Privy Council Appeal No. 27 *of* 1947

Kalidindi Ramakrishna Raju and another - - - - *Appellants*

v.

Kalidindi Narayana Raju 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 FEBRUARY, 1949

Present at the Hearing:

LORD PORTER

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

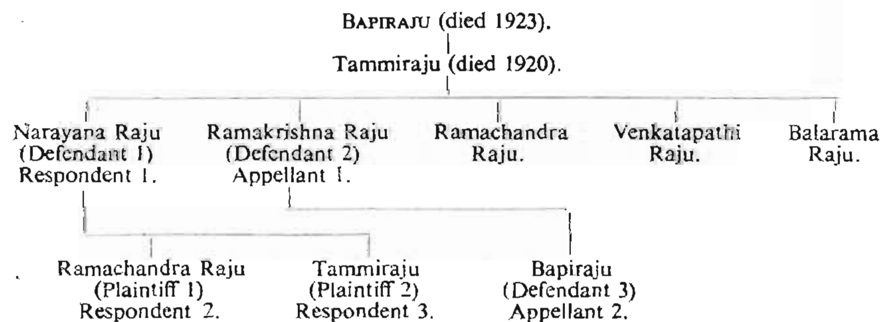
[*Delivered by* LORD PORTER]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated 2nd January, 1945, which reversed a judgment and decree of the Court of the Subordinate Judge of Ellore dated the 9th September, 1942.

The question for determination is whether an Exchange Deed in respect of certain properties entered into on the 11th February, 1934, between the 1st appellant and the 1st respondent, who are brothers, is valid and binding upon the 2nd and 3rd respondents, who are minors and sons of the 1st respondent. The suit was brought on the 9th February, 1937, by the 2nd and 3rd respondents against the 1st respondent and the 1st appellant to set aside the Exchange Deed.

The trial court held that the agreement was in the nature of a family arrangement and was binding on the minor respondents but the High Court reversed this finding.

The parties to this appeal belong to the village of Pedapulleru and are all members of the same family. Their relationship is shown in the subjoined pedigree.



Bapiraju had a son Tammiraju and five grandsons, Narayana Raju the 1st respondent, Ramakrishna Raju the 1st appellant, Ramachandra Raju, Venkatapathi Raju and Balarama Raju who all constituted a Hindu Joint family. Bapiraju managed the family affairs till his death which occurred in 1923. In this he was assisted latterly by Narayana Raju the eldest of his grandsons, his son Tammiraju having predeceased him.

Narayana Raju has two sons, the 2nd and 3rd respondents, who are, as has been stated, minors and Ramakrishna Raju has a son, the 2nd appellant who is or was at all material times also a minor. After the death of Bapiraju in 1923, Narayana Raju, the 1st respondent, as the eldest male member, assumed management of the affairs of the family and continued to act in that capacity until 1925 when he went on pilgrimage for three months. From that time onwards the family affairs were mainly in the hands of the 1st appellant who acted as manager, the 1st respondent concerning himself with the cultivation of the family lands near his village.

About September, 1933, as a result of family dissensions the brothers decided to become separate and to divide the family properties. Because he was acting as manager and in consequence of his knowledge of the family affairs the division was entrusted to the 1st appellant, though he may have had some slight assistance from the 1st respondent.

The family owned considerable movable and immovable properties consisting of about 480 acres of dry and wet lands and outstandings to the value of Rs.3,25,000. In preparation for the division of these properties the brothers began to prepare inventories of the outstandings due to and the debts owing to others by the family. Lists of the immovable properties and of the cattle were also prepared. The lands are situated in the villages Peda Pulleru, China Pulleru, Cherukuvada, Yenamadurru, Sisali, Undi, Vandram, Kalla and others. The lands in Peda Pulleru are near the residences of the family ; the lands in China Pulleru are at a short distance from the village while the other lands are within a distance of about 12 to 13 miles. The liabilities amounted to about Rs.18,000. On the 25th January, 1934, after this preparatory step had been taken, a complete division of movable and immovable properties was made. Lists showing the division of all outstandings which were not disclosed in the income-tax returns were prepared separately. The outstandings shown in the income-tax returns and the immovable properties were entered in a deed of partition executed on the same day. The lists of items not included in the income-tax returns together with those shown in the deed of partition represented a complete division of all the family properties among the brothers. A preliminary division of that portion of the property which had not been included in the income-tax returns was made on the 15th November, 1933, in order to conceal its existence from the income-tax authorities, but when the final division was made in January fresh lists were prepared which included all the outstandings, whether disclosed or not, and the family lands.

