NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1798-1799 OF 2014

M.S. BHAVANI AND ANR. ...APPELLANTS

VERSUS

M.S. RAGHU NANDAN ....RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. The instant appeals arise out of the common final judgment and order dated 01.10.2012 passed by the High Court of Karnataka at Bangalore in R.F.A. No. 1888/2011 and R.F.A. No. 1889/2011. Vide the impugned judgment, the High Court partly allowed R.F.A. No. 1888/2011 by affirming the relief granted by the Trial Court that Respondent No. 1 herein is not bound by the sale deed executed by his mother in favour of the appellants herein. Further, the High Court dismissed R.F.A. No. 1889/2011 vide the impugned judgment.

2. The factual background to these appeals is as follows:

2.1 The suit property was the self-acquired property of one M. Srinivasa Murthy (*hereinafter* 'testator') who had purchased it from the Bangalore Development Authority in 1974. He had a daughter namely M.S. Bhavani (Appellant No. 1 herein) and a son namely M.S. Raghu Nandan (Respondent No. 1 herein). Appellant No. 1 initially got married in 1983 and a son named Sameera was born to her. However, her marriage ended in a divorce and she then married one Suresh Babu (Appellant No. 2 herein) in 1994. At such time, her son was about 10 years old.

2.2 In 2002, M. Srinivasa Murthy died, leaving behind his last Will dated 07.06.1995, written in his own handwriting (holograph) and registered before the Sub-Registrar, Rajajinagar, Bangalore. Under this Will, he had bequeathed the suit property in favour of his wife, Nirmala Murthy (Respondent No. 2 herein).

2.3 In exercise of the rights vested in her by the Will dated 07.06.1995, Respondent No. 2 Nirmala Murthy executed a sale deed on 25.02.2004 in favour of the Appellants herein (her daughter and son-in-law) for the sale of the suit property for a consideration of Rs. 16,42,000/- (*hereinafter* 'the sale deed'). It

has been stated that such amount was paid in cash by the Appellants at the time of the execution of the sale deed.

2.4 Respondent No. 1 herein filed O.S. No. 6341/2006 against his mother Nirmala Murthy (Respondent No. 2), and his sister and brother-in-law (the Appellants herein), seeking a declaration *inter alia* that his mother and sister were not entitled to execute any sale deed in favour of his brother-in-law, as he had a share in the suit property and the Will dated 07.06.1995 only gave his mother, Nirmala Murthy, a life interest in respect of such property.

2.5 Later, O.S. No. 1845/2008 came to be filed by the Appellants against Nirmala Murthy seeking her ejectment from the suit property on the ground that she was a mere licensee, who had only been permitted to stay in the property after the sale in 2004, as the Appellants were residing in Australia. It was stated that the Appellants did not wish to continue the said licence in her favour, as she had joined hands with Respondent No. 1 to file O.S. No. 6341/2006 against them.

2.6 Vide common judgment dated 09.09.2011, the IIIrd Additional City Civil Judge, Bangalore City partly decreed the suit for declaration, O.S. No. 6341/2006, noting that though the Will

dated 07.06.1995 vested absolute rights with Nirmala Murthy in respect of the disposition of the suit property, the sale to the Appellants was vitiated by fraud inasmuch as Nirmala Murthy never intended to sell the property to the Appellants. It was further found that the Appellants had gotten the sale deed executed by misrepresentation by obtaining Nirmala Murthy's signatures on the pretext that they were required on her visa applications for travel to Australia. In light of this, it was held that the sale deed did not bind Respondent No. 1, being a fraudulent document against the intention of the testator. Based on such finding, ejectment suit O.S. No. 1845/2008 was also dismissed.

2.7 In the appeal before the High Court, vide the impugned judgment dated 01.10.2012, it was observed that the nature of the right vested with Nirmala Murthy under the Will dated 07.06.1995 was absolute and she had unfettered powers to sell the property, as long as her discretion was exercised voluntarily. However, the High Court also noted that in the event that a sale was made by Nirmala Murthy, both her children (Appellant No. 1 and Respondent No.1 herein) would be entitled to a share in the sale proceeds. As regards fraud or coercion in the execution of

the sale deed, the High Court modified the findings of the Trial Court and observed that there was no material on record to show that Nirmala Murthy had been drugged or threatened at gunpoint so as to execute the sale deed in question. Notwithstanding this, the final relief granted by the Trial Court that Respondent No.1 was not bound by the sale deed, was confirmed on the basis that such sale deed was against the intention of the testator inasmuch as it should have been executed in a transparent manner, after obtaining the concurrence of Respondent No. 1.

