P. N. Easwara Iyer

Vs

P. N. Venkatasubramania Iyer & Others

Civil Appeal Nos. 1278 of 1968 and 410 and 411 of 1976

(CJI Y. V. Chandrachud, D. A. Desai, R. S. Pathak JJ)

05.05.1978

JUDGMENT

PATHAK, J. -

1. These appeals arise out of two suits for partition of Hindu coparcenary properties.

2. The principal parties to the suits are P. S. Narayana Iyer and his four sons. The eldest son, Easwara Iyer, instituted Suit 367 of 1950, and the third son, Ramachandra Iyer, was the plaintiff in Suit 474 of 1950. The suits relate to the same properties.

3. There was a joint Hindu family consisting of Narayana Pattar, his three sons, Appu Pattar, Samu Pattar, Venkatarama Pattar and their families. The geneological table is set out below :

Narayana Pattar | ---------- | | | Appu Pattar Samu Pattar Venkatarama (died 1900) (died 1925) Pattar | | (died 1921)---------- ---------- || | | |Ramakrishna Narayana Sahasranama | Iyer Iyer Iyer | (died 1912) | | | | | ---------- | | | | Easwara Iyer Sesha Iyer | | ---------- ---------- | | | | |P.S. Narayana Ranga Iyer Anantha Lakshmi Ramanatha Iyer Narayana Narayana Iyer(died 28-5-1951) Iyer Iyer (Defdt. 1) | ---------- ---------- | | | | | |Sesham- Easwars Alamelu Venkata- Meenakshi Rama- Krishnamal Iyer Ammal Subramania Ammal chandra Iyer(Defdt. 9) (Pltff.) (Defdt. 10) Iyer (Defdt. 11) Iyer died Feb. | | 1951 | | (Defdt. 2) (Defdt. 3) (Defdt. 4) | | | | | | | | | Married | | | | Annapurni | | | | Ammal | | | | (Defdt. 18) | | | | | | ---------- ---------- | | | | | | | | | | P. R. Nara- P. R. Ven- | | | | yanan kata | | | | (Defdt. 7) chalam- | | | | (Defdt. 8) | | P. V. Nara- P. V. Seshan | | yana (Defdt. 6) | | (Defdt. 5) | | | | ---------- ---------- | | | | |P. S. Thiri- P. S. P. S. T. S. Rama- T. S. Nara- T. S. Rama-vikraman Nara- Ventaka- nathan yanan krishnan(Defdt. 12) yanan raman (Defdt. 15) (Defdt. 16) (Defdt. 17) (Defdt. 13) (Defdt. 14)##

4. For greater convenience, the parties will be described hereafter as plaintiff and defendants according to their array in Suit 367 of 1950.

5. The family carried on a banking business and owned forest lands, wet lands and dry lands, tile works, ginning and groundnut factories. The coparcenary properties are situated in territories now included in the States of Tamil Nadu and Kerala.

6. On the death of Appu Pattar in 1900, the family affairs were managed by Samu Pattar until his death in 1925. The first defendant, his son, was in the service of the Madras Bank (later the Imperial Bank, Madras) from 1907, and after postings at Tuticorin, Madurai, and Madras, he retired from the Bank in 1924, Even before Samu Pattar's death, he was actively involved in the family business, and from 1925 he assumed complete control of the family business and properties. The larger family continued joint until 1932, when there was a division in status. The actual division of the coparcenary properties occupied some years, and was finalised by a registered deed of partition dated September 9, 1939. The properties were partitioned between the separate branches of the larger family, and the share of Samu Pattar's branch was divided between his sons. This left the first defendant in separate possession of the share of his own family.

7. While the division of the coparcenary properties of the larger family was still in progress, differences arose between the first defendant and his eldest son, the plaintiff. By a letter dated January 13, 1940 the father informed the son that they would cease to be joint, and there would be a division of the properties falling to the shares of their branch. This was incorporated in a registered deed of partition dated October 26, 1943 under which, among other things, the first defendant retained for himself cash and certain properties, including properties allotted by the larger family for payment of its debts to the sons of the first defendant. The arrangement so effected was not accepted by the plaintiff. He instituted Suit 1 of 1940 for recovery of a debt of Rs. 27,633 owed to him by the larger family. On July 20, 1943 the suit was decreed and the decree was satisfied by the first defendant.

