Ganga Bakhsh Singh And Ors. vs Madho Singh And Ors. on 22 December, 1954

Equivalent citations: AIR1955ALL288, AIR 1955 ALLAHABAD 288

JUDGMENT

Malik C.J.

1. This case was referred to this Bench, as it raised a question of law on which there was a difference of opinion between a Full Bench of the Allahabad High Court and some Division Bench rulings of the Avadh Chief Court. The point for decision is whether a reversioner who had given his consent to a gift made by a Hindu widow of a part of her husband's property could claim possession of that property on the death of the widow, the succession having opened in his favour.

2. The facts of the case are that one Padam Singh died issueless in the year 1899 leaving a widow Deoka Kuar, who got possession of his estate. On 16-11-1916, Deoka Kuar and four other persons, Tikam Singh, Jit Singh, Bhikham Singh and Tilak Singh, who were the presumptive rever-sioners on that date, executed a deed of gift in favour of Niranjan Singh, Dharmu. Singh and Har Baklish Singh, sister's sons of Deoka Kuar, transferring to them one-sixth share in the estate. On 10-11-1931, Deoka Kuar died and Bhikham Singh and Tilak Singh, who were alive on that date, became the owners of the property. They did not challenge the deed in their lifetime and on 2-4-1943, before the expiry of 12 years a suit was filed by Madho Singh, son of Tilak Singh deceased and Suraj Bakhsh Singh and Durga Bakhsh Singh, legatees under the will of Bhikham Singh for possession of the one-sixth share that had been gifted. The defendants are the sons of Niranjan Singh, Dharmu Singh and Har Bakhsh Singh, all the three having died before the date of the suit.

3. The trial Court following a decision of the late Avadh Chief Court decreed the suit on 21-12-1943 and the appeal filed by the defendants was dismissed by the lower appellate Court on 24-7-1944. On 30-3-1949, the case was referred by a learned single Judge to a Full Bench but in December, 1949 when the case came up before a Bench of three learned Judges, in view of the decision in -- 'Faten Singh v. Thakur Rukmini Rawanji Maharaj', AIR 1923 All 387 (FB) (A), the case was referred to a larger Bench. In the referring order of Kidwai, J. there is a full and detailed discussion of the case law on the point and it is therefore not necessary for us to refer to them in detail.

4. The right of a Hindu widow in her husband's estate is now well-settled by case law. It has been held that she is not a life tenant as recognised in English law; that the entire estate vests in her during her lifetime only with certain restrictions on her power of alienation. She has the . right to alienate a reasonable part of the estate for religious or charitable purposes and for the benefit of the soul of her deceased husband. She has also the right to transfer her husband's estate or a part of it for what their Lordships of the Judicial Committee have characterised as 'worldly purposes'. A worldly purpose would generally be for legal necessity or for a purpose which is obviously for the benefit of the estate.

5. The question has often arisen as to the effect of a consent given by the next presumptive reversioners to an alienation made by a widow. If the presumptive reversioners have consented to a transfer of a part of the estate the law is now well-settled that it may be presumed that the transfer was for purposes recognised under the Hindu law. This is based on a simple principle that when a person does something which might be against his interest, there must be some good reason why he does it. If the presumptive reversioners consent to an alienation by a Hindu widow, it must be presumed that they were satisfied that the widow was doing something within her rights and they had, therefore, no objection to it.

6. Where a Hindu widow has transferred the entire estate with the consent of the next presumptive reversioners the transfer has been upheld on the ground that it is in fact a surrender by the widow to the presumptive reversioners and is a transfer by them to the transferee.

7. If, however, the widow has made a transfer of only a part of the estate with the consent of the presumptive reversioners, the question arises on what principle such a transfer can be supported where obviously it cannot be for a religious or charitable purpose for the benefit of her husband's soul and is not for legal necessity or for the benefit of the estate.

