

Muthangi Ayyanna

Vs

Muthangi Jaggarao and Others

Civil Appeal No. 1679 of 1968

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

26.10.1976

JUDGMENT

BEG, J. –

1. This is an appeal by one of the defendants in a partition suit. It has come up before us after certification of the case under the unamended provisions of Article 133 as the decree of the trial Court was modified so that the requirements of Order 45, Rule 7 of the Civil Procedure Code had been fulfilled.

2. Learned counsel for the appellant (defendant 4 transposed on November 5, 1951 as plaintiff 4) confined his argument to liability of Rs. 42,550/10/1 which resulted after the accounts which the appellant had to render on behalf of his branch of the family. The pedigree of the family is as follows :

Jaggiah | ----- || Narasiah Butchiramayya (Plaintiff) d. 1912 d. June 7, 1951 || ----- ||| | | | | Son Daughters D-2 D-3 D-4 D-5D-1 Sitharamayya D-6 to D-8 Transposed as Plaintiffs 2 to 5 born 1903 by Order dated November 5, 1951 died 1936##

April 20, 1953 - D-6 to D-8 surrendered their rights to D-9, 10, 11, 12, D-1's branch represented by D-9 to D-12.

3. A preliminary decree for partition was passed on December 12, 1942, in the following terms :

This suit coming on this day for final disposal in the presence of Sri N. Purushotham Naidu advocate for the plaintiff, of Shri P. Lakshminarayana, pleader for the second defendant, of Sri N. Sreeramamurthi, advocate for fifth defendant, and of Sri B. Subba Rao, pleader for defendants 6 and 7, and defendants 3 and 4, appearing in person and defendants 1 and 8, being reported dead, this court doth order and direct as follows :

(i) That the properties in plaint Schedules A and A-1 and items 1 and 1-a of the A Schedule filed along with the written statement of defendants 6 to 8 (Surasani Yanam lands) be divided into equal shares by metes and plaintiff and defendants 2 to 5 be put in possession of one such share and the other share be taken by defendants 6 and 7.

(ii) That half of the purchase price of items 2 and 3 of Schedule A filed along with the written statement of defendants 6 to 8 (i.e. Akulavari house and Challagalla Nagayya's lands) be paid by defendants 6 and 7 to plaintiff and defendants 2 to 5 with interest thereon at 12 per cent per annum from the dates of the sale deeds.

(iii) That an account be taken of the outstanding due to the family as on 6-12-1925 and the plaintiff and defendants 6 and 7 do furnish accounts in respect of the collections or loans etc., on and after that date.

(iv) That plaintiff and defendants 6 and 7 do file accounts before the Commissioner in respect of the net income derived from the lands in plaint A and A-1 schedules which fell to their share prior to 1-7-1929 as mentioned in Exhibit XI, the account to be from 6-12-1925 till 1-7-1929.

(v) That defendants 6 and 7 do render accounts for first defendant's management of all the properties subsequent to December 6, 1925.

(vi) That defendants 6 and 7 do deliver item 51 of the plaint B schedule to the plaintiff, (the other items having been divided between the parties with their consent in Court on November 30, 1942, as per memo filed by them on that date.

(vii) That Mr. N. Venkat Rao, Vakil, be hereby appointed Commissioner for the purpose of taking account and submitting a report as expeditiously as possible after taking of such accounts (the outstandings as stated by the arbitrator in Exhibit 113 may be taken by him as showing prima facie a correct list of the outstandings and the account books produced and filed by the parties may be taken as prima facie correct accounts. The Commissioner will take into account the memo, dated 30-12-1942, filed by both parties into Court. He may take the direction of the Court as and when necessary.

4. On appeal, the High Court modified that preliminary decree and substituted it by the following decree :

1. That for the words and figures occurring in Clause 3 of the first paragraph of the decree of the lower court namely "on 6-12-1925", the following words and figures namely "on 30-9-1922" be and hereby the are substituted;

2. That the finding of the lower court regarding the properties mentioned in Schedule A of the plaint viz. that it forms part of the joint family properties be and hereby is set aside partitioned amongst the parties to the suit;

3. That for the words and figures in the decree of the lower court viz. "Plaint A and A(1) schedules", the following words and figures viz. "item 1 of the plaint A(1) schedule" be and hereby are substituted;

4. That item 2 of the plaint A(1) schedule and items 2 and 3 mentioned in the A schedule attached to the written statement of defendants 6 and 7 be considered to have been items of joint family property and that they be taken to have been already allotted and that the plaintiff do keep the said item 2 of the plaint A(1) schedule and that defendants 6 and 7 do keep the items 2 and 3 of the said A schedule attached to

the written statement of defendants 6 and 7 and that there be no part of any one of the parties to pay interest to the other;

5. That for Clause 5 of the first paragraph of the decree of the lower court, the following paragraph viz. "that the plaintiff, the 2nd, 6th and the 7th defendants and other parties to the suit do equally render accounts for their respective management including the receipt of income, of all the properties subsequent to December 6, 1925"; be and hereby is substituted;

6. That the Commissioner do follow the observations and directions contained in the judgment herein in respect of the income in particular of the estates of Prakkilanka and Annadevara;

7. That Clause 6 of the first paragraph of the decree of the lower court be and hereby is deleted;

8. That the finding of the lower court regarding the emerald listed as item 51 of the plaint B schedule, that it is the exclusive property of the plaintiff be and hereby is set aside and that the said item of property be and hereby is declared to belong to the joint family and is divisible; and

9. That each party do bear their respective costs both in the appeal and in the memorandum of cross objections.

5. Our attention has been invited to the pleadings of the parties and following statement of the claim mentioned in the judgment of the trial Court when passing the preliminary decree :

First defendant in his written statement claims account of the management of the plaintiff and second defendant of the joint family properties and he values the claim tentatively at Rupees 3100 and paid a court fee of Rs. 269-15-9 thereon.

6. This appeal, coming up before us from the final decree, raises the question whether the preliminary decree, confines, as the learned Counsel for the appellant-defendant 4 submits, accounting to the claims made by and against individual parties mentioned in the preliminary decree. He urges that it cannot be extended to all parties, including the defendant 4, if the terms of the preliminary decree are binding. The contention is based on the well recognised proposition that a final decree cannot amend or go behind the preliminary decree on a matter determined by the preliminary decree.

7. Clause 5 of the decree of the High Court, on the appeal from the preliminary decree, had modified the decree passed by the trial Court, and had extended accounting to all parties to the suit who were impleaded both in their individual capacities and as representatives of their branches. Hence, we do not think that the Commissioner or the High Court had erred in interpreting the preliminary decree, as modified by the High Court on appeal, as embracing there relief granted by the final decree. As this is the only question, which is devoid of substance, argued before us, we need not consider any other question.

8. Considering that this is a partition suit, we think that the costs throughout should be borne by the estate. Accordingly, subject to the modification that the costs of the suit throughout will be borne by the estate, we affirm the order and decree of the High Court and dismiss this appeal.

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