

K. V. Narayanan

Vs

K. V. Ranganandhan and Others

Civil Appeal No. 1365 Of 1968

(A.c. Gupta, Jaswant Singh JJ)

12.03.1976

JUDGMENT

JASWANT SINGH, J. –

1. This is an appeal by certificate granted by the High Court of Judicature at Madras under Article 133(1)(a) and (b) of the Constitution of India against its judgment and decree dated December 8, 1966 in A. S. No. 609 of 1961.
2. The facts culminating in this appeal lie in a short compass and may be briefly stated thus :

2A. Kota Venkatachala Pathy whose legal representatives are the respondents herein and Kota Narayanan, the appellant herein, were real brothers being the sons of one Kota Rangaswami Chettiar. Together with their cousin Subramanyam Chettiar, the son of Kota Kuppaswami Chettiar, the brother of Kota Rangaswami Chettiar, they formed a joint family which was a trading one. Prior to 1927, Subramanyam Chettiar was the manager and karta of the family. After 1927 Kota Venkatachala Pathy took over the management of the family and its properties. By registered deed dated May 29, 1929 (Exh. A-1) a partition of joint family properties was effected between Subramanyam Chettiar on the one hand and Kota Venkatachala Pathy and his brother, Kota Narayanan, who was then a minor, on the other, each branch taking a half share. As karta of the joint family, Subramanyam Chettiar had, before November 20, 1927 incurred debts to the tune of Rs. 9506 from several creditors. Five items of joint family properties detailed in Schedule D-1 to the deed of partition were earmarked for the discharge of the aforesaid debts and were given over to Kota Venkatachala Pathy who was made responsible for the discharge of the debts. These debts were discharged by Kota Venkatachala Pathy before March 26, 1934. On September 7, 1956, Kota Venkatachala Pathy brought a suit, being Suit No. O.S. 87 of 1956, in the Court of the Subordinate Judge of Vellore, North Arcot, for partition and separate possession of 3/4th of the properties set out in Schedule A to the plaint, 1/2 of the properties set out in Schedule A-1 to the plaint and whole of the properties set out in Schedule B to the plaint. One of the items namely, item No. 1 of Schedule B to the plaint which consists of four shops is what remains undisposed out of the properties mentioned in Schedule D-1 to the deed of partition which were set apart for the purpose of discharging the aforesaid debts incurred by Subramanyam Chettiar before 1927.

3. The case as set out by Kota Venkatachala Pathy in his plaint was that the properties set out in

Schedule D-1 to the deed of partition were given over to him absolutely for the discharge of the aforesaid debts set out in Schedule D to the deed of partition and it was provided in the said deed that either he would discharge the debts mentioned in the deed or undertake to pay the same himself within a month from the registration of the document and obtain and hand over to Subramanyam Chettiar receipts from the creditors specifically mentioned there, that Subramanyam Chettiar was not liable for payment of the aforesaid debts and that if the aforesaid conditions were not satisfied by him i.e. by Kota Venkatachala Pathy and any loss was occasioned to the former, the latter would be liable for those losses. The case of Kota Venkatachala Pathy further was that since he had discharged the debts detailed in Schedule D to the deed of partition, he was entitled to the exclusive possession of item No. 1 of Schedule B to the plaint as his self-acquired property by virtue of the terms of deed of partition and also to the rest of the properties detailed in the said Schedule B as he had purchased the same with his own funds. Kota Venkatachala Pathy based his claim of 3/4th share in properties detailed in Schedule A to the plaint on the ground that he was entitled to 1/4th by birth as a coparcener and the rest of the half share allotted to Subramanyam Chettiar as he had purchased the same from auction purchasers. The relief for account was based by Kota Venkatachala Pathy on the ground that there was an oral division in status in 1938 and it was the appellant who was managing the properties either as a co-owner or as an agent since then.