8. Whatever observation may have been made in the case, -- 'Collector of Masulipatam v. Cavaly Vencata Narainapah', 8 Moo Ind App 529 (PC) (B), as regards a transfer made by a Hindu widow with the consent of the reversioners, in a later case,--'Rengaswami Goundan v. Nachiappa Goun-den', AIR 1918 PC 196 (C), their Lordships pointed out that if it was held that mere consent of the presumptive reversioners to a transfer made by a Hindu widow validated it, then it would amount to holding that the estate vested in the widow and the presumptive reversioners and they between them had the right to alienate it. Their Lordships held that this was not correct and for the reason that a Hindu reversioner had merely a 'spes successionis' and had no vested interest in the property.

Where, however, a transfer is made for consideration and the presumptive reversioners had either consented to that transfer or had joined it as executants, it may be presumed that the transfer was for legal necessity and the burden of proving that the transfer was not valid would be on the reversioners who inherit the property on the death of the widow but so far as the reversioners who had 'joined in the execution of the deed or had consented to it, they would be barred from challenge ing the document. The same result would follow in a case where a Hindu widow had made a transfer without consideration but the consent of the reversioners had been obtained by payment. Having received consideration the reversioners cannot obviously claim that the widow had no right to transfer the property by gift.

9. Difficulty, however, arises in a case where a widow makes a gift of a part of the estate, not for any religious or charitable purpose which might be conducive to the well being of the soul of the deceased husband and the transfer is supported only on the ground that the next body of presumptive reversioners were parties to it or had consented to the transfer. There can be no doubt that if on the death of the widow the property was inherited by reversioners other than those who had consented to the transfer they would not be bound by such consent. If, however, the consenting

reversioners themselves succeed to the property the question arises whether they can go back on their consent and claim that the widow had no right to make the gift and they were entitled to get possession of the property.

10. A reversioner who had consented to the gift and had not received any consideration for such a consent cannot be deemed to be estopped, un-less on the faith of the consent given, the donee had acted to his detriment. The doctrine of election would also not be strictly applicable, as that doctrine applies to a case where a person claiming to repudiate a deed has accepted some benefit under the same deed. The Courts of Equity have held that he cannot approbate and reprobate, i.e., he cannot derive benefit from a part of the document and at the same time claim that he would not be bound by the rest of it. This aspect has been fully dealt with in the referring order of Kidwai, J. and it need not, therefore, be dealt with now at any great length. The learned Judges in Lucknow, who took the contrary view, based their judgment on the ground that neither the doctrine of estoppel nor the doctrine of election would strictly apply to such a case.

11. At the same time it must be remembered, as has been pointed out by their Lordships of the Judicial Committee, that a Hindu widow is the owner of the property and the entire property vests in her. Her rights of alienation are no doubt restricted but a transfer made by her for a purpose not justified under Hindu Law is not void but is voidable and, when a reversioner gives his consent to such a transfer, the probabilities are that ho gave it for some good reason and the principle that their Lordships of the Judicial Committee have laid down, as interpreted in Fateh Singh's case, is really an extension of the doctrine prevailing in the Courts in England that if a person has solemnly given his consent to a transfer, he should not be allowed to go back on it.

Their Lordships in 'AIR 1918 PC 196 (C)', while dealing with this question at great length, did not confine their decision to the facts of that case but attempted to lay down the whole law regarding transfers by Hindu widows of the entire estate or a part of it for a purpose not recognised by Hindu Law and the effect thereon of consent given by the reversioners for consideration and without consideration. Dealing with the question of a reversioner who had consented to a transfer and had then succeeded to the property on the death of the widow, they pointed out that Section 115, Evidence Act, may not apply to such a case and posed a question as follows: "How can it be said that the plaintiff, by any act of his, led the respondents to think that something was true, and then to act on that belief?" Their Lordships then held that in the absence of these two pre-requisites Section 115, Evidence Act, which contains the rule of estoppel in India would not apply. Their Lordships then went on to consider whether the reversioner, who succeeds to [the property, which had been transferred by a Hindu widow with his consent, may not be barred from claiming the property on the ground of ratification. Dealing with this aspect their Lordships said :

> "It is scarcely that (ratification), though it might be hyper-criticism to object to the use of the word".