2.8 It is against this common judgment that the Appellants have come in appeal before this Court. At this juncture, it may also be noted that Respondent No. 2 Nirmala Murthy passed away during the pendency of the proceedings before this Court.

3. Heard learned Counsel for the parties.

4. Learned Senior Counsel, Mr. Dhruv Mehta appearing for the Appellants, first drew our attention to the Will dated 07.06.1995 to argue that Nirmala Murthy became the absolute heir to the suit property thereunder, and had an unfettered right to sell the property without informing or consulting any of her children and to deal with the sale proceeds in a manner of her choice. Alluding to the use of the word “desire” in respect of the

sale proceeds being divided among the children of the testator, he submitted that there is no bequest in the latter part of the Will in favour of Respondent No. 1 so as to accord him any rights over the suit property. In any case, relying upon the decisions in ***Mauleshwar Mani* v. *Jagdish Prasad***, (2002) 2 SCC 468, ***Madhuri Gosh* v. *Debobroto Dutta***, (2016) 10 SCC 805, and ***Siddamurthy Jayarami Reddy (dead) by LRs.* v. *Godi Jayarami Reddy***, (2011) 5 SCC 65, he argued that once an absolute right was vested with Nirmala Murthy, any subsequent right in favour of the children in the event of the sale of the property would be repugnant to such absolute right of ownership and thereby be invalid. As regards the sale deed dated 25.02.2004, it was argued that the validity of such deed and payment of valuable consideration thereunder are beyond the scope of the suit filed by Respondent No. 1 and should have therefore not been considered by the Trial Court and the High Court.

5. Per contra, learned Counsel Mr. S.N. Bhat appearing for Respondent No. 1, emphasized on reading the Will dated 07.06.1995 holistically, pointing to an underlying dominant

intention of only giving a life interest in the suit property to Nirmala Murthy, and not to bequeath it absolutely to her. In this regard, he adverted to clauses allegedly indicating an intention to settle the properties on the two children and conferring rights on them in respect thereof, particularly by disposing of the property and providing them with a share in the sale proceeds. To support his contention that such latter parts of the Will dated 07.06.1995 granting a share in the property to Respondent No. 1 should be given effect, he relied on the decisions in ***Ramachandra Shenoy*** **v.** ***Mrs. Hilda Brite***, AIR 1964 SC 1323 and ***Kaivelikkal Ambunhi (dead) by LRs.*** **v.** ***H. Ganesh Bhandary***, (1995) 5 SCC 444, which hold that in the event of a conflict between two clauses of a Will, the latter one shall prevail. As regards the sale deed dated 25.02.2004, learned Counsel alluded to the observations by the Trial Court and the High Court regarding the suspicious circumstances in which such deed was executed. Based on this, he argued that no title had passed to the Appellants by virtue of such deed, especially in the absence of a sale consideration.

6. Upon perusing the record and hearing the arguments advanced, we find that the following points arise for our consideration:

(a) Whether the testator of the Will dated 07.06.1995 intended to vest Nirmala Murthy with an absolute interest in the suit property?

(b) If yes, whether the sale deed dated 25.02.2004 was against the Will dated 07.06.1995, and therefore unenforceable as against Respondent No. 1?

We will be adverting to each of these in turn.

7. As regards the *first* point, it would be useful to refer to the relevant excerpts of the Will dated 07.06.1995, which are as follows:

> "I herein execute this last Will and testament on this day the date 7th of June of 1995 out of my free will and in bound (sic) mind and health…
>
> My daughter M.S. Bhavani is a divorcee from her first husband and has a son by him by name Sameera aged 10 years. She is a Doctor by profession and practicing privately.
>
> One Gentleman by name Sri Suresh Babu who is an M.Tch in Civil Engineering and by profession a structural Engineer and consultant and with his progressive and magnanimous outlook came forward to my daughter in spite of she having a son of 10 years.
>
> I celebrated the marriage of my daughter M.S. Bhavani with Sri. Suresh Babu on 6th July 1994…
>
> My daughter is staying with him and her son separately in a rented house.

