Privy Council Appeal No. 36 *of* 1944

Randhi Appalaswami - - - - - - - *Appellant*

v.

Randhi Suryanarayanamurti and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1947

Present at the Hearing:

LORD SIMONDS

LORD UTHWATT

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras, dated the 24th April, 1941, which reversed a judgment and decree of the Court of the District Judge of East Godavari at Rajahmundry dated the 1st November, 1937.

The parties are members of a Hindu joint family governed by the Mitakshara School of Hindu law. The appeal arises out of a suit for partition brought on the 10th December, 1935, by respondents 1 and 2, who were then minors, by one Krishnamurti their maternal uncle and next friend, against the appellant, who was their father by his first marriage, and the 3rd respondent who was the son of the appellant by his second marriage.

The questions which arise are (1) whether the suit was for the benefit of the minor plaintiffs and (2) whether the property specified in schedule 1 to the written statement of the appellant is his separate property or is joint family property belonging to him and the first two respondents. In the view their Lordships take of the case a further question as to whether respondent No. 3 is entitled to a share in the joint family property does not call for decision.

It is common ground that down to the year 1917 the appellant, his father and two brothers were members of a joint Hindu family, and that a partition took place between them on the 14th May, 1917, upon terms contained in a partition deed which is Exhibit A. Further reference to this deed will be made hereafter.

The first wife of the appellant died in October, 1933, having had two sons, the first two respondents, and three daughters by the appellant, and on the 9th November, 1935, the appellant married a second wife. The second marriage of the appellant was resented by the members of the first wife's family and by some of the members of his own family, and this suit was filed a month after the marriage.

By the plaint it was alleged that after the death of the first wife the appellant began to lead a reckless and profligate life, that he ran into heavy debts through his immoral pursuits and had been squandering the family funds, that he contracted a marriage secretly with a girl which was considered very objectionable and incestuous by the members of the community and which resulted in a social ostracism of the defendant. It was further alleged that the appellant had committed the following acts of malversation:

(*a*) The appellant borrowed heavy sums without legal necessity or any justifiable purpose or any family benefit, mostly for purposes of his immoral pursuits.

(*b*) He lent large sums to persons connected with his immoral conduct without any intention or reasonable likelihood of recovering the same, thereby causing heavy loss to the family. The appellant also allowed some debts to get barred and uncollected.

(*c*) The appellant was spending large sums from the family funds on his immoral pursuits and got the same debited in the family accounts under false entries for fictitious purposes.

(*d*) He employed in his business relations of his second wife at heavy salaries without any need and allowed them to draw heavy sums from family funds.

(*e*) The appellant had neglected to get his eldest daughter married though she had attained age and should have been married according to usages of the caste and family tradition more than a year before.

(*f*) The appellant had developed dissatisfaction and contempt for his children by the deceased wife and treated them with cruelty and exhibited culpable negligence in regard to their needs.

(*g*) That it was not possible for the plaintiffs and their sisters consistently with their personal safety, family status, and respectability to reside with the defendant or his newly wedded wife.

By his written statement the appellant alleged that the properties shown in schedule I thereto were his self-acquired properties and that the plaintiffs had no right to ask for partition of the same; that he had acquired such properties by his own individual exertions without the aid of any other member or any ancestral family nucleus; he maintained that in respect of the really joint properties partition was not in the interest of the minors and if it should be found to be in their interest, he would have no objection to partition of the really ancestral property; he denied all the allegations of misconduct made against him in the plaint.

The trial of the suit took place before the District Judge of East Godavari on the 1st November, 1937, and subsequent days. In his judgment the learned judge discussed in detail the evidence oral and documentary. He held that none of the allegations of misconduct made against the appellant had been proved and that the suit for partition was not filed in the interest of the minors. He expressed the view that nothing more detrimental to their interests could have been conceived. On those grounds the suit was dismissed, but at the request of the parties the learned judge considered the evidence, and recorded a finding, as to the extent of the property held jointly by the appellant and his sons. He reached the conclusion that all the plaintiffs could ask for in a partition suit against their father would be a division of the property allotted to him under Exhibit A which was substantially intact and unencumbered.

In appeal the High Court at Madras while offering no criticism of the views which the learned trial judge had taken of the evidence, disagreed with both his conclusions. They considered that the filing of the suit was in the interest of the minor plaintiffs on two grounds; first, because since the filing of the suit the relations between the first wife's family and the appellant had become further estranged and even the relations between the appellant and his eldest son, the first respondent, had become strained; secondly, because two sons had been born to the appellant by his second wife since the date of the plaint and accordingly the shares of the minor plaintiffs in the joint family property would be reduced. Their Lordships are not in agreement with either of these reasons. If there has been increased estrangement between the appellant and members of his family since the date of the plaint it may reasonably be assumed that that is due mainly to the institution of the suit and can afford no justification for such institution. The suggestion that the suit for partition was in the interest of the minors because their interest in the joint family property was liable to be diminished by the birth of further sons to the appellant is in their

Lordships' view quite untenable. It is of the essence of any coparcenary governed by the Mitakshara School of law that the interest of any individual coparcener is liable at any time to be increased or diminished by deaths or births. A joint family is the normal unit of Hindu society, and the advantage of membership in such a family cannot be measured in the case of any coparcener merely by a consideration of the extent of his interest for the time being in the coparcenary property. Before this Board the reasons given by the High Court for holding that the suit was in the interest of the minors have not been supported, but it has been contended that the appellant has wrongfully claimed that joint family property is his own self-acquired property, and that the making of that claim justified the filing of the suit. This contention, which was not raised in the Courts in India, renders it necessary to consider the second matter upon which the High Court differed from the District Judge, namely as to the extent of the joint family property.

