

Lakkireddi Chinna Venkata Reddi

Vs

Lakkireddi Lakshmama

Civil Appeal No. 251 of 1961

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah JJ)

04.03.1963

JUDGMENT

SHAH J. -

This appeal with certificate granted by the High Court of Andhra Pradesh is against the decree in appeal No. 64 of 1951 modifying the decree in Suit No. 111 of 1949 of the file of the Subordinate Judge, Cuddapah.

The following genealogy explains the relationship between the parties to the appeal :

Lakkireddi Triupati Reddy | ----- ||| Venkata
Konda Pedda Tirupelu Chinna Tirupelu Reddy Reddy Reddy | -----
---- ||| Bala Konda Pedda Butchi Chinna Butchi | -----
----- ||||| Pedda Chinna Bala Butchi Konda Raju Venkata Venkata Venkata
Venkata = Lakshmama Konda Konda (D-1) (D-2) (D-3) (2nd plttf.) (D-3) (D-
4)=Venkatamma | (D-9) |||----- ||||| Venkata Ram
Ram Pulla Reddy Pullamma Rami- Chandra Krishna (1st plttf.) reddy Reddy
Reddy (D-6) (D-7) (D-8)##

Butchi Tirupati was one of the six sons of Bala Konda. Pulla Reddy and Lakshmama - son and widow respectively of Butchi Tirupati - instituted Suit No. 111 of 1949 in the Court of the Subordinate Judge, Cuddapah for partition and separate possession of their share in the property of the joint family to which they belonged and a fourth share in certain property devised under the will executed by Venkata Konda Reddy, on July 1, 1910. Pulla Reddy was at the date of the suit a minor and his mother Lakshmama acted as his next friend. Pulla Reddy died during the pendency of the suit and Lakshmama was shown in the record as his legal representative for the suit. The trial Court held that the property devised under the will of Venkata Konda Reddy in favour of Pedda Venkata (D-1), Chinna Venkata (D-2), Bala Venkata (D-5) and Butchi Tirupati had on account of blending with the joint family estate been impressed with the character of joint family property, and on that account Lakshmama was entitled to a fifty share in all the property in suit. The High Court in appeal awarded to Lakshmama a fourth share in the property devised under the will of Venkata Konda Reddy and confirmed the decree of the Trial Court awarding a fifth share in the property of the joint family. Defendant-2 Chinna Venkata, Defendant-3 Raju Konda and Defendant-4 Venkata Konda have appealed to this Court, with certificate under Art. 133(1)(a) granted by the High Court.

Two questions survive in this appeal :

(1) Whether Suit No. 111 of 1949 for partition of joint family property could, after the death of the minor Pulla Reddy, be continued by his mother Lakshmama. That question necessitates an investigation whether the suit was instituted for the benefit of the minor Pulla Reddy, because it is settled law that the Court will not grant a decree for partition of joint family property in a suit instituted by a Hindu minor through his next friend, unless the Court is satisfied that the partition is likely to be for the benefit of the minor by advancing or protecting his interest; and

(2) Whether the property devised under the will of Venkata Konda Reddy in favour of defendants 1, 2, 5 and Butchi Tirupati had, because of blending with their joint family estate, been impressed with the character of joint family property.

We will set out such facts as have a bearing on these questions.

It is common ground that at the date of his death in 1947 Butchi Tirupati was a member of a Hindu coparcenary consisting of himself, his five brothers and Pulla Reddy. After the death of Butchi Tirupati, defendants 1, 2, 3 and 4 purported to partition the estate in their possession, and executed a deed of partition (Ext. A-3) on August 12, 1948, in which the minor Pulla Reddy was represented by the fourth defendant. By this deed certain properties were allotted to the share of the first defendant Pedda Venkata, but the deed was silent about the dissolution of the joint family qua other members of the family, and about allotment of shares to those members. Thereafter Lakshmama instituted the suit out of which this appeal has arisen on behalf of herself and as next friend of her minor son, for a decree for partition of their share in the estate of the joint family and the property devised under the will of Venkata Konda Reddy, alleging that defendants 2, 3 and 4 declined to give to the minor Pulla Reddy his share in the estate, and drove her and the minor away from the family house, and that with a view to prejudice the right of the minor in the property they had brought into existence a deed of partition which did not disclose the entire estate of the joint family. The first defendant substantially admitted the claim of the plaintiffs to a share in the properties in suit. Defendants, 2, 3 and 4 denied that the two plaintiffs were driven away from the joint family house as alleged by Lakshmama, and submitted that it would be "highly prejudicial" to the interests of Pulla Reddy to have his share separated from the joint family estate. They contended that the property of Venkata Konda Reddy had devolved by survivorship on their father Bala Konda and after the death of Bala Konda, his sons (defendants 1 to 5 and Butchi Tirupati) took it by survivorship, that the will executed by Venkata Konda Reddy was not valid because it attempted to devise property which belonged to the joint family, that in any event the property devised under that will had been blended with the joint family estate and had been treated as of the joint family and on that footing were included in the partition deed dated August 12, 1948, and that certain lands - items Nos. 6, 7 and 8 in the schedule annexed to the plaint - had been given to Chinnamma sister of the contesting defendants for her maintenance and were not liable to be partitioned.

