
CASE ANALYSIS: JUMMA MASJID V. KODIMANIADRA DEVIAH

Monika Bidiyasar, Manipal University Jaipur

Introduction

The case of Jumma Masjid v. Kodimaniadra Deviah (1962) is a landmark legal decision in context of section 43 of Transfer of Property Act, 1882 which deals with transfer of property by unauthorized person who subsequently acquires interest in the property transferred. Section 43 is the Statutory recognition of the doctrine of Feeding the grant by Estoppel which stipulates that transfer of a property by an unauthorized person who subsequently acquires the interest in that property is bound to feed the transfer grant by estoppel. The essence of a case lies in protecting the innocent buyers who may fall victim to deceitful actions by vendors making false representations during the transactions. It further discussed the Rule of Estoppel and when it could be resorted to the Transfer of Property Act, 1882. This case, which originated in a Hindu joint family context, lays down the guidelines for interpreting and distinguishing the two important provisions of the act i.e. section 6(a) and section 43. Here is the brief analysis of the case:

THE JUMMA MASJID, MERCARA V. KODIMANIANDRA DEVIAH¹

1. Title

Appellants: Jumma Masjid, Mercara

Respondent: Kodimaniadra Deviah

2. Bench and Quorum:

Supreme court of India, Full Bench comprising of Justice J.C. Shah, J.L. Kapur, M. Hidayatullah and T.L. Venkatarama Aiyar.

3. Subject:

Family and Property

¹ MANU/SC/0397/1962

4. Acts/ Rules:

Constitution Of India - Article 133(1)(c); Indian Contract Act, 1872 - Section 23; Transfer of Property Act, 1882 - Section 43, Transfer of Property Act, 1882 - Section 44, Transfer of Property Act, 1882 - Section 6(a).

5. Relevant Section:

Transfer of Property Act, 1882 - Section 43

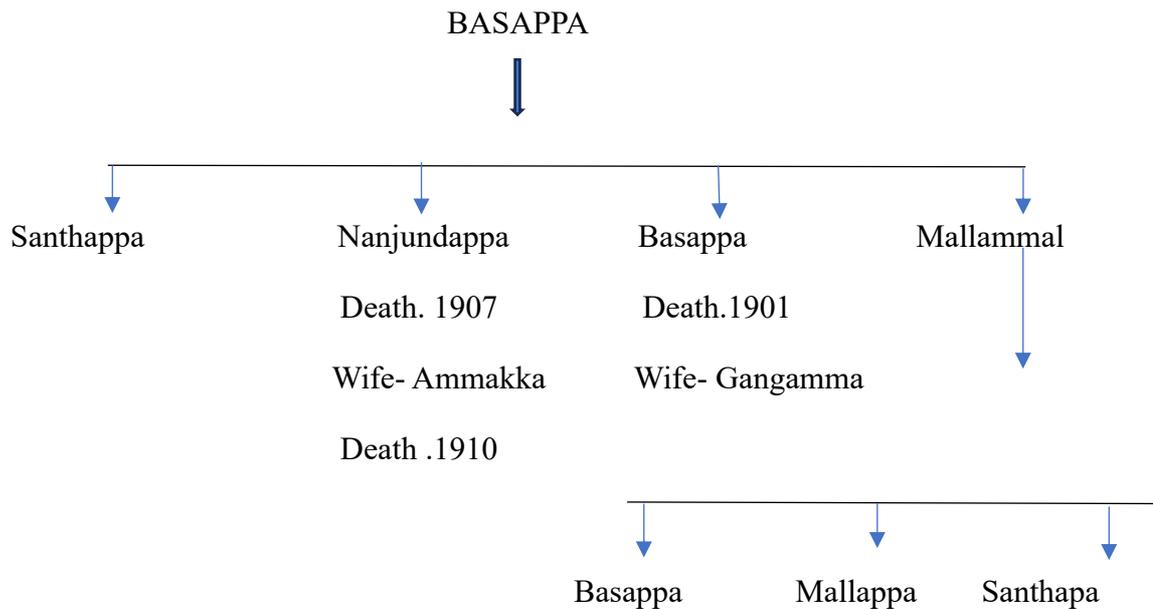
6. Procedural History of the Case:

