(2011) 10 AP CK 0017

Andhra Pradesh High Court

Case No: S.A. No''s. 580 of 1998 and 280 of 1999

Doppalapudi Venkata Subbamma and Another		APPELLANT
	Vs	
Doppalapudi Ramaiah and Another Doppalapudi Ramanaiah and Another Vs Doppalapudi Adiseshamma		RESPONDENT

Date of Decision: Oct. 21, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2012) 3 ALD 35 : (2012) 3 ALT 27

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: Subba Rao Korrapati, for the Appellant; N. Subba Rao, for the Respondent

Final Decision: Allowed

Judgement

R. Kantha Rao, J.

S.A. No. 580 of 1998 is filed by the plaintiffs against the decree and judgment dated 18.03.1998 passed by the Senior Civil Judge, Parchoor in A.S. No. 20 of 1997 reversing the decree and judgment dated 26.02.1997 passed by the Principal District Munsiff, Parchur in O.S. No. 113 of 1994.

2. Whereas, S.A. No. 280 of 1999 is filed by the defendants against the decree and judgment dated 18.03.1998 passed by the Senior Civil Judge, Parchur in A.S. No. 21 of 1997 confirming the decree and judgment dated 26.02.1997 passed by the Principal District Munsiff, Parchur in O.S. No. 112 of 1994.

3. Since these two second appeals are between the same parties and common substantial questions of law would arise for consideration, both the appeals are being disposed of by the following common judgment.

4. In the first place, I would like to briefly refer to the back ground facts giving rise to the filing of these second appeals.

5. For the sake of convenience, the parties will be referred as ''the plaintiffs and the defendants'' i.e. as they were arrayed in the respective suits.

6. The subject matter of dispute in S.A. No. 580 of 1998 is two items of landed property. Item No. 1 is an extent of Ac. 3.08 cents of dry land D. No. 160/6, Parchur S.R.O. Devarapalli Village, whereas, item No. 2 is an extent of Ac. 01.11 cents out of Ac. 3.61 cents dry land of D. No. 29/1, Parchur S.R.O. Devarapalli Village.

7. Peddi Audiseshamma, plaintiff No. 2 in O.S. No. 113 of 1994 is the mother of Doppalapudi Ramanaiah, who is the first defendant in the suit. Doppalapudi Venkayamma, second defendant is the wife of the first defendant. Peddi Audiseshamma, plaintiff in O.S. No. 112 of 1994 and the second plaintiff in O.S. No. 113 of 1994 is the sister of the first defendant.

8. It is pleaded by the plaintiffs in O.S. No. 113 of 1994 that item Nos. 1 and 2 of the suit schedule properties in O.S. No. 113 of 1994 were gifted to them under two registered gift deeds dated 22.02.1994 by Venkateshwarlu, who is the husband of the first plaintiff and father of the second plaintiff and first defendant in O.S. No. 113 of 1994 and they were put in possession of the said properties under the gift deeds. Late Venkateshwarlu gave life interest to his wife and the vested reminder to the daughter and the plaintiffs stating that the gifts were acted upon. They asserted that the revenue records also reveal the possession of the plaintiffs in respect of the item Nos. 1 and 2 of the plaint schedule properties. According to them, the defendants developed grudge against them for late Venkateshwarlu settling items 1 and 2 in favour of the plaintiffs and when they were hurling threats to dispossess the plaintiffs from the plaint schedule properties, they were constrained to file the suit seeking the relief of permanent injunction. According to the plaintiffs, items 1 and 2 of the plaint schedule properties are the self-acquired properties of late Venkateshwarlu, in which the defendants have no right.

9. On the other hand, the defendants contended before the learned trial Court that the plaint schedule properties are the joint family properties relating to late Venkateshwarlu, the first defendant and his brother late Nageshwar Rao, who is no more. Late Venkateshwarlu has no right to alienate the schedule mentioned properties by executing gift deeds in favour of the plaintiffs.

10. The defendants further contended that late Venkateshwarlu was acting as Kartha of the joint family and was managing the joint family properties. Originally item No. 1 of the plaint schedule properties belongs to their joint family and was gifted to one Katta Tulasamma, the sister of late Venkateshwarlu on 22.04.1940 under a registered gift deed by late Doppalapudi Ramanaiah. Doppalapudi Venkateshwarlu is the father of Doppalapudi Ramanaiah. Tulsamma died prior to filing of the suit. She being issueless and as per the terms of the gift deed, item No.

1 of the plaint schedule property which was gifted to Tulsamma devolved upon Doppalapudi Venkateshwarlu and his heirs (first defendant and his brother, who are the sons of Venkateshwarlu). According to the defendants, late Venkateshwarlu has no right to alienate item No. 1 in favour of his wife without the consent of the other coparceners.