8. Thereafter the suits, out of which the present appeals arise, were instituted by the plaintiff and the third defendant for partition of the coparcenary properties belonging to the first defendant and his branch. Reference will be made to the properties as they have been detailed in the Schedules appended to the plaint in Suit 367 of 1950.

9. There is no dispute between the parties in regard to the properties at item 1 to 171 of Schedule A, as admittedly they were allotted specifically to this branch on the partition of the larger family. As regards the properties at times 172 to 282, they were put into the possession of the first defendant at that partition for discharging debts totaling Rs. 90,000 owed by the larger family to the sons of the first defendant. Those properties were, however, claimed by the first defendant as his separate property. Out of them, he settled the properties at itmes 210 to 282 (described as the "Karulai Estate") on the second defendant and his sons by a registered instrument dated June 21, 1949. And except for the properties at items 327, 328 and 330 which the second defendant claimed as his self-acquisitions and a portion of the property at item 341 consisting of 29 grounds and 1777 sq. ft. of land which was alleged by the fourth defendant to have been acquired by him the remaining properties at items 283 to 341 were treated by the first defendant as his separate property. Out of these, he settled the property "Venkata Vilas" at items 336 on the second defendant and his sons and the fourth defendant by a registered deed dated November 30, 1949, and the house properties at items 337, 338 and 339 on his three daughters by registered gift deeds dated November 3, 1949. The plaintiff claimed that all those properties were liable to be included for the purpose of partition. The plaintiff also claimed the inclusion of two sums of Rs. 50,000 each held in fixed deposit in the name of the second defendant and the fourth defendant as well as certain items of jewellery.

10. The two suits were tried together on the original side of the High Court of Madras. During the pendency of the suits, the fourth defendant died in February 1951, and his widow, Annapurni Ammal, was brought on the record as the eighteenth defendant. On May 28, 1951, the defendant died, and his sons were recorded as his legal representatives. The plaint was also amended to take

into account the devolution of his one-fifth share in the coparcenary properties on his sons, and the plaintiff now claimed a four-fifteenth share in coparcenary properties. On April 21, 1959 the learned Single Judge, who tried the suits, passed a decree for division of the coparcenary properties equally between the plaintiff and the second, third and eighteenth defendants, the last being regarded as the legal representative of the deceased fourth defendant. He held that the partition effected by the first defendant and recorded in the registered deed of 1943 was void, that all the properties claimed by the first, second and fourth defendants as their self-acquisitions were coparcenary properties liable to be included for partition, that the gift of the "Karulai Estate" at items 210 to 282 in favour of the second defendant and his sons and the gift of "Venkata Vilas" at item 336 in favour of the second defendant and his sons and the fourth defendant were invalid, but he upheld the gifts of the properties at items 337 to 339 in favour of the daughters. The fixed deposits of Rs. 50,000 each in the name of the second and fourth defendants were held not binding on the estate. The jewellery in suit was also held to be coparcenary property. The second defendant had put forward a claim on account of improvements said to have been made by him in the properties which had passed into his possession, but the claim was negatived. The second, third and eighteenth defendant were directed to render accounts of the profits of the properties which had been placed in their possession.

