

PETITIONER:
G.RAMASWAMY @ SURYAPRAKASA RAO AND OTHERS

Vs.

RESPONDENT:
LANKA SUBBARAO PATRUDU AND OTHERS

DATE OF JUDGMENT: 09/02/1996

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
RAMASWAMY, K.

CITATION:
1996 AIR 1474 JT 1996 (2) 265
1996 SCALE (2)145

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.B. PATTANAIK. J.
Leave granted.

This appeal by the plaintiffs is directed from the judgment of the Division Bench of the High Court of Andhra Pradesh dated 22.-7.1991 in Letters Patent Appeal No. 275 of 1990 arising out of Original Suit No. 187/76. Two items of properties are involved in this appeal namely Items 6 and 7 of the Plaint Schedule. The plaintiffs filed a suit to set aside the sales effected in favour of the defendants by their father on the ground that the father had no power of alienation and the sale is void on account of non passing of consideration. It is the case of the plaintiffs that their grand father Gulla Kondala Rao had extensive properties in Visakhapatnam and he had acquired these properties out of his business of printing press. After the death of the wife of Kondala Rao he married Narasamma but as he did not beget any child, he adopted one Ramarao, in accordance with the custom. He also executed an adoption deed on 13.11.1947. The said Kondala Rao also executed a deed of Gift in favour of his second wife Narasamma in respect of some of his properties and the said gift was acted upon. Item Nos. 6 and of the Plaint Properties are those properties which had been gifted by Kondalarao in favour of Narasamma. Said Narasamma had bequeathed the properties under a registered will dated 3.3.1964 in favour of plaintiffs - appellants. Ramarao the adopted son of Kondalarao became way ward and squandered away the family properties and illegally executed sale deed. Several properties were sold for no consideration at all or for utterly inadequate consideration. The plaintiffs who were sons of Ramarao filed a suit challenging the alienation made by their father on the ground that the properties gifted by the original owner late Kondalarao in favour of Narasamma, and those properties having been bequeathed by Narasamma in favour of appellants, the same could not have

been alienated by the father of the plaintiffs treating the same to be a joint family property. So far as other sale deeds are concerned with which we are not concerned in this appeal the plaintiffs also challenged the same on the ground that no consideration has passed therefore and the plaintiffs' father recklessly executed those sale deeds without understanding the purport of such sales. The plaintiffs also challenged the legality of sale in Execution Proceeding No. 345 of 1965 arising out of S.C. No. 286 of 1954. We are, however, not concerned with that transaction in this appeal. Defendants 3, 5, 7 to 10 and 12 resisted the suit by filing different written statements. Apart from denying the allegations with regard to non passing of consideration and the reckless manner in which the plaintiffs' father alleged to have sold the properties, the gift deed executed by late Kondalarao in favour of Narasamma in the year 1947 and the will executed by late Narasamma in the year 1964 was also not admitted and it was contended that they are not genuine, valid and never acted upon. It was their further case that sale of the joint family properties had been made by the father for legal necessity and for benefit of the family and therefore the same is binding upon all including the plaintiffs. On these pleadings the learned Trial Court framed as many as 18 issues out of which issue no. 1 was in relation to the validity of the gift deed of the year 1947 as well as the will of 1964. On a thorough discussion of the materials on record the Trial Court came to the conclusion that the gift deed of 1947 was executed by late Kondalarao in favour of late Narasamma which is Exhibit A-3 and the will of 1964 executed by late Narasamma that is Exhibit A-11 are true, genuine and duly acted upon. On Issue No. 4 which was the issue on the question of consideration, the said issue had been framed against the 3rd defendant, on the basis of the pleadings of the 3rd defendant and since the suit was dismissed as against the said defendant, the court did not give any finding thereon. On Issue No. 15 which was on the question as to whether plaintiffs' father could have alienated the plaintiffs' share in the property, the learned Trial Judge came to the conclusion that the sales in favour of defendants 4 to 8 are not valid and binding on the plaintiffs and they are liable to be set aside and as such, defendants 11 and 12 cannot have any rights over the properties purchased by D11 from D-4. It was further held that the Court sale in favour of D-9 in E.P. 345/65 in S.C. 246/54 is valid and binding on the plaintiff and therefore the sale in favour of D-10 by D-9 under the original of Ex.A-10 is valid and binding on the plaintiffs. In view of the finding in issue no. 15, the Court did not think it necessary to decide the question of adequacy of consideration which was issue no. 16. Question whether late Ramarao, the father of the plaintiffs was living recklessly and was addicted to the drinking habit, which was issue no. 11, the Trial Court answered in favour of the plaintiff and held that late Ramarao was addicted to the drinking habit and not leading a good life. With these findings the suit was decreed in part against defendant nos. 4, 6 to 8, 11, 12 and 25 to 31 but was dismissed as against defendant nos. 3, 9 and 13 to 21 who are legal representatives of D-10. Against the aforesaid judgment of the learned Trial Court 3 appeals were filed by different defendants being appeal nos. 699, 744 and 1071 of 1981. Appeal No. 744 of 1981 was in relation to property described in Item Nos. 6 and 7 of the Plaint Schedule. The learned Single Judge who heard the appeals did not reverse the findings of the Trial Court on

