SUPREME COURT OF INDIA

Mallappa Girimallappa Betgeri

Vs.

R. Yellappagouda Patil

C.A.No.148 of 1953

(S. K. Das, A. K. Sarkar and K. Subba Rao, JJ.)

09.04.1959

JUDGEMENT

SARKAR J.:

1. The relationship of the parties will appear from the following genealogical table.

2. The branches of Girimallappa and Mirijappa were separate at all times material to this litigation.

3. Sometime in 1943, Ramangouda claiming to have been adopted on 11-101942 as a son to Marigoolappa by his widow Basalingawa, filed the suit out of which the present appeal arises against the members of the branch of Girimallappa and also Gangawa (Def. No. 8), widow of Karabasappa for partition of the properties belonging to the branch of Girimallappa as a joint family and other reliefs.

4. The suit was contested by the defendants Nos. 1, 2, 3 and 5. In the first place, they challenged the adoption of the plaintiff. Secondly, they denied that all the properties in which Ramangouda claimed a share were joint family properties. The defendant No. 8 Gangawa, was not really interested in the disputes involved in the suit and does not appear to have taken any part in it. Basalingawa, the adoptive mother of Ramangouda, who was defendant No. 7 in the suit, supported his claim.

5. The suit was heard by the Civil Judge at Dharwar in Bombay who held that Ramangouda had been duly adopted as a son to Marigoolappa by his widow Basalingawa and that the properties claimed by Ramangouda as joint were so. Mallappa, the defendant No. 1, preferred an appeal against this decree to the High Court at Bombay. In the High Court the challenge to the adoption was abandoned and the only point canvassed was whether two of the properties were joint family properties, the rest being accepted as joint. These properties were Kurtakoti properties which will be referred to as the "K" properties and certain other properties acquired by the defendant No. 1 between 1914 and 1929. The High Court held that both these properties were joint properties. The defendant No. 1, Mallappa, has come up in appeal to this Court against this judgment. The appeal is contested by Ramangouda who is respondent No. 1. The only dispute in this appeal is whether the Courts below were right in holding that the "K" properties and those that were acquired between 19l4 and 1929 were joint properties.

6. The appellant claims both these properties as his separate properties. His case is as follows: On 3-11-1903, that is, soon after her husband's death, Gangawa, the widow of Karabasappa, whom we

shall hereafter refer to as Gangawa adopted him as a son unto her husband. Later, doubts having arisen as to the validity of this adoption, the appellant on August 12, 1904 got Gangawa to adopt one Irangouda, the husband of a sister of his, as Karabasappa's son. The "K" properties belonged to Karabasappa. Irangouda, as the owner of the "K" properties by virtue of the aforesaid adoption, transferred them to the appellant by a deed of sale executed on 13-6-1905. The deed stated that as consideration for the sale the appellant paid to Irangouda Rs. 2,000 but this statement was false and in fact the transfer was really by way of gift and entirely without consideration. The other properties were purchased out of the income of the "K" properties. It is on this basis that the appellant contends that none of these properties was joint property.

7. There is no dispute that the "K" properties came to the appellant by transfer under the deed of sale mentioned earlier nor that the other properties were acquired out of the income of the "K" properties. Both the Courts below however disbelieved the case of the appellant that the "K" properties had been transferred to him without any consideration. They came to the conclusion that the consideration mentioned had been paid. They further held that the evidence showed that there was a sufficient nucleus of joint family property, called the Belhode properties, out of which the "K" properties could have been acquired and that being so, a presumption arose that the "K" properties acquired in the name of the appellant, the senior member of the joint family, were joint properties and it was for the appellant to discharge the onus of proving that they were not so. The Courts below came to the conclusion that the appellant had not been able to discharge that onus and, therefore, held that the "K" properties were joint family properties. Since the subsequently acquired properties had been admittedly purchased with the income of the "K" properties, it followed that they were also joint properties.

8. It is not the practice of this Court to set aside findings of fact concurrently arrived at by the courts below. We, therefore, have to proceed on the basis that the appellant has failed to prove that the "K" properties had been transferred to him by Irangouda entirely without any consideration.

