

In Re: Velappa Gownden

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SooperKanoon Citation : sooperkanoon.com/821659

Court : Chennai

Decided On : Jan-25-1912

Reported in : 13Ind.Cas.640

Judge : Sundara Aiyar, J.

Appellant : In Re: Velappa Gownden

Judgement :

Sundara Aiyar, J.

1. The defendant took a sale-deed from the plaintiff's 2nd witness, who is the plaintiff's brother's widow. The plaintiff alleges in his plaint that he and his deceased brother were undivided, and that, after the latter's death, he became the sole owner of the plaint property and was in possession, and that his brother's widow executed a sale-deed in favour of the defendant, purporting to treat the property as hers by right of inheritance from her husband. The plaintiff asked for a declaration that the sale in favour of the defendant would not affect his rights in the property. Both the Courts have found against the plaintiff both on the question of his right as survivor to succeed to the property on his brother's death and on the question of possession. They have held that the plaintiff and his brother were divided. On the question of the validity of the alienation, the Munsif found that Rs. 1,000 was borrowed by the widow for defraying the expenses of her daughter's marriage and for the balance of Rs. 250, she received a hypothecation document

from the vendee charging the lands sold. This was the case set up by the defendant himself. It is quite clear that the widow would have no right to sell her husband's property for a consideration to be received by her in future, when there is no allegation that there was any pressing necessity to provide for any expenses in the future in the interests of her husband's estate. It is not alleged in this case that Rs. 250 was wanted for any urgent necessity in the near future.

2. The alienation, therefore, cannot apparently be supported as one binding on the reversioner. But this question really did not arise in the case, for the right which the plaintiff wanted to be declared was a present right as owner of the property, he having obtained the sole title by survivorship on the death of his brother. In such a case, no question of the validity of the alienation with respect to its effect on the rights of reversioners arises. If the widow did not succeed to the property as her husband's heir, then the alienation would be absolutely void as against the plaintiff, the present owner, and the character of the alienation would, in that case, also be equally unnecessary. The appellant's Counsel presses for a declaration that the alienation would not affect his reversionary rights. This, as already stated, was not the right which he sought to be declared in his plaint, and it is quite possible that the defendant, notwithstanding the framing of the third issue regarding the character of the alienation, might not have adduced all his evidence relating to that question, as he might have been advised that any finding on that issue would not affect the decree which the Court should pass in the case. And I do not think this is a case in which the Court should permit the plaintiff to vary the cause of action on which he came into Court and grant the discretionary relief of declaration. I have no doubt that the Court would be well advised not to exercise its discretion in such a case in favour of the plaintiff.

3. I would, therefore, dismiss the second appeal without pronouncing a decisive opinion on the third issue. I have already stated that I would not be prepared to accept the finding of the lower Appellate Court that the alienation is binding on the plaintiff. I dismiss the second appeal.