Kosaraju Lakshmi Tulasi and Another Vs Kosaraju Ramachandra Rao and Others

Court: Andhra Pradesh High Court

Date of Decision: Sept. 29, 2006

Citation: (2007) 2 ALD 338

Hon'ble Judges: P. Swaroop Reddy, J

Bench: Single Bench

Advocate: M.V. Durga Prasad, for the Appellant; K. Venkata Ranga Das, in AS No. 1552 of 1992, for the Respondent

Final Decision: Allowed

Judgement

P. Swaroop Reddy, J.
These two appeals are filed by the appellants-plaintiffs, Kosaraju Lakshmi Tulasi and Kosaraju Karuna, against the

common judgment dated 10-9-1991 in O.S. Nos.223 of 1988 and 1 of 1991 passed by the learned Subordinate Judge, Gudivada.

2. In fact three suits (1) O.S. Nos.223 of 1988, (2) 1 of 1991 and (3) 2 of 1991, as they finally stood numbered were disposed of by a common

judgment dated 10-9-1991 by the learned Subordinate Judge, Gudiwada.

3. O.S. No. 223 of 1988 was filed by plaintiffs, Kosaraju Lakshmi Tulasi and Kosaraju Karuna, against their father Kosaraju Ranga itoo-

Defendant No. 2 and senior paternal uncle, Kosaraju Ramachandra i?ao-Defendant No. 1. Subsequently Potluri Venkata Krishna Rao was

impleaded as Defendant No. 3 since he was claimed to be agreement of sale holder from Defendant No. 2 for the property in dispute. The suit is

filed for declaration that they are absolute owners of Plaint-A schedule property, recovery of possession and profits at the rate of Rs. 500/- per

month.

4. O.S. No. 1 of 1991 was also filed by the same plaintiffs against the same defendant as in O.S. No. 223 of 1988 but their grandfather Kosaraju

Seethaiah was added as Defendant No. 1. This suit is filed for declaration of their title in respect of the suit schedule property.

5. The third suit O.S. No. 2 of 1991 was filed for specific performance by Potluri Venkata Krishna Rao who is Defendant No. 3 in O.S. No. 223

of 1988 and Defendant No. 4 in O.S. No. 1 of 1991 claiming that father of plaintiffs Kosaraju Ranga Rao-Defendant No. 1, who is also

Defendant No. 2 in O.S. No. 223 of 1988 and O.S. No. 1 of 1991, has executed Ex. B-2 agreement of sale dated 4-6-1978 in his favour and

received the entire sale consideration of Rs. 14,000/- and failed to execute sale deed. In this suit Defendant Nos. 1 and 2 in O.S. No. 223 of

1988 are arrayed as Defendant Nos.2 and 1 and the plaintiffs in the above suit are subsequently impleaded as Defendant Nos.3 and 4.

6. Without going into details of all the pleadings in all the suits, it is sufficient to refer to the details with regard to main controversies covering all the

suits, which are as follows:

7. The parties herein are being referred as they were arrayed in O.S. No. 1 of 1991 as only in this suit all the parties are on record.

8. The plaintiffs are the daughters of Defendant No. 2. Defendant No. 1, who is no more, is father of Defendant No. 2. Defendant No. 3 is elder

brother of Defendant No. 2. Defendant No. 4 was said to be a person in whose favour Defendant No. 2 executed an agreement of sale. The

disputed property is a house situated at Gudlavalleru. Defendant No. 1 and his sons have partitioned their properties, thereafter Defendant Nos. 1

and 2 were living jointly. During that period, Defendant No. 1 executed Ex. A-2 registered settlement deed dated 15-2-1969 in favour of

Defendant No. 2 in respect of the plaint schedule property by retaining life estate in himself and his wife. Defendant No. 2 in turn executed Ex. A-3

gift deed dated 15-6-1978 in favour of the plaintiffs. Thereafter, Defendant No. 1 cancelled Ex. A-2 gift deed dated 15-2-1969 executed in

favour of Defendant No. 2 by executing Ex. A-5 registered revocation deed dated 24-3-1981 after giving a notice under Ex. B-14 for which Ex.