Before the subordinate Judge it was maintained on behalf of the 2nd and 3rd respondents that there were two distinct divisions each complete in itself, one on the 15th November and the other on the 24th January, but both Courts in India have negatived this contention and their Lordships, in accordance with their usual practice, would not disturb the concurrent finding even if they had, as they have not, any wish to do so. The properties were ultimately divided into five shares and the younger brothers were allowed to choose before the older ones, but as the 1st appellant had divided up the property the 1st respondent though senior to him claimed priority and was given the earlier choice, leaving the last remaining share to the 1st appellant. In exercising it he elected to take the fifth share leaving the third to the 1st appellant.

It is alleged on behalf of the respondents that in separating the property into shares the 1st appellant included in the fifth share outstandings and lands which were apparently of no greater value than those included in the other shares, but were actually worth more: that on the other hand the third share though apparently more attractive was considerably less in value than the fifth: that when so acting the 1st appellant hoped to be given his choice before his elder brother and so to possess himself of a more valuable share and indeed in any case to deceive that brother into a wrong choice. In the event however his expectations were not fulfilled and he therefore found himself saddled with assets less in value than those

which his brothers obtained and more particularly less than the share received by the 1st respondent. It is suggested, however, that he could not at once complain since he had made the division.

However this may be it is certain that a few days later he complained bitterly of the inequality of his share. His excuse, real or pretended, was that certain lands held as security for a mortgage were of much less value than the money secured on them and that he had only accidentally found out their deficiency in value after the division had been completed. Whatever truth there may be in this assertion, it seems that the third share was actually of less value than the fifth.

The 1st respondent himself makes this allegation and is supported by the two mediators hereafter referred to. Moreover the learned subordinate Judge after a minute and careful analysis of the material came to that view. Indeed it is difficult upon any other basis to see why, as will appear, the 1st appellant struggled to change his share or was willing to pay in order to effect a change. Whatever the merits of his complaint the 1st appellant in fact four days after the division raised a dispute, insisting that either a fresh division or a readjustment of the family properties comprised in all the shares should be made, so as to equalise the value of the shares. Venkatapathi Raju, the 4th brother was also dissatisfied and complained of the inadequacy of his share. The 1st respondent however would not agree to any revision of the shares and the 1st appellant went to Ellore in order to put his complaint before Mr. Peddiraju, the family lawyer, but as Mr. Peddiraju was away at Madras, went on to seek him there. Before he found him, however, he met Mr. Venkatarama Raju, an advocate of the High Court, who was related to the family, and informed him of the dispute. Mr. Venkatarama Raju advised him to seek an amicable settlement and suggested that Mr. Peddiraju as the family lawyer was the proper person to mediate between the brothers. Mr. Venkatarama and the 1st appellant then saw Mr. Peddiraju, who promised to act as mediator and asked them both to accompany him to his place at Ellore, where a meeting of the parties could more conveniently be arranged.

On the 10th February, 1934, at the request of Mr. Peddiraju the four brothers and a representative of Venkatapathi the fifth brother together with the family clerk, met Messrs. Peddiraju and Venkatarama Raju. After hearing the parties the two mediators succeeded in settling the disputes. They decided that no change in the shares of the three younger brothers was necessary except that the fourth brother, Venkatapathi Raju, should be paid Rs.500 by each of the other four. But an important change was made in the case of the properties allotted to the 1st appellant and 1st respondent. The 1st respondent himself proposed to the mediators that he should give up his share to the 1st appellant and take the latter's share on condition that the 1st appellant undertook to discharge certain debts due by the 1st respondent amounting to Rs.10,600. The mediators considering the proposal a reasonable one advised a settlement on that basis.

