

Privy Council Appeal No. 42 of 1925.

Ramgowda Annagowda Patil and others - - - - *Appellants*

v.

Bhausahab and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 11TH JULY, 1927.

Present at the Hearing :

LORD SINHA.

LORD BLANESBURGH.

LORD SALVESEN.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD SINHA.]

This is an appeal by the plaintiffs from a decree of the High Court of Bombay which modified a decree of the Subordinate Judge of Belgaum made in suit No. 203 of 1919.

That suit was instituted to recover possession of certain houses and lands from the defendants.

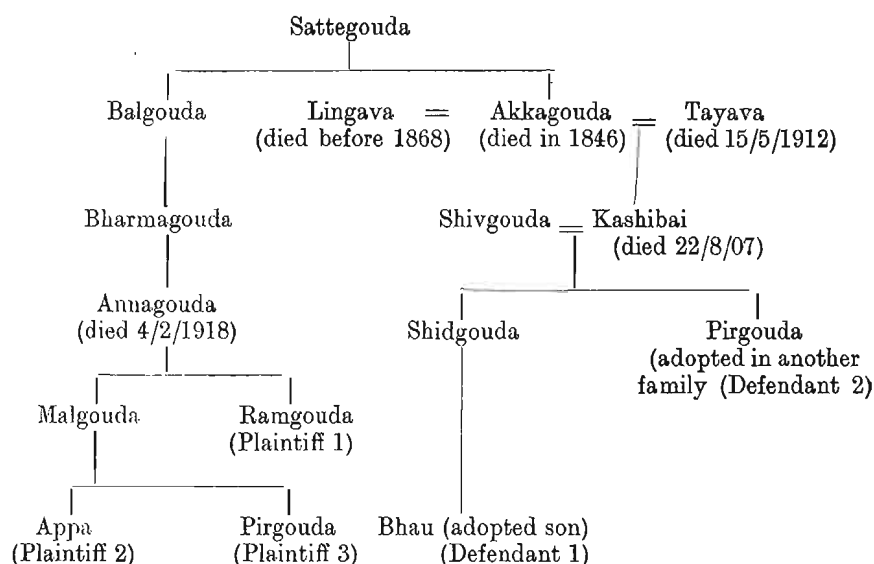
The properties in suit originally belonged to one Akkagowda who died in 1846, leaving two widows, Lingava and Tayava, and a daughter Kashibai, who was married to one Shivgouda and had a son Shidgouda.

Lingava died before 1868, but her co-widow lived till 1912, thus surviving her husband for 66 years.

Kashibai, the daughter, died in 1907, a few days after the death of her husband Shivgouda. Shidgouda, her eldest son, died in 1907, leaving an adopted son named Bhau (Defendant No. 1).

Kashibai had a second son, Pargouda (Defendant No. 2) who, however, had been given in adoption to another family some years before Kashibai's death.

The pedigree of the family is as follows :—



It is no longer in dispute that when the succession opened out on the death of Tayava in 1912, Annagouda was under the Hindu Law the nearest heir of Akkagouda, in preference to Bhau (Defendant No. 1) and Pargouda (Defendant No. 2).

Tayava had alienated most of her husband's properties in 1868 by and under 3 deeds. By one of these she made a gift of certain of those properties to her brother Basappa ; by another she purported to sell half of certain other lands to Annagouda himself for Rs. 2,000/-, and by the third she sold the other half of those properties to her son-in-law Shivgouda. There was only one small property left unalienated.

These 3 deeds were all executed and registered on the same day. The deed of gift in favour of Basappa was attested by Annagouda and Shivgouda ; the deed of sale in favour of Shivgouda was attested by Annagouda and Basappa ; and the sale deed in favour of Annagouda was attested by Basappa and Shivgouda. And the widow as executant was identified before the Registrar in respect of all three deeds by Annagouda.

The latter subsequently in 1882 sold the properties purchased by him as aforesaid for Rs. 3,000/-. The properties purchased by Shivgouda remained in his possession till his death and afterwards of his grandson and son (Defendants 1 and 2) and their tenant Defendant No. 3. Basappa's share passed by purchase to Defendants 4 to 7.

Annagouda, who survived the widow by nearly 6 years, did not in his lifetime seek to set aside the alienations in favour of Shivgouda and Basappa ; but after his death in 1918, his son and grandsons instituted the present suit, against all the defendants above named to recover those properties on the ground that the alienations thereof by the widow were not valid.

