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DWARAMPUDI NAGARATNAMBA

v.

KUNUKU RAMAYYA & ANR.

July 19, 1967

B [R. S. BACHAWAT, J. M. SHELAT AND V. BHARGAVA, JJ.]

Hindu Law—Transfer to concubine—For services—whether consideration—Indian Contract Act, 1872 (9 *of* 1872), *s.* 2(d)—*Transfer of Property Act*, 1882 (4 *of* 1882), *s.* 6(*h*).

V the *karta* of a joint Hindu family, transferred in 1946 certain properties, of the joint family to the appellant, who was his concu-
C bines since 1945. The joint family disrupted in 1947, and after V's death, the respondents—his widow and sons, filed a suit against the appellant for recovery of possession of the properties alleging that the documents were executed without consideration or for immoral purposes, and were void. The appellant instituted suits for partition of the joint family properties and for allotment to her the properties conveyed by the deeds. The trial court dismissed the respondents' suit and decreed the appellant's suit, which the High Court reversed. In appeal to this Court, the appellant contended that V, agreed
D to make the transfers in consideration of past cohabitation, having regard to s. 2(d) of the Indian Contract Act, 1872, her past service was a valuable consideration and V was competent to alienate for value his undivided interest in the coparcenary properties. The respondents contended that the transfers were by way of gifts and not in consideration of the past cohabitation, and V was not competent to make a gift of the coparcenary properties and even assuming
E that the transfers were made in consideration of past cohabitation, they were hit by s. 6 (h) of the Transfer of Property Act, 1882.

HELD: Under the Madras School of Mitakshara law by which V was governed, he had no power to make a gift of even his undivided interest in the coparcenary properties to his concubine. [46C]

V and the appellant were parties to an illicit intercourse. The
F two agreed to cohabit. Pursuant to the agreement each rendered services to the other. Her services were given in exchange for his promise under which she obtained similar services. In view of her services, he promised to give his services only and not his properties. Having once operated as the consideration for his earlier promise, her past services could not be treated under s. 2(d) of the Indian Contract Act as a subsisting consideration for the properties to her. The past cohabitation was the motive and not
G the consideration for the transfers which were without consideration and were by way of gifts. The gifts were not hit by s. 6(h) of the Transfer of Property Act, by reason of the fact that they were motivated by a desire to compensate the concubine for her past services. [45E—G]

The invalid gifts were not validated by the disruption of the joint family in 1947. After the disruption of the joint family, V was
H free to make a gift of his divided interest in the coparcenary properties to the appellant, but he did not make any such gift. [46D]

Balo v. *Parbati*, I.L.R. [1940] All. 370 and *Istak Kamu Musalman* v. *Ranchhod Zipru Bhate*, I.L.R. [1947] Bom. 206, 217 referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 83—85 of 1965.

Appeals by special leave from the judgment and decree dated February 9, 1962 of the Andhra Pradesh High Court in Tr. Appeal No. 558 of 1957 and A. S. Nos. 89 and 157 of 1957 respectively.

P. Ram Reddy, A. V. V. Nair, B. Parthasarathy, and *O. C. Mathur,* for the appellant (in all the appeals).

C. R. Pattabhiraman and *R. Ganapathy Iyer,* for the respondents (in C.As. Nos. 83 and 84 of 1965) and respondents Nos. 1—5 (in C.A. No. 85 of 1965).

The Judgment of the Court was delivered by

Bachawat, J.—One Venkatacharyulu was the Karta of a joint family consisting of himself and his four sons. The appellant was his concubine since 1945 until his death on February 22, 1949. By two registered deeds purporting to be sale deeds dated April 15, 1946, (Exbts. A-1 and A-2), he transferred to the appellant certain properties belonging to the joint family. In 1947 after the execution of Ex. A-1 and A-2 there was a disruption of the joint family and a severance of the joint status between Venkatacharyulu and his sons. In 1954 his widow and sons instituted O.S. No. 12 of 1954 against the appellant for recovery of possession of the properties alleging that the documents dated April 15, 1946, were executed without consideration or for immoral purposes, and were void. The appellant instituted against his widow and sons O.S. No. 63 of 1954, asking for general partition of the joint family properties and for allotment to her of the properties conveyed by the two deeds. She also instituted O.S. No. 62 of 1954 against one of his sons and another person asking for damages and mesne profits for wrongful trespass on the properties. The trial court dismissed O.S. No. 12 of 1954 and O.S. No. 62 of 1954 and decreed O.S. No. 63 of 1954. From these decrees appeals were preferred in the High Court of Andhra Pradesh. The High Court confirmed the decree in O.S. No. 62/54, allowed the two other appeals, dismissed O.S. No. 63/54 and decreed O.S. No. 12/54, the decree for possession in respect of the properties covered by Ex. A-1 being conditional on payment by the respondents of the value of improvements made by the appellant to the properties. From the decrees passed by the High Court, the present appeals have been filed by special leave.

