Reddi Krishnamurthi (Legal Representative of Defendant 2) and ors. Vs. Reddi Seshayya and ors.

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Court : Chennai

Decided On : Mar-29-1944

Reported in : AIR1944Mad439

Appellant : Reddi Krishnamurthi (Legal Representative of Defendant 2) and ors.

Respondent : Reddi Seshayya and ors.

Judgement :

Happell, J.

1. This is an appeal against the decree and judgment of the District Judge of West Godavari reversing in appeal the decree of the Additional Subordinate Judge of Ellore in O.S. No. 34 of 1937. In that suit the seven plaintiffs sued for a declaration that a surrender deed executed by defendant 1 on 15th May 1937, in favour of defendant 2 was not binding on them. The plaintiffs are the sons of the sons of a certain Brahmanna who was the brother of one Ganganna and so the uncle of Ganganna's son, Venkatarayudu. There had been a partition between Ganganna and Brahmanna and, on the death of Venkatarayudu in 1898 his widow, defendant 1, obtained a widow's estate in the properties left by him. Defendant 2 was Venkatarayudu's sister's son; and defendant 3 was defendant l's brother's son and had been brought into her house to manage her affairs for her. In the suit the plaintiffs raised two main contentions. They said that Venkatarayudu had adopted one Narayanamurthi who had died shortly after Venkatarayudu himself so that they and not defendant 2 are the nearest reversioners to Venkatarayudu's estate. Both the lower Courts held that there had been no adoption by Venkatarayudu of Narayanamurthi and consequently this question is not now before us. The second contention raised was that the surrender deed executed by defendant 1 in favour of defendant 2 was not valid in law. This deed, Ex. I, was executed on 15th May 1937, and purported to be a surrender of the whole of Venkatarayudu's properties in which defendant 1 held a widow's estate in favour of defendant 2. Although, executed on 15th May 1937, it was not registered until 13th August of the same year. Between 10th August 1937 and 12th August 1937, defendant 2 purported under various deeds to sell many of the properties covered by Ex. I to defendants 4 to 20. These deeds were registered on the same date as the surrender deed, Ex. I, namely, 13th August 1937. The learned Additional Subordinate Judge held that all the alienations made by defendant 2 were true and valid except one evidenced by the deed Ex. V in favour of defendant 15 which, in his opinion, was intended for the benefit of defendant 1 herself. Applying, however, the rule that, notwithstanding the fact that a widow may have retained for her maintenance a small portion of the properties comprising her widow's estate, a surrender by her in favour of the nearest reversioner of the whole of the rest of the property will be regarded as a complete surrender of all her interest and valid in law, he held that the surrender

deed, Ex. I, was valid and binding on the plaintiffs and so dismissed the suit. The learned District Judge, however, took the view that all the alienations were benami transactions intended for the benefit of defendant 3 and that the alienation in favour of defendant 15 was not distinguishable from the other alienations. In this view he allowed the appeal and decreed the suit for the plaintiffs.

2. The question for our decision is, therefore, whether in the circumstances of this case, the deed of surrender of 15th May 1937, is valid in law. As this is a second appeal, the finding of the learned District Judge that the alienations made by defendant 2 between 10th and 12th August 1937, were benami for defendant 3 cannot be challenged. In our judgment, however, having regard to all the circumstances of the case, there is no reason to doubt that the view formed by the learned District Judge in this matter was correct. The case must therefore be regarded from the point of view that the surrender deed, the retention of some of the properties covered by the surrender deed by defendant 2 himself, and the alienation of the rest benami for defendant 3, all form part of the same transaction. That the several transactions cannot be separated we think is clear from the fact that the surrender deed was registered on the same day as the deeds alienating a considerable part of the property surrendered, from the evidence of defendant 2 himself which shows that he was by no means the prime mover in the transactions, and from the fact that the surrender deed, as is proved by the evidence of one of the alienees, defendant 15, has throughout been in the possession of defendant 15 and not in that of defendant 2.

3. The result of a consideration of the decided cases as to the power of a Hindu widow to deal with the property of her husband to which she has succeeded for a life estate on his death has been summarized by Lord Dunedin in Rangaswami v. Nachiappa A.I.R. 1918 P.C. 196 as follows:

An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a bona fide surrender and not a device to divide the estate with the reversioner.

