

CASE NO.:
Appeal (civil) 197 of 1999

PETITIONER:
Subbegowda (Dead) by LR.

RESPONDENT:
Thimmegowda (Dead) by LRs.

DATE OF JUDGMENT: 16/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

R.C. Lahoti, J.

Thimmegowda, the sole respondent herein, has died during the pendency of these proceedings and his widow and one daughter (major and unmarried) are on record as legal representatives of the deceased. Thimmegowda and Subbegowda were real brothers. Thimmegowda did not have any son. His family consisted of his wife and four daughters. Narayani (or Narayana), impleaded as appellant No.2, is the son of Subbegowda. Subbegowda, the appellant No.1, has also died during the pendency of these proceedings.

Thimmegowda, having no male issue, adopted Narayani, the son of his younger brother Subbegowda. A deed of adoption dated 4.6.1965 was executed and registered. On 1.8.1969, another deed came to be executed and registered by Thimmegowda and this deed is the subject matter of controversy in these proceedings. The deed is styled as 'Settlement Deed'. The contents of the deed reveal what had impelled Thimmegowda to execute the deed. Thimmegowda had agricultural land but was unable to carry out agricultural operations. Out of his four daughters, he had performed the marriage of the two and the remaining two, respectively aged 10 and 4 years at that time, were yet to be married and were residing with the parents. The deed goes on to state —

"I have not given right of any kind over my properties to you, my adopted son Narayani. You represented to me that in case I hand over the total responsibility of the family properties to you, you together with your natural father and brothers would manage the properties and discharged the existing dates of the family and further that you would require the power through written records, I am today executing this settlement deed in your favour, my adopted son Narayani. I have made this arrangement so that hereafter you may in a wise manner alongwith your natural father improve my property and manage the same as per your wish without any obstruction. Hereafter I shall have no objection for your management of the family properties. You shall look after my welfare and that of my wife and children and you shall get my daughters married. Since you have taken the

responsibility of my welfare and that of my wife and since the responsibility of protecting us has been taken over by you and further since you have to discharge the debts incurred by me till now for the family, I have handed over the possession of schedule properties under this settlement deed to you. In case either my wife or I incur any further debt hereafter you shall not be responsible for the same. You shall not violate any one of the above said conditions. In case you violate any condition, I shall have the right to cancel this settlement deed. You shall have the right to enjoy hereafter all the treasure, trove, water, plants etc. in the schedule property and you shall have the right to sell, gift and alienate the same and may enjoy the same from generation to generation peacefully."

(emphasis supplied)

The above statement is followed by a schedule wherein six landed properties are listed. Below the schedule there is yet another endorsement made by the executant Thimmegowda as under:-

"I have settled the six items of properties as mentioned above and therefore have executed this settlement deed.

Sd/- on behalf of minor Narayani his natural father, Subbegowda as guardian.

Since you, Narayani have been under my care and custody since the beginning and since I wanted to give you something for yours livelihood, I have through this settlement deed entrusted the schedule properties to you. The approximate value of the schedule properties is Rupees one thousand (Rs.1000/).

Sd/- Thimmegowda

Sd/- Witnesses"

(emphasis supplied)

On 9.11.1970, Thimmegowda filed a suit against Narayani and his natural father Subbegowda seeking setting aside of the settlement deed dated 1.8.1969 on the ground of fraud and misrepresentation and the consequential relief of restoration of possession over the suit schedule properties. The trial Court dismissed the suit on the finding that any circumstances vitiating the voluntary execution and registration of the deed were not made out. Fraud and misrepresentation, as alleged by the plaintiff, were not proved. First appeal preferred by the plaintiff was dismissed. A second appeal was preferred. The High Court framed and dealt with a single substantial question of law — "whether a deed purported to be a settlement deed could be validly executed with a term enabling the settler to have the deed set aside and in such a case whether such a deed could convey valid title to the settlee?" In a brief judgment, dealing with the question of law as framed, the High Court formed an

opinion that the power of revocation of settlement deed was expressly reserved to himself by the settler in the deed itself and, therefore, the settler was fully justified in law to invoke the revocation clause. Other issues were of no significance. It was open for the executant to cancel the deed of settlement and that having been done the suit was liable to be decreed. The High Court set aside the judgments and decrees of the trial Court and the first appellate Court and passed a decree in favour of the plaintiff. Feeling aggrieved, the defendants namely Narayani, the adopted son, and his natural father Subbegowda are in appeal of whom, as already stated, Subbegowda has died.

The singular substantial question to be decided in the case is what is the true nature of the deed dated 1.8.1969? Though called a Settlement Deed, what was the intention of the executant behind executing the deed? The question of construction of a document is to be decided by finding out the intention of the executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into ____ to the extent permissible ____ the prevailing circumstances which persuaded the author of the document to execute it. If the executant intended to transfer property the Court would lean in favour of holding the transferee having been vested with interest in the property. Where an intention to transfer property within the meaning of Section 5 of Transfer of Property Act, 1882 cannot be spelled out, the document will be given effect to as it reads and as is explicit from what is set out in the deed itself.