B-1 reply was issued by Defendant No. 2. Subsequently Defendant No. 1 sold away the property under Ex. A-6 dated 9-4-1981 to Defendant

No. 3. Defendant No. 4 claimed that Defendant No. 2 executed Ex. B-2 agreement of sale on 4-6-1978.

9. Learned Subordinate Judge framed the following issues in O.S. No. 223 of 1988:

(1) Whether the gift deed dated 15-6-1978 is true and valid?

(2) Whether the settlement deed dated 12-5-1969 is a conditional one?

(3) Whether the revocation deed dated 25-3-1981 is true, valid and binding on the plaintiffs?

(4) Whether the sale deed dated 9-4-1981 is true, valid and binding on the plaintiffs? (Deleted)

(5) Whether P.V. Krishna Rao is a necessary party to the suit?

(6) Whether the plaintiffs are absolute owners of "A" schedule property?

(7) Whether the plaintiffs are entitled for possession of "A" schedule property?

(8) Whether the plaintiffs are entitled for future mesne profits"?

(9) To what relief?

9(i). The following issues in O.S. No. 1 of 1991:

(1) Whether the settlement deed dated 12-5-1969 executed by the 1st defendant in favour of 2nd defendant conveying vested remainder and

reserving life interest in the plaint schedule properties was burdened with the condition that the 2nd defendant should maintain the 1st defendant

and his wife?

(2) Whether the 2nd defendant had no right to execute the gift deed dated 15-6-1978 conveying vested remainder in the plaint schedule properties

to the plaintiffs?

(3) Whether the revocation deed dated 25-3-1981 executed by the 1st defendant is valid?

(4) Whether the sale deed dated 94-1981 was executed by the 1st defendant in order to defeat the rights of the plaintiffs?

(5) Whether the 3rd defendant has no better right than the life interest of the 1st defendant?

(6) Whether the plaintiffs are entitled to the declaration prayed for?

(7) To what relief?

9(ii) the following issues and additional issues in O.S. No. 2 of 1991:

(1) Whether the suit agreement dated 4-6-1978 alleged to have been executed by the defendant is true?

(2) Whether the plaintiff paid Rs. 13,225/-, Rs. 750/- and Rs. 25/- on 4-6-1978, 24-9-1975 and 29-9-1978 respectively to the defendant

towards sale consideration?

(3) Whether the plaintiff was always ready and willing to perform his part of the contract?

(4) If the suit agreement is true? Whether the defendant failed to perform his part of the contract?

(5) Whether the suit is not barred by limitation?

(6) Whether the plaintiff is entitled to the relief of specific performance?

(7) To what relief?

Additional Issues:

(1) Whether the 1st defendant has no title or interest in the suit property?

(2) Whether the 2nd defendant has been in possession of the suit schedule property as a purchaser?

(3) Whether Defendant No. 1 colluded with the plaintiff and transit into existence of the agreement of sale?

10. On behalf of the plaintiffs, PWs. 1 and 2 were examined and Exs. A-1 to A-11 were marked. On behalf of the defendants DWs. 1 to 5 were

examined and Exs. B-1 to B-17 were marked.

11. Learned Subordinate Judge dismissed all the suits holding that Ex. A-2 settlement deed in favour of Defendant No. 2 dated 12-2-1969 was a

conditional one and the deed of revocation Ex. A-5 dated 24-3-1981 is true, valid and binding on the plaintiffs. Defendant No. 2 had no right to

convey vested remainder in the suit schedule property in favour of the plaintiffs. The settlement deed dated 9-4-1981 executed by Defendant No.

1 in favour of Defendant No. 2 is true, valid and binding on the plaintiffs. Defendant No. 1 had absolute rights in the plaint schedule property and

he conveyed his title to Defendant No. 3 who in turn has absolute rights in the plaint schedule property. Ex. B-2 agreement of sale dated 4-6-1978

executed by Defendant No. 2 in favour of Defendant No. 4 is valid and Defendant No. 2 received the entire sale consideration and committed

default in performing his part of the contract but as Defendant No. 2 had no title to the property in view of the deed of revocation Ex. A-5,

Defendant No. 4 is not entitled to any relief.

