R. S. Madanappa and Others

Vs

Chandramma and Another

Civil Appeal No. 730 of 1962

(S. M. Sikri, K. N. Wanchoo, J. R. Madholkar JJ)

05.03.1965

JUDGMENT

MUDHOLKAR, J. -

This is an appeal by defendants Nos. 3 to 8 from a decision of the High Court of Mysore passing a decree in favour of respondent No. 1 who was defendant No. 1 in the trial court, for possession of half the property which was the subject matter of the suit and also allowing future mesne profits.

The relevant facts are briefly these : The plaintiff who is the elder sister of the first defendant instituted a suit in the court of the District Judge, Bangalore for a declaration that she is the owner of half share in the properties described in the schedule to the plaint and for partition and separate possession of half share and for mesne profits. According to her the suit property was the absolute property of her mother Puttananjamma and upon her death this property devolved on her and the first defendant as her mother's heirs. Since, according to her, the first defendant did not want to join her as co-plaintiff in the suit, she was joined as a defendant. It is common ground that the property was in the possession of the second defendant R. S. Maddanappa, the father of the plaintiff and the first defendant and Gargavva, the second wife of Maddanappa and her children. Madanappa died during the pendency of the appeal before this Court and his legal representatives are the other defendants to the suit. Briefly stated his defence, which is also the defence of the defendants other than defendant No. 1 is that though the suit properties belonged to Gowramma, the mother of Puttananjamma, she had settled them orally on the latter as well as on him self and that after the death of Puttananjamma he has been in possession of those properties and enjoying them as full owner. He further pleaded that it was the last wish of Puttananjamma that he should enjoy these properties as absolute owner. The plaintiff and the first defendant had, according to him, expressly and impliedly abandoned their right in these properties, that his possession over the properties was adverse to them and as he was in adverse possession for over the statutory period, the suit was barred. Finally he contended that he had spend more than Rs. 46,000 towards improvements of the properties which met partly from the income of his joint ancestral property and partly from the assets of the third defendant. These improvements, he alleged, were made by him bona fide in the belief that he had a right to the suit properties and consequently he was entitled to the benefit of the provisions of Section 51 of the Transfer of Property Act.

The first defendant admitted the claim of the plaintiff and also claimed a decree against the other defendants in respect of her half share in the suit properties. The other defendants, however, resisted her claim and in addition to what the second defendant has alleged in his written statement contended that she was estopped by her conduct from claiming any share in the properties.

The trial court decreed the claim of the plaintiff but held that the first defendant was estopped from claiming possession of her half share in the properties left by her mother. The first defendant preferred an appeal before the High Court challenging the correctness of the decision of the trial court. The other defendants also filed an appeal before the High Court challenging the decision of the trial court in favour of the plaintiff. It would appear that the plaintiff had also preferred some cross-objections. All the matters were heard together in the High Court, which dismissed the appeal preferred by defendants Nos. 2 to 8 as well as the cross-objections lodged by the plaintiff but decreed the appeal preferred by the first defendant and passed a decree in her favour for possession of her half share in the suit properties, and future mesne profits against the remaining defendants. Defendants Nos. 2 to 8 applied for a certificate from the High Court under Articles 133(1)(a) and 133(1)(c) in respect of the decree of the High Court in the two appeals. The High Court granted the certificate to defendants Nos. 2 to 8 in so far as defendant No. 1 was concerned but refused certificate in so far as the plaintiff was concerned. We are therefore, concerned with a limited question and that is whether the High Court was right in awarding a decree to the first defendant for possession of her half share and mesne profits.

Mr. Venkatarangaiengar, who appears for the appellants accepts the position that as the certificate was refused to defendants Nos. 2 to 8 in so far as the plaintiff is concerned the only points which they are entitled to urge are those which concern the first defendant alone and no other. The points which the learned counsel formulated are as follows :

> (1) It is not open to a court to award future mesne profits to a party who did not claim them in the suit;
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> (2) No decree can be passed favour of a defendant who has not asked for transposition as plaintiff in the suit.
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> (3) That the first defendant was estopped by her conduct from claiming possession of her alleged half share of the properties.

