

UGRE GOWDA
v.
NAGEGOWDA (DEAD) BY LRS. AND ORS.

JULY 27, 2004

[S.B. SINHA AND S.H. KAPADIA, JJ.]

Hindu Law—Hindu widow's right to transfer her property—A Hindu widow transferring property by gift deed—Suit filed for declaration that plaintiff was adopted son of the widow and gift deed executed by her was null and void—Held, adoption did not divest the widow of suit property which vested in her by succession on death of her husband—Mere adoption did not deprive the widow of her right to dispose of her own disposable property.

Deeds and documents—Plaintiff claiming title on the basis of an adoption-cum-settlement deed—Held, settlement has neither been stamped nor does it identify suit property nor indicates its valuation—In the circumstances, it did not convey any right, title or interest in favour plaintiff.

Constitution of India, 1950:

Article 136—Plea that gift of co-parcenary property was void—Held, cannot be permitted to be raised before Supreme Court as no question of law was framed in this regard in second appeal under s. 100 CPC—Code of Civil Procedure, 1908—s.100.

Plaintiff-respondent No. 1 filed a suit for declaration that he was adopted son of defendant No. 1 and absolute owner of the suit property by virtue of an adoption-cum-settlement deed (Ext.P-1) executed by defendant No. 1; and that the gift deed executed by defendant No. 1 in favour of defendant No. 2 was null and void and without any authority of law; and consequently defendant No. 3 did not derive title from defendant No. 2. The trial court dismissed the suit holding that adoption was not proved. The lower appellate court held that although adoption stood proved, the plaintiff did not divest defendant No. 1 of the suit property which vested in her by succession on the demise of

A her husband. It also held that Ext. P-1 was not a valid settlement and, therefore, the plaintiff did not become owner of the suit property. The High Court, in the second appeal filed by the plaintiff, held that Ext. P-1 vested the suit property in the plaintiff; that the gift deed was null and void and consequently defendant No. 3 did not derive any title to the suit property. Aggrieved, defendant No. 3 filed the present appeal.

Allowing the appeal, the Court

HELD : 1. Adoption did not divest 1st defendant of the suit property which vested in her by succession on the death of her husband. Transfer of title in favour of the plaintiff had no relevance with the adoption because mere adoption did not deprive defendant no. 1 of her right to dispose of her own disposable property. An adoption of a son does not deprive the adoptive mother of the power to dispose of her separate property by transfer or by will. [144-G-H; 145-A-B]

D *Hindu Law by Mulla*—17th Edn. pp. 447 & 449, referred to.

2. The High Court erred in holding that the recital in Rx. P-1 was sufficient to constitute transfer of the title and that it vested the suit property in the plaintiff. As held by the lower appellate court, Ex. P-1 has been stamped. It does not identify the suit property. It did not contain valuation. In the circumstances, it did not convey any right, title or interest in favour of the plaintiff. The trial Court and the lower appellate court rightly held that there was no valid settlement.

[145-B-C]

F 3. The plea that gift of co-parcenary property was void, cannot be permitted to be raised at this stage as no question of law was framed by the High Court in second appeal under s.100 CPC as to whether suit property was coparcenary. The judgment of the High Court proceeds on the footing of the suit property as the separate absolute property of the widow. [145-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5318 of 1999.

From the Judgment and Order dated 27.7.1998 of the Karnataka High Court in Regular Second Appeal No. 1452 of 1995.

S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni and Mrs. A Sangeeta Kumar for the Appellant.

R.S. Hegde, G.V. Chandrashekhar and P.P. Singh for the Respondents.

B

The Judgment of the Court was delivered by

KAPADIA, J.: This is an appeal by special leave filed by the original defendant no. 3 against the judgment and order dated 27th July, 1998 passed by the High Court of Karnataka in R.S.A. No. 1452 of 1995, by which suit no. 36 of 1988 filed in the Court of Munsiff, K.R. Pet stood decreed.

C

The undisputed facts giving rise to this civil appeal are as follows :—

Nagegowda (since deceased) filed the title suit in the Court of Munsiff, K.R. Pet (hereinafter referred to for the sake of brevity as "the trial Court") seeking a declaration that he was the adopted son of Smt. Sannananjamma (defendant no. 1) and an absolute owner of the suit property based on the deed of adoption-cum-settlement dated 12.7.1984 (Ex.P1). In the said suit, the deceased plaintiff contended that defendant no. 1 had adopted him about 23 years back in accordance with the then prevailing customs as she had no son. That since adoption he lived in the family of defendant no. 1 looking after the suit property. In the said suit, the plaintiff relied upon Ex.P1 executed by defendant no. 1. Under Ex.P1, the earlier adoption was confirmed and the suit property was stated to have been given to the plaintiff. It was alleged that the suit property was ancestral and in joint possession and enjoyment of the plaintiff and defendant no.1. That after the plaintiff attained majority, he became the manager; looked after the property and that there was no division in the family properties. In the circumstances, he pleaded that gift deed dated 17.7.1985 executed by defendant no. 1 in favour of defendant no. 2 was null and void and without authority of law. The plaintiff further pleaded that consequently defendant no. 3 did not derive title from defendant no. 2. By written statement, adoption and plaintiff's title were denied.