9. In our view, this finding was based on proper evidence. Not only was there the statement in the deed of sale that the "K" properties had been transferred in consideration of Rs. 2,000 paid by the appellant to Irangouda but in a suit which Gangawa had filed in 1906 against the appellant and Irangouda to set aside their adoptions, which suit it may be stated was compromised by a provision for a larger maintenance being made for her, the appellant had put in a written statement in which he contended that the properties had been sold to him for Rs. 2,000. It may also be pointed out that in the sale deed it had been stated that a part of the consideration, namely, Rs. 600 was paid in the presence of the Registrar. The appellant did not lead any evidence to show that no consideration was paid for the sale deed except his own bare statement. Dr. Barlingay appearing in support of the appeal has suggested various reasons why it should have been held on the evidence that the transfer of the "K" properties to the appellant was really without consideration. We do not feel justified in entering into a discussion of those reasons and we deem it enough to say that the Courts below could on the evidence before them legally come to the conclusion that the consideration mentioned in the deed of sale had been paid. It is not for this Court to substitute its own view on the question for the view taken by the Courts below.

10. We then find that the appellant was a manager of a joint family and had acquired the "K" properties in his own name for a consideration. It was never disputed that the Belhode properties were joint family properties. The Courts below held that the Belhode properties provided a sufficient nucleus of joint family property out of which the "K" properties might have been acquired. The sufficiency of the nucleus is again a question of fact and it is not for us to interfere

with the findings of the Courts below on that question. For reasons to be hereinafter stated, we think that apart from the Belhode properties the appellant had no other source of income. In those circumstances a presumption arises that the "K" properties were the properties of the joint family: See Srinivas Krishnarao Kango v. Narayan Devji Kango, (1955) 1 SCR 1: (AIR 1954 SC 379). Unless that presumption is rebutted it must prevail. It is quite clear that the appellant has failed to displace that presumption. The only way in which he sought to do so was by proving that the transfer to him was by way of a gift. But he has failed. The presumption remains unrebutted.

11. It had been contended on the appellant's behalf that he had been in possession of the "K" properties since his adoption by Gangawa in 1903 and might have paid the consideration mentioned in the deed of sale out of the income received from them. We find it somewhat difficult to appreciate the point of this contention. However that may be, the learned trial Judge found no sufficient evidence to prove that the appellant was in possession of the "K" properties prior to the execution of the deed of sale. The learned Judges of the High Court do not appear to have differed from that finding. They however observed that assuming that the appellant was so in possession of the "K" properties, it had not been proved that he had paid the consideration for the transfer of the "K" properties to him out of their income. So the High Court held in our view rightly, that the presumption had not been rebutted. We may add that no question of the consideration for the acquisition of the "K" properties being paid out of their income really arose for, according to the appellant, he had got them without paying any consideration.

12. Dr. Barlingay contended that no presumption arose that a property in the possession of a member of a joint family was joint property, where the person in possession is proved to have been the owner of other sources of income. No authority has been cited in support of this contention and we are not aware of any. But it seems to us that the question does not really arise. The Courts below have not held that the appellant had at any time prior to the execution of the deed of sale in his favour, been in possession of the "K" properties or in receipt of any income from them. It has therefore not been shown that at the relevant time the appellant had any other source of income than the joint family properties.

13. Again, the only basis on which Dr Barlingay placed his contention that the presumption did not arise when the person in possession of the property had other source of income, was the possibility that he might have acquired the property out of that income. But, as we have earlier stated, clearly that is not a possibility in the present case. The appellants case being that he acquired the "K" properties by way of a gift and entirely without consideration, it is not open to him to contend that the consideration may have been paid out of a particular source.

14. There is therefore no reason why a presumption should not arise in this case that the "K" properties were joint family properties. That being so, it has to be held on the appellant's own case, that the properties acquired between 1914 and 1929 were also joint family properties,

15. In the result this appeal fails and it is dismissed with costs.

Appeal dismissed.

</html