Smt. Krishnabai Bhritar Ganpatrao Deshmukh

Vs

Appasaheb Tuljaramarao Nimbalkar and Others

Civil Appeal No. 54 of 1969

(R. S. Sarkaria, D. A. Desai. JJ)

31.07.1979

JUDGMENT

KAILASAM J.

1. This appeal by the defendant, on certificate, is directed against a judgment, dated October 23, 1968, whereby in first appeal, the High Court of Mysore set aside the judgment and decree passed by the Joint Civil Judge, Senior Division, Belgaum.

2. The pedigree of the family given below will be helpful in understanding the facts leading to this appeal :

Ravalojirao (died before 1900) | ---------- | | Narayanarao Ramachandrarao (died in 1924) (died on January 20, 1955) | | Tuljaramrao Krishnabai (died in 1944) (defendant-appellant) ---------- | |Appasaheb Nanasaheb(Pltf. 1.) (Pltf. 2.) Sou. Vasundhararaje (Pltf. 3.) | ---------- | | | | | Ashok Pushpendra Virendra Inderjit Ravalogirao Narayanarao Kumar Singh Singh Singh (Pltf. 9) (Pltf. 10)(Pltf. 3) (Pltf. 6) (Pltf. 7) (Pltf. 8)##

3. By a registered document, dated July 25, 1902 (Ex. 39), executed by Narayanarao, six Desgat lands situated in village Nanandi, Umarani and Nandikurli, totalling about 120 acres, were received by Ramachandrarao, for separate living and maintenance of himself and his male lineal descendants. Out of the lands covered by the said deed, three lands comprising in survey nos. 114 (26 acres-30 gunthas), 115 (9 acres-38 gunthas) and 116 (26 acres-34 gunthas), totalling about 63 acres and 22 gunthas, situate in the area of village Umarani, Taluka Chikodi, are the subject-matter of the suit, out of which this appeal has arisen.

4. The respondents herein, who are the grandsons and great-grandsons of Narayanarao, on July 24, 1960, instituted Suit No. 26 of 1960 in the Court of Civil Judge, Belgaum, against Smt. Krishnabai, appellant for possession of the said lands and for recovery of past and future mesne profits, with these allegations : (i) that the suit lands were Desgat Watan lands and were part of the Desgat Watan estate of Nanandi, (ii) that by virtue of an ancient and immemorial family and territorial custom, the Desgat estate of Nanandi was impartible, and descended from generation to generation to the seniormost member by the rule of primogeniture, while the junior members of the family were only given some lands for their maintenance by the holder of the Desgat for the time being, (iii) that till his death, the appellant's father continued to be an undivided member of the joint family consisting of himself and the plaintiffs; and (iv) that on July 31, 1956, a partition by metes and bounds has

taken place between the plaintiffs inter se under a partition deed.

5. The suit was resisted by the defendant-appellant. She denied the alleged ancient, family and territorial customer of primogeniture. She denied that the property formed part of the Desgat Watan estate of Nanandi. She further denied that her father, Ramachandrarao, came into possession of the suit land for his maintenance. She further pleaded that Ramachandrarao and his brother Narayanarao had separated during their lifetime and the suit lands and some other lands were given to Ramachandrarao in the partition between the two brothers towards a part of his share, and it was agreed that the share of Ramachandrarao in other family properties would be separated and settled and settled at some future convenient time. She further stated that since 1902, Ramachandrarao was in separate possession and enjoyment of the suit lands till his death on January 20, 1955, and that at the time of his death he was not an undivided member of the joint family of himself and the plaintiffs. She further pleaded that on her father's death she succeeded to the suit lands, which were his separated property. She further relied on the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 (Bombay Act 60 of 1950), (for short, called the Act), and the re-grant of the land made in favour of her father, under that Act.