It is my moral duty to provide her a share in my immovable property, i.e. House No. 377, 5th Main Road, 3rd Block, 3rd Stage, Basaveshwar Nagar.

After my death, my wife Smt. Nirmala shall be sole legal and rightful heir over my immovable and movable property and she will have every right and authority to sell, mortgage and lease my house or totally bequeath it to anybody who take care of her in her last days, and old age also.
The decision of my wife Smt. Nirmala is supreme in this matter and none of my children, i.e., Bhavani and Raghunanda have any right to question my wife, put unjust claim, obstruct or put any obstacle for the manner my deals with my property.
It is my desire that the house should be sold and sale amount be divided among my daughter and my son as per the decision of my wife. My wife shall endev (sic) to sell the house (sic) during her lifetime.
In case my wife is unable to sell the house during her lifetime, my daughter shall be the seller of the house and she should (sic) the house mutually with my son Raghunanda."

(emphasis supplied)

A reading of the above portion of the Will dated 07.06.1995, clearly indicates that the testator sought to provide for the manner in which his wife Nirmala Murthy would have a right to the suit property and how she would deal with the same. In addition to this, he also sought to provide for the manner in which the property may be dealt with by his daughter and son, in the event that his wife did not sell the property during her

lifetime. Notably, this second part is not attracted at all in the present case, as Nirmala Murthy sold the suit property during her lifetime.

8. The question that then remains to be answered is whether the right vested in Nirmala Murthy was absolute in nature. While the Appellants argued in favour of an absolute right, Respondent No. 1 submitted that the dominant intention of the testator was to look after his children and give them a share in the property, thereby implying that the right of Nirmala Murthy was only intended to be limited to a life interest in the property.

9. Since the issue essentially turns on the interpretation of the Will, it would be useful to note certain principles that should be borne in mind while undertaking the construction of a will. At its very core, the exercise involves an endeavour to try and find out the intention of the testator. This intention has to be gathered primarily from the language of the will, reading the entire document as a whole, without indulging in any conjecture or speculation as to what the testator would have done had he been better informed or better advised. In construing the language of a will, the Courts may look to the nature and the

grammatical meaning of the words used, and also consider surrounding circumstances such as the position of the testator, his family relationship, and other factors that may surface once the Court puts itself in the position of a person making the will [*see* ***Shyamal Kanti Guha (dead) through LRs* v. *Meena Bose***, (2008) 8 SCC 115].

10. Keeping in mind these principles and upon a close reading of the wording of the Will dated 07.06.1995, we find that the testator intended to give his wife, Nirmala Murthy (Respondent No. 2) absolute rights over the suit property, by making her the sole legal and rightful heir of all his immovable and movable properties.

10.1 By according Nirmala Murthy the right to sell, mortgage, and lease the house or even to bequeath it to anybody who takes care of her in her last days, it is clear that the testator intended to create an absolute interest in her favour, and to preclude his daughter and son (Appellant No. 1 and Respondent No. 1 respectively) from succeeding to the suit property. This is further supported by the clause stating that the decision of Nirmala Murthy in exercise of these rights would be supreme and the children would have no right to question or put an unjust

claim against the same. To this extent, we agree with the finding of the High Court that Nirmala Murthy had an absolute right in the suit property and that the children were disinherited from the bequest.

10.2 However, we hasten to add here that such right vested with Nirmala Murthy was intended to be completely unfettered in nature. The contention raised by Respondent No. 1 that she only had a life interest in the property as the testator necessarily wanted a sale of the property, cannot be accepted. This is because the part of the Will where the testator states that "*the house should be sold and sale amount be divided among my daughter and my* son" is preceded by the expression "*it is my desire*". Juxtaposed with this, the bequest in favour of Nirmala Murthy is characterized by words such as "*my wife shall be sole legal and rightful heir over my immovable and movable property and she will have every right and authority to sell, mortgage and lease...*". The assertive language used in favour of Nirmala Murthy is a clear indication of the creation of an absolute bequest in her favour, while the use of non-mandatory words such as '*desire*' indicate that the testator did not wish to compel

his wife to sell the suit property. He merely desired that his wife should endeavour to sell the property during her lifetime and divide the sale proceeds as she chose.