12. Thus, the net result of the dismissal of the suits is; plaintiffs would not get any relief of declaration of ownership or recovery of possession or

mesne profits and Defendant No. 3 remains to be the owner of the plaint schedule property as it was held that though the agreement of sale was

executed in favour of Defendant No. 4 by Defendant No. 2, Defendant No. 2 had no title over the plaint schedule property, as such, the

transaction is not a valid one.

13. Aggrieved by the above judgment, plaintiffs alone have preferred both these appeals.

14. The only question that can clinch the entire case is the validity of the cancellation of the gift deed dated 12-5-1969 (Ex. A-2) executed by

Seethaiah under cancellation deed Ex. A-5 dated 24-3-1981.

15. Ex. A-2, the gift deed executed by Seethaiah in favour of the second defendant, which is in Telugu, and when translated into English, the

relevant portion read as follows:

I and my wife have become old. You are attending to all our needs and you are our third son. Earlier, yourself and I have already divided our

properties. Even after partition, yourself and myself are living jointly. Your sisters were already married prior to our partition. Opining that in future

also, you would lookafter us, as in the past and on account of love and affection we have towards you, I developed the intention of conveying my

share in the joint house held by you and me in your favour. In accordance with the said intention, the schedule house is gifted to you free of cost

with absolute rights with a condition that, it shall remain in my and my wife''s possession during our lifetime and after our death, you have to enjoy it

with absolute rights. During our lifetime, we ourselves would pay the taxes for the property. After our death, you have to take possession of the

property, pay taxes and enjoy with absolute rights.

16. Thus, Ex. A-2 says that the property is conveyed to the second defendant, retaining life interest. There is no dispute that the wife of the

executant, Seethaiah predeceased him.

17. Ex. A-5 is dated 24-3-1981. This is the document under which, the transaction under Ex. A-2 was cancelled. This document says as, you D-2

were looking after and maintaining me and my wife with love and affection even after partition, with the hope that you would lookafter us similarly

in future also, I have executed document dated 12-5-1969 (Ex. A-2) in your favour retaining life interest for both of us. But, later, you failed to

lookafter me and my wife, shifted along with your family to Hyderabad and started living there. As such we shifted to our daughter at

Bhairavapatnam. Thus you failed to maintain us and shifted to Hyderabad. As you acted against the conditions of the document dated 12-5-1969

(Ex. A2), I got issued a notice on 1-6-1967 (Ex. B-14) and you gave a reply saying that you have nothing to do with the document and I can

cancel the same (Ex. B-1). As such I decided to execute revocation document. As such since now all the contents of Ex. A-2 stand cancelled and

the entire rights in the property would revert back to me.

18. Thereafter Ex. A-6 is executed in favour of the first defendant on 94-1981, immediately after a fortnight of Ex. A-5. In this document,

Seethaiah has stated that he has executed Ex. A2 in favour of second defendant under the hope that the second defendant would look after

himself and his wife till this death. But the second defendant against the terms of the document, Ex. A-2, did not looked after them and acted

against the terms of Ex. A-2. As such after giving notice to the second defendant and on receiving reply from him, he executed revocation deed

dated 24-3-1981 (Ex. A-5). As his wife and himself are in need of money for their maintenance and medicines etc., he was selling the property.

19. Now the important question is whether Ex. A-2 contained any condition like the second defendant has to look after Seethaiah and his wife i.e.,

the parents of the second defendant and whether Ex. A-2 can be revoked at all.

20. A reading of Ex. A-2 clearly shows that there was no condition at all. What all is stated in Ex. A-2 is that under the impression that the second

defendant would lookafter them till their death, he (Seethaiah) executed Ex. A-2. There is no contemplation that it is executed subject to the

condition that the second defendant should lookafter Seethaiah and his wife in future also. Thus there cannot be finding that Ex. A-2 contained any

condition of second defendant looking after Seethaiah and his wife till their death and in case of failure, Ex. A-2 can be revoked.

21. Now, the question is whether Ex. A-2, which is executed with life interest for Seethaiah and his wife could have been revoked at all, under Ex.

A-5.