Thereupon the 1st appellant and the 1st respondent entered into an agreement which was witnessed by the mediators. It set out a part of the terms agreed upon and provided for the execution of a deed of exchange. In pursuance of this agreement the Exchange Deed of the 11th February which is now in issue was drawn up. The deed, after referring to the previous partition and to the doubts that had arisen, stated that on the advice of the mediators it had been agreed that certain of the properties therein set out which had fallen to the share of the 1st appellant at the partition should be taken by the 1st respondent and that certain others which had fallen to the share of the 1st respondent at the partition should be taken by the 1st appellant. Other documents implementing the decision of the arbitrators were executed.

In fulfilment of the terms agreed Rs.500 was paid to Venkatapathi Raju by each of his brothers: the 1st appellant and the 1st respondent exchanged their respective shares and the 1st respondent received Rs.10,600. the greater part of which was applied by the 1st appellant in

discharging pressing debts of the 1st respondent. From the time of making this arrangement the 1st appellant and the 1st respondent have been in possession of the respective shares so exchanged and have been realising the outstandings allotted to them and effecting sales and mortgages of lands and enjoying their shares for some three years.

It was not until the 9th February, 1937, that the respondents Nos. 2 and 3 through their respective next friends filed the suit now under appeal against their father, the 1st respondent as defendant No. 1 and their uncle and his son, the appellants as defendants Nos. 2 and 3. They prayed for a declaration that the deed of exchange dated the 11th February, 1934, was void, inoperative and not binding on them, for an order directing that the properties allotted to the 1st respondent by the original partition deed be put in their possession and that the properties which had been allotted to the 1st appellant in the partition deed be put in possession of the appellants. The plaint alleged that, after the partition, the 1st appellant with the support of his friends demanded that the 1st respondent should exchange the share that fell to him with the share the 1st appellant received, that the 1st respondent was unwilling to do so, but the 1st appellant made him agree by exercising coercion and undue influence ; that the exchange deed was invalid and inoperative and was not binding on those respondents and that there was no legal necessity for the transfer, nor was there any benefit to the family by the exchange. They denied that the 1st appellant paid the 1st respondent any sum of money in consideration for the exchange.

It was part of the respondent's case that the only agreement made between the parties in February was that contained in the Exchange Deed of the 11th February, and that even if any further agreement had been arrived at it was inadmissible in evidence. The appellants however on their part asserted that the document contained only part of the terms. In this allegation they were supported by the two mediators, and the subordinate Judge admitted evidence to show what the full terms agreed upon were, in order to supplement and explain that document and the agreement of the 18th February. In their Lordships' opinion this evidence was rightly admitted. Moreover the High Court held the same opinion and the contrary view is not now persisted in.

As a result of this evidence the subordinate Judge came to the conclusion that there was a complete exchange of properties between the 1st respondent and the 1st appellant including land and outstandings, revealed or unrevealed to the revenue authorities, and that each property so exchanged should continue to be subject to the debts which had previously been apportioned to it. As however the share now taken by the 1st appellant was of considerably greater value than that which he gave up, he promised to pay Rs.10,600 to his brother.

The 1st respondent as defendant No. 1 filed a written statement which supported the allegations made in the Plaint, and further alleged that the exchange agreement was executed under undue influence and coercion.