11. A number of appeals were filed. The second defendant and his sons preferred O.S.A. 74 of 1959 and O.S.A. 75 of 1959 against the decrees in Suit 367 of 1950 and Suit 474 of 1950 respectively. The plaintiff in Suit 367 of 1950 filed O.S.A. 31 of 1960 so far as the decree in that suit proceeded against him. The eighteenth defendant preferred O.S.A. 28 of 1960 and O.S.A. 29 of 1960 against the decrees in Suit 367 of 1950 and Suit 474 of 1950 respectively. The appeals were heard and disposed of by a Division Bench of the High Court on its Appellate side on January 21, 1965. The decree passed by the learned Single Judge was confirmed with certain modifications. The properties at items 327, 328 and 330 claimed by the second defendant and the portion of item 341 claimed by the fourth defendant were held to be their self-acquisitions, and therefore not available for division. In respect of the two fixed deposits of Rs. 50,000 each, the Division Bench directed that if they could not be directly related to the original fixed deposits standing in the name of the first defendant at the time of division in status, they would be treated as the personal property of the second and fourth defendants. The jewellary was held not to belong to the coparcenary. And concerning the claim of the second defendant on account of improvements, the matter was left to be determined at the time of preparation of the final decree. As regards the shares of the parties in the coparcenary properties, it was held that after taking into account the devolution of the share of the first defendant, the plaintiff, the second and third defendants were entitled to a four-fifteenth share each and the eighteenth defendant, as representing the deceased fourth defendant, to the remaining one fifth share.

12. Against the decrees disposing of those appeals, the parties have now preferred the present appeals to this Court.

13. In these appeals, it is urged by the plaintiff that the High Court erred in holding that the properties at items 327, 328 and 330 were the self-acquisitions, of the second defendant and the portion of item 341 claimed by the fourth defendant was his self-acquisition. He also assailed the finding in respect of the properties at items 337, 338 and 339 gifted to the daughters by the first defendant as well as the finding in regard to the two deposits totalling Rs. 1,00,000 and the jewellery, and also the claim of the second defendant to improvements alleged to have been effected by him. All those properties, it was contended, were coparcenary properties liable to inclusion for partition. The defendants challenged the finding that the properties at partition; they maintain that the settlements of the "Karulai" estate and "Venkata Vilas" on the respective defendants by the first

defendant were valid and binding on the family.

14. The case in regard to the properties at items 337, 338 and 339 may be considered first. The site on which the three houses were built by the first defendant was purchased for Rs. 17,500 on December 14, 1920. The houses were constructed in 1934 at a cost of about Rs. 20,000. The purchase price of the site, Rs. 17,500, proceeded from a cheque of Rs. 4000 issued by one V. L. Ethiraj and from a cheque dated December 14, 1920 for Rs. 13,500 issued by the first defendant. The High Court has found that the sum of Rs. 13,500 must be attributed to the accumulated sums received by way of illegal gratification by the first defendant during his employment in the Madras Bank. There is ample evidence on the record to support the allegation that he had been receiving what has been euphemistically described as "Mamool" from constituents of the Bank. A sum of Rs. 13,500 could not have proceeded out of the family funds as there had already been rather heavy drawings from them of Rs. 15,000 in May, 1920 and of Rs. 59,000 in September, 1920. Accordingly, the sum of Rs. 13,500 must be regarded as proceeding from the self-acquired funds of the first defendant. In regard to the sum of Rs. 4,000 from Ethiraj, the appellate court has found that the money was paid to the first defendant in satisfaction of a debt owed to him personally. Alternatively, the appellate court has taken the view that even if the sum of Rs. 4,000 be regarded as proceeding from the coparcenary funds, then having regard to the extent of the family properties it was open to the first defendant as the father to make a gift of this sum to the three daughters. We see no reason to take a different view. It, therefore, appears that the findings of both the courts below that the properties at items 337, 338 and 339 should be regarded as falling outside the partition suits must be upheld.