The Trial Court held that partition of the property of the joint family was for the benefit of the minor Pulla Reddy and the High Court affirmed that view.

The contentions raised in the written statement filed by defendants 2, 3 and 4 clearly disclose that the continuance of the joint family status would be prejudicial to the interest of the minor Pulla Reddy. They denied that certain items of property which were found by the Court to be joint family property were of that character : they sought to set up title of their sister Chinnamma to certain other property, and pleaded that the property devised under the will of Venkata Konda Reddy had ceased to be the separate property of the devisees. The evidence on the record establishes that the

contesting defendants made it difficult for Pulla Reddy and his mother Lakshmama to live in the joint family house. The deed dated August 12, 1948 which included some and not all the joint family property for the purpose of partition, appeared also to be an attempt to create evidence that the property set out in the deed was the only estate of the joint family. It is true that normally the family estate is better managed in union than in division, nevertheless the interest of the minor is the prime consideration in adjudging whether the estate should be divided at the instance of a minor suitor. If the conduct of the adult coparceners, or the claim made by them is prejudicial to the interest of the minor the Court will readily presume that it is for his benefit to divide the estate. The conclusion recorded by the Trial Court and the High Court that partition would be for the benefit of the minor was amply supported by evidence. In the circumstances it is unnecessary to express any opinion on the question whether Lakshmama was entitled in her own right to file a suit for a share in the property of the joint family, and for the share of her husband Butchi Tirupati in the estate devised under the will of Venkata Konda Reddy and prosecute it after the death of her son Pulla Reddy.

Action by a minor for a decree for partition and separate possession of his share in the family property is not founded on a cause of action personal to him. The right claimed is in property, and devolves on his death even during minority upon his legal representative. The Court, it is true, will direct partition only if partition is in the interest of the minor but that limitation arises not because of any peculiarity in the estate of the minor but is imposed for the protection of his interest. The effect of the decision of the Court granting a decree for partition in a suit instituted by a minor is not to create a new right which the minor did not possess, but merely to recognise the right which accrued to him when the action was commenced. It is the institution of the suit, subject to the decision of the Court, and not the decree of the Court that brings about the severance. In *Kakumanu Peda Subbayas v. Kakumanu Akkamma* [(1959) S.C.R. 1249.], it was held by this Court that a suit filed on behalf of a Hindu minor for partition of joint family properties does not on the death of the minor during the pendency of the suit abate, and may be continued by his legal representative and decree obtained therein if the Court holds that the institution of the suit was for the benefit of the minor. Death of the minor Pulla Reddy during the pendency of the suit had not, therefore, on the view ultimately taken by the Court the effect of terminating the suit which was instituted for partition of the property in suit.

We may now consider the second question, about the quantum of interest awardable to Lakshmama in the property devised under the will of Venkata Konda Reddy. Lakkireddi Tirupati had three sons. Venkata Konda Reddy, Pedda Tirupelu Reddy and Chinna Tirupelu Reddy. Venkata Konda Reddy executed a will on July 1, 1910 devising in favour of the four sons of his nephew Bala Konda, named, Pedda Venkata, Chinna Venkata, Bala Venkata and Butchi Tirupati (who were born before the date of the will), all his property which he claimed to have received on partition between him and his brothers. Bala Konda instituted on July 2, 1910 suit No. 466 of 1910 in the Court of the District Munsif, Proddatur for division of properties which he claimed were jointly enjoyed by him and his two uncles Venkata Konda Reddy and Chinna Tirupelu Reddy. Under a decree dated June 26, 1911 passed in the suit with the consent of parties the property in suit divided into five shares one of which was allotted to Bala Konda and the rest was taken in two equal moieties by his two uncles. Venkata Konda Reddy died in 1915 and the property which fell to his share by the compromise decree devolved by virtue of the disposition under his will on the four sons of Bala Konda. It is contended by defendants 2, 3 and 4 that the property devised under the will of Venkata Konda Reddy became by subsequent blending, property of the joint family, and the plaintiffs were not entitled to claim a share larger than the share they had in the joint family property. It may be mentioned that defendants 3 and 4 were born after the date of Venkata Konda's will, and they were

not devisees under that will.

Law relating to blending of separate property with joint family property is well-settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein : but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation. It is true that Butchi Tirupati who was one of the devisees under the will of Venkata Konda Reddy was a member of the joint family consisting of himself, his five brothers and his father Bala Konda. It is also true that there is no clear evidence as to how the property was dealt with, nor as to the appropriation of the income thereof. But there is no evidence on the record to show that by any conscious act or exercise of volition Butchi Tirupati surrendered his interest in the property devised in his favour under the will of Venkata Konda Reddy so as to blend it with the joint family property. In the absence of any such evidence, the High Court was, in our judgment, right in holding that Lakshmama was entitled to a fourth share in the property devised under the will of Venkata Konda Reddy.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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