We will consider the question of estoppel first. The conduct of the first defendant from which the learned counsel wants us to draw the inference of estoppel consists of her attitude when she was served with a notice by the plaintiff, her general attitude respecting Bangalore properties as expressed in the letter dated 17th January, 1941 written by her to her step-mother and the attestation by her and her husband on 3-10-1944 of the will executed on 25th January, 1941 by Maddanappa. In the notice dated 26th January, 1948 by the plaintiff's lawyer to the first defendant it was stated that the plaintiff and the first defendant were joint owners of the suit properties which were in the possession of their father and requested for the co-operation of the first defendant in order to effect the division of the properties. A copy of this notice was sent to Maddanappa and he sent a reply to it to the plaintiff's lawyers. The first defendant, however sent no reply at all. We find it difficult to construe the conduct of the first defendant in not replying to the notice and in not co-operating with the plaintiff in instituting a suit for obtaining possession of the properties as justifying the inference of estoppel. It does not mean that she impliedly admitted that she had no interest in the properties. It is true that in Ex. 15, which is a letter sent by her on 17-1-1941 to her step-mother she has observed thus :

> "I have no desire whatsoever in respect of the properties which are at Bangalore. Everything belongs to my father. He has the sole authority to do anything .... We give our consent to anything done by our father. We will not do anything."

But even these statements cannot assist the appellants because admittedly the father knew the true legal position. That is to say, the father knew that these properties belonged to Puttananjamma and that he had no authority to deal with these properties. No doubt, in his written statement Maddanappa had set up a case that the properties belonged to him by virtue of the declaration made by Puttananjamma at the time of her death, but that case has been negatived by the courts below. The father's possession must, therefore, be deemed to have been, to his knowledge, on behalf of the plaintiff and the first defendant. There was thus no possibility of an erroneous belief about his tile being created in the mind of Maddanappa because of what the first defendant had said in her letter to her step-mother.

In so far as the attestation of the will is concerned, the appellants' position is no better. This 'will' purports to make a disposition of the suit properties along with other properties by Maddanappa in favour of defendants Nos. 3 to 8. The attestation of the will by the first defendant and her husband, would no doubt affix them with the knowledge of what Maddanappa was doing, but it cannot operate as estoppel against them and in favour of defendants Nos. 3 to 8 or even in favour of Maddanappa. The will could take effect only upon the death of Maddanappa and, therefore, no interest in the property had at all accrued to the defendants Nos. 3 to 8 even on the date of the suit. So far as Maddanappa is concerned, he, as already stated, knew the true position and therefore, could not say that an erroneous belief about his title to the properties was created in his mind by reason of the conduct of the first defendant and her husband in attesting the document. Apart from that there is nothing on the record to show that by reason of the conduct of the first defendant Maddanappa altered his position to his disadvantage.

Mr. Venkatarangaiengar, however, says that subsequent to the execution of the will he had effected further improvements in the properties and for this purpose spend his own moneys. According to him, he would not have done so in the absence of an assurance like the one given by the first defendant and her husband to the effect that they had no objection to the disposition of the suit properties by him in any way he chose to make it. The short answer to this is that Maddanappa on his own allegations was not only in possession and enjoyment of these properties ever since the death of Puttananjamma but had made improvements in the properties even before the execution of the will. In these circumstances, it is clear that the provisions of Section 115 of the Indian Evidence Act, which contain the law of estoppel by representation do not help him.

Mr. Venkatarangaiengar, however, wanted us to hold that the law of estoppel by representation is not confined to the provisions of s. 115 of the Evidence Act, that apart from the provisions of this section there is what is called "equitable estoppel" evolved by the English Judges and that the present case would come within such "equitable estoppel". In some decisions of the High Courts reference has been made to "equitable estoppel" but we doubt whether the court while determining whether the conduct of a particular party amounts to an estoppel, could travel beyond the provisions of Section 115 of the Evidence Act. As was pointed out by Garth C.J. in Ganges Manufacturing Co. v. Saurjmull [I.L.R. 5 Cal., 669] the provision of s. 115 of the Evidence Act are in one sense a rule of evidence and are founded upon the well known doctrine laid down in Pickard v. Sears [6 Ad. & E. 469] in which the rule was stated thus :

> "Where one by his word or conduct wilfully causes another to believe for the existence of a certain state of thing and induced him to act on that belief so as to alter his own previous position, the former is concluded from averring against the letter a different state of things as existing at the first time."

The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Therefore, where one person makes a misrepresentation to the other about a fact he would not be shut out by the rule of estoppel, if that other person know the true state of facts and must consequently not have been misled by the misrepresentation.