6. The learned trial Judge by his judgment, dated September 29, 1962, dismissed the respondents' suit with these findings :

> (a) that the alleged custom of impartibility and devolution of property by the rule of primogeniture had not been proved;
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> (b) that there was a severance of the joint family consisting of the two brothers, in 1902, when they had agreed to separate, that since then for about 53 years till his death in 1955, Ramachandrarao was living separately and enjoying the suit land as his separate property;
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> (c) that the suit lands were originally Watan lands, but they were not so at the date of the suit because the Bombay Act 60 of 1950, which came into force on May 1, 1951, had abolished Watans and thereafter the suit lands were, on the application of its holder, Ramachandrarao, re-granted in his favour; that the plaintiffs were aware of Ramachandrarao's application for the re-grant and they had tacitly assented to the re-grant in his favour.

7. Aggrieved, the plaintiffs preferred an appeal in the High Court of Mysore. The High Court affirmed the finding of the trial Court, that the custom pleaded by the plaintiffs with regard to the impartibility of the property had not been established. It observed that "the onus of proving partition is on the defendant", but "the only evidence in support of her case that Ramachandrarao was divided, is Ex. 39". The High Court construed the deed (Ex. 39) with the aid of its translation into English, one made by the trial Judge, and the other by the High Court Translator. It then took note of these features in support of the 'theory of partition' :

> (a) Permanency of the arrangement. The deed provides that Ramachandrarao and his descendants in the male line shall enjoy the property from generation to generation without interference from the grantor.
>
> (b) Cesser of commensality. The deed says that Ramachandrarao desired to live separately and therefore the lands were granted to him. The evidence is that

Ramachandrarao lived separate from 1902. There is no evidence to the contrary.

8. It then listed these features to negative the 'theory of partition' :

(a) The nomenclature of the deed. It is styled as a deed of maintenance.

(b) It was executed by one of the parties only. If it was intended to be a partition deed it would have been executed by both the parties each relinquishing his rights in the properties not allotted to him.

(c) The deed says that the lands were given to the grantee and his descendants in the male line for maintenance only and they should enjoy the lands continuously.

(d) The total extent of the Desgat lands was over eight thousand acres; if partition was intended, Ramachandrarao who was entitled to a one-half share would not have been contented with 90 acres valued at Rs. 3400.

After cataloguing these pros and cons, the High Court concluded :

In our judgment, Ex. 39 considered along with the circumstances in which it was executed, does not establish the defendant's case that Ramachandrarao was divided from Narayanarao in 1902 and that the suit lands, among others, were allotted to Ramachandrarao's share. We are of the view that on the erroneous but honest belief that the Desgat was an impartible estate, Narayanarao granted the lands to Ramachandrarao and his descendants in the male line in lieu of their maintenance. When Ramachandrarao died without male issue, the interest granted ceased or the tenure came to an end. The plaintiffs who are the surviving members of the family are entitled to resume the lands.

9. Although no such plea was taken by the plaintiffs in the plaint, the High Court held that in view of Section 90 of the Indian Trusts Act, the re-grant made, after the abolition of Watans, under the Act in favour of Ramachandrarao must enure for the benefit of the family of the Watandars including the plaintiffs, because Ramachandrarao, at the time of his death was holding the suit land as an undivided member of the joint family, for his own benefit and that of the other members of the undivided family.

10. Since there was no evidence as to the occupancy price paid by Ramachandrarao to obtain the re-grant, the High Court, after allowing the appeal and setting aside the decree of the trial Court, remanded the matter to the court below, with a direction that it should ascertain the amount of occupancy price paid by Ramachandrarao, and then pass a decree for possession in favour of the plaintiffs subject to the repayment of the said amount.

11. Hence this appeal by the defendant on the basis of a certificate granted by the High Court under Article 133(1)(a) and (c) of the Constitution.

12. Shri B. D. Bal, learned Counsel for the appellant, has, in the course of his arguments, sought to make out two main points :

(1)(a) Some time prior to the execution of the deed, (Ex. 39) dated July 25, 1902, there was a severance of the joint Hindu family as a result of an intimation by Ramachandrarao of his intention to separate and Narayanarao's acceptance of the same. Such severance can be clearly inferred from :

(i) the recitals in the deed (Ex. 39), the permanent allocation of the suit land along with some other land to Ramachandrarao and his descendants, and (ii) the subsequent conduct of the members of the erstwhile joint family.