15. Turning next to the properties at items 327, 328 and 330, the evidence shows that the properties at items 327 and 328 were purchased by the second defendant for Rs. 650 at a court auction on June 5, 1946. It seems that the property had been mortgaged to the second defendant for a loan of Rs. 1,000 in 1941 and the second defendant had obtained a decree on the mortgage. As regards the property at item 330, it had been subject to a usufructuary mortgage in favour of Samu Pattar under a registered deed dated March 30, 1924. The second defendant purchased the property at a sale effected by the Official Receiver for Rs. 301 on October 27, 1943. The sale having been subject to a charge for Rs. 4,500, with interest amounting to Rs. 150 due thereon, on account of the usufructuary mortgage, the second defendant paid the sum of Rs. 4,650 to his father and obtained a deed of release of November 3, 1949. The larger family had already assigned the usufructuary mortgage on the property in favour of the father. On these facts, we are in agreement with the appellate court that the properties at items 327, 328 and 330 must be regarded as the self-acquisitions of the second defendant. A faint attempt was made to urge that the first defendant had made available coparcenary funds to the second defendant for the acquisition of the properties, but we are not satisfied that there is any substance in the contention. It was admitted before us that the evidence was wholly deficient for the purpose of supporting the plea that coparcenary funds were employed.

16. The property at item 341 has been claimed by the fourth defendant as his self-acquisition. The sale deed dated March 27, 1944 shows that a portion of land measuring about 29 grounds and 1777 sq. ft. was acquired by the fourth defendant. The property was purchased at a public auction by him and the appellate court has found that he paid Rs. 3,000 on the acceptance of his bid and thereafter the balance of Rs. 9,000 and that the property must be regarded as his self-acquisition. There is abundant evidence before us to support that finding. It must be remembered that when the property was acquired in 1944, the fourth defendant was a divided member of the family. Further, even if the first defendant made a gift of money to the fourth defendant and the property was acquired from that money, the property must continue to be regarded as the separate property of the fourth

defendant. It was never acquired by him for the family, and all that can be said is that the first defendant is liable to account for the money so gifted. Agreeing with the appellate court, we are of the opinion that this property is the self-acquisition of the fourth defendant.

17. As regards the claim of the plaintiff in regard to the two fixed deposits of Rs. 50,000, we have been taken through the evidence, but we are not satisfied that we should interfere with the direction of the appellate court that the matter should be investigated by the court of first instance in order to determine whether they can be directly related to the original fixed deposits standing in the name of the first defendant at the time of the division in status of the family. It was not proved before the appellate court that the two fixed deposits could be directly traced to the original fixed deposits held as joint family assets, and it is only right that a proper inquiry should be made now. We see no case either for disturbing the finding of the appellate court that the jewellery claimed was not proved to belong to the coparcenary. The direction of the appellate court that the claim of the second defendant on account of improvements made by him should be determined by the court of the first instance was also assailed, but it has not been established that the direction is not justified and we should interfere with it.

18. We now turn to the two settlements of property made by the first defendant on the second defendant, his sons and the fourth defendant. The properties at items Nos. 210 to 282 were settled on the second defendant and his sons by the first defendant under a deed of settlement dated June 21, 1949. It was recited in the deed that at the partition of the family the property had been allotted to the share of the settler's branch consisting of himself and his sons and that at the partition effected thereafter between him and his sons in 1940, the property had fallen to the share of the settlor. The second settlement was made by the first defendant on the second and fourth defendants by a deed dated November 30, 1949 and it related to the property described as "Venkata Vilas" mentioned at item No. 336. This was also described in the deed by the first defendant as his separate property. The appellate court has found that the two sets of property constitute coparcenary property and could not be described as separate property of the first defendant. As regards the properties at items Nos. 210 to 282, they were given by the larger family to the possession of the first defendant for the purpose of discharging debts owed by the larger family to the sons of the first defendant. The partition deed dated September 9, 1939 discloses that after the shares of the different branches of the larger family had been determined and properties had been allotted according to the respective shares, the property at items Nos. 210 to 282 were set apart separately and entrusted to the possession of the first defendant for the purpose mentioned above. It is important to note that the deed does not mention that the ownership of the properties was transferred to the first defendant. They were coparcenary properties entrusted as such to the first defendant. The plaintiff, who did not consider that the partition set up in 1940 by the first defendant between him and his sons was binding on them, filed a suit (No. 1 of 1940) against the first defendant for recovery of his share of the money owed to him by the larger family. The suit was decreed on July 30, 1933 and it appears that the decree was satisfied from other funds. It seems to us clear that the properties at items Nos. 210 to 282, which were originally in the nature of coparcenary property, remained coparcenary property in the hands of the first defendant and were liable to partition between him and his sons. It was strenuously urged that the properties had been given by the larger family to the first defendant subject to the obligation that he should personally discharge the debts owed by the larger family to his sons and, therefore, it is said, the properties must be regarded as his personal property. The contention is not supported by the partition deed of 1939, nor by any other material before us. Reliance was also placed by the defendants on K. V. Narayanan v. K. V. Ranganandhan ((1976) 3 SCR 637 : (1977) 1 SCC 244), but we do not see how that case can assist the defendants. That was a case where on a partition between the two branches of the family certain properties were given to a

