(2002) 07 AP CK 0004

Andhra Pradesh High Court

Case No: Second Appeal No. 459 of 1990

Manam Satyavathi		APPELLANT
	Vs	
Thota Naarayya and Others		RESPONDENT

Date of Decision: July 5, 2002

Acts Referred:

- Hindu Succession Act, 1956 - Section 30

Citation: (2002) 07 AP CK 0004

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Subhash Chandra Bose, for the Appellant; Ram Mohan, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.
The unsuccessful plaintiff, aggrieved by the reversing Judgment made in A.S. No. 17/89 on the file of Subordinate Judge, Pithapuram as against the Judgment of the Court of first instance - District Munsif, Pithapuram made in O.S. No. 149/85, had preferred the present Second Appeal.

2. The appellant/plaintiff instituted the aforesaid suit for declaration of her title relating to the plaint schedule property and for recovery of possession and also for recovery of a sum of Rs.2000/- from 3rd defendant towards value of the produce from the plaint schedule property and also for future profits and for costs of the suit. The case of the appellant/plaintiff in nut-shell can be narrated as follows:

Plaintiff is the daughter of one late Thota Veeraswamy and respondents 1 to 3/defendants 1 to 3 are the brothers of the appellant/plaintiff and respondents 4 and 5/defendants 4 and 5 are the sisters of the appellant/plaintiff. 6th defendant in the suit is the mother of the plaintiff and during the lifetime of Veeraswamy she was given the plaint

schedule property by way of Pasupu Kumkuma at the time of her marriage and subsequent thereto possession also was given and thus the plaintiff has been in possession and enjoyment of the said property. It is also her case that even during the lifetime of her father on 6-7-1973 her father on his own behalf and also as guardian of his minor sons, defendants 2 and 3 in the suit, and also Narayya, 1st defendant in the suit, on his behalf and also as guardian of his minor son Srinivasulu, had executed registered gift deed in favour of the plaintiff reiterating the aforesaid fact that the plaint schedule property was given by way of Pasupu Kumkuma. The recitals of the said document are self-explanatory. It is also stated that in view of the fact that she is having absolute title to the property and exclusive possession and enjoyment of the property, patta passbook also had been issued in her favour and her daughter was given in marriage to the 3rd defendant and hence at the request of the 3rd defendant she had permitted him to look after the property and also to attend to the agricultural operations, realize the profits and handover the same inasmuch as she was residing at Tata Nagar with her husband and likewise the 3rd defendant was doing so. But however it was stated that at the instance of other defendants certain problems arose even in the marital life in between the 3rd defendant and his wife and certain other aspects also had been pleaded in this regard.

3. Defendants 2 and 3 had filed written statement taking a stand that the said gift deed is not true, valid and binding on the defendants. Specific stand was taken that the plaint schedule property and thatched house at Gollaprolu with vacant site are the only ancestral property available to the said joint family and the plaintiff always has been in affluent position. The joint family was in deep debts and the names of certain creditors also had been mentioned and under such peculiar circumstances the suit gift deed was nominally executed so as to secure the property and to avoid the creditors in collusion with the plaintiff, being a close relative. It was also pleaded that the plaint schedule property was never in possession of the plaintiff and to her knowledge Veeraswamy and his family members have been alone in possession and enjoyment of the said property. It was also stated that the said document is a void document and it is not binding and in such circumstances the plaintiff is not entitled to any of the reliefs prayed for.

4. The written statement filed by defendants 2 and 3 was adopted by defendants 1, 4 and 6 and on the strength of the respective pleadings of the parties, the following Issues were settled by the trial Court:

1. Whether the plaintiff is entitled for declaration and vacant possession of the plaint schedule property as prayed for ?

2. Whether the plaintiff is entitled to the profits of Rs.2,000/- for 1984-86 against the 3rd defendant with interest as prayed for ?

3. To what relief ?

5. On behalf of the plaintiff only plaintiff was examined as PW-1 and Exs.A-1 to A-7 were marked. The 1st defendant was examined as DW-1 and DW-2 also was examined and Ex.B-1 was marked.

6. The Court of first instance after answering Issues came to the conclusion that the plaintiff is entitled to a decree as prayed for and the suit was decreed with costs and aggrieved by the same, the defendants had preferred A.S. No. 17/89 on the file of Subordinate Judge, Pithapuram and the appellate Court had allowed the Appeal and aggrieved by the said Judgment and decree, the unsuccessful plaintiff had preferred the present Second Appeal.

7. Sri Subhash Chandra Bose, the learned Counsel representing the appellant/plaintiff had made the following submissions. The learned Counsel had pointed out to the substantial questions of law which had been framed as (a) to (c) of paragraph-12 of the Memorandum of Grounds of Appeal. The learned Counsel also had pointed out that the registered gift deed was executed even in the year 1973 and the property was delivered pursuant thereto and the 1st defendant himself had signed the gift deed and no suit was instituted by any member of the family questioning the validity of the gift deed so far. Hence, the rights which had already accrued to the plaintiff relating to the plaint schedule property cannot in any way be disturbed and hence the appellant/plaintiff is entitled to the relief as prayed for and the Court of first instance is well justified in decreeing the suit on that ground. The learned Counsel also further contended that the following question of law will arise for consideration in this Second Appeal:

Whether the reversal of the well considered Judgment of the trial Court, especially in the light of the fact that the validity of the gift deed was not questioned at all by any one of the defendants, can be sustained in law ?