11. The defendants further contended that item No. 2 of the plaint schedule property was also one of the joint family properties purchased by Doppalapudi Ramanaiah and his daughter Kambampati Rangamma under a registered sale deed on 12.11.1926. K. Rangamma pre-deceased her father Ramanaiah without leaving any of her heirs and as such, Venkateshwarlu and Ramanaiah being the father and grand father of the first defendant respectively inherited the share of deceased Rangamma. After the death of Ramanaiah, item No. 2 of the plaint schedule properties again became the joint family property consisting of late Venkateshwarlu, the first defendant and his brother Nageshwar Rao. According to the defendants, since item No. 2 is also one of the joint family properties, late Venkateshwarlu has no right to execute the registered gift deed in respect of the item No. 2 in favour of the second plaintiff.

12. Nextly, it is contended that late Venkateshwarlu, the first defendant and other members of the joint family effected partition of the properties excluding the schedule properties of late Venkateshwarlu representing to the other members that if the said properties were also included in the partition deeds, they had to pay heavy stamp duty. It was alleged by the defendants that after knowing about the gift deed executed by late Venkateshwarlu in respect of the item Nos. 1 and 2 of the plaint schedule property in favour of plaintiffs 1 and 2, the fist defendant got issued a registered notice to the plaintiffs stating therein that late Venkateshwarlu has no right to execute the gift deeds in favour of the plaintiffs 1 and 2. It was also contended by the defendants that they are in possession and enjoyment of the plaint schedule properties and therefore, the plaintiffs are not entitled for decree of permanent injunction.

13. It is pleaded by the plaintiff in O.S. No. 112 of 1994, who is the daughter of late Venkateshwarlu that the plaint schedule property in O.S. No. 112 of 1994 was gifted by her father Venkateshwarlu at the time of her marriage that took place about 15 years back as ''pasupukunkuma'' and subsequently, late Venkateshwarlu executed a registered gift deed in her favour on 24.06.1993 and she has been in possession and enjoyment of the said property, ever since it was given to her by her father towards pasupukunkuma at the time of her marriage. She also pleaded that the revenue records also reveal that she is in possession and enjoyment of the plaint schedule property. She stated in the plaint that when the defendants tried to dispossess her from the plaint schedule property by force, she was constrained to file the suit for permanent injunction. In the suit, the defendants contended that the schedule property belongs to joint family consisting of late Venkateshwarlu, first defendant

and his brother Nageshwara Rao, Late Venkateshwarlu, father of the first defendant was the Kartha of the undivided Hindu Joint Family and he was managing the properties, the plaint schedule property being part of the ancestral properties belonging to the Hindu Joint family, late Venkateshwarlu alone cannot gift the same to the plaintiff, who is his daughter without the consent of the other coparceners. It was further contended by the defendants that originally the plaint schedule property was purchased by Kambampati Rangamma and father of Doppalapudi Ramanaiah, who is the grandfather of the first defendant for consideration of Rs. 500/- under a registered sale deed dated 12.11.1926. Rangamma pre-deceased her father and as she was issueless, after the death of Rangamma, the plaint schedule property was succeeded by Doppalapudi Ramanaiah, who is the grandfather of the first defendant and after the death of Rmanaiah, it became ancestral property of the joint family.

14. Nextly, it was contended that the members of the joint family partitioned the joint family properties under partition deed dated 03.03.1994 and therefore, late Venkateshwarlu has no right to alienate the plaint schedule property in favour of the plaintiff under gift deed. According to the defendants, they are in fact, in possession and enjoyment of the plaint schedule property and thus the plaintiff is not entitled for the relief of permanent injunction.

15. In the Second Appeal No. 580 of 1998, the following substantial questions of law have been formulated for consideration:

1) Whether late Venkateshwarlu got item No. 1 of the plaint schedule property as heir to late Tulsamma, can it be said to be the joint family property of late Venkateshwarlu and his sons?

2) Whether Ramanaiah got item No. 2 of the plaint schedule properties as heir to his daughter Rangamma and when late Venkateshwarlu inherited it as heir to his father, can it be said to be the joint family property of late Venkateshwarlu and his sons.

3) Whether the appellate Court is justified in holding that the properties gifted to Tulsamma under Ex. B.1 and the property purchased by Rangamma under Ex. B.2 reverted back to the joint family of the defendants.

