the language of Section 9 of the Matrimonial causes Act, 1950, which deals with the legitimacy of children of only voidable marriages and does not refer to children of marriages void ipso jure and made the section applicable to cases of both voidable and void marriages annulled by a decree of court. Though the language of the section is more appropriate to

voidable marriages, it has been applied to void marriages as well, presumably with the object of ensuring that where a marriage was in fact solemnised but was void for any of the grounds mentioned in Section 11, the children of such marriage should not be bastardised whether a decree of nullity is passed or not. But the above obvious intention of the Legislature has not been duly carried out by a proper wording of the section. As pointed out by the learned counsel for the appellants, the language of the section is so plain and unambiguous and it would be straining the language beyond permissible limits to say that the children born of void marriages are legitimate even in cases where a decree of nullity had not been granted. If a third party successfully challenges the validity of the marriage in other proceedings on the ground that it is void by operation of Section 11, the children of such a marriage would still be illegitimate as the decree of nullity has not been granted at the instance of either of the parties by invoking the provisions of the Act. In view of the language of the section being plain and unambiguous, it is not possible for the court to construe the same in a different manner having in mind the presumed intention of the legislature even if it appears to be obvious. I am therefore, of the view that this is a casus omissus which the Courts cannot reach for no canon of construction will permit the court to supply what is clearly a lacuna in the statute and it is for the legislature to set right the matter by a suitable amendment of the section. I also find that in a decision of this court in *Gowiri Ammal v Thulasi Ammal* : AIR1962 Mad510 , it has been held that a decree of nullity cannot be passed after the death of one of the spouses and a child born of a marriage of which nullity was sought but could not be granted in view of the death of one of the spouses is not entitled to the benefit of Section 16. Therefore, on the language of Section 16 as it stands today, it is not possible for me to hold that the second plaintiffs a legitimate child of the second defendant. Then both the plaintiffs not being the legal heirs of the second defendant, they cannot claim any interest in the one third share left by the second defendant in the suit property and the first and third defendants being admittedly the legal heirs, they will be entitled to succeed to that one-third share. The decree and judgment of the lower appellate court have, therefore, to be modified to the effect that the plaintiffs will be entitled to a two third share in the suit property.

11. The result is the second appeal is allowed in part to the extend indicated above. There will, however, be no order as to costs. No leave.

12. Appeal partly allowed

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com