The Jumma Masjid v. Kodimaniandra Deviah case is an important case in respect of interpreting the different sections of property law in harmony while recognizing the need to protect the interest of bona fide parties who acted in good faith on the basis of representations made to them. In this case, the appellant filed a suit before the District Judge of Coorg for the possession of half- share in the property already transferred to the bona fide transferee (Respondent) by the vendors who does not possess a right *in praesenti* but only a Spes succession. The suit was dismissed by the court on the ground that transferee had purchased the property on the representation made by the vendors who subsequently acquired interest in the same property and as a result the transferee had a better title to the property as compared to the Appellant by virtue of section 43 of the Act. The decision was challenged by the Appellant before the High Court of Madras who dismissed the appeal while upholding the decision of the District Court. Being aggrieved by the judgement of High Court the appellant has presented the present civil appeal before the Hon'ble Supreme Court of India.

7. Facts of the case:

The brief facts of the case which lead to the present appeal are as follows:

1. Before proceeding to the detailed facts of the Case, the relationship between the parties is displayed through flow chart for better understanding of the case.



2. In this case, three brothers named Santhappa, Nanjundappa and Basappa executed a usufructuary mortgage of the joint family property (subject matter of the litigation) in the year 1900 in the favour of Appanna Shetty (mortgagee). There was litigation relating to this and a compromise was arrived according to which for a period of 20 years i.e., till August 1920, the mortgagee was entitled to retain the possession and after that the property was to be reverted back to the family.
3. In the family, two brothers were married, and their wives were Ammakka and Gangamma, while the third one was unmarried. These three brothers also had a sister and she had two children and three grandsons (Basappa, Nallappa and Santhappa). All the brothers died and the sister too. Just the two wives and the grandchildren remained alive. After some time Ammakka w/o Nanjundappa also died, and the property was in the hands of the Gangamma.
4. According to the law, till the wives are alive they will hold the property. In case both the wives die the property will go to the sister and eventually to the grandsons. Grandsons were the heirs under the ground of Spes Succession. It was also mentioned that grandson one will receive $\frac{1}{2}$ of the share while the other two grandsons will receive $\frac{1}{4}$ of the share of the property each.
5. On 18 November 1920, these 3 grandsons sold the suit property to Ganapathi for consideration making him believe that they are actual owners of the property and possess the right to transfer. Ganapathi later on sued the reversioner to recover the

possession of the properties but Gangamma claimed that she was entitled to them as those properties were the self-acquisitions of her husband Basappa. Before the case

6. Ganapathi asked the Revenue Authorities to transfer the property standing in the name of Gangamma to his own name. Here the Jumma Masjid Mercara intervened and claimed that it was entitled to the properties on two grounds:
 - Firstly, under a gift alleged to have been made by Gangamma before dying, and
 - Secondly, under a deed of release executed by Santhappa, one of the reversioners, giving up his half -share in the properties to the mosque for some consideration.
7. But the revenue authorities declined to accept the title of the appellant and directed that the name of Ganapathi should be entered as the owner of the properties. Pursuant to this order, Ganapathi got into possession of the properties.
8. To this, a suit was instituted by the appellant before the District Judge of Coorg for recovery of half shares in the property that has been held by Ganagamma and for the Mesne profits.

8. Issues:

Whether a transfer of property in return for some consideration made by a person who represents that he has a present and transferable interest in that property, while in reality he possesses only a Spes succession, is within the protection of section 43 of Transfer of Property Act?