4) When the first plaintiff, being the wife, is entitled to be maintained by the joint family and when the 2nd plaintiff, being daughter, is entitled to be provided with some land towards ''pasupukumkuma'', can the gift of the suit lands by the father-manager of the joint family assuming that there was no partition by the date of Exs. A1 and A2 conveying life estate to first plaintiff and vested remainder to second plaintiff be said to be invalid?

5) Whether the findings of the first appellate Court are vitiated by non-application of mind to and non-consideration of the crucial aspects of the case are liable to be

interfered with on the ground that they are perverse and not based on evidence.

16. The learned first appellate Court referring to Ex. A.1 and A2-gift deeds dated 22.02.1994 executed in favour of the plaintiffs 1 and 2 respectively held that the evidence of PWs.2 to 4, who are the attestors and scribe of Exs. A.1 and A.2, the plaintiffs could be able to establish that late Venkateshwarlu executed the said gift deeds in their favour. Even the defendants are not denying the execution of the said gift deeds by the said Venkateshwarlu, they only contend that gift deeds executed by late Venkateshwarlu are not valid, he has no power or authority to execute the said gift deeds without the consent of the other coparceners of the joint family i.e. the first defendant and his brother late Nageshwar Rao. Ex. A.3-partition deed dated 03.03.1994 does not contain the properties covered by Exs. A.1 and A.2 gift deeds. The version of the defendants is that late Venkateshwarlu at the time of execution of Ex. A.3-partition deed said that if the said properties were included in the partition deed, they would have to pay huge amount of stamp duty and therefore, at his instance, the said properties were omitted from the partition deed. The theory put-forth by the defendants is quite unconvincing. From Ex. A.3 partition deed it is obvious that the said properties were not joint family properties and therefore, they were not included in Ex. A.3-partition deed dated 03.03.1994.

17. The first defendant, who was examined as DW1 stated in his deposition in categorical terms that the properties covered by Ex. B.3-partition deed are worth Rs. 1,99,699/- and that late Venkateshwarlu was given only Rs. 5,500/- towards his share. As rightly contended by the plaintiffs, apparently a very low amount was given to late Venkateshwarlu because he retained the plaint schedule properties for himself without giving any share to the first defendant or his brother. Ex. B.3-partition deed also reveals that late Venkateshwarlu was the manager of the joint family properties till prior to the date of partition deed dated 03.03.1994. Thereafter, it appears that the disputes arose between the parties and the properties were divided under the partition deed dated 03.03.1994. DW1 also further deposed before the learned trial Court that all the particulars furnished in Ex. A.3 partition deed are agreed and Ex. B.3 was executed with free consent of all parties to the said deed. DW.1 also admitted in his deposition that his father sold 0.35 cents in Devarapalli Village to Sanepalli Venkateshwarlu under a sale deed dated 01.10.1992 and he attested the sale deed and the boundaries mentioned in the sale deed are correct. It is crucial to notice that in the sale deed the first defendant and his brother are shown as the owners of the land on northern side. This also clearly indicates that late Venkteshwarlu was dealing with the plaint schedule properties in his own name as owner of the property and some other properties and no objection was taken either by the first defendant or his brother Nageshwara Rao about the sale of the properties which were considered to be the exclusive properties of late Venkateshwarlu. The lands which were mentioned in the northern boundary to the schedule land of the above said sale deed is nothing but the lands fell to the share of the first defendant and his brother under the partition.

Therefore, it seems that as contended by the plaintiff that two and half years prior to Ex. B.3-partition deed, there was a oral partition among the joint family properties and subsequently, it was reduced to writing under Ex. B.3-partition deed dated 03.03.1994. DW.1 admitted in his evidence before the learned trial Court that the plaint schedule properties were in possession of late Venkateshwarlu till his death. From the evidence of DW.1, therefore, it is obvious that he was not in possession of the paint schedule properties. Further exclusion of the plaint schedule properties from Ex. B.3-partition deed also shows that the joint family has no title or possession in respect of the plaint schedule properties by the date of Ex. B.3-partition deed. DW1 was not specific in his evidence as to whether the plaintiffs were given possession under Exs. A1 and A2-Gift deeds. He deposed before the trial Court that he does not know as to whether the possession of the suit lands was delivered to the plaintiffs under Exs. A.1 and A2. DW.2 another witness examined on behalf of the defendants also stated that during his life time late Venkateshwarlu was in possession and enjoyment of the plaint schedule lands. The certificate issued by the Village Administrative Officer which is marked as Ex. A.6 shows that the plaintiffs are in possession of the suit lands. Another important aspect relevant for considering the possession of the plaintiffs in respect of the plaint schedule properties is that Exs. A.1 and A2 were executed in favour of the plaintiffs on 22.02.1994. The suit was filed on 18.07.1994, i.e. within a period of five months after execution of Exs. A.1 and A.2. The entire evidence on record clearly reveals that till his death, late Venkateshwarlu was in possession and enjoyment of the suit properties. This circumstances clearly indicate that till the date of execution of Ex. B.3-partition deed, late Venkateshwarlu was in possession and enjoyment of the plaint schedule properties and subsequent to him, the plaintiffs who were put in possession under Exs. A.1 and A2 gift deeds dated 22.02.1994 have been continuing in possession of the said properties and they have been in possession of the properties on the date of filing of the suit.