The 1st appellant on his part filed a written statement in answer alleging that the registered partition deed did not embody all the items of the family properties that were divided ; that he had no alternative but to accept what was left as his share ; that he found that the value of the properties that fell to him was very much less than the value of the others ; that he and another brother Venkatapathi Raju, who was also not satisfied with his share, asked the others for a fresh partition, but the 1st respondent and the other brothers did not agree ; that he then consulted the family lawyers and asked them to issue notice to the other members of the family demanding a reopening of the partition ; that the two advocates prevailed upon him not to rush to Court and promised to settle the matter amicably ; that they, having the welfare of the family at heart, acted as mediators and settled the dispute ; that at their request he consented to exchange his share for that of the 1st respondent and to pay the personal debts of the 1st respondent, amounting to Rs.10,600, that the shares were accordingly exchanged and that the creditors of the

1st respondent were paid the agreed sum ; he denied that any coercion or undue influence was exercised by anybody on the 1st respondent and maintained that the exchange bound all the respondents, was for a legal necessity and was beneficial to the estate of the 1st respondent as his properties were saved from his creditors ; that the 1st respondent had acted upon the exchange and collected some of the outstandings, and that the 1st appellant had made considerable improvements to his share.

In these circumstances the subordinate Judge framed a number of issues of which those material for their Lordships' consideration may be reduced to four viz.: (1) Were the respondents entitled to avoid the Exchange Deed by reason of coercion and undue influence? (2) Was the present deed of exchange part of a revised general partition or family settlement or was it an independent transaction between the 1st respondent and 1st appellant? If the former, were the respondents entitled to maintain the action for a mere setting aside of the Exchange Deed? (3) Did the provision of about Rs.10,000 made up of an actual payment of Rs.7000 and an allotment of a debt for Rs.3000 odd form part of the Exchange transaction and was the whole amount paid? (4) In any event was the transaction valid and binding on the minor respondents?

Two of these issues are not now seriously in dispute. Firstly both Courts in India have found that there was no coercion or undue influence. Indeed having regard to the evidence of the two mediators it is difficult to see how they could have come to any other conclusion. In any case the findings are concurrent.

Secondly the subordinate Judge expressly found and the High Court appear to have accepted the view that the whole sum agreed—which in exact figures amounted to Rs.10.600—was in fact paid or allotted. This finding was not seriously contested before their Lordships.

The two other issues give rise to greater difficulty.

The subordinate Judge as their Lordships understand reached the conclusion that the Exchange made on the 10th February was a mere re-arrangement putting in order the partition which had taken place four days previously. In this he was probably influenced by the fact that Venkatapathi demanded and received an additional sum of Rs.500 from each of his brothers. But in any case he thought the arrangement arrived at between the two brothers was a fair compromise of a genuine dispute and as such binding on the minor respondents. The two Judges of the High Court on the other hand came to the conclusion that there was no dispute. In their opinion the first appellant knew the value of the impugned mortgaged lands and not only so but his contention that they were not sufficient cover for the mortgage debts was false and known to be false by the 1st appellant. They considered that the lands were ample security even apart from the personal obligations of the mortgagors. The only complaint, they said, which the 1st appellant made was of the value of the debt so secured and, as there was no justification for it, there was no dispute. In this approach they differ from that adopted by the subordinate Judge in that they do not regard the exchange of properties as forming part of a general settlement, but merely as a private arrangement between two of the brothers in no way involving the other three.

Whether this view is defensible or not may be doubted inasmuch as the compromise involved not only the division between the two brothers but also an addition to the portion allotted to a third. Their Lordships however do not think it necessary to pursue this consideration, as in their view the settlement can be defended even if regarded as an arrangment come to between the two elder brothers and them only.

In speaking of a dispute the High Court obviously envisaged a claim which has a genuine foundation, in respect of which the one party thinks he has a claim and the other recognizes its possibility, and considered that on the one hand the 1st appellant had no such claim and on the other the 1st respondent wanted money to pay his pressing debts and was willing to submit to an unjustifiable claim in order to secure their payment.

This was certainly not the attitude of the former at the time if the evidence of the mediators is to be believed and they are responsible and influential persons whose evidence was accepted in full by the subordinate Judge.

According to their account he pressed them to serve notice on the other members of the family for the setting aside of the partition and was only dissuaded on the ground that it was desirable to effect a compromise for the sake of the family. In the subordinate Judge's opinion the 1st appellant rightly or wrongly thought he had a grievance. Indeed his view was that that appellant in fact thought he was deceived in thinking that the mortgaged lands were sufficient security for the mortgage loan, but in any case suffered from a sense of grievance, whether resulting from his own act or not, and intended to press his claim.