The High Court found that the transfers under Ex. A-1 and Ex. A-2 were not supported by any consideration by way of cash or delivery of jewels. This finding is not challenged before us. The High Court held that the transfers were made by Venkatacharyulu in favour of the appellant in view of past illicit cohabitation

A with her, such past cohabitation was the motive and not the consideration for the transfers and the two deeds though ostensibly sale deeds, were in reality gift deeds. It held that Venkatacharyulu had no power to make a gift of the joint family properties, the two deeds were invalid and the subsequent severance of joint status in 1947 could not validate them.

B In this Court, it is common case that future illicit cohabitation was not the object or the consideration for the transfers under Ex. A-1 and Ex. A-2. The appellant contends that Venkatacharyulu agreed to make the transfers in consideration of past cohabitation, having regard to section 2(d) of the Indian Contract Act, 1872, her past service was a valuable consideration and Venkatacharyulu C was competent to alienate for value his undivided interest in the coparcenary properties. The respondents contend that the transfers were by way of gifts and not in consideration of the past cohabitation, and Venkatacharyulu was not competent to make a gift of the coparcenary properties. In the alternative, the respondents contend that assuming that the transfers were made in D consideration of past cohabitation, they were hit by Sec. 6(h) of the Transfer of Property Act, 1882.

Our findings are as follows:—

Venkatacharyulu and the appellant were parties to an illicit E intercourse. The two agreed to cohabit. Pursuant to the agreement each rendered services to the other. Her services were given in exchange for his promise under which she obtained similar services. In lieu of her services, he promised to give his services only and not his properties. Having once operated as the consideration for his earlier promise, her past services could not be treated under section 2(d) of the Indian Contract Act as a subsisting considera- F tion for his subsequent promise to transfer the properties to her. The past cohabitation was the motive and not the consideration for the transfers under Ex. A-1 and A-2. The transfers were without consideration and were by way of gifts. The gifts were not hit by sec. 6(h) of the Transfer of Property Act, by reason of the fact that they were motivated by a desire to compensate the con- G cubine for her past services.

In *Balo* v. *Parbati*(1) the Court held that the assignment of mortgagee's rights to a woman in consideration of past cohabitation was not hit by sec. 6(h) of the Transfer of Property Act and was valid. Properly speaking, the past cohabitation was the motive H and not the consideration for the assignment. The assignment was without consideration by way of gift and as such was not hit by s. 6(h).

(1) I.L.R. [1940] All. 370.

In *Istak Kamu Musalman* v. *Ranchhod Zipru Bhate*(1) the court rightly held that past cohabitation was the motive for the gift under Exhibit 186, and the gift was valid but in holding that the promises to make the gifts under other exhibits were made in consideration of past illicit cohabitation and consequently those gifts were invalid, the Court seems to have too readily assumed that past cohabitation was the consideration for the subsequent promises.

Venkatacharyulu was free to make a gift of his own property to his concubine. The gifts under Exs. A-1 and A-2 were not hit by s. 6(h) of the Transfer of Property Act. But the properties gifted under Ex. A-1 and A-2 were coparcenary properties. Under the Madras school of Mitakshara law by which Venkatacharyulu was governed, he had no power to make a gift of even his undivided interest in the coparcenary properties to his concubine. The gifts were therefore invalid.

The invalid gifts were not validated by the disruption of the joint family in 1947. After the disruption of the joint family, Venkatacharyulu was free to make a gift of his divided interest in the coparcenary properties to the appellant, but he did not make any such gift. The transfers under Exs. A-1 and A-2 were and are invalid. We find no ground for interfering with the decrees passed by the High Court.

In the result, the appeals are dismissed. There will be one set of costs and one hearing fee.

Y. P. *Appeals dismissed.*

(1) I.L.R. [1947] Bom. 206, 217.