Mauji Lal vs Jagnandan Ram And Ors. on 16 January, 1952

Equivalent citations: AIR1953ALL78, AIR 1953 ALLAHABAD 78

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Srimati Kishan Dei, succeeding to the property in suit as a limited owner either in the capacity of a widow of Ram Swarup or as a mother of Parshottam, her son, remarried Har Narain and later she and Jai Karan executed a deed which ostensibly is a combination of a deed of surrender by her in favour of Jai Karan and a deed of gift by both Jai Karan and herself to Mauji Ram, son of Har Narain, her second husband. Jagbandhan sued Kishan Dei, defendant 1, Mauji Ram, defendant 2, Mahesh Earn, son of Jai Karan, defendant 3, and Hanuman Prasad, brother of the plaintiff, defendant 4, for an injunction against defendants 1 to 3 preventing them from interfering with his possession of the property in suit, it being alleged that he was in possession as a survivor of the joint family which originally consisted of Beni Prasad and Ram Lal, brothers, who reunited after there had been a partition between them and their other four brothers. The allegation of Ram Lal and Beni Prasad reuniting to form a joint family was not accepted by the Courts below. The alternative case of Jagbandhan was that the composite deed of surrender and gift executed by Kishan Dei and Jai Karan was not binding on him after the death of Kishan Dei, in case it be held that Beni Prasad and Ram Lal had separated and did not reunite. Both the Courts held that this deed was not binding on Jagbandhan after the death of Kishan Dei. Mauji Ram, therefore, filed this appeal against this decree.

2. Jagbandhan had also claimed in the suit ownership of house No. 3 in list 'c' attached to the plaint on the ground that he had built it fifteen or sixteen years back. He also claimed Rs. 500 which he had incurred in meeting the ex-penses in connection with two suits instituted by Kishan Dei and in depositing rs. 300 which she was ordered to deposit under a decree of the Court. These two claims were disallowed. The claim for the house was disallowed on the ground that a decision in a previous suit between Kishan Dei and Hanuman Prasad, defendant 4, brother of Jagbandhan plaintiff, operated as res judicata. The claim for Rs. 500 was disallowed on the Hading that the claim was made after the expiry of the necessary limitation. Jagbandhan has preferred second Appeal No. 258 of 1948 against the decree disallowing his claim with respect to these two items.

3. I am of opinion that both the appeals should fail.

4. The deed in suit was executed in 1940 by Kishan Dei and Jai Karan. In the first portion of the deed Kishan Dei expressed that she surrendered all her life interest in the entire property in favour of Jai Karan, executant No. 2, and gave up all connection with that property. In the latter part both she and Jai Karan referred to the services which Mauji Ram had rendered to them without any compensation, to the fact that his services would remain uncompensated if they died and then stated that they voluntarily gifted the property and house to Mauji Ram and that Mauji Ram accepted the gift deed. The validity of this deed is challenged on various grounds. One is that one executant cannot create any right in the same document in favour of another executant. Even if this objection be not good and it be held that the expression of her desire for surrendering the property was enough to accomplish the surrender, the document as a whole does not indicate that Kishan Dei had surrendered the property to Jai Karan prior to Jai Karan's executing the gift deed in favour of Mauji Ram. The surrender should have been prior in point of time to the gift deed. In view of Kishan Dei's joining Jai Karan in executing the gift deed in the latter part of the document, indicating thereby that she had interest left in the property even after her using expressions in the earlier part of the document that she had surrendered and had left no interest in herself, I find it very difficult to agree with the contention for Mauji Ram, appellant, that Kishan Dei had really surrendered the entire estate in favour of Jai Karan and that her joining Jai Karan in executing the latter part relating to the gift was an unnecessary act. In law it would be unnecessary for her to join in a gift deed executed by Jai Karan to whom property passes after her surrendering the property, but her conduct is very much relevant in determining whether she had really surrendered. To my mind, her conduct does not indicate that. It only indicates that she was not probably trusting Jai Karan to do what might have been agreed upon between them with respect to the ultimate transfer of the property to Mauji Ram, in whom she was interested as a step-mother. Probably, for practical purposes the execution of this deed made no difference to her enjoying the fruits of this property. In this view of the matter, I hold that this deed falls short of proving that Kishan Dei had surrendered her rights in this property to Jai Karan, the nearest reversioner at the time.