E

F

G

By judgment and decree dated 29.11.1991 passed by the trial Court, H

A it was held that the adoption was not proved; that it was not according to law and that plaintiff did not acquire any title to the suit property under Ex.P1, as there was no description nor value of the suit property mentioned therein. The trial Court further held that settlement was not stamped and that there was no evidence of actual delivery of possession. In the B circumstances, the trial Court dismissed the suit.

Being aggrieved, Nagegowda (original plaintiff) carried the matter in appeal being R.A. NO. 4 of 1992 in the Court of Civil Judge, Srirangapatna (hereinafter referred to as the "lower appellate Court"). On considering the C evidence on record, the lower appellate Court concluded that the plaintiff had proved the adoption which had taken place around 1964-65. However, the lower appellate Court rejected the contention of the plaintiff that as he was the adopted son, he was entitled to the suit property. In this connection, it was held that although the adoption stood proved, the D plaintiff did not divest defendant no.1 of the suit property which vested in her by succession on the demise of her husband; that during the life time of defendant no. 1, Nagegowda did not become the owner of suit property. Affirming the decree of the trial Court, the lower appellate Court came to the conclusion that Ex.P1 was not a valid settlement and, therefore, the E plaintiff had not become the owner of the suit property. Consequently, both the Courts below dismissed the suit.

Being aggrieved, Nagegowda, the original plaintiff preferred R.S.A. No. 1452 of 1995 under section 100 CPC before the High Court which took the view that Ex.P1 itself vested the suit property in the plaintiff and, F therefore, the gift deed dated 17.7.1985 was null and void and consequently the appellant did derive any title to the suit property. In coming to this conclusion, the High Court relied on the recitals in Ex. P1. Consequently, the High Court set aside the concurrent findings given by the Courts below and allowed the appeal filed by Nagegowda (original plaintiff). Hence, this G civil appeal is filed by defendant no. 3.

We find merit in this civil appeal. An adoption of a son does not deprive the adoptive mother of the power to dispose of her separate property by transfer or by will [See: *HIndu Law by Mulla*, 17th Edn. pages H 447 & 449]. In the present appeal, we are concerned with plaintiff's title

to the suit property. The plaintiff was adopted in 1964-65. However, as A rightly held by the lower appellate Court, adoption did not divest 1st defendant of the suit property which vested in her by succession on the death of her husband. It is for this reason that the plaintiff relied on Ex.P1 contending that the said deed was a deed of adoption-cum-settlement. Transfer of title in favour of the plaintiff had no relevance with the adoption B because mere adoption did not deprive defendant no. 1 of her right to dispose of her own disposable property. In the present case, the High Court had erred in holding that the recital in Ex. P1 was sufficient to constitute transfer of the title. That Ex.P1 itself vested the suit property on the plaintiff. As held by the lower appellate Court, Ex.P1 has not been stamped. C It does not identify the suit property. It did not contain valuation. In the circumstances, it did not convey any right, title or interest in favour of the plaintiff. The High Court has not gone into these aspects at all. We are in agreement with the views of the trial Court and the lower appellate Court that there was no valid settlement. Consequently, the lower appellate Court D and the trial Court were right in dismissing the suit.

Before concluding, we may point out that Shri R.S. Hegde, learned counsel appearing on behalf of Nagegowda submitted that Ex.P1 affirms the adoption which took place in 1964-65. He urged that the lower appellate Court had erred in holding that although the plaintiff was adopted E in 1964-65, the plaintiff did not become the owner of the suit property during the life time of defendant no. 1. In this connection, it was contended that on adoption, the plaintiff became a member of the coparcenary as the adoption was made by defendant no. 1 as a member of the joint family and, therefore, on the demise of the husband of defendant no. 1, the widow F did not become the absolute owner of the suit property and consequently defendant no. 1 had no power or authority to transfer the suit property to defendant no. 2 by the above gift deed. It was urged that a gift of a coparcenary property by a member is void. That the adopted son was entitled to challenge a gift of a coparcenary property by the adoptive G mother. We are not inclined to go into this argument. The original plaintiff was the appellant before the High Court. He had preferred the second appeal under section 100 CPC. No question of law was framed as to whether the property in question was coparcenary. The impugned judgment of the High Court proceeds on the footing of the suit property as the H

A separate absolute property of the widow. Hence, we cannot permit the plaintiff now to raise such a plea.

In the result, we allow this appeal and set aside the judgment and decree of the High Court and consequently restore the judgment and decree passed by the lower appellate Court. In the circumstances, there shall be no order as to costs.

R.P.

Appeal allowed.