
Bade Sriramulu Vs Chedalavada Prabhakara Rao, Minor by Ch. Venkaiah and Others

Appeal No. 2237 of 1984

Court: Andhra Pradesh High Court

Date of Decision: Oct. 15, 1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 96#Hindu Minority and Guardianship Act, 1956
â€” Section 8#Hindu Succession Act, 1956 â€” Section 14(1), 14(2)

Citation: (1997) 2 ALT 30

Hon'ble Judges: P. Ramakrishnam Raju, J

Bench: Single Bench

Advocate: C. Poornaiah, for the Appellant; Nayini Krishna Murthy, for 1st Respondent, for the Respondent

Final Decision: Dismissed

Judgement

P. Ramakrishnam Raju, J.

This appeal is brought by the first defendant against the decree and judgment in O.S. No. 61 of 1976. The first

respondent being minor, represented by his maternal uncle Chunduri Venkaiah filed the suit for partition and separate possession of half share in

the plaint schedule property and also for declaration that he is entitled to recover possession of the other half after the life time of his mother, the

second defendant together with future profits.

2. One Chadalavada Venkata Ramanjaneyulu, a Medical Practitioner at Ongole purchased vacant site at Ongole in the year 1958 and 1961 and

constructed a terraced house thereon which is the plaint schedule property. He executed a settlement deed dated 28-5-1966 giving a half share in

the said house to his son the plaintiff with absolute rights and the other half to his wife, the second respondent for life and the vested remainder to

the plaintiff. Anjaneyulu died on 8-6-1968. The second respondent, his widow was managing the property of the minor plaintiff. After the death of

Anjaneyulu some of his creditors obtained decrees against his estate. As the Co-operative Building Society brought pressure upon the second

respondent, she sold the said property for a low price of Rs. 15,000/- while its value at that time was Rs. 50,000/-. As the second respondent

neglected the plaintiff, his maternal uncle took him under his care and protection. As the sale of the minor's property by the second respondent is

illegal, this suit is filed.

3. The plaintiff examined three witnesses and marked Exs. A-1 to A-3; while the respondent (defendant) Nos. 1 and 3 examined 8 witnesses

including themselves as D.Ws. 1 and 8 respectively, apart from marking Exs. B-1 to B-90. The trial Court decreed the suit in the following terms:-

In view of my foregoing findings, I hold that the plaintiff is entitled to claim partition and immediate possession of his half share in the suit property

and a declaration that he is entitled to recover possession of the other half share after the life time of the second defendant on condition of his

restoring to the first defendant the sale consideration of Rs. 15,000/- with interest at 6% per annum from the date of the suit till the date of

payment. On such payment being made, the first defendant shall put the plaintiff and the second defendant in possession of the suit property.

Hence the appeal by the first defendant.

4. Sri C. Poornaiah, the learned Advocate appearing for the appellant vehemently contended that the half share of the house gifted by late

Anjaneyulu to the second respondent gets enlarged u/s 14(1) of the Hindu Succession Act, 1956, and therefore, she becomes an absolute owner.

As such, the alienation made in respect of her half share cannot be questioned by the minor. He also further contended that the second respondent

being the natural guardian is entitled to alienate the minor's half share since it is a joint family property in the hands of the minor for legal necessities

or for the benefit of the estate.

5. Under Ex. A-1 settlement deed dated 28-5-1966 late Anjaneyulu gifted half of the plaint schedule property to the minor plaintiff with absolute

rights and the other half to his wife, the second defendant for enjoyment during her life time and vested remainder to the minor plaintiff absolutely. It

is stated that the said settlement deed was executed purely out of love and affection. Therefore in such circumstances, the first question for

consideration is whether the property in the hands of the widow would enlarge into a full estate, or she has a mere right to enjoy during her life time

as stipulated in the settlement deed.

6. Section 14 of the Hindu Succession Act, 1956 - hereinafter called "the Act" may be usefully extracted:

14 (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full

owner thereof and not as a limited owner.

Explanation:- In this sub-section ""property"" included both moveable and immovable property acquired by a female Hindu by inheritance or devise,

or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her

marriage, or by her own skill or exertion, or by purchase, or by prescription, or in any other manner whatsoever, and also any such property held

by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a

decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a

restricted estate in such property.

7. A reading of this section shows that the property which is in possession of a female Hindu whether acquired before or after the commencement

of this Act shall be enjoyed by her with absolute rights and not as a limited owner. Therefore, it is clear that the concept of limited estate was

sought to be abolished by introduction of this section. The words ""not as a limited owner"" employed in this section would clearly convey that a

female Hindu who would have been a limited owner under the old Hindu Law would become a full and absolute owner of the property by virtue of

Section 14(1). The words, ""whether acquired before or after the commencement of this Act,"" occurring in sub-section (1) of Section 14, would

further demonstrate that irrespective of the fact whether the property was acquired by a female Hindu before or after the commencement of the

Act, the property shall be held by her as full owner and not as limited owner. The explanation amplifies further that ""property"" includes both

movable and immovable acquired by any manner including gift or at partition or in lieu of maintenance etc., However, sub-section (2) of Section

14 carves an exception to the general rule of enlarging into full ownership. Exceptions as specified therein are the restrictions on enjoyment when

the property was acquired by way of a gift, will or other instrument, decree or order of a Civil Court or under an award. Therefore, merely being a

female Hindu or being in possession of property is not enough to attract the application of Section 14(1) of the Act, but what is essential is that the

female Hindu should be a limited owner when she acquired the said property. This view of mine gets support from the decision in Bai Vija v.

