2022 INSC 432

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2582 OF 2010

K.C. LAXMANA ... **APPELLANT(S)**

VERSUS

K.C. CHANDRAPPA GOWDA & ANR. ... **RESPONDENT(S)**

J U D G M E N T

S. ABDUL NAZEER, J.

1. This appeal by special leave is directed against the judgment and decree in Regular Second Appeal No.372 of 2003 dated 03.10.2008, whereby the High Court of Karnataka at Bangalore has dismissed the appeal.

2. K.C. Chandrappa Gowda filed a suit against his father-K.S. Chinne Gowda and one K.C. Laxmana for partition and separate possession of his one-third share in the suit-schedule property and for a declaration that the gift/settlement deed dated 22.03.1980 (Ex. P-1) executed by the first defendant-K.S. Chinne Gowda in favour of the second defendant-K.C. Laxmana as null and void. According to the plaintiff, the schedule property belongs to the joint family consisting of himself, the first defendant and one K.C. Subraya Gowda. It was further contended that the first defendant had no right to transfer the schedule property in favour of the second defendant as he is not a coparcener or a member of their family. Consequently, it was contended that the alienation made without the plaintiff's consent is null and void and thus not binding on him.

3. The first defendant opposed the suit by filing his written statement. It was admitted that the suit schedule property is a joint family property. It was contended that the second defendant was brought up by the first defendant and out of love and affection he settled the suit property under Ex.P-1 in favour of the second

defendant. It was further contended that the joint family property was already partitioned between himself, the plaintiff and the other son-Subbraya Gowda on 23.03.1990. The plaintiff, having taken his share without any demur is not entitled to maintain the suit. It was also contended that the suit was barred by limitation. The second defendant had adopted the written statement filed by the first defendant.

4. The parties led evidence in support of their respective contentions and have produced the documents thereof. The Trial Court, on appreciation of the materials on record, dismissed the suit. Feeling aggrieved, the plaintiff filed a first appeal. The Appellate Court, after reconsideration of the entire materials on record and re-assessment of evidence, set aside the judgment of the Trial Court. It was held that the Settlement Deed at Exhibit P-1 is a void document. The plaintiff was granted one-third share in the suit property. This judgment of the Appellate Court was challenged by K.C. Laxmana, the second defendant in the High Court. The High Court, after hearing the learned counsel for the parties and on

consideration of the materials on record, dismissed the appeal by the impugned order.

5. Mr. Anand Sanjay M. Nuli, learned counsel appearing for the appellant/second defendant, first contended that the High Court was not justified in holding that the suit was not barred by limitation. According to him, Article 58 of the Limitation Act, 1963 is applicable to the facts of the present case. Secondly, it was argued that the transfer of property by way of settlement was for pious purpose which is permissible in law. Therefore, he submitted that the High Court was not justified in upholding the judgment of the Appellate Court.

6. On the other hand, Mr. Arvind Varma, learned senior counsel appearing for the respondent/plaintiff, while supporting the judgment of the High Court, has submitted that the alienation by way of gift of joint family property made by the first defendant in favour of the second defendant was void. The period of limitation for challenging such an alienation is twelve years from the date the alienee takes possession of the property under Article 109 of the

Second Schedule to the Limitation Act. Therefore, he submitted that the suit was not barred by time.

7. Having regard to the contentions urged, the first question for consideration is whether the suit filed by the plaintiff was barred by limitation.

There is no dispute that the parties to the suit are Hindus and are governed by Mitkashara Law. The plaintiff has challenged the alienation made by his father-the first defendant, under Ex.P-1 which is a joint family property, in favour of the second defendant.

8. Article 58 of the Second Schedule to the Limitation Act provides for the period of limitation to file a suit to obtain any other declaration. The period of limitation under this article is three years from the date when the right to sue first accrues. It is a residuary article governing all those suits for declaration which are not specifically governed by any other articles in the Limitation Act. Article 109 is the special Article to apply where the alienation of the father is challenged by the son and the property is ancestral and the parties are governed by Mitakshara law. Generally, where a statute contains both general provision as well as specific provision,

the later must prevail. Therefore, Article 58 has no application to the instant case. Article 109 is as under:

Description of suit	*Period of limitation*	*Time from which period begins to run*
109.By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.

9. The word 'alienation' in this article includes 'gift'. In order to attract Article 109, the following conditions have to be fulfilled, namely, (1) the parties must be Hindus governed by Mitakshara; (2) the suit is for setting aside the alienation by the father at the instance of the son; (3) the property relates to ancestral property; and (4) the alienee has taken over possession of the property alienated by the father. This article provides that the period of limitation is twelve years from the date the alienee takes possession of the property.

10. In the instant case, Ex.P-1 was executed by the father of the plaintiff in favour of the second defendant on 02.03.1980 and the second defendant has taken possession of the property on

22.03.1980 when Ex.P-1 was registered. Counting the period of twelve years from 22.03.1980, the limitation for filing of the suit in the present case would have expired on 21.03.1992. The suit was filed on 11.10.1991. Therefore, the suit was not barred by time.

11. The second question for consideration is whether the transfer of property made by the first defendant in favour of the second defendant under Ex.P-1 was for a pious purpose.