22. The learned trial Judge in Paragraph-31 of the judgment observed that the document Ex. A-2 imposed a burden on D-2 to maintain Sithayya

and his wife, though it is not specifically mentioned that failure to maintain them would result in cancellation of the gift. The parties understood that

aspect in that sense only; that it can be seen from the registered notice Ex. B-14 and reply Ex. B-1, in 1979 itself, Sithayya exercised his right to

revoke the document and intimated that he is cancelling the document by the registered notice to D-2. D-2 has accepted the cancellation and

stated that he has no objection for cancellation of the gift and he is ready and willing to abide by the said cancellation. That subsequent to Ex. B-1,

D-2 never exercised any rights in the suit schedule property. That indicates that there was contemporaneous agreement between D-2 and Sithayya

contemplating that D-2 should maintain his parents during their lifetime in consideration of the property gifted to him. That after cancellation of the

gift deed, D-2 never questioned Sithayya with regard to the cancellation.

23. In my opinion the above observation of the learned trial Judge is incorrect. The relevant contents of Ex. A-2 already referred clearly show that

there was no condition attached to the gift. Only Sithaiah was hoping that D-2, who was maintaining him till then would continue to maintain him till

end. Not only that it is not stated that failure to maintain Sithaiah and his wife by D-2 would result in cancellation of the gift. It is not even stated

that D-2 has to maintain Sithaiah and his wife till their death. As already referred Sithaiah expressed only a hope that D-2 would maintain them till

their last breath. The learned trial Judge also observed that though it is not specifically mentioned, the parties understood the same in that sense

only and that can be gathered from Ex. B-14, B-l and subsequent conduct of D-2.

24. What is stated in Ex. B-14, the notice is that at the time of partition D-2 was looking after Sithaiah and his wife and Sithaiah believing the same

executed the gift deed. Subsequent to that D-2 never looked after them; that D-2 violated the assurance given before gifting of the property. Thus,

even according to Ex. B-14, Sithaiah believed that D-2 would look after him and his wife, though it is again stated that they believed the promise

made by D-2. Thus, here also it is not clearly stated that D-2 promised to look after Sithaiah and his wife. What is stated in Ex. B-1 reply notice is

that he is not getting any income from the house given by his father, he is unable to maintain himself at Hyderabad; he has no capacity to maintain

his father; he can take back the house and that he has no-objection for giving back the house. In this reply, Ex. B-1, he never admitted that there

was any contemplation to maintain the parents. It is stated that he can take back the house and that he has no-objection for giving back the house.

This Ex. B-1 is not having any date, nor any cover under which it was sent. Ex. B-14 is dated 13-3-1979, therefore, it has to be presumed that

this Ex. B-1 was issued sometime thereafter.

25. Ex. A-3, the gift deed executed by D-2 in favour of the plaintiffs is dated 15-6-1978. Exs. B-14 and B-l are subsequent to 15-6-1978. It is

the contention of the learned Counsel for the appellants that D-2 was never taking care of the family; he was not interested in the plaintiffs, as such

no weight need be given to Ex. B-1.

26. There is some suspicion about Exs. B-14 and B-l being collusive actions. There was no necessity for D-2 to give a reply like Exs. B-1 to B-

14. In case he was not interested, he would have kept quite. The way in which Ex. B-1 is written and sent to the Advocate for Sithaiah shows that

there is possibility of collusion between Sithaiah and D-2. Further even as per Ex. B-14, the D-2 was demanded to execute cancellation deed,

failing which Sithaiah would take appropriate legal action to cancel the gift deed, thereby contemplating perhaps filing of a suit for cancellation of

the gift deed. Thus, apart from other things, definitely there was no condition attached to Ex. A-2, gift deed.

27. Now, the question is what is the legal position on this aspect. Whether in the case of any condition attached to the gift, can it be cancelled for

violation of such condition and in spite of there being a condition also, whether the gift cannot be cancelled.

28. The learned trial Judge has referred to various decisions of our High Court, apart from other High Courts, including the judgment of our High

Court in G. Padmanabham v. G. Singarayya 1988 (2) APLJ 365. It would be useful to refer here itself, that the above judgment was set aside by a

Division Bench of our High Court in L.P.A. No. 399 of 1988 between Grandhi Padmanabham v. N.K.V. Madhusudhana Rao 1996 (3) ALD 391

(DB) : 1996 AffIC 5413.