9. Arguments:

Contention by the Appellant:

- a) The first contention on the behalf of Appellant was that the transfer made in the favour of transferees is void and conferred no title as the vendors had only a Spes Succession in the property at the time of transfer.
- b) The Second contention was that section 43 of the transfer of property act should be read as subject to section 6(a) of the Act otherwise the application of section 43 to cases of what are in fact transfers of Spes Successionis, will have the effect of nullifying the provision of section 6(a).
- c) The third contention was that there can be no estoppel against statute as transfers which are prohibited by Sec.6 (a) could not be held to be protected by Section. 43 of the Act.

- d) The fourth contention was that the Plea of Estoppel could not be raised against a minor who had transferred property on a representation that he was of minor age, and that Sec. 43 is inapplicable to such transfers, vide case of Sadiq Ali Khan v. Jai Kishori² A.I.R. 1928 PC. 152.
- e) The fourth contention was that the illustration appended to the section is repugnant to the section 43 of the act and must be rejected.

Contention by the Respondent:

The contention on behalf of Respondent was that Santhappa had sold the properties to him on a representation that he had become entitled to them as reversioner of Nanjundappa, so he is estopped from asserting that they were in fact the self-acquisition of Basappa and as a result the appellant had no title to it.

10. Laws Applied:

Section 43 of Transfer of Property Act – Transfer by unauthorised person who subsequently acquires interest in property transferred.

“Where a person [fraudulently or]³ erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

Section 6 of Transfer of Property Act- What may be transferred:

“It provides that property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force such as the Chance of an heir - apparent succeeding to an estate, the chance of a relation obtaining legacy on the death of kinsman, or any other mere possibility of a like nature, cannot be transferred.”

11. Judgement:

The court while dismissing the appeal and upholding the decisions of lower courts held that when a person transfers property on the representation that he had a present interest therein,

² A.I.R. 1928 PC. 152.

³ Inserted by sec.13 of 1929 Amendment Act.

whereas he has, in fact, only a *Spes Successionis*, the transferee is entitled to the benefit of section 43, if he has taken the transfer on the faith of that representation and for consideration.

The Apex Court further held that the section embodies a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision by the Courts below was given, the relevant words of Section 43 were, “where a person erroneously represents”, and now, as amended by Act 20 of 1929, they are “where a person fraudulently or erroneously represents”, and that emphasises that for the purpose of the section it matters not whether the transferor act fraudulently or innocently in making the representation, and that what is material is that he did made representation and the transferee has acted on it.

In Conclusion, the Court held that the Santhappa, the vendor, represented that he was entitled to the property in *praesenti*, and acting on that representation the buyer entered into the transaction and becomes entitled to the property by virtue of section 43 of the act. Furthermore, any subsequent dealings made by the Santhappa by way of release did not operate as to vest any title in the appellant.

12. Rationale:

1. The court while explaining the significance of section 43 of the act held that, it clearly applies whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting. There is an exception in favour of transferees for consideration in good faith and without notice of the rights under the prior transfer.
2. The Hon'ble Supreme Court while contradicting the first contention of the Appellant that the transfer made in favour of transferee was void under section 6(a) , held that the Transferee (Ganapathi) purchased the properties under Ex. III on the faith of the representation made by the vendors that they are entitled to transfer the property on the death of Ammakka and he acquired a good title under Sec. 43 of the Transfer of

Property Act as compared to the Appellant and that Ex. A under which release deed was executed in the favour of Appellant could not prevail as against it.

3. The court while denying the second contention of Appellant, held that this contention had the effect of importing a new exception to the section with the following effect: “Nothing in this section shall operate to confer on the transferee any title, if the transferor had at the date of the transfer an interest of the kind mentioned in Sec. 6(a)” but by acceding to this contention “*we will not be construing section 43 but only rewriting*”. The court while distinguishing between sec.6(a) and section 43, held that :

- *section 6(a) and s. 43 relate to two different subjects, and there is no necessary conflict between them.*
- *Section 6(a) deals with certain kinds of interests in property mentioned therein and prohibits a transfer simpliciter of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires.*
- *Section 6(a) enacts a rule of substantive law, while s. 43 enacts a rule of estoppel which is one of evidence.*

Therefore, two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other and both of them can be given full effect on their own terms, in their respective spheres.