As noticed above, the second defendant has adopted the written statement filed by the first defendant before the trial court wherein it was admitted that the schedule property was a joint family property belonging to the HUF consisting of the plaintiff, his father the second defendant and his brother one K.C. Subbaraya Gowda, all three of whom were coparceners in the HUF. The second defendant is not a coparcener or a member of this family. It was also admitted that the schedule property was gifted to him by the settlement/gift deed dated 22.03.1980 (Ex.P-1) by the first defendant who was the Karta of the HUF. The plaintiff was not a signatory to the said document. In fact, the plaintiff has categorically averred in the plaint that he did not consent to the

gifting of the schedule property in favour of the second defendant vide the said deed.

12. It is trite law that Karta/Manager of a joint family property may alienate joint family property only in three situations, namely, (i) legal necessity (ii) for the benefit of the estate and (iii) with the consent of all the coparceners of the family. In the instant case, the alienation of the joint family property under Ex.P-1 was not with the consent of all the coparceners. It is settled law that where an alienation is not made with the consent of all the coparceners, it is voidable at the instance of the coparceners whose consent has not been obtained (See : **Thimmaiah and Ors. Vs. Ningamma and Anr.**[1]). Therefore, the alienation of the joint family property in favour of the second defendant was voidable at the instance of the plaintiff whose consent had not been obtained as a coparcener before the said alienation.

13. In the instant case, it is admitted by the second defendant that the settlement deed dated 22.03.1980 (Ex.P-1) is, in fact, a gift deed which was executed by the first defendant in favour of the

1 (2000) 7 SCC409

second defendant 'out of love and affection' and by virtue of which the second defendant was given a portion of the joint family property. It is well-settled that a Hindu father or any other managing member of a HUF has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift in regard to the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'. It is irrelevant if such gift or settlement was made by a donor, i.e. the first defendant, in favour of a donee who was raised by the donor without any relationship, i.e. the second defendant. The gift deed in the instant case is not for any charitable or religious purpose.

14. This principle of law has been laid down by this Court in **Guramma Bhratar Chanbasappa Deshmukh and Ors. vs. Mallappa Chanbasappa and Anr.**[2], wherein it was held as follows:

> "It may, therefore, be conceded that the expression "pious purposes" is wide enough, under certain circumstances, to take in charitable purposes though the scope of the latter purposes has

2 AIR 1964 SC 510

nowhere been precisely drawn. But what we are concerned with in this case is the power of a manager to make a gift to an outsider of a joint family property. The scope of the limitations on that power has been fairly well settled by the decisions interpreting the relevant texts of Hindu law. The decisions of Hindu law sanctioned gifts to strangers by a manager of a joint Hindu family of a small extent of property for pious purposes. But no authority went so far, and none has been placed before us, to sustain such a gift to a stranger however much the donor was beholden to him on the ground that it was made out of charity. It must be remembered that the manager has no absolute power of disposal over joint Hindu family property. The Hindu law permits him to do so only within strict limits. We cannot extend the scope of the power on the basis of the wide interpretation give to the words "pious purposes" in Hindu law in a different context. In the circumstances, we hold that a gift to a stranger of a joint family property by the manager of the family is void."

15. In **Ammathayi @ Perumalakkal and Anr. Vs. Kumaresan @ Balakrishnan and Ors.**[3]**,** this Court has reiterated the above position as under:

> **"10.** As to the contention that Rangaswami Chettiar was merely carrying his father's wishes when he made this gift in favour of his wife and that act of his was a matter of pious obligation laid on him by his father, we are of opinion that no gift of ancestral immovable property can be made on such a ground. Even the father-in-law, if he had desired to make a gift at the time of the marriage of his daughter-in-law, would not be competent to do so insofar as immovable ancestral property is concerned. No case in support of the proposition that a father-in-law can make a gift of ancestral immovable property in favour of his daughter-in-law at the time of her marriage has been cited. There is in our opinion no authority to support such a proposition in Hindu law. As already observed, a Hindu father or any other managing member has power to make a gift within reasonable limits of ancestral immovable property for pious purposes, and we cannot see how a

3 AIR 1967 SC 569

> gift by the father-in-law to the daughter-in-law at the time of marriage can by any stretch of reasoning be called a pious purpose, whatever may be the position of a gift by the father or his representation to a daughter at the time of her marriage. One can understand such a gift being made to a daughter when she is leaving the family of her father. As it is the duty of the father or his representative to marry the daughter, such a gift may be and has been held by this Court to be for a pious purpose. But we see no pious purpose for such a gift by a father-in-law in favour of his daughter-in-law at the time of marriage. As a matter of fact the daughter-in-law becomes a member of the family of her father-in-law after marriage and she would be entitled after marriage in her own right to the ancestral immovable property in certain circumstances, and clearly therefore her case stands on a very different footing from the case of a daughter who is being married and to whom a reasonable gift of ancestral immovable property can be made as held by this Court."

16. In view of the above, we are of the view that the settlement deed/gift deed dated 22.03.1980 (Ex.P-1) executed by the first defendant in favour of the second defendant was rightly declared as null and void by the first Appellate Court and the High Court.

17. Resultantly, the appeal fails and it is accordingly dismissed. There shall be no order as to costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(KRISHNA MURARI)

New Delhi;
April 19, 2022.