29. In Murikipudi Ankamma v. T. Narasayya AIR 1947 Mad. 127, the relevant portion of the gift deed, which is marked as Ex. D-3, in that case,

read as follows:

I had a son and he died. My wife also died. I am now aged 60 years and I have no strength to lookafter my own affairs and my agricultural duties.

So about 4 years ago, I brought you who are my uterine younger brother"s son and kept you in my house. From that time, you alone have been

looking after my cultivation works etc., in my house, have been living in my house alone and maintaining me well. I have a belief that you would

maintain me well during my lifetime. And as I bear affection towards you, I got the idea of conveying my property to you. Therefore, I have

conveyed to you under dhakal the property worth Rs. 800/-.

30. Thus, like in the present case, there also the donor had the belief that the donee would maintain the donor during his lifetime. The Hon''ble

Madras High Court held that what the donor had at that time, was a hope or wish that the donee would continue to take the same care and

attention to him, as he used to do before and that he would maintain him well during his lifetime. That is exactly similar to what is mentioned in Ex.

A-2 in the present case.

The Court went on holding that ""the obligation to maintain there was not cast upon the donee, as a necessary or an essential condition of the grant.

The gift was entirely out of love and affection and the reference to maintenance was only as a matter of fond wish. As such it is not possible to

agree that in the absence of express reservation of power of revocation, the donor continues to have that right even after he had divested himself of

all the right, title and interest in the property by means of the gift and after he had duly vested the property in the donee. The Court finally held that

the gift deed was true, valid and there was not a condition and revocation of the same is valid. In the above judgment a reference was made to the

following passage:

If a man will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, a Court of equity will

not loose the fetters he has put upon himself, but he must lie down under his own folly"". [White and Tudor''s Leading Cases, 6th Edition, Page-

353]

31. The Court finally held that it was a case where the donor contends that the gift was duly revoked by him on account of the failure of a certain

condition which was laid down in the deed. If he had power of revocation and had validly revoked the gift, he became the absolute owner, in case

he had no power of revocation, he ceased to have any interest or right in the property on his divesting himself of his title in favour of the donee in

which event there is no question of the donor continuing after the gift to be an ostensible owner and of any equity arising in his favour.

32. The above judgment is very closely applicable to the facts of the present case.

33. In another decision in Tila Bewa Vs. Mana Bewa, , it was held that even a case conditional gift cannot be revoked on account of violation of

the condition, which was for maintenance and that the donor can only recover the maintenance.

34. In a Division Bench judgment of this Court in Grandhi Padmanabham ''s case (supra), which overruled the judgment of the same case G

Padmanabham''s case (supra), where the gift deed was executed and later on another agreement was executed imposing certain conditions like

payment of maintenance, it was held that subsequent unregistered document is not valid, consequently revocation of the gift is also not valid. In that

case, plaintiff and Defendant No. 3 were sons of Defendant No. 2, the parties entered into a partition, thereafter Defendant No. 2 gifted certain

properties to plaintiff and Defendant No. 3 by executing a registered gift deed on 15-9-1966. The gift deed was acted upon. The plaintiff executed

an agreement dated 15-9-1966 itself to pay Rs. 200/- per month towards maintenance to Defendant No. 2 and Defendant No. 3 also executed an

agreement to pay Rs. 100/- per month towards maintenance to Defendant No. 2. Later, Defendant No. 2 revoked the gift deed by a registered

revocation deed dated 8-5-1967 as the plaintiff and Defendant No. 3 did not keep up their promise of payment of monthly maintenance. On

evidence, it was found that the agreements for payment of maintenance were duly executed. It was held that the donor and the donee can agree for

revocation of gift on conditions to revoke incorporated in the gift deed itself. Where the properties are transferred by registered gift deed with

conditions for revocation, the property is said to be transferred to the donee subject to conditions of revocation mentioned in the gift deed. Where

the property is transferred under a registered gift deed without any condition of revocation, absolute rights in the property will be transferred to the

donee from the donor and the donor will have neither the right to revoke the gift deed nor to deal with the property in any way. Once the gift is

completed, absolute rights are conferred on the donee. There was no condition in the gift deed that the donor had right to revoke the gift on the

failure of payment of maintenance amount by the donee, on the other hand, it was stated that the gift deed is executed with free will and volition of

the donor. Under the gift deed, all the rights stood transferred to the donee on the same day. Agreement was executed separately by virtue of

which right is created in favour of the donor by the donee to revoke the gift deed, in case the donee fails to pay the maintenance amount. Thus, the

agreement altered the rights created under the gift deed in favour of the appellant, as such, it required registration.