Thakorbhai Chelabhai, wherein it is held that for applicability of sub-section (1) two conditions must co-exist, namely, (i) the concerned female

Hindu must be possessed of property; and (ii) such property must be possessed by her as a limited owner. The same view is reiterated in

Kalawatibai Vs. Soiryabai and others, wherein it is observed as follows:

On a plain reading of the section, and its interpretation by this Court in various decisions, a female Hindu possessed of the property on the date

the Act came into force could become absolute owner only if she was a limited owner.

In the light of the above discussion, we have to see whether the second respondent is a limited owner in whose hands the half share gifted to her by

her husband would get enlarged. The second respondent was living with her husband at the time of execution of Ex.A-1. The gift of the property,

on a plain reading of the settlement deed shows that it was made out of love and affection towards his wife and son. No pre-existing right

whatsoever can be culled out from the said settlement deed, nor was it existing at that time.

8. Sri C. Poornaiah, the learned Advocate appearing for the appellant cited the following decisions:

(2) Kalawatibai v. Soiryabai (2 supra)

(3) Maharaja Pillai Lakshmi Ammal Vs. Maharaja Pillai Thillanayakom Pillai and Another,

(4) Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, . ;

These are the cases where a female Hindu was put in possession of the property either towards maintenance or under a compromise decree or in

lieu of some pre-existing right. Therefore, these decisions in my view cannot help the appellant. The restrictions imposed in the settlement deed

have to be given effect to, and if the interpretation placed by the appellant is accepted it amounts to ignoring Section 14(2) in its entirety which is

impermissible. Accordingly, I hold that this case is squarely governed by Section 14(2) and not Section 14(2). Hence the half share held by the

second respondent does not enlarge into a full or absolute estate, but the second respondent takes the , property under the terms of the settlement

deed (Ex.A-1) and enjoy the same during her life time without the power of alienation.

9. The next question that remains to be considered is whether the second respondent can alienate the minor's property without the permission of

the District Court.

10. Sri C. Poornaiah, the learned Advocate for the appellant submits that in view of the over-whelming evidence adduced in this case that the

property was alienated for discharging antecedent debts contracted by late Anjaneyulu, the second respondent who is the natural guardian of the

minor plaintiff is empowered to alienate the same.

11. Section 8, of the Hindu Minority and Guardianship Act, 1956 deals with the power of the natural guardian which is extracted hereunder :

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this Section, to do all acts which are necessary or reasonable

and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate ; the guardian can in no case bind the minor

by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court,

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the Immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years, or for a term extending more than one year beyond the date on which the minor

will attain majority.

(3) Any disposal of Immovable property by a natural guardian, in contravention of Sub-section (1) or sub-section (2), is voidable at the instance of

the minor or any person claiming under him.

(4)

(5)

(6)

Under sub-section (2) of Section 8, the previous permission of the Court is mandatory before any disposal of Immovable property of the minor by

the natural guardian and under sub-section (3), the said alienation is voidable at the instance of the minor.

12. It is admitted that late Anjaneyulu was a Medical Practitioner. He purchased the site and constructed the double storied building at Ongole. It

was his self-acquired property. While so, he conveyed the same under a registered settlement deed (Ex.A-1) during his life time. At the time of

execution of the settlement deed though the minor plaintiff and his father late Anjaneyulu constitute a joint Hindu family, they had no joint family

property. What was conveyed by late Anjaneyulu was his self-acquired property. Under those circumstances, we have to examine the nature of

the property in the hands of the minor son represented by his mother as guardian. The concept of Hindu joint family is wider in connotation than the

term Hindu coparcenary, in the sense there maybe female members in Hindu joint family, but not in Hindu coparcenary. But in usage both the

terms, joint family property and coparcenary property are used synonymously as the same concept, with the result there are only two classes of

property, namely joint family property and separate property. What is contended by the learned Advocate for the appellant is that the self-

acquired property as gifted by late Anjaneyulu would partake the character of joint family property in the hands of minor plaintiff and his mother,

the second respondent. If this is acceptable, the learned Advocate for the appellant develops his argument further and submits that u/s 12 of this

Act, no guardian shall be appointed in respect of the undivided interest in joint family property when the property is under the management of an

adult member of the family. The learned Advocate would be justified in placing reliance on Section 12 of this Act in support of his contention that

Section 12 is an embargo for appointment of a guardian and as such, the second respondent cannot approach the Court for appointment of a

guardian for the minor's property. He relied on the decision of the Supreme Court in Sri Narayan Bal and Ors. v. Sri Sridhar Sutar and Ors.,

1996 (1) Supreme 638 wherein the Supreme Court held as follows:

u/s 8 a natural guardian of the property of the Hindu minor, before he disposes of any Immovable property of the minor, must seek permission of

the Court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6

and 12 of the Act, the previous permission of the Court u/s 8 for disposing of the undivided interest of the minor in the joint family property is not

required.