4. The appellant resisted the claim of extra share made by Kota Venkatachala Pathy and contended that the latter was entitled only to half share in all the suit properties. According to the appellant, the family debts set out in Schedule D to the aforesaid deed of partition was discharged by Kota Venkatachala Pathy not only by the sale of the properties set out in Schedule D-1 to the deed of partition but also by substantially utilising other joint family properties available for division. It was also contended by the appellant that since Kota Venkatachala Pathy acted as karta of his branch, the aforesaid deed of partition should be construed as meaning that any item salvaged or saved after the discharge of the aforesaid family debts would be ancestral property and not exclusive property of the plaintiff. As regards the properties other than item No. 1 of Exhibit B of the plaint, it was contended by the appellant that they were also to be shared half and half between him and Kota Venkatachala Pathy as they were purchased from the joint family funds. With regard to the relief for rendition of accounts, the appellant contended that he became the karta of the joint family in 1947 and Kota Venkatachala Pathy was not entitled to the relief of rendition of account till the date of the suit when alone there was a division of status and not in 1938 as claimed by Kota Venkatachala Pathy.

5. On a consideration of the evidence adduced in the case, the trial Court by its judgment and decree dated September 12, 1960, held that there was no division in status till the date of the suit. With regard to item No. 1 of Schedule B to the plaint, the trial Court held that the total amount of debts paid was Rs. 15,669-6-2 and out of D-1 schedule properties of the estimated value of Rs. 9506 only Rs. 2575 were realized from the sale of four items thereof and the balance of the debts were discharged from out of the joint family assets like jewels, outstandings realized and other immovable properties allotted to Rangaswamy Chettiar's branch in 1929 partition and that the conversion of such joint family assets was made by Kota Venkatachala Pathy who was managing the family till 1947. The trial Court accordingly held that the properties namely item No. 1 of Schedule B to the plaint should be deemed to have been salvaged by detriment to the paternal estate. The trial Court also found that as the defendant-appellant herein was a minor at the time of 1929 partition and Kota Venkatachala Pathy, the original plaintiff had acted as his guardian, the latter must be deemed to have acted for the former also when he undertook to discharge the debts and that as between the original plaintiff and defendant to whom the properties were jointly allotted under Exhibit A-1, there was a position of implied trust in respect of properties set out in Schedules A and B to the

plaint. The trial Court also upheld the appellant's plea of blending of all the properties by Kota Venkatachala Pathy. The trial Court also found that properties covered by sale deeds Exhibit B-1 and Exhibit B-4 which originally formed part of the half share allotted to Subramanyam Chettiar though purchased by the original plaintiff in his own name were joint family properties and as such were liable to partition in equal shares. The trial Court negatived the claim of Kota Venkatachala Pathy for a share in excess of one half in the aforesaid properties and held that he was entitled to only one half of all the suit properties. The trial Court also decreed that the appellant shall render true and proper accounts in respect of the income and expenses regarding half share of the respondents in the proportions mentioned in Schedule A, A-1 and B to the plaintiff from 1947 onwards but did not give directions as to the assets and funds of capital nature withdrawn by Kota Venkatachala Pathy from out of the joint family utilised for his own separate and independent business.

6. Aggrieved by this judgment, Kota Venkatachala Pathy, the original plaintiff, whose legal representatives are the respondents herein, preferred an appeal to the High Court of Judicature of Madras. By its judgment dated December 8, 1966, the High Court allowed the appeal in part, set aside the judgment and decree of the trial Court and decreed the suit brought by the original plaintiff with regard to item No. 1 of Schedule B to the plaint holding that the properties mentioned in Schedule D-1 to the partition deed were conveyed absolutely to the original plaintiff in lieu of his undertaking to be liable to discharge the entire debts mentioned in Schedule D to the partition deed whether the properties were sufficient or insufficient to discharge the same and if there was any surplus out of the properties he was to have the same absolutely but if the properties were not sufficient, he was to discharge the debts on his own responsibility without making Subramanyam Chettiar liable for the same; that though a portion of the debts were discharged out of the joint family funds that only cast on the legal representatives of the original plaintiff a liability to account to the appellant for such drawings as the original plaintiff might have made and whatever amount was found to be so drawn would have to be debited against him i.e. the original plaintiff, after giving him credit for whatever amount he might have put into the common fund. The High Court further held that in determining the net drawals by the original plaintiff from the joint family funds, credit would be given to him for drawings made by the appellant by way of receipts of rents from item No. 1 of Schedule B to the plaint; that the original plaintiff was not liable to account for the joint family properties as there was no proof of mismanagement, mishandling or improper application of joint family properties or funds and that the defendant was also not liable to account to the original plaintiff for the management of the properties of which he was incharge. The High Court affirmed the judgment of the trial Court in regard to the properties covered by Exhibits B-1 and B-4 holding that these were acquired with the common funds of the original plaintiff and the appellant which he was managing. Dissatisfied with this judgment and decree, the defendant has come up in appeal to this Court.