member of one branch for discharging some family debts. The debts were discharged by him and subsequently on a suit for partition of his branch filed by him, he claimed that one of the items earmarked for the discharge of the debts and which had remained undisposed of, was his exclusive property as it was given to him absolutely. This court held that the properties had been given to him on the partition of 1929 as separate property and were not liable to partition. The deed under which the properties were entrusted to him showed that the sole responsibility for discharge of the debts had been placed on him, and his liability to discharge the debts was not confined to the extent of the properties but was irrespective of the sufficiency or otherwise of the properties, and any deficit or surplus had to be met or enjoyed by him exclusively. It was also apparent that the other branch which had separated in 1929 was no longer liable for the debts. The court found that the properties were given to the family member in view of his personal undertaking to discharge the debts. It is apparent at once that the facts of the case are distinguishable. In the instant case, the properties were coparcenary properties and continued as such throughout. They were given into the possession and not into the ownership of the first defendant. As they were not employed by him for the purpose for which they had been given, they remained available for partition between him and his sons. Accordingly, we hold that the "Karulai" estate, represented by the properties at items 210 to 282 must be regarded as coparcenary property liable to partition.

19. In regard to the property "Venkata Vilas" at item 336, the record shows that it was purchased on September 19, 1920 for Rs. 50,000 and that the purchase price proceeded from the coparcenary funds. The evidence has been carefully considered by the appellate court and it has found that the first defendant could not possibly have had sufficient personal funds in order to acquire the property. Indeed, the evidence discloses that a sum of Rs. 49,000 was drawn by cheque on August 4, 1920 from the family account. We are in agreement with the appellate court that the property, "Venkata Vilas", constitutes coparcenary property available for partition between the members of the family.

20. Towards the end it was urged on behalf of the defendants that even if the properties covered by the two settlements are regarded as coparcenary properties, the settlements were made when the family stood divided in status and therefore they should be regarded as valid at least to the extent of the share of first defendant. There appears to be no objection by any party to this suggestion being accepted, except that it pointed out by the plaintiff that the eighteenth defendant, representing the estate of her deceased husband, the fourth defendant, has filed no appeal in this Court against the decree of the appellate Court so far as declared invalid the settlement of November 30, 1949. It seems to us desirable on considerations of equal justice and in order to maintain consistency in these cases that we should make no exception in regard to the claim of the eighteenth defendant, and she should be entitled to the same interest in the one-fifth share of the first defendant in "Venkata Vilas" as the second defendant would have. In the circumstances, we hold that the settlement dated June 21, 1949 shall be treated as settling the one-fifth share of the first defendant in the properties mentioned therein on the second defendant, and the settlement dated November 30, 1949, which was intended in favour of the second and fourth defendants, shall be regarded as valid in favour of the second defendant and the eighteenth defendant, representing the estate of the fourth defendant, to the extent of one-half each of the one-fifth share of the first defendant in the property mentioned therein. The rest of the shares in all the properties shall be worked out in the light of this judgment.

21. Finally, it may be mentioned that a plea of res judicata was raised by the defendants when the hearing of these appeals commenced but it was soon abandoned.

22. Subject to the directions given in this judgment all the appeals before us are dismissed. The

parties shall bear their costs, which will be paid to them by the Receiver from the estate according to their respective shares, the amount on account of counsel's fee being paid on the basis of the bills submitted by them.

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