8. The learned Counsel further had taken me through the findings which had been recorded by the learned District Munsif, Pithapuram and had submitted that the trial Court had totally erred in reversing those findings on the ground that the gift in question is a void transaction. The learned Counsel further would maintain that defendants 2 and 3 who are really the aggrieved parties had not questioned the transaction at any point of time and further even in this suit they had not chosen to enter into the witness box and hence adverse inference has to be drawn in this regard. The learned Counsel further would maintain that at any rate, by virtue of the fact that the gift deed in question was not questioned at all by the aggrieved parties within the period of limitation, the defendants cannot raise the said question so as to defeat the rights of the plaintiff. The learned counsel also had pointed out relating to the nature of transaction and had contended that the plea of benami is not available. The learned Counsel also had placed reliance on Ponnuchami Servai Vs. Balasubramanian and Others, , P.SUBBI REDDI Vs. P. CHINNA REDDEMMA, 1996[3] ALD 98, Swaku Vs. Hemanand, , Bailochan Karan Vs. Basant Kumari Naik and Another, , Darshan Singh and others Vs. Gurdev Singh, , Ramaswami Naidu and Another Vs. Gopalakrishna Naidu and Others, ; Iswar Bhai C. Patel @ Bachu

Bhai Patel Vs. Harihar Behera and Another, .

9. Sri Ram Mohan, the learned Counsel representing the respondents/defendants had contended that the appellate Court had reversed the Judgment and decree of the trial Court on well considered reasons and hence it cannot be said that the reversal of the Judgment cannot be sustained. The learned Counsel also further contended that it is a peculiar case where the father, as Manager of the joint family, had executed the gift deed - Ex.A-1, in favour of only one of the daughters to the exclusion of the other sons and the daughters. The learned Counsel further had fairly submitted that no doubt under the general principles of Hindu Law, a father is entitled to gift a reasonable portion of the property in favour of a daughter by way of Pasupu Kumkuma. But however the learned Counsel would maintain that here is a case where the total property of the family was given away by the father under Ex.A-1 in favour of the daughter, the plaintiff in the suit, and such a transaction is not protected even by the general principles of Hindu Law and it is definitely a void transaction. The learned Counsel also had maintained that at the best the father was having only a share along with the sons at the relevant point of time and just to ward-off the pressure from the creditors, the family had thought of bringing into existence this Ex.A-1 in favour of the daughter and that cannot be taken advantage of since no title passed in favour of the daughter i.e., the plaintiff, under Ex.A-1. The learned Counsel also submitted that at any rate since the transaction itself is a void transaction, it is liable to be ignored and no legal rights accrued in favour of the plaintiff. In such a case there is no necessity on the part of the other defendants to question the validity or to file a suit either praying for the relief of setting-aside or cancellation of the said document, as the case may be. The learned Counsel had drawn my attention to several decisions Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others, , SUBBA RAO Vs. RAMAMURTI, AIR 1958 AP 626 , Kamala Devi Vs. Bachu Lal Gupta, , Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, , Ammathayee Ammal and Another Vs. Kumaresan and Others, , Kavuru Venkatappayya Vs. Kavuru Raghavayya, and Rathinasabapathy Pillai and Another Vs. Saraswathi Ammal, .

10. Heard both the counsel and also perused the Judgment of the Court of first instance and also the Judgment of the appellate Court and the oral and documentary evidence.

11. The short question involved in the present suit is the validity of Ex.A-1 gift deed executed by Veeraswamy in favour of plaintiff - PW-1 dated 6-7-1973. Ex.A-2 is the notice and Ex.A-3 is the reply notice. Exs.A-4, A-5 and A-6 are the cist receipts and Ex.A-7 is the ryoth pass book issued in favour of the plaintiff. Apart from this documentary evidence, the evidence of PW-1 alone is available on behalf of the appellant/plaintiff. As against this evidence, the evidence of the 1st defendant as DW-1 and another general witness who was examined as DW-2 is available on record. Ex.B-1 is the acknowledgement register showing cist paid and Exs.B-2 to B-11 are the different cist receipts and all these documents are marked to show that at no point of time possession was with the appellant/plaintiff and the possession continued to be with the family of the defendants only despite the execution of Ex.A-1 in her favour. The plaintiff, as PW-1, no

doubt deposed that at the time of her marriage she was given this extent of Ac.1-30 cents by her parents and subsequent thereto her father executed the gift deed Ex.A-1 in her favour. She also further deposed that Ex.A-1 was executed by her father on his behalf and on behalf of defendants 1 to 3 and she also further deposed that the possession had been delivered and inasmuch as her daughter was given in marriage to the 3rd defendant he was entrusted with the duty of supervising the agricultural operations and subsequent thereto there were certain problems. This witness also deposed about payment of cist - Exs.A-4 to A-6, and also the issuance of pattadar passbook in her favour - Ex.A-7. As against this evidence, the evidence of DW-1 is available and as already referred to supra, the evidence of DW-2 is of general nature. It is no doubt true that the defendants 2 and 3 were not examined. The 1st defendant as DW-1 deposed that Ex.A-1 is only a nominal document and it was brought into existence to evade debts due to the creditors and except this oral statement there is no other material available on record and no doubt the creditors referred to also had not been examined.