7. The learned Counsel for the appellant has, while supporting the appeal, strenuously urged that the properties mentioned in Schedule D-1 to the deed of partition (Exh. A-1) were not intended by the parties thereto to be given to Kota Venkatachala Pathy as his separate properties but were given to him only for a specific purpose viz. for discharging the family debts; that the ancestral properties could not be converted into separate properties by means of an arrangement arrived at between Subramanyam Chettiar and Kota Venkatachala Pathy; that the character of a property has to be decided after considering whether it is saved as a result of detriment to the paternal estate and as in the instant case, property mentioned at item No. 1 of Schedule D-1 to the deed of partition was saved by using the joint family assets, the said property could not but be regarded as the ancestral property of the parties which was subject to partition. He has further urged that in any event D-1

schedule properties lost the character of separate properties as they were blended by Kota Venkatachala Pathy with the joint family properties. He has lastly urged that the directions given by the High Court with regard to accounting cannot be sustained as they are neither clear nor justified.

8. The principal question for determination in this case is whether the properties mentioned in D-1 schedule to the deed of partition were separate properties of Kota Venkatachala Pathy or retained the character of ancestral properties. The answer to this question depends largely on the construction of the deed of partition (Exh. A-1), material portion whereof is reproduced below for facility of reference :

Venkatachalapathi the individual No. 2 shall discharge the debts described in 'D' Schedule, the debts payable to outsiders by Subramanyam Chetti amongst us for the amount borrowed for conducting the family business prior to 20-11-27 and individual No. 2 for discharging the loans, shall enjoy absolutely the properties mentioned in Schedule D-1. Venkatachalapathi Chetti, the individual No. 2 shall either discharge the debts within a month from the date of registration of this document and obtain receipt for the creditors stating that Subramanyam Chetti is not liable to the aforesaid loans and shall give those receipts to Subramanyam Chetti. If it is not done so and thereby any loss is caused to Subramanyam Chetti by creditors, Venkatachalapathi Chetti shall be liable for those losses. The afore Venkatachalapathi Chetti himself shall get possession of D-1 schedule properties given to him in lieu of discharging the aforesaid debts whether those properties are adjusted to the aforesaid debts, or whether there remain any balance or any deficit.

9. The salient features of the deed as extracted above are : (1) sole responsibility for discharge of the debts detailed in Schedule D to the deed of partition which were payable to the outsiders was placed on Kota Venkatachala Pathy. (2) The liability cast on Kota Venkatachala Pathy for the discharge of the debts was not to the extent of the properties detailed in Schedule D-1 to the deed to partition but was irrespective of the sufficiency or otherwise of the properties and any deficit or surplus was to be met or enjoyed by him exclusively. (3) the debts were to be discharged by Kota Venkatachala Pathy within a month of the registration of the deed and he was required to have it in writing from the creditors that Subramanyam Chetti was no longer liable for the debts. (4) In case, there was a default on the part of Kota Venkatachala Pathy to discharge the debts as undertaken by him and any loss was caused to Subramanyam Chetti, the former was to indemnify the latter. (5) Exclusive dominion, control and enjoyment of the properties mentioned in Schedule D-1 was vested in Kota Venkatachala Pathy in consideration of the obligation undertaken by him to discharge the debts.

10. The aforesaid salient features leave no manner of doubt that the properties mentioned in D-1 schedule to the deed of partition were given to Kota Venkatachala Pathy in lieu of the personal undertaking given by him to discharge the aforesaid debts. In other words, the conveyance of the properties to Kota Venkatachala Pathy was in the nature of remuneration for the services to be rendered by him. It will be useful in this connection to refer to the decision of this Court in Raj Kumar Singh Hukam Chandji v. C.I.T., Madhya Pradesh [(1971) 1 SCR 748 : (1970) 2 SCC 436] where on the question whether the managing Director's remuneration received by the assessee was assessable in his individual hands or in the hands of the assessee's Hindu undivided family, this Court expressed the view that the remuneration was assessable as the assessee's individual income and not as the income of his Hindu undivided family. We are, therefore, of the view that Schedule D-1 properties were given absolutely to Kota Venkatachala Pathy as his separate properties.

