GORIE GOURI NAIDU (MINOR) AND ANR.

v.

THANDROTHU BODEMMA AND ORS.

JANUARY 9, 1997

[G.N. RAY AD G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 : Section 11—Res judicata—Even if erroneous, an inter party judgment binds the party if the Court of competent jurisdiction has decided the lis—In an earlier decision Court declared that deed of gifts were not valid under Hindu Law—Held the said decision was binding on the parties—Donees could not claim any title in respect of the said property—It was not open to them to contend that in view of a family settlement the opposite party was estopped from challenging validity of the gift deed.

Kale and Ors. **v.** *Deputy Director of Consideration & Ors.*, **[1976] 3 SCC 119, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 242 of 1987.

From the Judgment and Order dated 31.3.86 of the Andhra Pradesh High Court in L.P.A No. 134 of 1980.

K. Ram Kumar, Ms. Asha Nair, Y. Subba Rao and C. Balasubramaniam for the Appellants.

R. Venugopal Reddy and B. Kanta Rao for the Respondents.

The following Order of the Court was delivered :

This appeal is directed against the judgment dated 31st March, 1986 passed by the Division Bench of the Andhra Pradesh High Court in Letters Patent Appeal No. 134 of 1980. The said Letters Patent Appeal arose out of the judgment dated 23rd April, 1979 in A.S. No. 29 of 1977.

The appellants before this Court are the heirs of the defendant No. 4 in O.S. No. 10 of 1973 filed in the Court of the learned Single Judge Parvathi Puram by the respondent M. Thandrothu Bodemma. The said suit was filed by the aforesaid plaintiff for partition and separate possession of

her half share in the A and F Schedule of the plaintiff property alongwith past and future profits. Such suit was dismissed by the learned Subordinate Judge but the appeal preferred before the High Court being appeal No. 514 of 1968 was allowed by the High Court and the plaintiff thereafter preferred appeal No. 29 of 1977 before the Andhra Pradesh High Court. Such appeal was also dismissed by the High Court inter alia holding that parties to the family settlement were estopped from challenging the validity of such deed when being partitioned, they had derived benefits by the said family settlement. The plaintiff thereafter preferred an appeal before the Division Bench under Clause 15 of the Letters Patent. Such appeal has been allowed by the impugned judgment and the Division Bench has held that all the four deed of gifts which were executed by Gowramma were declared void and it was not open for the donees under the said deeds to claim any title. The suit was therefore decreed by the Division Bench.

Mr. Ram Kumar, the learned counsel appearing for the appellant, has submitted that family settlement or arrangement between the parties of the family and descendant from the near relation must be given proper sanctity and if the family arangements are not being vitiated by fraud, the said family arrangements must be enforced between the parties to the family arrangements, in support of this contention he has relied on the decision of this Court made in *Kale and Ors.* v. *Deputy Director of Consolidation and Ors.,* [1976] 3 SCC 119. It has been held in the said decision that when the members of the family or near relations seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind of bring about complete harmony and goodwill in the family, the family arrangement is not to be discarded on technical grounds. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced, if honesty made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to one what their rights actually depend. It has also been indicated in the said judgment that object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which man the unity and solidarity of the family and create hatred and bad blood between the various members of the family. The Court has held that so far as family arrangements are concerned, the courts lean in favour of family arrangements. Technical or trivial

grounds are overlooked. Rule of estoppel is presed into service to prevent unsettling of a settled dispute. Relying on the said decision, Mr. Ram Kumar has submitted that the learned Single Judge of the High Court has also applied this salutory principle of estoppel so far as parties to the family settlement are concerned and the Division Bench should not have set aside this said well-reasoned judgment of the learned Single Judge.

It however appears to us that previously between the parties another suit was instituted in the Court of the learned Subordinate Judge Srikakulam being original suit No. 50 of 1954. In the said suit, the validity of the deed of gifts made by Bowaremma was questioned. It was held by the learned Subordinate Judge that the said deed of gifts were not valid under the Hindu Law. The appeal was taken to the Andhra Pradesh High Court being appeal No. 514 of 1968 and by Judgment dated 12.2.1971, the High Court disposed of the said appeal No. 514 of 1968 wherein the High Court held that such deed of gift was invalid in law. By the impugned Judgment, the Division Bench of the Andhra Pradesh High Court has held that in view of such declaration of the said deed of gifts as invalid, no claim of title on the basis of the said deed of gift or family settlement can be made. In our view, such decision of the Division Bench is justified since the said earlier decision in declaring the deeds of gift as invalid, is binding between the parties. There is no occasion to consider the principle of estoppel since considered by the learned Single Judge in the facts and circumstances of the case for holding the said transfers as valid, in view of the earlier adjudication on the validity of the said deeds in the previous suit between the parties. The law is well settled that even if erroneous, an inter party judgment binds the party if the court of competent jurisdiction has decided the lis. We, therefore, find no reason to interfere with the impugned decision of the High Court. This appeal therefore, fails and is dismissed without any order as to costs.

Appeals dismissed.