Then their Lordships dealt with the question whether the doctrine of election applied and pointed out that though a reversionary heir has a right to challenge any alienation at its inception, he is not bound to do so and can wait till the death of the widow. After having dealt with various grounds

which could be urged against a reversioner who had consented to a transfer and was yet claiming the property their Lordships said :

> "Of course something might be done even before that time which amounted to an actual election to hold the deed good."

It is these words on which the learned Judges of the Allahabad High Court relied for their decision in 'Fateh Singh's case (A)', that the consenting reversioner who succeeded to the property must be deemed to have made an election to ratify that deed and cannot, therefore, claim the property. (See 'AIR 1923 All 387 (FB) (A))'. In the majority judgment delivered by Mears C. J., Banerji, Pig-gott. and Ryves JJ., it was said:

> "It is towards the close of their judgment that their Lordships laid down the principle upon which the controversy now before us ought, in our opinion, to be determined, After discussing various aspects of the question, and explaining the decision in 'Bajrangi Singh's, case' their Lordships entered upon this particular aspect of the question, in an important paragraph which begins with the words, 'No doubt there is another view which is not estoppel, but is expressed by one learned Judge as ratification. It is scarcely that, though it might be hypercriticism to object to the use of the word. What it is based on is this. An alienation by a widow is not a void contract. It is only voidable.' For this last proposition express authority is quoted in the case of-- 'Bijoy Gopal Mookerjee v. Krisha Mahishi Debi', 34 Cal-329 (PC) (D).
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> Their Lordships go on to point out that, if a reversioner who had actually succeeded to the estate, thereupon did something which showed that he treated the alienation as good, he would lose his right of complaint. This may be spoken of though scarcely accurately, as ratification. In some cases it has been expressed as an election to hold the deed good.' They then pointed out that a presumptive reversionary heir was not bound to challenge an alienation by the widow in possession of the estate as soon as it came to his knowledge, taut was entitled to wait till the death of the widow has affirmed his character.' They added, 'of course something might be done even before that time which amounted to an actual election to hold the deed good.' If these words are carefully considered with reference to their context, it seems to us quite beyond question that they refer to something done by the reversioner before the death of the widow has affirmed his character".

After having said as above, the conclusion arrived at by the learned Judges was that :

> "no reversioner could well have done anything before the death of the widow which so clearly amounted to an actual election to hold good the transfer effected by the widow, while in possession of the estate to which he had since succeeded, as what Fateh Singh did when he executed the deed of 12-5-1905. Having made this election he cannot be permitted, now that the succession has opened in his favour in respect of half of the estate formerly in Mst. Muniam's possession, to challenge the validity of

> the transfer which he had expressly bound himself to accept. Whether his action be spoken of as a ratification of the transfer, or as an election to hold good the deed of 19-4-1905, we are satisfied that it is binding upon Fateh Singh so that he personally is not permitted to challenge its effect."

12. Trouble, however, arises when we bear in mind that a reversioner has a mere 'spes succes-sionis' and has no interest in the " property in the lifetime of the widow. If property is gifted by a Hindu widow to him and to a stranger no doubt the doctrine of election might apply, A reversioner cannot transfer his 'spes successionis' and if he has not derived any benefit under the deed of gift executed by a Hindu widow nor has received any consideration for giving his consent, there may be no question of estoppel operating against him and it may not strictly be a case of his claim being barred by ratification or election. The ground on which the view taken in 'Fateh Singh's case (A)', can be supported is that the transfer being voidable and the reversioner having consented to it, by an extended doctrine of election laid down by their Lordships in -- 'Rangaswami Goundan v. Nachiappa Goun-den', (C), he cannot be allowed to repudiate a transaction to which he had consented and claim the property when the reversion opens in his favour. This would, however, only apply to the consenting reversioner if he succeeds to the property and not to any other reversioner who succeeds to the property the consenting reversioner having died in the lifetime of the widow.