18. The contention of the plaintiffs is that being the wife, the first plaintiff is entitled to be maintained from out of the joint family properties, the second plaintiff being the daughter of late Venkateshwarlu, is entitled to get some land towards ''pasupukumkuma'' at the time of marriage and therefore, even if the property is considered to be joint family property, the gift deeds executed by late Venkateshwarlu in favour of the plaintiffs 1 an 2 are valid and binding on the defendants. In this context, it is relevant to refer to the following judgments.

19. In Singilidevi Veera Venkata Ananthalakshmi and Another Vs. Bhamidipati Seetharamayya (died) and Another, the Supreme Court laid down as follows:

A father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage.

It is for the other heirs to prove that the gift is excessive and not within reasonable limits.

In Ammathayee Ammal and Another Vs. Kumaresan and Others, wherein the Supreme Court held as follows:

So far as moveable ancestral property is concerned, a gift out of affection may be made to a wife to a daughter and even to a son, provided the gift is within reasonable limits A gift, for example, of the whole or almost the whole of the ancestral moveable property cannot be upheld as a gift through affection as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of moveable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immoveable property within reasonable limits for "pious purposes". What is generally understood by "pious purposes" is gift for charitable and or religious purposes. It also includes cases where a Hindu father makes a gift within reasonable limits of immoveable ancestral property to his daughter in fulfillment of an antenuptial promise made on the occasion of the settlement of the terms of her marriage and the same can also be done by the mother in case the father is dead.

20. Legal position is clear on the subject that so long as the gift made in favour of the first plaintiff i.e. wife of late Venkateshwarlu if the property is considered to be the joint family property, he cannot make any such gift without the consent of the other coparceners. But, insofar as gift made by late Venkteshwarlu in favour of the second plaintiff, who is the daughter, the said gift being for small extent of property and being in reasonable limits can be said to be valid even if the property gifted under the gift deed is considered to be the joint family property.

21. However, in this case, the crucial point to be determined is whether the plaint schedule properties are the joint family properties of ate Venkateshwarlu, his son, first defendant and another son late Nageshwara Rao. Originally item No. 1 of the plaint schedule property was gifted out of the joint family property to one Katta Tulasamma, who was sister of late Venkateshwarlu. It was gifted on 22.04.1940 under a registered gift deed by Venkateshwarlu and his father Ramanaiah. Tulasamma died issuless without leaving any of her heirs. Therefore, on her death, the property was inherited by Venkateshwarlu and his father, Ramanaiah. Subsequent to the death of Ramanaiah, the property was inherited by Venkateshwarlu and therefore, the property cannot be said to be the joint family property of late Venkateshwarlu and his sons.

22. Similarly, item No. 2 of the plaint schedule property was purchased by Ramanaiah and his daughter Katta Rangamma under a registered sale deed dated 12.11.1926-Ex. B.2. It is therefore, their self-acquired property. Rangamma pre-deceased her father Ramanaiah without leaving any of her heirs and thereafter, Venkateshwarlu and Ramanaiah being the father and son inherited the said

property from Rangamma. Therefore, this property also cannot be said to be the joint family property of late Venkateshwarlu which was vested in Venkateshwarlu by inheritance exclusively after the death of his father. Therefore, late Venkateshwarlu had a power and authority to execute Exs. A.1 and A2 sale deeds in favour of the plaintiffs 1 and 2 and the said gifts made by late Venkateshwarlu are perfectly valid and it is not open for the defendants to contend that the said gifts were made out of the joint family properties. Further, as I have already stated that the said properties in view of their non-exclusion in Ex. B.3-partition deed and the other circumstances referred above were never treated as joint family properties and were treated by all the joint family members as the exclusive properties of late Venkateshwarlu. Insofar as the possession in respect of the plaint schedule properties is concerned, the evidence on record clearly shows that under Exs. A.1 and A2-gift deeds the plaintiffs were put in possession of the property and they are enjoying the same. From the evidence of DW.1 itself he is not in possession of the said properties.