4. The court while rebutting the third contention of appellant that there cannot be estoppel against a statute, observed that this contention would have a force if the matter was solely of sec.6(a) as rule of estoppel are not to be resorted to for defeating or circumventing prohibitions enacted by statutes on grounds of public policy. But here the matter does not rest only on Sec. 6(a) as the matter involves section 43 which enacts a special provision for the protection of transferees for consideration from persons who represent that they have a present title, which, in fact, they have not.
5. While reverting to the fourth contention the court held that sec. 43 deals with transfers which fail for want of title in the transferor and not want of capacity in him at the time

of transfer and decisions on transfer by minors therefore are of no assistance in ascertaining the true scope of s. 43.

6. For negating the fifth contention of appellant the court relied on the observations of judicial committee in the case of *Mahomed Syedol Ariffin v. Yeoh Ooi Gark*,⁴ wherein it was observed that “*It is the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they are the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves.*”
7. The judgement in the case of *Alamanaya kunigari Nabi Sab v. Murukuti Papaiah*⁵ acted as the precedent to the current case wherein it was held that if the transferee acted on the transferor’s representation, which is a spes succession, the case would support the doctrine of estoppel, and the transferee will have the necessary grounds to acquire the property.

In essence, the ratio decidendi of the case underscores the importance of principal of estoppel outlined under section 43 of the act, which can validate the property transfers based on the representation of title, regardless of transferor’s initial title status, provided fraudulent representations were made and relied upon in good faith by the transferee.

13. Critical Analysis:

As the section 43 of the transfer of property act provides that whenever a person makes a representation either fraudulently or erroneously about the right to transfer the property and transfers the property then he is required to feed the grant made by him to the bona fide transferee on the subsequent acquisition of that interest in the property. In such case the transfer is not void and the transferor is not permitted to take the defence that he does not possess interest at the time of transfer. But the problem arose where a person makes a representation as to right to transfer but in actual only have *Spes Succession* which is barred by sec.6(a). Now, by applying the doctrine of section 43 to this situation, the person having spes succession is required to transfer the property which will be inherited by him. But as per general principles

⁴ (1916) SCC PC 52

⁵ (1915) 29 M.L.J 733

of law there cannot be an estoppel against the statute and according to which, the doctrine is inapplicable to cases which are specifically prohibited by statute, such as spes successionis.

To address this issue the case of *Jumma Masjid v. Kodimaniandra Deviah* served as a pivotal reference point. It clarified the respective roles of section 6(a) and section 43 of the act and drawn a thin line for distinguishing between them. While differentiating between them the court held, they have their own spheres of operation which may seem overlapping but are not overriding. Section 6(a) is applicable where there is no fraudulent representation, and both the parties know about the capacity of transferor while section 43 applies where there is a misrepresentation by the transferor and acting on such representation bona fide transferee did something for consideration. As in the present case, the transferee Ganapathi who was unaware about the transferor's defective title got the property by virtue of section 43 as he purchased the property based on the representation made by the three reversioners that they have the transferable right to the property.

But there is a flaw in this judgement as it did not protect the rights of the second transferee which is safeguarded by section 43 of the act in terms of "Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option." In this case, Jumma Masjid was a bona fide second transferee who purchased the property for consideration of Rs. 300 in good faith and without the notice of contract between the transferor and Ganapathi (Transferee) and along with this the property was purchased by the subsequent transferee prior to the exercise of option by the Ganapathi but these rights of subsequent transferee were ignored by the court while granting the possession of property to the Ganapati.

In conclusion, the decision of court seems to be contrary to the section 43 which expressly protects the rights of bonafide second transferee but at the same time, the court's role in interpreting the provisions and protecting the innocent parties from being deceived can't be ignored.