11. Let us now see as to whether the aforesaid arrangement entered into between the members of the Hindu undivided family whereby properties mentioned in Schedule D-1 to the deed of partition were made over to Kota Venkatachala Pathy was valid according to Hindu Law. A reference to page 426 of Mayne's Treatise on Hindu Law and Usage (11th Edition) makes it clear that while dividing the family estate, it is necessary for the joint family to take account of both the assets and the debts for which the undivided estate is liable and to make provision for discharge of the debts. It is also well settled by the decisions of this Court in *Sahu Madho Das v. Pandit Mukand Ram* [(1955) 2 SCR 22 : AIR 1955 SC 481]; *Maturi Pullaiah v. Maturi Narasimham* [AIR 1966 SC 1836] and *S. Shanmugam Pillai v. K. Shanmugam Pillai* [(1973) 2 SCC 312] that if family arrangements which are governed by a special equity peculiar to themselves or entered into bona fide to maintain peace or bring about harmony in the family and the terms thereof are fair is taking into consideration the circumstances of the case, every effort must be made by the Court to recognise and sustain it. Examining the matter in the light of these principles, we find that by aforesaid arrangement both Subramanyam Chettiar and the defendant-appellant were absolved of the responsibility to discharge the family debts and liability was cast on Kota Venkatachala Pathy alone to discharge the same irrespective of the fact whether the properties mentioned in Schedule D-1 to Exhibit A-1 ultimately turned out to be sufficient or insufficient to meet the burden. Thus the arrangement being bona fide and its terms being fair, we cannot but hold that it was valid and the properties detailed in Schedule D-1 to the deed of partition became separate properties of Kota Venkatachala Pathy from the date of the execution of the deed of partition and are not liable to partition.

12. This takes us to the question as to whether there was, as contended by the appellant, any blending of the properties mentioned in Schedule D-1 to the deed of partition with the rest of the properties of the joint family consisting of Kota Venkatachala Pathy and the appellant. It is true that 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 intention of abandoning his separate claim therein but the question whether a coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights. Such an intention cannot be inferred merely from the physical mixing of the property with his joint family or from the fact that other members of the family are allowed to use the property jointly with himself or that the income of the separate property is utilised out of generosity or kindness to support persons whom the holder is not bound to support or from the failure to maintain separate accounts for an act of generosity or kindness cannot ordinarily be regarded as an admission of a legal obligation. (See *Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmana* [(1964) 2 SCR 172 : AIR 1963 SC 1601] and *G. Narayana Ram v. G. Chamaraju* [AIR 1968 SC 1276 : (1968) 3 SCR 464].)

13. In the instant case we are unable to find that there was any intention on the part of Kota Venkatachala Pathy of abandoning his separate right over the properties set out in Schedule D-1 to the deed of partition. The mere fact that these properties were not separately entered by Kota Venkatachala Pathy in the account books or that no separate account of the earnings from these properties was maintained by him cannot rob the properties of their character of self-acquired properties. We are accordingly of the view that there was no blending of the properties by Kota Venkatachala Pathy as contended by the appellant.

14. The mere fact that some amount out of the joint family funds was used for discharge of the debts mentioned in schedule to the deed of partition is also of no consequence. If any amount out of the joint family funds was used for the discharge of the outstanding payable to the outside debtors, the

legal representatives of Kota Venkatachala Pathy would, as pointed out by the High Court be liable for them.

15. There is also no substance in the last contention advanced on behalf of the appellant. The legal position is well settled that in the absence of proof of misappropriation or fraudulent or improper conversion by the manager of a joint family a coparcener seeking partition is not entitled to call upon the manager to account for his past dealing with the family property. The coparcener is entitled only to an account of the joint family property as it exists on the date he demands partition. In the instant case there being no evidence to establish any misappropriation or fraudulent conversion of the joint family property by Kota Venkatachala Pathy during the period he acted as karta of the family, we are unable to interfere with the direction issued by the High Court which is just and proper.

16. For the foregoing reasons, the appeal fails and is hereby dismissed but in the circumstances of the case without any order as to costs.

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