the question of genuineness and validity of the gift deed as well as the will executed by Narasamma in favour of the plaintiffs. The Single Judge also came to the conclusion that the sale deed executed by Ramarao in favour of defendants no. 7 and 8 was not to pay off any antecedent debts but on the basis of recital of the sale deed, came to the conclusion that the sale had been effected for family purpose and as such is valid and binds not only in respect of Ramarao's 1/3rd share but also in respect of the 2/3rd share belonging to the plaintiffs 1 and 3. This conclusion was in respect of sale deed Ex.B-2. So far as other sale deed Ex.B-4 is concerned the learned Single Judge held that it is valid only so far as the 1/3rd share of late Gulla Ramarao is concerned but it does not bind the plaintiffs so far as the 2/3rd share of the plaintiffs 1 and 3 is concerned. Ultimately the learned Single Judge held that Ex.B-2, the sale deed dated 25.11.1969 executed in favour of the 8th defendant in respect of item no. 7 of Plaint A Schedule property is valid and binding on the plaintiffs and the sale deed Ex.B-4 dated 21.10.1969 executed in favour of 7th defendant in respect of item no. 6 of plaint A schedule property are valid and binding only so far as the undivided 1/3rd share of the late Gulla Ramarao is concerned and do not bind the plaintiffs so far as the remaining undivided 2/3rd share of plaintiffs 1 and 3 is concerned. With these conclusions the appeal (744/81) having been allowed in part, the plaintiffs preferred Letters Patent Appeal No. 275/90 in the High Court of Andhra Pradesh. Though appeals against the other judgments had also been preferred but we are not concerned with the same in this appeal, since as has been said earlier the present appeal is directed against the judgment of the Division Bench in Letters Patent Appeal No. 275/90. The Division Bench without taking into consideration the gift deed of 1947 and will of 1964 came to conclusion that the plaintiffs cannot challenge the alienation made by their father, to the extent of father's share in the joint family property. With this conclusion the Letters Patent Appeal having been dismissed, the plaintiffs are in appeal before this Court.

Sri Prakash Reddy, the learned counsel appearing for the appellants contended that the disputed properties namely Item Nos. 6 and 7 of the Plaint Schedule having been gifted away by the original owner late Kundala Rao in favour of Narasamma and said Narasamma having bequeathed the same by registered will of the year 1964 in favour of the plaintiffs and the Trial Court having found the gift deed and the will genuine and valid and acted upon, without interference with the said findings the learned Single Judge in appeal as well as the learned Division Bench could not have come to conclusion that the sale so far as the 1/3rd share of the father is concerned is valid. It is, therefore, contended that the learned Single Judge as well as the Division Bench of the High Court committed gross error of law in decreeing the plaintiffs' suit so far as the two items of properties are concerned only to the extent of 2/3rd and not in entirety.

Mr, Sampath, learned counsel appearing for the respondents on the other hand contended that such a contention had never been raised in the courts below and therefore the plaintiffs are not entitled to raise this plea in this court.

We are unable to persuade ourselves to agree with the contentions raised by Mr. Sampath. In fact the plaintiffs had taken this plea in the Plaint itself and an issue has been struck to this effect which issue was answered by the

Trial Court in favour of the plaintiffs. The Trial Court on consideration of the materials had recorded the finding that the Gift executed by late Kundala Rao in favour of Narasamma and the will executed by Narasamma in favour of plaintiffs are genuine, valid and had been acted upon. The plaintiffs' suit had been decreed so far as the said items of properties are concerned. The defendants has gone up in appeal and learned Single Judge while allowing the appeals without reversing the findings proceeded on the assumption that the property being joint family property, the father could alienate the same for family necessity and thereby committed the error. The Division Bench in Letters Patent Appeal also committed the said mistake. In view of the findings of the Trial Judge that the Gift Deed as well as the will are genuine, valid and had been acted upon, and the disputed two items of properties namely Item Nos. 6 and 7 of the Plaint Schedule being included therein, the father could not have alienated the same and therefore the alienation could not be held to be valid even to the extent of 1/3rd as held by the Division Bench in the Letters Patent Appeal under challenge. In the aforesaid premises the Judgment of the Division Bench in Letters Patent Appeal No. 275/90 as well as Judgment of the Single Judge in Appeal No. 744/81 are set aside and the Judgment of the Trial Judge so far as the properties in Item Nos. 6 and 7 of the Plaint Schedule are concerned is confirmed. The plaintiffs' suit in respect of these two items properties is decreed. This appeal is allowed but in the circumstances without any order as to costs.