5. In the alternative, it has been argued for the appellant that this document be treated as a joint gift deed by her and Jai Karan, the nearest reversioner, to Mauji Ram. and that, therefore, it should be held to be valid. I do not think so. Jai Karan's joining as a donor in this deed cannot make the execution of the gift deed by Kishan. Dei valid. She could not execute the gift deed of. the property which she held as a limited owner. Jai Karan could not execute a gift deed of property which he did not own and possess. He had no right over this property in the absence of a valid surrender of the property to him. His action may indicate his consent to the gifting of the property to Mauji Ram, but his consent to the gift cannot make it a valid gift.

6. It has also been argued for Mauji Ram that such a composite gift deed by the limited owner and the nearest reversioner should be treated as a deed of surrender by the limited owner in favour of the nearest reversioner and then as a gift deed by the nearest reversioner in favour of a third person. I do not agree with this proposition, and the reason is what I have indicated above that surrender should precede the execution of the gift deed by the next reversioner. When a deed is executed jointly it cannot be said that there had been any such priority in the surrender vis-a-vis the gift of the property to the third person.

7. Great stress is laid on behalf of Mauji Ram appellant on the case of Rangaswami v. Nachi-appa, reported in a. I. R. 1918 P. C. 196, for the view that a conveyance of the entire property by a widow with the consent of the next reversioner will be valid. Special reference is made to the observations of the Judicial Committee at p. 199:

> "The surrender once exercised in favour of the nearest reversioner or reversioners, the estate became his or theirs, and it was an obvious extension of the doctrine to hold that, inasmuch as he or they were entitled to convey to a third party, it came to the same thing if the conveyance was made by the widow with his or their consent. This was decided to be possible by the case of Nobokishore v. Hari Nath, 10 Cal. 1102 (F.B.) already cited. The judgment went upon the principle of surrender, and it might do so, for, the surrender there was of the whole estate, but it is worthy of notice that the order of reference showed that the alienation was ostensibly on the ground of necessity, so that it might have been supported on the grounds to be mentioned under the second head above set forth."

To my mind, these observations do not show that the Judicial Committee approved of the view which was said to be an obvious extension of the doctrine that "surrender once exercised in favour of the nearest reversioner or reversioners, the estate became his or theirs." It may be mentioned further that after the consideration of the whole subject of the power of a Hindu widow over an estate which belonged to her husband to which she had succeeded, either immediately on the death of her husband or on the death of her childless son her husband being already dead, their Lordships of the Judicial Committee summarized their conclusions at p. 201. They remarked as follows:

> "The result of the consideration of the decided cases may be summarized thus:
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> (1) An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a bona fide surrender, not a device to divide the estate with the reversioner.
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> (2) When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then, if such necessity is not proved aliunde and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction will be held to afford a presumptive proof, which, if not rebutted by contrary proof, will validate the transaction as a right and proper one."

It will be seen from these conclusions that their Lordships did not lay down the proposition that an alienation by a widow of the entire estate of her husband with the consent of the nearest reversioner will be valid in law. They simply held that such an alienation by way of surrender to the nearest reversioner of the entire property would be valid if it be bona fide.

8. After this decision of their Lordships of the Judicial Committee, this Court decided in Ram-

ratanlal v. Gangotri Prasad, A. I. R. 1935 All. 73, that when a Hindu widow executes a document purporting to be a perpetual lease but which is in reality a deed of gift, the reversioners of the widow's husband who are alive at the time of her death can challenge the transaction, although at the time when the lease was executed the entire body of presumptive reversioners consented to it. The consent of the entire body of presumptive reversioners was not held sufficient to validate the deed of gift. The cases reported in Yeshwant Bala v. Antu Navaji, a. I. R. 1934 Bom. 351 and Pandurang v. Ishwar, a. I. R. 1939 Bom. 79 support the contentions for Mauji Ram appellant. With respect, I do not agree with the views ox-pressed there which, as already indicated, are not consistent with the views expressed by this Court earlier. In the first case, a limited owner, the widow, and her daughter who was the next reversioner and could take an absolute estate joined in executing a gift deed of the entire estate in favour of another. The gift deed was held to be good. In view of the observations in the case of Ranga-swami v. Nachiappa, a. I. R. 1918 p. c. 196, it was not considered in this case that though their Lordships considered the decision of the Full Bench of the Calcutta High Court as an obvious extension of the principle of surrender, they did not express their full approval of it. It may also be mentioned here that in Narayanaswami Ayyar v. Rama Ayyar, 53 Mad. 692 (P. C.), their Lordships of the Judicial Committee left the question of the validity of a deed of gift executed by a limited owner with the consent of the next reversioner open. This indicates that they did not consider that their decision in 1918 was a decision on this point. Further, it was not considered in the Bombay case as to when in point of time the widow can be said to have surrendered in favour of her daughter and the daughter became the absolute owner of the property.

