

(1930) 08 BOM CK 0016

Bombay High Court

Case No: None

Baburao Lakshman Nikam and
Others

APPELLANT

Vs

Tukaram Pundalika Powar and
Others

RESPONDENT

Date of Decision: Aug. 26, 1930

Citation: AIR 1931 Bom 208

Hon'ble Judges: Patkar, J; Baker, J

Bench: Full Bench

Judgement

Patkar, J.

This was a suit brought, by the plaintiffs to recover possession of the plaint property on the ground that it belonged to one Murari and after his death to his wife Zinga, that Zinga died and the property was inherited by Am who died on 4th February 1924, and that the plaintiffs as the stepsons of Anu are entitled to succeed to Murari.

2. It appears that on 23rd May 1921, the widow Zinga and her surviving daughter Anu, the only reversioner then living, passed a deed of gift in favour of Tukaram, the present defendant 1. The other defendants are alienees from defendant 1.

3. Both the lower Courts held that the gift by Zinga with the consent of Anu of the whole of the property which was inherited by her from her husband in favour of defendant 1 was valid, and that the plaintiffs were estopped from disputing the validity of the deed of gift in favour of defendant 1.

4. After the decision of the learned Assistant Judge a review application was filed and it was held that the property which, was the subject matter of the deed of gift in favour of defend in 1 did not comprise the whole of the property which, was inherited by the widow, and therefore the doctrine of surrender would not validate the transaction in favour of defendant 1. The learned Judge was of opinion that his view on the question of estoppel was sufficient to defeat the plaintiffs' claim.

5. It is not necessary in this second appeal to go into the question as to whether the deed of gift, even if it were of the whole of the property inherited by Zinga, was valid. In the case of *Tukaram v. Yesu* AIR 1931 Bom. 100 it was held that the gift of the whole or even of a part of the property inherited by the widow in favour of third person with the consent of the next reversioner would not be valid, but the gift may be binding on the consenting reversioner on the ground of estoppel as held in *Basappa v. Fakirappa* AIR 1922 Bom. 102, or on the ground of election accepted in the case of *Akkawa v. Sayadkhan Mithekhan* AIR 1927 Bora. 260, *Fateh Singh Rukmini Ramanji Maharaj* AIR 1923 All. 387 and [\(Vemulapalli\) Ramakotayya Vs. \(Gutha\) Viraraghavayya](#). In *Basappa v. Fakirappa* AIR 1922 Bom. 102 it was held that a gift made by a Hindu widow of a portion of her husband's property in favour of her husband's brother's grandson with the consent of the next reversioner, another brother of her husband, was valid, on the principle of estoppel, as against the particular reversioner who consented to it. This decision was followed in. The Full Bench decision of the Allahabad High Court in *Fateh Singh v. Thekur Rukmini Ramanji Maharaj* AIR 1923 All. 387 and the Full Bench decision of the Bombay High Court in *Akkawa v. Sayadkhan Mithekhan* AIR 1927 Bora. 260. In *Akkawa v. Sayadkhan Mithekhan* AIR 1927 Bora. 260 it was held that where a Hindu widow sells a part of her husband's property without legal necessity, but with the consent of the next presumptive reversioner (whether a male or female) as evidenced by his joining in the deed, the reversioner cannot, having regard to his election, impugn the validity of the sale. At p. 486 it was observed:

In the present case the plaintiff actually joined in the deed by which the property in question was alienated. That if, I think, a clear election to hold the transaction as valid. That being so, in my judgment it makes no difference whether in such a case of election, the part electing was a male or was a female. A reversioner whether male or female could bring an action in the lifetime of the widow to set aside an alienation alleged to be invalid. If that is so and he or she can thus elect to challenge a transaction as invalid, then surely it follows that he or she may also elect to hold that deed as valid. I think it must also be conceded that an election testified by actual joinder in a deed of alienation must be at least as good as any act of ratification or sanction given after that deed of alienation.

6. In the present case, Anu, the only presumptive reversioner, joined the widow Zinga in passing a gift deed in favour of defendant 1. The Full Bench decision therefore of this Court is an authority for holding that Anu elected to hold the deed of gift as valid, and therefore she could not be allowed to resile from that position, and if Anu is capable of disputing the validity of the deed of gift in favour of defendant 1, it would follow that her stepsons who stand in her shoes are similarly precluded from disputing the validity of the deed of gift. The same view was taken by the Full Bench of the Madras High Court in [\(Vemulapalli\) Ramakotayya Vs. \(Gutha\) Viraraghavayya](#), where it was held that if the next presumptive male reversioner consents, though for no consideration, to an alienation without necessity by a Hindu

widow (e.g., a gift), the transaction will be binding on him when he actually succeeds to the estate. The meaning of election has been considered by the Madras Full Bench where it has been understood in the sense of ratification or of election to hold a transaction as good. According to the decision of the Privy Council in *Rangasami Gounden v. Nachiappa Gounden* AIR 1918 P.C. 190 election to hold a transaction as good can be evidenced by the conduct of the presumptive reversioner during the lifetime of the widow, or it may be the ratification after the character of the reversioner has been affirmed by the death of the widow. A person cannot approbate and reprobate the same transaction. Though the doctrine of estoppel cannot be applied in the case of a gift where no detriment is caused to the donee and the strict doctrine of election cannot be invoked in the case of a reversioner who has not benefited by the transaction, it is now settled that where a reversioner has either ratified the transaction after the death of the widow or has unequivocally manifested his intention to abide by the act of the widow, e.g. by joining in the deed of the widow during her lifetime, he is personally debarred from resiling from it and impugning its validity. In AIR 1927 227 (Privy Council) it was observed by their Lordships of the Privy Council as follows: p. 402 (of 57 I.A.):

It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding.

7. We think therefore that having regard to the recent decisions of the Privy Council and of the Full Benches of the different High Courts, it is now settled law that the reversioner who consents to an alienation, whether it be an alienation without necessity or a deed of gift, is precluded from disputing the validity of the transaction. This principle is described as estoppel in *Basappa v. Fakirappa* AIR 1922 Bom. 102 and is based in the later cases either on ratification or election to hold the transaction as good. It is difficult to apply the principle of estoppel to a transaction such as the present, namely the deed of gift, as it cannot be said that the donee has done anything to his detriment on account of the conduct of the reversioner in consenting to the deed of gift. I think that Anu in the present case was precluded from disputing the validity of the deed of gift in favour of Tukaram on the ground of election to treat the transaction as valid if not on the ground of estoppel. The present plaintiffs are the stepsons of Anu and are not the reversioners of Murari. They stand in the shoes of Anu, and if Anu was precluded from disputing the transaction in favour of defendant 1, they cannot stand on a higher footing than that of Anu, and they similarly are, in my opinion, precluded by the conduct of Anu from disputing the validity of the transaction in favour of defendant 1.

8. On these grounds I think that the view of the lower Court is right and this appeal must be dismissed with costs.

Baker, J.

9. I agree. I think the case is covered by the decision in Akkawa v. Sayadkhan Mithekhah AIR 1927 Bora. 260 and the decision of the Privy Council in Ramgouda Annagouda v. Bhausahab AIR 1931 Bom. 100.