35. In the case on hand, whether a separate agreement imposing conditions for revocation of gift, requires registration would not arise, as here

there is no such written agreement. The finding that if the gift is subject to conditions and in case the conditions are not fulfilled, the gift can be

revoked is relevant.

36. Thus, the legal position is that in case there is any condition in the gift deed for revocation of the gift on account of any breach of conditions

referred in the gift, the gift cannot be revoked for breach of conditions contemplated. In Tila Bewa ''s case (supra), even it was held by the Orissa

High Court that in case of breach of conditions like non-payment of maintenance, the remedy open was to only recover the maintenance but not to

revoke the gift, that position has not arisen in this case and the Hon''ble Division Bench of our High Court also did not emphatically affirm the

above decision, as such, I hold that the legal position is only that in the absence of conditions in the gift deed, on account of violation of which gift

can be revoked, the gift cannot be revoked, however, in case, there was any condition in the gift deed, itself, and the same is violated, it can be

revoked. There cannot be revocation of gift on the basis of a separate document imposing conditions, unless the same is a registered document.

37. Thus, in the present case, as already observed, there is absolutely no material in the gift deed, that the gift was executed with a condition that

the second defendant has to maintain the parents. The interpretation that there was such an understanding as found by the learned trial Judge

cannot be accepted, as the law as referred above, is that even in case where there is a document contemporaneously executed imposing such

liability also in the absence of registration of the document, such condition is invalid.

38. When even an unregistered written agreement is not valid, there cannot be any presumption or interpretation that, too, on the basis of

subsequent incidents like Exs. B-14 and B-1 in this case, that the parties understood the document to be containing conditions, as documents like

Exs. B-14 and B-l can be collusive documents created to defeat the rights of subsequent purchasers etc.

39. Thus, it has to be held that Ex. A-5 revocation deed dated 24-3-1981 cancelling Ex. A-2 gift deed (settlement deed) is invalid.

40. In view of that, Defendant No. 2, father of the plaintiffs, would have right to transfer his interest in the property in favour of the plaintiffs validly.

Natural consequence of the same would be the plaintiffs suits O.S. No. 223 of 1988 and O.S. No. 1 of 1991 have to be decreed and the suit of

Defendant No. 3 in O.S. No. 2 of 1991 is liable to be dismissed on this count also. However, no appeal is filed by Defendant No. 4 against

dismissal of O.S. No. 2 of 1991, hence there is no need of passing any further orders with regard to O.S. No. 2 of 1991.

Accordingly, O.S. Nos.223 of 1988 and 1 of 1991 are decreed by allowing the appeals.

41. There is no need of any separate enquiry with regard to mesne profits. The plaintiffs are entitled to mesne profits at the rate of Rs. 500/- per

month from June, 1987 till delivery of possession of the suit property in their favour, since Seethaiah died on 19-5-1987 on which date they

became entitled to possession of the suit property. They have claimed mesne profits at the rate of Rs. 500/- per month. No doubt, there is no

evidence with regard to rental value. In 1987 when they filed O.P. No. 66 of 1987 as informa pauperis, they claimed Rs. 500/- per month. Even if

the same was higher than the prevailing rent, in these twenty years, it must have gone up manifold and must have crossed it long back, as such,

uniformly for the entire period, the same can be taken at Rs. 500/- per month as there is no amendment claiming higher amount for subsequent

period. Thus, the plaintiffs are entitled to mesne profits at the rate of Rs. 500/- per month throughout from June, 1987 till taking delivery of

possession of the property. They are liable to pay Court fee for the same.

42. Accordingly, both the appeals are allowed. No costs.