10.3 We also note that the High Court erred in observing that in the event that a sale was to be made by Nirmala Murthy, both the children would be entitled to a share in the sale proceeds. As mentioned supra, the testator intended to create an absolutely unfettered right in favour of his wife by virtue of the Will. Reading in other clauses that are merely expressive of his desire as compulsory dictates on such absolute ownership goes against the clear wording of the Will, and would amount to rewriting it. Thus, we do not find that there was any bequest made in favour of the children of the testator under the Will dated 07.06.1995.

10.4 In this regard, reliance sought to be placed by Respondent No. 1 on the decision in ***Kaivelikkal Ambunhi*** (supra), to argue that the subsequent bequest made in the latter part of the Will had to be given effect, is also misplaced, as the rule of last intention is only applicable when there is inconsistency in the bequests. We may note the following excerpt from the decision:

"**4.** A Will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause is held to prevail over the earlier clause. This is regulated by the well-known maxim "*cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est*" which means that if in a Will there are two inconsistent provisions, the latter shall prevail over the earlier (See: *Hammond, Re, Hammond* v. *Treharne* [(1938) 3 All ER 308 : 54 TLR 903]).

…**6.** It may, however, be pointed out that this rule of interpretation can be invoked only if different clauses cannot be reconciled. (See: *Rameshwar Bakhsh Singh* v. *Balraj Kuar* [AIR 1935 PC 187 : 1935 All LJ 1133])."

(emphasis supplied)

Here, there is no inconsistency in the clauses of the Will inasmuch as the house property was absolutely bequeathed to Nirmala Murthy and no inconsistent bequest has been made thereafter. As discussed supra, the part of the Will providing for the sale of the property during her lifetime and the distribution of the sale proceeds between the children cannot be treated as a bequest, as it was a mere desire expressed by the testator.

10.5 In any case, even if it is assumed that the latter clause went beyond a mere expression of desire and created a bequest in favour of the children of the testator (Appellant No. 1 and

Respondent No. 1), the first clause creating an absolute right in favour of Nirmala Murthy shall prevail over such clause. In this regard, the following observations of this Court in ***Mauleshwar Mani*** (supra) are relevant:

> "**11.** From the decisions referred to above, the legal principle that emerges, inter alia, are:
>
> (*1*) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and
>
> (*2*) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.
>
> **12.** In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid. In the present case the testator Jamuna Prasad under the will had bequest his entire estate, movable and immovable property including the land under self-cultivation, house and groves etc. to his wife Smt Sona Devi and thereafter by subsequent bequest the testator gave the very same properties to nine sons of his

daughters, which was not permissible…"

(emphasis supplied)

Notably, these observations were reaffirmed by this Court in ***Madhuri Gosh*** (supra) as well.

10.6 Given that we find that an absolute right was given to Nirmala Murthy over the property, in view of the aforesaid decisions, any subsequent bequest sought in favour of the children of the testator cannot be given effect. Further, the reliance of Respondent No. 1 on the decision in ***Ramachandra Shenoy*** (supra) is misplaced inasmuch as the Clause in the Will in that case stated thus:

> "3.(c) All kinds of movable properties that shall be in my possession and authority at the time of my death i.e. all kinds of moveable properties inclusive of the amounts that shall be not from others and the cash – all these my eldest daughter Severina Sobina Coelho, shall after my death, enjoy and after her lifetime, her male children also shall enjoy permanently and with absolute interest."

Clearly, the clauses in the Will in the present case are significantly different from the aforementioned clause, wherein the daughter was clearly given a life interest only. This is not the case with the right of Nirmala Murthy, which has been expressly stated to be absolute in nature.

10.7 In view of the foregoing observations, we answer the first question in the affirmative and hold that the Will dated 07.06.1995 creates an absolute, unfettered right in favour of Nirmala Murthy with respect to the suit property.