It is admitted that Annagouda became entitled to the succession in 1912 and that the plaintiffs claim under or through him and therefore have no better title to succeed in this suit than Annagouda had.

On the written statements filed by the defendants, issues were raised, of which the two material ones are :—

1. Are the plaintiffs estopped from bringing this suit ; and
2. Do the defendants prove that the transactions of gift (to Basappa) and sale (to Shivgouda) are legal and valid and binding on the plaintiffs.

The Trial Court found in favour of the plaintiffs on both issues and gave them a decree.

The High Court held that no question of estoppel arose in the case ; but on the 2nd issue, held that both the gift to Basappa and the sale to Shivgouda by Tayava were binding on the plaintiffs, who therefore were entitled to recover in the suit only the small property which was not included in any of the three documents by her in 1868.

The grounds of their judgment may best be stated in their own words :—

“ The transactions which were effected by Tayava with the consent of Annagouda and Shivgouda were evidently pre-arranged as a proper disposition of Akkagouda’s property between these parties, and those transactions must be considered as a whole, and since Annagouda received considerable advantage from giving his consent to Tayava’s alienations, it would be most inequitable if his descendants, while retaining that advantage, should be allowed to set aside the other alienations.”

It was contended before their Lordships on behalf of the appellants that the decision of the High Court was erroneous because :—

1. The attestation by Annagouda of (1) the deed of gift to Basappa and (2) the deed of sale to Shivgouda was no evidence of his consent to either of those transactions.

2. The deed of gift in favour of Basappa was admittedly not supported by legal necessity and no consent of reversioners, near or remote, could give it validity.

3. That even if Annagouda consented, such consent would not give validity to the sale to Shivgouda, as Annagouda was not the nearest reversioner at the time, inasmuch as the daughter Kashibai and her son Pirgouda were then alive and were nearer in succession.

4. That the sale to Annagouda himself did not estop him from questioning either the gift to Basappa or the sale to Shivgouda, as the transactions were separate and in no way interdependent, and that there was no such equity in favour of the defendants as the High Court assumed.

Their Lordships consider that the decision of this case depends upon how far the 3 documents can be taken as separate and independent, or so connected as to form one transaction.

The long lapse of time between the execution of the deeds and the institution of the suit has rendered it impossible to prove what actually occurred between the parties on that occasion. There is not sufficiently definite evidence to come to a conclusion as to how far any of those properties were validly encumbered or what was done with the purchase money alleged to have passed on the 2 deeds of sale.

But the parties to the documents included, or after so great a lapse of time may be presumed in a very real sense to have included, all persons who had any actual or possible interest in the properties, viz., the widow herself, her brother, who was a natural object of her affection and bounty, her son-in-law, who was the natural protector of the interests of her daughter and grandson, and the nearest kinsman on the husband's side and the only person from whom any opposition might be apprehended with regard to dealings by the widow concerning her husband's estate.

Their Lordships conclude that all the circumstances strongly point to the three documents being part and parcel of one transaction by which a disposition was made of Akkagouda's estate, such as was likely to prevent disputes in the future and therefore in the best interests of all the parties.

The three deeds appear thus to be inseparably connected together and in that view Annagouda not only consented to the sale to Shivgouda and the gift to Basappa but these dispositions formed parts of the same transaction by which he himself acquired a part of the estate.

It was argued that Annagouda's contingent interest as a remote reversioner could not be validly sold by him, as it was a mere *spes successionis*, and an agreement to sell such interest would also be void in law. It is not necessary to consider that question, because he did not in fact either sell or agree to sell his reversionary interest. It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding.

If some person other than Annagouda had been at the death of Tayava the nearest heir of her husband, it might have been open to him to question all or any of the 3 deeds, but Annagouda himself being a party to and benefiting by the transaction evidenced thereby was precluded from questioning any part of it. Nor is it other than a most notable circumstance that he did not, after Tayava's death, essay to do so.

For these reasons their Lordships agree with the conclusion arrived at by the High Court and would humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

RAMGOWDA ANNAGOWDA PATIL AND OTHERS

vs.

BHAUSAHEB AND OTHERS.

DELIVERED BY LORD SINHA.

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