23. The suit in respect of the plaint schedule properties is for simple injunction, the plaintiffs, who are found to be in possession of the plaint schedule properties, are entitled for the relief of permanent injunction and the findings recorded by both the Courts below are contrary to the evidence on record and also against the well settled legal principles. The said findings are therefore, liable to be set aside in this second appeal.

24. In so far as S.A. No. 280 of 1999 is concerned, the defendants are the appellants. The plaintiff therein, who is the daughter of late Venkateshwarlu instituted the suit seeking relief of permanent injunction. Her contention is that her father gifted the plaint schedule property which is the subject matter of O.S. No. 112 of 1994 about 15 years prior to the filing of the suit at the time of her marriage. Her version is that subsequently late Venkateshwarlu executed a registered gift deed in her favour in respect of the plaint schedule properties on 24.06.1993 and she was put in possession of the property under the said gift deed. According to her, she has been in continuous possession and enjoyment of the property ever since it was gifted to her by her father as ''pasupukumkuma'' at the time of her marriage.

25. The plaint schedule property in this case also was not included in the partition deed dated 03.03.1994 which fact clearly reveals that the property is not the joint family property and is the exclusive property of late Venkateshwarlu. The contention of the defendants is that late Venkateshwarlu is not competent to execute Ex. A.1-gift deed dated 24.06.1993 in respect of the plaint schedule property in favour of the plaintiff without the consent of the other members of the coparcenery. But, this property was originally purchased by Ramanaiah and his daughter Rangamma under a registered sale deed dated 12.11.1926-Ex. B.2. Rangamma pre-deceased her father Ramanaiah without leaving any issues. After the death of Rangamma, the property was inherited by Ramanaiah and after his death, it was inherited by late Venkateshwarlu. Therefore, the property cannot be said to be the joint family

property of late Venkateshwarlu. Ex. B.1-partition deed dated 03.03.1994 was executed between the joint family members excluding the suit properties. The recital in Ex. B.1-partition deed dated 03.03.1994 that late Venkateshwarlu was only given a cash of Rs. 5,500/- clearly indicates that as he was in possession of the plaint schedule property and some other property which was not mentioned in Ex. B.1 he was given a small amount of Rs. 5,500/-.

26. Even otherwise, the plaintiff in the present case is no other than the daughter of late Venkateshwarlu. As already noticed hereinbefore, legal position is very clear that Manager of Hindu Joint Family can make a gift in favour of his daughter from the immoveable property of the joint family and the said gift cannot be challenged if it is within reasonable limits. In the instant case, only a small extent of land was gifted to the plaintiff and the defendants on whom the burden lies that the gift is not within reasonable limits, did not raise any contention that the gift is unreasonable. Therefore, even if it is considered that the plaint schedule property is part of the joint family property, the gift in favour of the plaintiffs by her father Venkateshwarlu is perfectly valid being within reasonable limits and it is not open for the defendants to contend that Venkateshwarlu is not entitled to make the gift of plaint schedule property in favour of the plaintiff without the consent of the other coparceners of the joint family.

27. After thoroughly examining the evidence on record, both the Courts below have concurrently held that the plaintiff has been in possession and enjoyment of the plaint schedule property ever since it was gifted to her by her father at the time of her marriage which took place 15 years prior to the institution of the suit towards ''pasupukumkuma'' and the findings on this aspect recorded by both the Courts below being based on oral and documentary evidence and since it relates to a question of fact, cannot be interfered with in this appeal. The finding of both the Courts below as to the possession of the plaintiff in respect of the plaint schedule property is based on evidence and reasoning and they cannot be said to be perverse. Therefore, this Court while dealing with the Second Appeal u/s 100 CPC will not interfere with the findings of fact recorded by the Courts below and insofar as the findings of law are concerned, they having been rightly recorded by both the Courts below require no interference.

28. For the foregoing reasons the decree and judgment dated 18.03.1998 passed by the Senior Civil Judge, Parchur in A.S. No. 20 of 1997 confirming the decree and judgment dated 26.02.1997 passed by the Principal District Munsif, Parchur in O.S. No. 113 of 1994 is set aside and the suit filed by the plaintiffs for permanent injunction is decreed as prayed for.

29. The decree and judgment dated 18.03.1998 passed by the Senior Civil Judge, Parchur in A.S. No. 21 of 1997 confirming the decree and judgment dated 26.02.1997 passed by the Principal District Munsiff, Parchur in O.S. No. 112 of 1994 is confirmed.

30. Accordingly, S.A. No. 580 of 1998 is allowed and S.A. No. 280 of 1999 is dismissed. There shall be no order as to costs.