(b) Since the deed (Ex. 39), (it is argued), is more than 75 years old and Narayanarao, Ramachandrarao and others who might have given evidence with regard to the circumstances resulting in this transaction are all dead and gone, the recitals in the deed coupled with the subsequent conduct of the parties, and supplemented by reasonable inferences, were more than sufficient to discharge the initial onus, if any, on the defendant to show severance of the joint family since 1902 or thereabout and the same continued till Ramachandrarao's death in 1955. (Reference in this connection has been made to Bhagwan Dayal v. Mst. Reoti Devi ((1962) 3 SCR 440 : AIR 1962 SC 287 : (1962) 1 SCJ 348).)

(c) Since at the time of his death in 1955. Ramachandrarao was not a member of an undivided Hindu family and the suit land was his separate property, his daughter, the defendant, would, even according to traditional Hindu Law, inherit his estate to the exclusion of the plaintiff-collaterals.

(2) Section 4 of the Bombay Act 60 of 1950 abolished Watans with effect from May 1, 1951. Section 5 of the same Act abrogated the rule of primogeniture and also every law or custom by virtue of which females were postponed to males in the matter of succession. After the abolition of the Watans Ramachandrarao alone, to the knowledge of the plaintiff-respondents, obtained a re-grant of the suit land from the Government in his favour. Similarly, the plaintiffs applied for re-grant of the other ex-Watan lands measuring about 8000 acres, to the exclusion of Ramachandrarao. The re-grant of the suit land in favour of Ramachandrarao created new rights exclusively in his favour. Since on May 1, 1951 he was holding the suit land separately as a divided member of the family, the re-grant did not enure for the benefit of the plaintiffs.

13. As against this, Shri V. S. Desai submits that since it was the admitted case of the parties that some time before the execution of the deed (Ex. 39) dated July 25, 1902, Narayanarao and Ramachandrarao constituted a joint Hindu family governed by Mitakshara, and the presumption of jointness in case of brothers is stronger, the burden was on the defendant to prove by cogent and convincing evidence that the joint family had disrupted and Ramachandrarao had separated in 1902 and the suit land was his separate property which fell to his share in partition. It is maintained that the recitals in the deed, Ex. 39, do not furnish any evidence that Ramachandrarao had communicated an unambiguous and clear intention to separate from his brother in estate and thenceforth hold it in defined shares. It is urged that the transaction evidenced by the deed should be construed by the Court, not according to its own sense of right and wrong, but according to the notions and beliefs prevailing among orthodox Hindus in 1902, of a strata of society to which Narayanarao and Ramachandrarao belonged. In 1902, proceeds the argument, to cause disruption of a joint Hindu family of Watandars was considered to be a sin. According to Shri Desai, if the document, Ex. 39, is considered from that viewpoint it would appear that the arrangement devised thereby was consistent with continuance and preservation of the jointness of the family and its estate, rather than its division and disruption. It is pointed out that the area of Watan land held by the joint Hindu family in 1902 was about eight thousand acres, and if the intention of the brothers was to sever the joint family status there was no difficulty in declaring that thenceforth the two

brothers would hold the entire estate in equal, defined shares. It is emphasised, though Ramachandrarao died in 1955, he never asked for partition and possession of his one-half share in the remaining seven or eight thousand acres held by Narayanarao and his descendants, but remained contented with a mere 118 or 120 acres given to him for maintenance under Ex. 39 in 1902. It is further submitted that the Court cannot construe the deed Ex. 39, as a deed of partition, but only as a deed of maintenance, as it expressly purports to be, because in view of Section 92 of the Evidence Act no extrinsic evidence is admissible to contradict or vary its terms.