11. In light of this finding, we now turn to the *second* point, i.e. whether the sale deed executed by Nirmala Murthy was against the intention of the testator, and thereby unenforceable as against Respondent No. 1. In this regard, we note at the very outset that several observations have been made by the Trial Court and the High Court with respect to the circumstances in which the sale deed was executed, which cast an aspersion on its validity. However, we do not find the need to delve into this question as the same is beyond the scope of the suit filed by Respondent No. 1. Moreover, no prayer for setting aside the sale deed was raised by Nirmala Murthy either. Thus, we shall only confine ourselves to an examination of the sale deed vis-à-vis the Will dated 07.06.1995.

12. Notably, the High Court found that the sale deed was not obtained by fraud or coercion on the part of the Appellants. However, it was held that such a deed was nevertheless unenforceable against Respondent No. 1, as it had been executed

in a clandestine manner without his concurrence or consultation. The High Court found that a transparent process of sale of the property by Nirmala Murthy was integral to the intention of the testator, as he had clearly expressed a desire for his son to get a share of the sale consideration. Thus, it was held that the sale deed in question, having been executed without the knowledge of Respondent No. 1, was against such intention and therefore not binding on him. Upon perusing the record and the wording of the Will, we do not agree with such finding of the High Court.

12.1 As mentioned supra, the right vested under the Will in favour of Nirmala Murthy was an unfettered and absolute right. There is nothing in the wording of the Will which indicates that the testator *necessarily required* any subsequent sale, mortgage, or lease carried out by Nirmala Murthy to happen with the concurrence or consultation of his children. In fact, when one looks to the circumstances and the family relationship between the testator and his son, it becomes clear that their relations were strained. This is particularly reflected in Ex. P-17, a letter addressed by Nirmala Murthy to her son, Respondent No. 1 herein, where she specifically alludes to the ill treatment meted out by her son to his sister (Appellant No. 1) and the testator. In

light of this, we find that a mere “desire” for the sale of the property and for the children to get a share in the proceeds therefrom cannot be read as a strict bar on the absolute right vested with Nirmala Murthy to deal with the property as she thought fit.

12.2 Thus, while it may have been desirable for Nirmala Murthy to carry out the sale transaction with the knowledge of Respondent No. 1, her failure to do so does not strike at the very root of the sale deed. In our considered opinion, interpreting the Will dated 07.06.1995 in a manner that places fetters on the power of Nirmala Murthy to sell the property by mandating consultation with her children would not be in consonance with the wording of the Will. Indeed, it effectively amounts to adding terms to the Will, which is impermissible.

12.3 In view of this, we find that the sale deed in question was executed in accordance with the Will dated 07.06.1995 and does not violate its terms. Therefore, Respondent No. 1 is also bound by the same and the finding of the High Court in this regard is liable to be set aside. The Appellants have acquired valid title over the suit property by virtue of the sale deed

executed by Nirmala Murthy and are therefore entitled to possession of the same.

13. Accordingly, we set aside the judgment of the High Court and find that Nirmala Murthy had an absolute right in the suit property by virtue of the Will dated 07.06.1995. We also find that the sale deed executed by her in favour of the Appellants in exercise of such rights is in consonance with the intention of the testator and binds all the parties to these appeals. Accordingly, O.S. No. 6341/2006 filed by Respondent No. 1 is dismissed and O.S. No. 1845/2018 filed by the Appellants for ejectment is decreed. Consequently, the instant civil appeals are allowed.

14. It has been brought to our notice that the suit property was in the possession of Nirmala Murthy during the pendency of these appeals, in view of the interim order passed by this Court on 27.01.2014 directing status quo to be maintained with respect to the suit property. However, as mentioned supra, Nirmala Murtha passed away during the pendency of these appeals. The suit property has been under lock and key since then, and the possession of such keys has been with Respondent No. 1. Therefore, in light of our findings above, and given these circumstances, we direct that the possession of the suit property

be handed over to the Appellants within a period of 3 months from the date of this order.

15. Ordered accordingly.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(R. SUBHASH REDDY)

New Delhi;
March 05, 2020