In Raj Bajrang Bahadur Singh Vs. Thakurain Bakhtraj Kuer, AIR 1953 SC 7, this Court was called upon to examine what the testator had intended the legatee to take under a will in the context of the expressions like Malik Kamil (absolute owner) and Naslan bad naslan (generation after generation) having been used in the will in reference to the interest which was sought to be demised. This Court held that such words, though descriptive of a heritable and alienable estate in the donee and connoting full proprietary rights, may not have been used with the intention of conferring absolute rights if there could be something in the context or in the surrounding circumstances to permit such an inference being drawn. "In cases where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership implied in the use of the word "malik".

For the interpreter of documents it is common knowledge that a transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. Condition may be condition precedent ____ a condition which must be performed before the grant or alienation takes effect to create an interest in property, or may be condition subsequent ____ a condition which has an effect of enlarging or defeating the interest already created or vested. In either case the condition will be annexed with the estate and would run with the same. In Philip John Vs. CIT Calcutta \026 AIR 1964 SC 587, vide para 14, this Court has dealt with conditions ____ precedent and subsequent, in the context of gift of shares. A covenant is not annexed with the estate and runs independently of it which may give rise to a cause of action for specific performance or for an action in damages. A restraint or a limitation has the effect of curtailing the quantum of the estate affected thereby.

The contents of the deed dated 1.8.1969 reveal the relevant circumstances. The executant himself had filed the suit and deposed to in support of plaint averments. The deed is subscribed to by Subbegowda too, who affixed his thumb mark on the deed. Narayani was minor and Subbegowda was acting for himself and for Narayani too as his guardian — being the natural father. Thus, the deed dated 1.8.1969 is a bi-party document in a way. Narayani was taken in adoption more than 4 years before the date of execution of the deed dated 1.8.1969, the reason being that Thimmegowda had no male issue of his own. Whatever interest in the property may have been created in favour of Narayani by virtue of his having been born into the family by virtue of adoption, Thimmegowda had not specifically created any interest in favour of his adopted son in any of the properties owned by him. The principal anxiety of Thimmegowda, which also was working as consideration for execution of document, was to see that his agricultural lands were properly managed so that the debts payable by him could be discharged and his minor unmarried daughters could be taken care of by being married. Narayani was minor. Thimmegowda was obviously acting upon the assurance given by Subbegowda, his own brother, that the adopted son Nayarani with Subbegowda would manage the property and fulfil the expectations of Thimmegowda, as set out in the deed. A comprehensive reading of the document shows that the settlement as per the terms of the document was not a transfer of property in favour of the adopted son; it was merely an arrangement or at best an entrustment of the scheduled property to his adopted son and the latter's natural father for the purpose of proper management without obstruction by anyone else including himself so that the welfare of himself, his wife and his children — specially the unmarried daughters — was assured. It is clear from the oral evidence adduced by the plaintiff that his wishes were not fulfilled. Though the pleas of fraud and undue influence vitiating the execution of deed are not substantiated, yet there can be no denying of the fact that Nayarani and his natural father did not come up to those expectations of Thimmegowda which had persuaded him as primary and essential considerations for the execution of the deed. Nothing prevented Thimmegowda from cancelling such settlement and depriving Narayani and his natural father from management over the scheduled property. Though at the end of the main document Thimmegowda has used the expression like permitting the settlee to enjoy the property and also for the right of sale and gift relating to property being conferred and the settlee and his heirs also going on enjoying the property but this stray sentence at the end of the document cannot be read in isolation dissected from the earlier part of the document which in very many words clearly demonstrates the intention of the executant of entrusting the management only of the scheduled property to Narayani and his natural father. May be if the settlee would have come up of the expectations of the settlor, the latter would not have objected to the settlee continuing in the enjoyment of the property and dealing with the same as if owner thereof. This is further clarified from the additional statement made by settlor just before concluding the execution of the document where he said that Narayani having been entrusted to the care and custody, as adopted son, of Thimmegowda, he was executing the deed with an intention to maintain the settlee for his life. There is no recital in the deed which may be read or be capable of being construed as a demise in praesenti vesting absolute title in the property in Nayarani in present or in future. Whatever was given to Narayani and his

natural father by the deed was capable of being cancelled or revoked under the power of revocation expressly reserved by Thimmegowda to himself.

The deed dated 1.8.1969 does not amount to transferring the scheduled property to Narayani. It was only an arrangement, called 'settlement' with the power of revocation expressly reserved to the author, subject to which reservation the arrangement was intended to come in effect. It has not been the case of the appellant before us, nor could it have been, that the scheduled property was gifted by Thimmegowda to Narayani. Had it been so, the question of testing validity of gift by reference to Section 126 or holding it to be onerous gift within the meaning of Section 127 of the Transfer of Property Act 1882 could have arisen. We need not dwell further on this aspect of the issue.

A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the court will give effect to it unless there is some provision of law which annuls or invalidates such condition, restraint or limitation. None has been brought to our notice.

The High Court has rightly formed an opinion that the deed could be revoked. Nothing has been brought to our notice to take a view to the contrary and hold that such a power of revocation could not have been reserved by Thimmegowda to himself.

The appeal is dismissed. The judgment and decree passed by the High Court is maintained. No order as to the costs.