

THE EFFECT OF ESTOPPEL CANNOT BE WARDED OFF BY PERSONS CLAIMING THROUGH THE PERSON WHOSE CONDUCT GENERATED THE ESTOPPEL

INTRODUCTION:

The Apex Court in its recent decision in **Elumalai @ Venkatesan & Anr. vs. M. Kamala And Ors. & Etc.**¹ held that the conduct accompanied by intention of the Parties has to be considered while considering the effect of estoppel.

FACTS:

The controversy in this case relates to the self-acquired property of one 'S'. 'S' had married twice in his lifetime. From his first marriage, was born a son 'C'. From his second marriage, he had 5 daughters and a son. 'C' had two children who are the Appellants in the present matter ("**Appellants**"). When one child of 'C' was a minor, and the other was not born, a Release Deed dated 12th November, 1975 was executed between 'S' and 'C' ("**Release Deed**"), for relinquishing 'C's share in the self-acquired property of 'S' for a valuable consideration. 'C' on execution of the release deed relinquished every other right apart from being a blood relative.

'C' predeceased his father 'S' in the year 1978. Two children from the second marriage of 'S' ("**Respondents**") filed a suit for partition for the self-acquired property of 'S', to exclude the children from the first marriage of 'S' on the basis of the Release Deed. The Trial Court held the Release Deed to be null and void on the basis that it was executed by 'C' when his father was still alive, and ordered division of the

property equally between the children of both marriages.

On appeal, the Madras High Court found the Release Deed to be a valid document and, on that basis, excluded the Appellants. Relying on the dicta laid down by the Apex Court in the case of *Gulam Abbas v. Haji Kayyam Ali and Others*², the High Court held that the Release Deed coupled with the consideration received by 'C' on executing the same, acted as an estoppel against the Appellants. ("**impugned judgment**")

Aggrieved by the decision of the High Court, the Appellants filed the present appeal before the Apex Court.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

The learned counsels for the Appellants *inter alia* argued that the High Court erred in relying on the Gulam Abbas case (Supra), by pointing out that, that particular case arose under Mohammedan Law, and that the principle laid down in the said judgment could not be employed to deprive the Appellants of their

¹ [2023] 1 S.C.R. 261.

² AIR 1973 SC 554.

share as Class – I heirs under Section 8 of the Hindu Succession Act, 1956.

It was contended that when the Release Deed was executed, the first Appellant was only three years old and the second Appellant was not even born. As the property was the self-acquired property of their grandfather 'S', and the Appellants being the sons of the predeceased son of 'S', their interests in the property were protected by Section 8 of the Hindu Succession Act, 1956. Referring to Section 6 of the Transfer of Property Act, 1882, it was further contended that when the Release Deed was executed, 'C' the father of the Appellants had a mere *spes successionis* and the mere expectation of succeeding to the property in the future, could not form the subject matter of a legitimate transfer.

It was further contended that the High Court had overlooked the mandate of Section 8 of the Hindu Minority and Guardianship Act, 1956. It was contended that 'C' the father of the Appellants could be treated as having entered into a covenant with his father 'S', even then, the covenant could not operate to bind the Appellants in view of Section 8 of the Hindu Minority and Guardianship Act, 1956.

Lastly, it was contended that despite being aware of 'C' dying intestate, 'S' did not execute a Will, or make any safeguard known to law to eliminate the Appellants from succeeding to the property as per Section 8 of the Hindu Succession Act, 1956.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

The learned counsel for the Respondent supported the impugned judgment of the High Court.

Attention was drawn to the terms of the Release Deed. It was pointed out that the intention of the Parties to the Release Deed was to be borne in mind. 'S' had a son from the second marriage who was mentally ill. It was contended that the intention of the parties was to protect the interests of the son who was mentally ill, which explains why the Release Deed was executed by 'C' in favour of 'S' for some consideration.

It was further contended that in addition, 'C' was also given valuable consideration in return for giving up his rights to the said self-acquired property. Thus, there was no question of the Appellants obtaining any share of the said self-acquired property of their grandfather 'S' through succession.

JUDGMENT:

The Apex Court held that the conduct and intention of the parties have to be considered whilst deciding the effect of the Release Deed. When 'S' the father of 'C' was alive, 'C' had merely a right of *spes successionis* to his father's self-acquired property. The Court went on to analyze Section 6(a) of the Transfer of Property Act, 1882 stating that the principle behind the section is *nemo est heres viventis*, that is, a living person has no heir. An heir apparent or presumptive has no reversionary interest that would enable him to object to any sale or gift made by the owner in possession. Unlike a coparcener who acquires right to joint family property by his mere birth, in regard to the separate property of the Hindu, no such right exists.

The Apex Court went onto hold that the Release Deed may not by itself have the effect of a transfer of the rights of 'C' in favour of his father. Since the property in question was not the ancestral property of 'C', 'C' would have only

acquired rights over the same if his father had died intestate. Thus, he was only an heir apparent. Therefore, as per the Doctrine of *Spec Successionis*, no transfer could have taken place as the transferor, that is, the father of the Appellants did not have any right at all in the property, which he could relinquish.

The Apex Court went on to state that intention of 'S' in executing the Release Deed has to be seen. The intention of 'S' appeared to have been to secure the interest of his mentally ill son from his second marriage, for which he gave his son 'C' some valuable consideration. Further, the Release Deed itself specified that 'C' did not have any other connection except blood relation, which signifies that it was the intention of 'S' to deny any future claim of 'C' to the said self-acquired property.

It was further held that though the conduct of executing the Release Deed by itself may not have resulted in a lawful transfer, however, the conduct of 'C' in executing the Release Deed being accompanied by the receipt of the valuable consideration would have estopped 'C'. The Court went onto state that the very fact that 'S' did not execute a Will shows that he proceeded on the basis that the branch

represented by 'C' was to be excluded from the inheritance of the self-acquired property for which the Release Deed was executed.

As far as Section 8 of the Hindu Succession Act, 1956 is concerned, the Apex Court held that the Appellants cannot claim immunity from the operation of the Principle of Estoppel on the basis of Section 8(a) of the said Act. The fact that 'C' received valuable consideration and allowed his father 'S' to proceed on the basis that he was free to deal with the property without the prospect of any future claim being made by 'C' with regard to the property in question, enabled a clear estoppel to come into existence following the receipt of the consideration by 'C'. In equity, this estoppel would shut out any future claims by 'C' or his children, the Appellants, as the effect of estoppel cannot be warded off by persons claiming through the person whose conduct generated the estoppel.

In view of the above, the Apex Court dismissed the appeal and held that, the Appellants were not entitled to any share in the self-acquired property of their grandfather 'S'.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.