13. Though, therefore, ho clear principle could be evolved out of the judgment in -- 'Fateh Singh's case (A), the view was followed by a Full Bench of the Bombay High Court in -- 'Akkava Ramchandrappa v. Syadkhan Muthekhan', AIR 1927 Bom 260 (E). The judgment of the Court was delivered by Marten, C. J. The learned Chief Justice said :

> "after dealing next with the question of estoppel which, in that particular case, their Lordships held did not arise as the plaintiff never consented to the deed, nor was his claim traced through any consenting party, their Lordships dealt with yet a fourth branch under which transactions may be upheld. Put shortly, that branch amounts to an election by a reversioner to treat the transaction as good."
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> Dealing with this question the learned Chief Justice proceeded to say:
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> "In the present case the plaintiff actually joined in the deed by which the property in question was alienated. That is, 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 party 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."

14. The same view was taken by a Full Bench of the Madras High. Court in -- 'Ramakottayya v. Viraraghavayya', AIR 1929 Mad 502 (F). Though the learned Judges were of the opinion that it did not come strictly within the doctrine of election as understood in the leading case of -- 'Streat-field v. Streatfield (1735) 1 White and Tudor, 9th edition, 373 (G), the learned Chief Justice (Sir Murrey Coutte Trotter, C. J.,) delivering the judgment of the Full Bench stated :

> "Their Lordships (of the Judicial Committee in 'Rangaswami Goundcn v. Nachiappa Gounden (C)') do not specify what class of cases they had in contemplation. One would obviously be where the presumptive reversioner had brought himself either within the doctrine of estoppel, or had taken a benefit and thereby fallen within the doctrine of election strictly so called, as defined in 'Streatfield v. Stroatfield (G)'.
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> The Allahabad and Bombay High Courts hold that a third case exists, namely, where although no one has been damnified so as to call into operation the doctrine of estoppel and the reversioner has taken no pecuniary benefit to bring himself within the meaning of the strict doctrine of election, he has nevertheless positively and definitively chosen to announce his intention and in fact agreed to abide by the act of the widow. The Pull Benches of Allahabad and Bombay have decided that he can do so even while he only occupies the character of a presumptive reversioner. We agree with the Allahabad and Bombay Courts in thinking that if he takes such a step he is personally debarred from resiling from it afterwards. Indeed it is so obviously desirable that the Courts of India should speak with one voice on a matter of such constant recurrence as this that we should not dissent from those decisions unless we were convinced that they were contrary to the decision of the Privy Council in 'Rangaswami Gounden v. Nachiappa Gounden (C)'."

15. In a single Judge decision of the Calcutta High Court delivered by E. K. Mukherjea, J. (the Chief Justice Designate of India) in -- 'Hare Krishna v. Upendrjt Kumar', AIR 1941 Cal 383 (H), his Lordship said :

> "Now, the consent of the presumptive rever-sioners does not by itself validate an act of alienation by the widow. It simply gives rise to a presumption as to the existence of legal necessity -- a presumption which the actual reversioner is always entitled to rebut. But if the actual reversioner is the same person as the one who has given consent as presumptive reversioner, a different coasideration arises and he is precluded from disputing the validity of the alienation. This is on the ground that a presumptive reversioner is competent to elect to treat the alienation as operative against his 'spes successionis' even during the lifetime of the widow, and, if he himself is the reversioner at the time of her death, the consent already expressed by him is binding on him."

16. In the case of -- 'Amrit Narayan Singh v. Gaya Singh', AIR 1917 PC 95 (I), their Lordships of the Judicial Committee held that the right of a Hindu reversioner in the lifetime of the widow was a mere 'spes successions' and was not capable of being transferred. The learned Judge (Mukherjea, J)

was, however, of the opinion that it is possible for the reversioner to treat the alienation as operative against the 'spes successionis' and by giving his consent to the transfer debar himself from claiming the property if the succession opened in his favour. Section 43, T. P. Act (Act IV of 1882) provides ;

> "Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable, property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists."