Therefore, the vital question is whether the property alienated by the second respondent as guardian of the minor plaintiff is the joint family

property or the self-acquired property of the minor. A Division Bench of this Court in W.T. Commissioner, A.P. v. Mukundgiriji, 1983 Taxation

Law Reports 1370 in a similar case held as follows:

The properties which devolved upon the assessee on his father's death are assessable in the status of "individual" and not in the status of "Hindu

undivided family" comprising of the assessee and his son or sons, as the case may be.

The said view was upheld by the Supreme Court in Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, . In P. Rajulu

Goud and others Vs. P. Jeevan Kumar and others, a learned Judge of this Court observed that the mere fact that the house was built by one

member of the joint family on joint family land cannot be regarded as sufficient by itself to show that he intended to waive his right in the said house

as his separate property if he built the house with his separate funds. The learned Judge further held that when the site was purchased with self-

acquired funds of a member of the family the house having been built with the joint family funds, the same principle would apply and the character

of the land as separate property cannot be erased. A Division Bench of the Madras High Court in Dhanasekaran v. Manoranjithammal, AIR 1992

Madras 219 considered similar question where the sale was effected by the mother of a minor plaintiff. In that case the property was the joint

family property of one R. Padayachi, his son the plaintiff and his wife, the first defendant. R. Padayachi died in the year 1960 leaving behind him his

widow, the first defendant and his son, the plaintiff. The minor plaintiff would be entitled to half share on notional partition on the date of death of

R. Padayachi and that in the half share of R. Padayachi, both the plaintiff and the first defendant would be entitled to equal shares. Therefore, in all

the plaintiff would get 3/4th share and the first defendant would get the remaining 1/4th share. While so, the first defendant alienated the property

including the 3/4th share of the minor as his defacto-guardian for legal necessities. The Division Bench of the Madras High Court held that the half

share which came to the plaintiff on the notional partition between himself and his father immediately before the death of his father by survivorship

as well as the 1/4th share which was inherited by him from his father on his death out of the remaining 1/4th (sic. 1/2) share which was got by his

father pursuant to the aforesaid notional partition, are not the joint family properties, but are the separate properties of the minor plaintiff. In a

recent case reported in Kallathil Sreedharan and Another Vs. Komath Pandyala Prasanna and Another, the Supreme Court observed that the

mandatory requirement of sanction from the Court for alienating the property of the minor as required u/s 8 of the Hindu Minority & Guardianship

Act, 1956 has not been obtained by the mother of the minor, and therefore, the sale to the extent of half share of the minor in the joint property of

the mother and her minor son does not bind the minor, and accordingly declined to grant a decree for specific performance under the said

agreement. Therefore, from the above discussion, it is clear that the property got by the minor plaintiff in the present case is his self-acquired

property and as such, sanction of the Court before alienating the same by the natural guardian is a must; inasmuch as the same was not obtained by

the second respondent, the sale under Ex.A-2 dated 29-9-1969 is voidable and the plaintiff is entitled to avoid the said sale.

13. When the sale is voidable and not void what is the proper decree to be passed is the next question. In Janardhanan Pillai Appukuttan Nair and

Others Vs. Bhagavathykutty Amma Radhamma, Justice T. Kochu Thommen, J. as he then was observed that the sale is invalid and it does not

mean that the plaintiff can keep the property and the money received under the sale deed as he would not be entitled to double enrichment and

equity demands that the consideration received by or on behalf of the plaintiff must be repaid. The lower Court also following the said judgment

granted decree for repayment in favour of the appellant. I have no hesitation in agreeing with the principle enunciated in the decision cited supra.

14. In the view I have taken that the minor's property which was alienated by his mother as guardian is the self-acquired property of the minor

plaintiff, it is unnecessary for me to go into the evidence let in by the appellant that the sale consideration went towards the discharge of antecedent

debts of late Anjaneyulu. However, if a finding is necessary on this issue, I have no hesitation in agreeing with the lower Court in view of the

overwhelming evidence that out of the sale consideration of Rs. 15,000/- most of it went in discharge of debts. I may also observe that there is no

obligation on the part of the alienee to see that each pie of the consideration went towards the discharge of antecedent debt only, Authority is

found for this proposition in State of Maharashtra v. Mahboob S. Allibhoy 1996 (2) ALT 316 : AIR 1996 SCW 2572 enough if the vendee

shows that he made genuine enquiries and satisfied himself regarding the pressure for sale of the land.

15. In view of the foregoing discussion, there are no merits in this appeal and it is accordingly dismissed, but in the circumstances without costs.