12. Be that as it may, the fact remains that Veeraswamy executed Ex.A-1 gift deed in favour of his daughter - the plaintiff. It is recited in Ex.A-1 itself that the gift was given towards Pasupu Kumkuma in her favour. It is needless to say that if only a reasonable portion of the family property, even if it is ancestral, had been given by the father in favour of the daughter by way of Pasupu Kumkuma, this Court in all probability would have upheld such a transaction. But here is a case where the father, though the undivided coparceners i.e., the sons, are available and the other daughters are also available, had executed Ex.A-1 in favour of the appellant/plaintiff. The concept of Pasupu Kumkuma is a very important concept. The meaning of the same in plain and simple can be as follows: ''Pasupu'' means turmeric and ''Kumkuma'' means an admixture of various auspicious powders of various colours used by women for a mark or beauty spot on the fore-heads and for decorative doors and normally this represents the auspicious symbol of married women whose husbands are alive. Normally the concept of Pasupu Kumkuma is understood as a gift given to a Hindu woman either at the time of her marriage or subsequent thereto either by the parents or near relatives blessing her to have a happy married life. I do not want to delve deep into the matter since this Pasupu Kumkuma had been well explained even in the old Hindu texts. No doubt, on the aspect relating to the power of the father to give away reasonable portion of the property of the family by way of gift, reliance was placed on certain decisions (10) and also (11) supra.

13. Here is a case where the father had gifted away the total extent of Acs.1-30 cents, admittedly the ancestral property of the joint family, to the detriment of the other sons. In the decision referred (8) supra, the Apex Court while holding that the gift of undivided share by a coparcener is void, had observed:

"A gift by a coparcener of his undivided interest in the coparcenary property is void. The reason as to why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift is that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided

interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a Hindu family from being disintegrated. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property".

14. The learned counsel for the appellant had made a faint attempt to get over the Judgment taking a stand that the defendants had not chosen to question the validity of Ex.A-1 and hence the rights which had accrued in favour of the appellant/plaintiff go unchallenged and hence she is entitled to maintain the suit. I am unable to accept with this contention for the reason that when a transaction is void transaction, it will be a void one from its inception and the character of the property i.e., the joint family property, does not change though the document Ex.A-1 came into existence and inasmuch as it does not affect the rights of the coparceners of the family, there is no necessity of such parties instituting a separate suit in this regard to get over the document. No doubt, the learned counsel so as to substantiate his contention, both on the question of limitation and also on the question that no suit had been filed to avoid the said transaction, had placed strong reliance on the decisions referred (2), (3), (4) and (5) supra, Nidhi Padhan Vs. Bhainra Khadia and Others, and also Meenambal and Others Vs. Chockalinga Chettiar and Others, . Such coparceners who are not bound by the transaction can ignore the transaction and can definitely assert their rights in an action brought against them. In similar fact situation, the same view was expressed in the decisions referred (13) and (14) supra by the Madras High Court. No doubt, on the question of limitation reliance also was placed on the decision of this Court referred (9) supra.

15. Yet another attempt was made by the learned counsel for the appellant raising a contention that the 1st defendant who was examined as DW-1 had attested Ex.A-1 and he was a major by that time and the only minor coparceners at the relevant time who became majors subsequently, aggrieved parties - defendants 2 and 3, had not chosen to come to witness box and assert their rights and adverse inference has to be drawn. Strong reliance had been placed on the decision of the Apex Court referred (7) supra in this regard. When the transaction is void transaction and it is a question of law, it is immaterial whether these parties entered the witness box and deposed or not and their rights are well protected as coparceners of the joint family. In the light of the peculiar facts, I have no hesitation in holding that Ex.A-1 gift deed, executed by Veeraswamy in favour of the plaintiff/appellant, to the total exclusion of the other coparceners in relation to the total property of the family, is definitely a void transaction and it is not binding on the other coparceners and the other coparceners are entitled to ignore the same and hence the appellate Court is well justified in reversing the Judgment of the trial Court. Further, the question of limitation and also the question of the other coparceners

questioning the validity of Ex.A-1 also will not arise in view of the opinion expressed by me above. Hence, viewed from any angle, the Second Appeal is devoid of merits and the same is dismissed. In view of the close relationship between the parties, this Court makes no order as to costs.