From this point of view it is not vital that the 1st appellant was wrong in considering that his portion was too small or knew that he had himself brought that result about by his method of division. He did feel that he was unjustly treated and was determined to litigate until he was persuaded by the mediators to compromise his claim.

Moreover the 1st respondent acknowledged that his brother's share was less valuable—indeed he was compelled to do so if he was to support a contention that his minor sons had been wrongly deprived of a more valuable for a less valuable share. Nor must it be forgotten in regarding the possibility that the 1st appellant was the father of a minor son whose rights had also to be taken into consideration in assessing the chances of litigation setting aside or modifying the original partition. In this sense there was in their Lordships' view a genuine dispute, wrong-headed it may be and more likely to fail than to succeed, though indeed such a result was by no means certain inasmuch as the subordinate Judge after a careful analysis came to the conclusion that the mortgaged property was insufficient as security and that the 1st appellant was ignorant of this fact and in any case that the difference in value between the two shares was about Rs.20,000: a difference which would justify a payment of Rs.10,000 or thereabouts to equalize the shares.

If then there was a genuine dispute, was the compromise a fair one and such as would be valid and binding on the minor children? In their Lordships' opinion it was. In the first place the making up of a family quarrel was effected and that of itself is some support for what was done. In the second place the 1st respondent obtained payment of his debts, the obligation of discharging which would in piety devolve upon the minors so that they too benefit.

The High Court, it is true, took the view that some of the land originally allotted to the 1st respondent might have been sold or some of the outstandings collected, but the value of land was at a low figure and money was difficult to come by, and it is in evidence that the brothers as a whole declined to help. It may well have been more advantageous to obtain payment by means of the exchange of properties rather than by selling the family land and there is no evidence that sufficient money could have been collected from the outgoings. That at least was the opinion of the mediators who knew all the factors in the case. In their view and in the view of the subordinate Judge acting upon the evidence the settlement effected was a fair compromise of the dispute and a fair exchange. In his opinion after an elaborate analysis of the figures the difference in value between the two shares was, as has been stated, somewhere about Rs.20,000 and this disparity made up by the agreed payment of Rs.10,600 from the one brother to the other.

In their Lordships' opinion, therefore, the compromise effected was a family settlement and for the benefit of the family as a whole.

It is indeed pointed out on behalf of the minor respondents that one of the mediators, Mr. Peddiraju, in his evidence said in the first place that the value of the lands in any of the shares was not ascertained during the talk about the exchange agreement and in the

second that he did not consider that there were the interests of the minor respondents to be considered. But both mediators said that they considered the settlement in the best interests of the two elder brothers and their families, that they thought it brought about peace for the family and that the payment of Rs.10,600 in those days of depression was a favour done to the 1st respondent.

They also took the view that the mortgage lands were inferior and that the 1st appellant might have incurred some loss in respect of them.

In the face of this evidence in their Lordships' opinion to place great emphasis on the statement of one of the mediators that he did not consider that there was the interest of the minor children of one party to be considered is to take too narrow a view. They were entitled to have regard to the interest of the family as a whole and were not obliged to turn their attention to the interest of one set of minors to the neglect of the family as a whole. Of course if it were shown that substantial injustice was done to the children of either brother by inadvertence or otherwise, their interests would require to be protected, but no such circumstance was proved in the present case.

In their Lordships' view the mediators effected a reasonable and beneficial settlement of a family dispute and the compromise should be upheld.

This conclusion renders it unnecessary for their Lordships to pronounce upon that portion of the case which deals with the terms to be imposed upon the parties as a condition of setting aside the Exchange. Taking the view which they do their Lordships will humbly advise His Majesty that the judgment and decree of the High Court be set aside and that the judgment and decree of the subordinate Judge be restored. The respondents must pay the costs of this appeal. The costs in the High Court of Madras must be paid by the plaintiffs in the suit.

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In the Privy Council

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