The High Court disagreed with the view of the District Judge that the only joint family property was that which the appellant took under Exhibit A, and held that the whole of the property set out in the first schedule to the written statement of the appellant, which had been acquired since the date of Exhibit A, was joint family property. The reason on which the High Court based their opinion was that up to May 1917, when Exhibit A was executed, the appellant was admittedly doing business in aluminium and paddy, his case being that that business was his own. The High Court rejected this contention, and held that before, and at the date of, the partition it was the appellant who was managing the affairs of the joint family and that the presumption was that he was doing business on behalf of the joint family, and the court continued: "or else it is impossible to understand why the whole of the assets of that business should be treated as joint family assets. There is no getting out of this fact that on the date of the partition the business in aluminium and paddy was treated as a joint family business." This view appears to their Lordships to be mistaken. There is no mention in Exhibit A of the business in aluminium and paddy; or of the assets belonging to such business; or of the liabilities incurred in connection therewith. Under Exhibit A the joint family property was divided into six parts shown in schedules A to F inclusive. The property in schedule A was allotted to the father, that in schedule B to the appellant, that in schedule C to the appellant's elder brother, that in schedule D to his younger brother, that in schedule E was to be held jointly between the two brothers of the appellant, and that in schedule F, which was of small amount, was to be joint between all the parties. The shares allotted to the father and the two brothers of the appellant comprised sums of cash which were to be obtained from the appellant who was said to have custody of the cash, but there is nothing in the deed to show the origin of the cash. In his evidence the appellant stated that although the business in aluminium and paddy was his own business, the difference between the value of the assets and the amount of liabilities was about Rs.7,000, and at the instance of mediators who assisted at the partition he agreed to apply a sum of Rs.7,000 for the benefit of the members of the family. He was supported in this evidence by the evidence of one of the mediators, Marukurti Somanna. It was objected on behalf of the respondents that this evidence was inadmissible under Section 92 of the Evidence Act. But if the evidence is rejected there is nothing whatever to suggest that the sum of cash included in the partition was derived from the business carried on by the appellant. If, on the other hand, the evidence be admitted as explaining the circumstances in which the partition took place, and not as contradicting the deed, such evidence falls far short of establishing that the appellant intended to bring into the partition his entire interest in the business. The danger of construing acts of generosity or kindness as admissions of legal obligation has been pointed out in many cases, see, for example, the decision of this Board in *Lala Muddun Gopal Lal* v. *Mussumat Khikhinda Koer* (1890) L.R. 18 Indian Appeals at page 21.

It has been argued before the Board that the share which the appellant took under Exhibit A formed the nucleus from which all his further acquisitions sprang. The learned District Judge found that under Exhibit A the appellant had got six acres of land, a house and site at Rajamundry valued then at Rs.2,000, ¼th of a 6/16th share in the Radhakrishna Rice Mills, outstandings valued at Rs.3,500, gold articles worth Rs.446 and some utensils worth Rs.70. The whole property was stated to be worth Rs.7,220. These findings have not been challenged. The evidence of the appellant, which was not contradicted upon this point, was that the whole of this property was intact and unencumbered except for a godown on the Rajahmundry site which he had sold for Rs.1,100, which sum he had debited against household expenditure. From the figures which the appellant gave in evidence, which again were not disputed, it is clear that his family expenses far exceeded the income derived from the joint property which he acquired under Exhibit A. Between 1918 and 1934 the appellant acquired various properties at a total expenditure of some Rs.55,000 and it was conceded in the judgment of the High Court that the defendant was a man of enterprise and that it was largely due to his energy and labour that a large fortune had been acquired. The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. (See *Babubhai Girdharlal* v. *Ujamlal Hargovandas* I.L.R. [1937] Bom. 708, *Venkataramayya* v. *Seshamma* I.L.R. [1937] Mad. 1012, *Vythianatha* v. *Varadaraja* I.L.R. [1938] Mad. 696.) In the present case their Lordships think that the acquisition by the appellant of the property under Exhibit A, which as between him and his sons was joint family property, cast upon the appellant the burden of proving that the property which he possessed at the time of the plaint was his self-acquired property, but they agree with the District Judge in thinking that this burden has been discharged. The evidence establishes that the property acquired by the appellant under Exhibit A is substantially intact, and has been kept distinct. The income derived from the property and the small sum derived from the sale of part of it have been properly applied towards the expenses of the family, and there is no evidence from which it can be held that the nucleus of joint family property assisted the appellant in the acquisition of the properties specified in the schedule to the written statement. Consequently there is no force in the suggestion that the appellant improperly claimed as his own property which belonged to the joint family, and that is the only ground now relied upon to show that this suit was filed in the interest of the minors.

The fourth respondent who was brought on record at his own request and claimed to be a mortgagee from some of the parties to this appeal, appeared by counsel who alleged that the dispute between his client and the other parties had been compromised and invited the Board to record the compromise. This appears to be a matter to be dealt with by the Courts in India.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed, that the Order of the High Court dated the 24th April, 1941, be set aside and that the Order of the District Judge of East Godavari dated the 1st November, 1937, be restored. The first respondent and Sureddi Krishnamurti the guardian of the minor respondent No. 2 must pay the costs of the appellant of the appeal to the High Court of Madras and of this appeal.

(58244) Wt. 8013—20 170 7/47 D.L. G. 379

RANDHI APPAI ASWAMI

v.

RANDHI SURYANARAYANAMURTI
AND OTHERS

DELIVERED BY SIR JOHN BEAUMONT

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

1947

In the Privy Council

RANDHI APPALASWAMI

v.

RANDHI SURYANARAYANAMURTI
AND OTHERS

DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1947