The section, however, partly reproduces the doctrine of what is commonly known in England as a grant feeding the estoppel shorn of some of its technicalities but it applies only to a case where a transfer is for consideration. A gift of property in which a transferor has no interest will not be protected under this section if the transferor acquires title to the property after the gift. Where a reversioner has joined in the execution of a deed of gift executed by a Hindu widow the fact that he purports to be one of the donors will not affect his interest under Section 43. The principle laid down in Section 43, T. P. Act, or its adaptation will not, therefore, debar a reversioner who has consented to a gift made by a Hindu widow from claiming the property if succession opens in his favour. The transfer can, therefore, be protected only on the ground laid down in 'Fateh Singh's case (A)', and followed by the High Courts of Bombay and Madras.

17. The position, therefore, is that in a large part of the country the view has prevailed that a reversioner, who has consented to a transfer made by a Hindu widow, though he may not have himself received any consideration, will not be allowed to claim the property on the death of the Hindu widow if the succession opens in his favour. In the referring order this position has been noticed by Kidwai, J. who has stated:

> "It may be that the principle adopted by the various Pull Benches is. a further development of a widow's power to alienate and, having now been accepted by four High Courts for a period of about 25 years, it should not be negatived but so far as Avadh, at least, is concerned, this principle was not accepted and it would not be giving effect to the rule of 'stare decisis'."

18. We have, therefore, examined the Avadh cases. Four cases of Avadh were cited before us. In one of them (-- 'Bindeshwari Singh v. Har Narain Singh', AIR 1929 Oudh 185 (J)), the learned Judges held that the consent by the reversioner in whose favour the succession had opened out was not established. The learned Judges said :

> "In the circumstances and having regard to the finding of the lower appellate Court, we are unable, to hold that the recital contained in the deed of relinquishment dated 28-5-1928, evidences a consent by a reversioner to an act of transfer of the estate by the female heir."

The rest of the judgment, therefore, where the learned Judges discussed the question whether the doctrine of estoppel or election will apply is 'obiter'.

19. In -- 'Babu Singh v. Rameshwar Bakhsh Singh', AIR 1932 Oudh 90 (K), the finding was that the reversioners had actually received consideration for their consent and were, therefore, bound by the consent and could not repudiate the same. Any expression of opinion, therefore, as regards the other position where a reversioner had given his consent without any remuneration was mere 'obiter'.

20. In -- 'Debi Dayal v. Sri Radha Krishna', AIR 1939 Oudh 145 (L), the transfer was made by a Hindu widow for religious and pious purposes. It was ratified by the next presumptive reversioners and the question arose whether the share gifted was a reasonable share of the whole estate. The learned Judges were of the opinion that a reasonable portion of the estate alienated for religious or pious purposes would be 1/20th share and a three-fourth share of the estate could not be said to be a reasonable portion of it. Though the learned Judges have carefully discussed the validity of a consent, "given without consideration, by a reversioner at some length and with a good deal of what they say we respectfully agree the decision, to our minds, is of doubtful Validity. Where a Hindu widow makes a transfer for a valid purpose, recognised under the Hindu Law, the question whether the share transferred was or was not a reasonable portion of the whole estate would depend on various circumstances and where the whole body of the next presumptive reversioners consented to the transfer, a presumption should arise that the transfer was of a reasonable portion of the estate.

21. The only other case cited before us was -- 'Ram Bharosey v. Bhagwandin', AIR 1943 Oudh 196 (M). In that case Bennett and Madeley JJ, followed 'Fateh Singh's case (A)', and agreed with the observation made in that case and in the case of 'Ramakottayya v. Viraraghavayya (F)'.

22. It cannot, therefore, be said that the law in Avadh was different from the law laid down in Allahabad, Bombay, Madras and Calcutta. We agree, with respect, with the learned Judges of the Madras High Court that In a matter of this kind it is desirable that all the High Courts in India should speak with a common voice and lay down the same law on the ground of 'stare decisis'. We therefore, uphold the view in 'Fateh, Singh's case (A)', and hold that where a reversioner has succeeded to the property on the death of a Hindu widow, he would be debarred from claiming the property which the widow had made a gift of. with his consent.

23. The result, therefore, is that this appeal is allowed, the decrees of the lower courts are set aside and the plaintiff's suit is dismissed, but in view of the peculiar circumstances of this case, we make no order as to costs.