The general principle of estoppel is stated thus by the Lord Chancellor in Cairncross v. Lorimer [3 Macq. 827] :

> "The doctrine will apply, which is to be found, I believe, in the laws of all civilized nations that if a man either by words or by conduct has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct. I am of opinion that, generally speaking, if a party having an interest to prevent an act being done has full notice of its being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license."

It may further be mentioned that in Carr v. London & N.W. Ry. Co. [L.R. 10 C.P. 307] four propositions concerning an estoppel by conduct were laid down by Brett, J. (afterwards Lord Reher) the third of which runs thus :

> "If a man either in express terms or by conduct makes a representation to another of the existence of a certain state of facts which he intends to be acted upon in a certain way, an it be acted upon in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estoppel from denying the existence of such a state of facts."

This also shows that the person claiming benefit of the doctrine must show that he has acted to his detriment on the faith of the representation made to him.

This was quoted with approval in Sarad v. Gopal [L.R. 19 I.A. 203]. It will thus be seen that there also the person who sets up an estoppel against the other must show that his position was altered by reason of the representation or conduct of the latter and unless he does that even the general principle of estoppel cannot be invoked by him. As already stated no detriment resulted to any of the defendants as a result of what the defendant No. 1 had stated in her letter to her step-mother or as a result of the attestation by her and her husband of the will of Maddanappa.

Mr. Venkatarangaiengar then tried to urge before us that it was a case of family settlement by the father with a view to avoid disputes amongst his heirs and legal representatives after his death and, therefore, the actions of defendant No. 1 can be looked at as acquiescence in the family settlement effected by the father. A case of family settlement was never set up by the defendants either in the trial court or in the High Court and we cannot allow a new case to be set up before us for the first time.

Finally on this aspect of the case the learned counsel referred to the observations of Lord Cranworth

in Ramsden v. Dyson [L.R.I.H.L. App. 129, 140] which are as follows :

> "If a stranger beings to build on my land supposing it to be his own and I (the real owner) perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land, on which he has expended money on the supposition, that the land was his own. It considers that when I saw the mistake in which he had fallen, it was my duty to be active and to state his adverse title; and that it would be dishonest in me to remain wilfully passive on such an occasion in order afterwards to profit by the mistake which I might have prevented.

The doctrine of acquiescence cannot afford any help to the appellants for the simple reason that Maddanappa who knew the true state of affairs could not say that any mistaken belief was caused in his mind by reason of what the first defendant said or did. According to the learned counsel, even if the first defendant's claim to the half share in the suit property cannot be denied to her she must at least be made to pay for the improvements effected by Maddanappa, according to her proportionate share in the suit property. As already stated the appellant was in enjoyment of these proportion after his wife's death and though fully aware of the fact that they belonged to the daughters he dealt with them as he chose. When he spent moneys on those properties he knew what he was doing and it is not open to him or to those who claim under him to say that the real owners of the properties or either of them should be made to pay for those improvements. No man who, knowing fully well that he has no title to property spends money on improving it can be permitted to deprive the original owner of his right to possession of the property except upon the payment for the improvements which were not effected with the consent of that person. In our view, therefore, neither was defendant No. 1 estopped from claiming possession of half share of the properties nor can she be made liable to pay half the costs of improvements alleged to have been made by the second defendant.

Now regarding the second point, this objection is purely technical. The plaintiff sued for partition of the suit properties upon the ground that they were inherited jointly by her and by the first defendant and claimed possession of her share from the other defendants who were wrongfully in possession of the properties. She also alleged that the first defendant did not co-operate in the matter and so she had to institute the suit. The first defendant admitted the plaintiff's title to half share in the properties and claimed a decree also in her own favour to the extent of the remaining half share in the properties. She could also have prayed for the transposition as a co-plaintiff and under Order I, rule 10(2) C.P.C. the Court could have transposed her as a co-plaintiff. The power under this provision is exercisable by the Court even suo motu. As pointed out by the Privy Council in Bhupender v. Rajeshwar [L.R. 58 I.A. 228] the power ought to be exercised by a court for doing complete justice between the parties. Here both the plaintiff and the first defendant claim under the same title and though defendants 2 to 8 had urged special defences against the first defendant, they have been fully considered and adjusted upon by the High Court while allowing her appeal. Since the trial court upheld the special defences urged by defendants 3 to 8 and negatived the claim of the first defendant it may have thought it unnecessary to order her transposition as plaintiff. But the High Court could, while upholding her claim, well have done so. Apparently it either over-looked the technical defect or felt that under O. XLI, rule 33 it had ample power to decree her claim. However that may be, the provisions of s. 99 would be a bar to interfere here with the High Court's decree upon a ground such as this.