9. In Pandurang v. Ishwar, A. I. R. 1939 Bom. 79, the limited owner had executed a gift deed in favour of a third person with the consent of the next reversioner. The next reversioner had not joined in the execution of the deed. It was held that the next reversioner had no right and his consent was not necessary to be given by a registered document. It was then held that the widow could make a valid surrender of her entire interest in her husband's property in favour of a third person with the consent of the next reversioner. I do not think, in view of what I have said above, that this view finds support from the case of Rangaswami v. Nachiappa, a. I. R. 1918 P. C. 196.

10. Another reason for challenging the validity of the deed of surrender is what has been mentioned by the Courts below, and it is that the deed does not appear to be a bona fide deed of surrender. This Court held in Abdulla v. Bam Lal, 34 all. 129, that the Court has to see that the transaction by which the limited owner transfers the entire estate without consideration to a third person with the consent of the next rever-sioner was a fair transaction. It is clear from this deed that the alleged surrender to Jai Karan was not genuinely contemplated and that it was just a cloak which was considered necessary to validate the transfer of the property to Mauji Bam in whom Kishan Dei was interested. Jai Karan was a very old man. He died soon after the execution of the deed. Even if he was in a fit condition to consider the nature of the entire transaction, he could not have taken much interest in it. The very fact that Kishan Dei did not execute a separate document and did not let Jai Karan execute a separate document gifting the property to Mauji Ram is an indication of the fact that probably she did not fully trust Jai Karan and did not wish to take a chance of Jai Karan's not executing the gift deed and thus taking advantage of the surrender deed executed by herself alone.

11. I am, therefore, of opinion that the Courts below rightly held that this deed is not a valid deed and is not binding on the reversioners after the death of Kishan Dei.

12. Jagbandhan's claim for rs. 500 is clearly time-barred. The amount was spent in 1929. This suit was instituted in 1940. The claim would be time-barred whether Article 61 or Article 120, Limitation Act applied to the case. This amount did not become a charge on the property. There is no law which could make it a charge and, therefore, Jagbandhan cannot take advantage of the larger period of limitation extending to 12 years.

13. The earlier suit by Kishan Dei against Hanuman Prasad was based on the allegations that house No. 3 of List 'C' belonged to her and that Hanuman Prasad had demolished certain portions. The suit was contested on the ground that the house did not belong to her and that Hanuman Prasad had been in possession for over 12 years. The pleadings as given in the judgment in suit No. 659 of 1938 do not indicate that Hanuman Prasad was sued as a manager of the joint family or that he contested the suit as manager of the joint family. But it appears that the real case of Hanuman Prasad was that the house belonged to the joint family consisting of himself and his brother Jagbandhan. Jagbandhan was examined in that suit and deposed to that effect. In the present suit too Jagbandhan took the same position. It was alleged that he had filed the suit for his own benefit and for the benefit of his brother Hanuman Prasad who was defendant 4 in the case. In the circumstances, I do not think that the finding of the Court below that the decision in the former suit operated as res judicata is wrong. Jagbandhan cannot claim house No. 3 of List 'C' in his own right. It is not for consideration in this case what rights he gets over this house in view of the other finding that the surrender by Kishan Dei is not binding on him after the death of Kishan Dei, who, it may be mentioned, died during the pendency of this appeal.

14. I, therefore, dismiss both the appeals with costs. This order will govern second Appeal No. 258 of 1948 as well.

15. Leave to appeal to a Bench is refused.