The argument advanced for the appellants is that the surrender in the present case is valid because it is a surrender of the whole estate and the surrender cannot be regarded as a device to divide the estate with the reversioner since the reversioner has not retained her interest in any of the property. In support of the contention we have been referred to the decision of a Division Bench of this Court in Subbiah Sastri v. Pattabhiramayya (1908) 31 Mad. 446. In that case the whole of the widow's limited estate was conveyed to the next reversioner. Two days after the conveyance the next reversioner conveyed the greater part of the properties to the brothers of the widow, and thus fulfilled an undertaking which he had given to the widow. The surrender was held to be valid. Whether in view of the subsequent pronouncements of the Judicial Committee in Rangaswami v. Nachiappa A.I.R. 1918 P.C. 196 and Sureshwar Misser v. Maheshrani A.I.R. 1921 P.C. 107 the decision was correct may be doubted. The facts however clearly distinguished the case from the case with which we are dealing. The decision was based on the fact that there was an absolute surrender of the widow's estate to the reversioner which put him in a position to give a good title to a third party - the undertaking being regarded as relating only to the motive which actuated

the widow and so irrelevant since, despite it, the reversioner could have retained the property for himself or conveyed it to whomsoever he pleased. In the present case the arrangement was one and indivisible, and avoided the possibility that the reversioner might not fulfil the arrangement after the surrender to him had been made.

4. The only other case to which reference need be made is the case in Sureshwar Misser v. Maheshrani A.I.R. 1921 P.C. 107 decided by the Privy Council. It is argued for the appellants that this case supports the contention that a surrender by a widow of the whole of her limited interest may be validated even though the estate is divided between the next reversioner and third parties in such a way as not to give the reversioner, as in Subbiah Sastri v. Pattabhiramayya (1908) 31 Mad. 447, at any time, the power to alienate the property to any other person than the person designated by the arrangement. In our opinion, if the facts in Sureshwar Misser v. Maheshrani A.I.R. 1921 P.C. 107 and the reasoning by which the decision is supported are examined the decision is no authority for the position contended for. The facts of the case were that a Hindu subject to the Mithila law left him surviving a widow, four daughters and a son. The son died soon after the lather and under a will made by him the daughters succeeded to the immovable property and obtained possession of it. The next reversioner however filed a suit for a declaration that the property being joint the will was inoperative , that on the death of the son the mother obtained a widow's estate in the property and that on her death it would devolve on the then nearest reversioner. The suit was compromised and the effect of the compromise was that the will was given up and the daughters and the nearest reversioner each took a half of the immovable properties. The moveable properties were retained by the mother who in any case was entitled to them absolutely under the Mithila law. Once the will was given up, the mother became entitled to a life interest in the immovable properties, so that the compromise amounted to a surrender by her of the immovable properties, and the division of them in equal halves between the daughters and the nearest reversioner. Lord Dunedin in his judgment said:

An arrangement by which a reversioner as consideration for the surrender promised to convey a portion of the property to a nominee or nominees of the lady surrendering, might well fall under the description of a device to divide the estate.

5. This observation makes it clear that the basis of the decision was not that the surrender was valid because the division was between the reversioner and third parties and consequently not a device to divide the estate with the reversioner. This is made clear by the succeeding sentence of the judgment in which Lord Dunedin observed that it was here that the fact of the arrangement being a compromise became of importance. Being a compromise it was a good consideration for the lady's relinquishment of her interest to avoid the possibility of an adverse decision and a litigation in the course of which the estate would probably be much diminished; and it was a good consideration for the reversioner's surrender of half the property to the daughters that he got rid of the will and avoided the possibility that the daughters might take all. The surrender therefore was a bona fide surrender and not merely a device to divide the estate. If it had been a device to divide the estate, there can be no doubt, having regard to the observations of Lord Dunedin, that it would have been held that the surrender was invalid notwithstanding the fact that the division of the property was not directly between the reversioner and the mother. In the present case however on the facts found, the surrender clearly was not a bona fide surrender. The whole arrangement was simply a device to divide the estate and defendant 2 gave up a part of the estate to defendant 3 in order that he might get a remainder in;

presenti. In our opinion, therefore, the decisions of the learned District Judge is correct.

6. The appeal is dismissed with costs.