The only other question for consideration is whether the High Court was justified in awarding

mesne profits to the first defendant even though she was not transposed as a plaintiff. According to the learned counsel mesne profits cannot be awarded to a successful party to a suit for possession unless a claim was made in respect of them. The learned counsel is right in so far a mesne profits prior to the suit are concerned but in so far as mesne profits subsequent to the date of the institution of the suit, that is future mesne profits are concerned, the position is governed by Order XX, rule 2, C.P.C. which is as follows :

> "(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree -
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> (a) for the possession of the property;
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> (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
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> (c) directing an inquiry as to rent or mesne profits from the institution of the suit until :-
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> (i) the delivery of possession to the decreeholder,
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> (ii) the relinquishment of possession by the judgment debtor with notice to the decree-holder through the Court, or
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> (iii) the expiration of three years from the date of the decree,
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> whichever event first occurs.
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> (2) Where an inquiry is directed under cl. (b) or cl. (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

The learned counsel, however, relied upon the decision of this Court in Mohd. Amin and others v. Vakil Ahmed and others [[1952] S.C.R. 1133, 1144]. That was a suit for a declaration that a deed of settlement was void and for possession of the property which was the subject matter of the settlement under that deed. The plaintiffs had not claimed mesne profits at all in their plaint but the High Court had passed a decree in the plaintiff's favour not only for possession but also for mesne profits. In the appeal before this Court against the decision of the High Court one of the points taken was that in a case of this kind, the court has no power to award mesne profits. While upholding this contention Bhagwati J. who delivered the judgment of the Court has observed thus:

> "The learned Solicitor-General appearing for the plaintiffs conceded that there was no demand for mesne profits as such but urged that the claim for mesne profits would be included within the expression 'awarding possession and occupation of the property aforesaid together with all the rights appertaining thereto'. We are afraid that the claim for mesne profits cannot be included within this expression and the High Court was in error in awarding to the plaintiffs mesne profits though they had not been claimed in the plaint. The provision in regard to the mesne profits will therefore have to be deleted from the decree."

In order to satisfy ourselves whether these observations related to the award of past mesne profits or

to the award of future mesne profits we sent for the original record of this Court and we found that the High Court had awarded past as well as future mesne profits. Mr. S. T. Desai, appearing for the respondent No. 1 stated that a Full Bench in Babburu Basavayya and four others v. Babburu Garavayya and another [I.L.R. 1952 Madras 173] following the decision of the Judicial Committee in Fakharuddin Mohomed Ahsan v. The Official Trustee [8 Cal. 178 (P.C.)] has held that even after the passing of the preliminary decree, it is open to the court to give appropriate directions, amongst other matters regarding future mesne profits either suo motu or on the application of the parties in order to prevent multiplicity of litigation and to do complete justice between the parties. This decision has been followed in a large number of cases. In Bachepalli Atchamma v. Yerragupta Rami Reddy [A.I.R. 1957 A.P. 52] Simma Krishnamma v. Nakka Latchumanaidu and others [A.I.R. 1958 A.P. 520] Kasibhatia Satyanarayana Sastrulu and others v. Kasibhatla Mallikarjuna Sastrulu [A.I.R. 1960 A.P. 45] and Ponnuswami Udayar and another v. Santhappa [A.I.R. 1963 Mad. 171] the decision of this Court was cited at the Bar and has been considered. The learned Judges have said that the authority of the decision in Babburu Basavayya and four others v. Babburu Guravayya [I.L.R. 1952 Madras 173] is not shaken by what this Court has said. One of the grounds given is that the former relates to a suit for partition while the latter to a suit for possession simpliciter. It is not necessary for us to consider whether the decision of this Court can be distinguished upon this ground, but we feel that when a suitable occasion arises it may become necessary to reconsider the decision of this Court as to future mesne profits. In the present case the plaintiff did claim not only partition and separate possession of her half share of the properties but also past mesne profits. The defendant No. 1 admitted the plaintiff's claim and in substance prayed for a similar decree in her favour. The decision of this Court would, therefore, not apply to a case like the one before us.

In the result therefore we uphold the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.

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