14. In support of his arguments, Shri Desai has referred to paragraph 448 of Mayne's Hindu Law (1953 Ed.).

15. Learned Counsel further submits that in view of the paucity of evidence produced by the defendant-appellant to show division of the joint family, the High Court was right in holding that Ramachandrarao dies as an undivided member of the joint Hindu family consisting of himself and the plaintiff. It is submitted, in that view of the matter, the second point urged by Shri Bal does not survive for decision. Nevertheless, Shri Desai took us through the relevant provision of the Bombay Act LX of 1950 and the Watan Act of 1974, to show that there is nothing in those provisions which militates against the finding of the High Court to the effect, that if Ramachandrarao died as an undivided member of the joint family, the re-grant would enure for the benefit of all the members of the family.

16. We will take Point No. 1 canvassed by Shri Bal. The primary question that falls to be considered is, whether in 1902 or shortly prior to it, there was a partition between the two brothers - Narayanarao and Ramachandrarao - in a manner known to law. In this connection, it is necessary, at the outset, to notice the fundamental principles of Hindu Law bearing on the point. The parties are admittedly governed by Mitakshara School of Hindu law. In an undivided Hindu family of Mitakshara concept, no member can say that he is the owner of one-half, one-third or one-fourth share in the family property, there being unity of ownership and commensality of enjoyment while the family remains undivided. Such unity and commensality are the essential attributes of the concept of joint family status. Cesser of this unity and commensality means cesser or severance of the joint family status, or, which under Hindu law, is 'partition'; irrespective of whether it is accompanied or followed by a division of the properties by metes and bounds. Disruption of joint status, itself, as Lord Westbury put it in Appovier v. Rama Subba Aiyan ((1886) 11 MIA 75 : 2 SR 218 : 8 WRPC), in effect, "covers both a division of right and division of property". Reiterating the same position, in Girja Bai v. Sadashiv ((1916) 43 IA 151 : AIR 1916 PC 104), the Judicial Committee explained that division of the joint status, or partition implies "separation in interest and in right, although not immediately followed by a de facto actual division of the subject-matter. This may at any time, be claimed by virtue of the separate right".

17. The division of the joint status may be brought about by any adult member of the joint family by intimating, indicating or representing to the other members in clear and unambiguous terms, his intention to separate and enjoy his share in the family property, in severality. Such intimation, indication or representation may take diverse forms. Sometimes it is evidenced by an explicit declaration (written or oral); sometimes it is manifested by conduct of the members of the family in dealing separately with the former family properties. Service of notice or institution of a suit by one member/coparcener against the other members/coparceners for partition and separate possession may be sufficient to cause disruption of the joint status.

18. We will now deal with the first proposition propounded by Shri Bal, in the light of these

principles. The primary question that arises for consideration is, whether Ramachandrarao had brought about a division of the joint family status or partition by intimating to his brothers in clear terms, some time in 1902 or shortly prior thereto, his intention to separate and enjoy his share in severality. Answer to this question depends on inferences which may reasonably be drawn from the contents of the deed (Ex. 39) and the subsequent conduct of the parties.

19. The original deed, Ex. 39 is in Marathi. It was rendered into English by the trial Judge himself, who concededly had adequate knowledge of Marathi. According to him, the deed (Ex. 39) speaks of a division of the joint family status and separation of interests. For this construction, the trial Judge drew much on the word "Vibhaktarahave" which, according to him, connotes division of status. The learned Judges of the High Court, however, did not accept this interpretation. They preferred to rely on the English translation of this deed made by the High Court Translator. Since there is some variation between the two translations, it will be worthwhile to extract the same here for facility of comparison and reference.

20. The translation effected by the trial Judge, reads as under :

> You (Ramachandrarao) are my younger brother. We were living jointly till today. Recently you have desired to take some property for maintenance (Nirwah Kurat) and live separate after division (Vibhaktarahave).

Since I have deemed it proper to give you some property for your maintenance as befits our Samsthan, I have given you the following properties for your maintenance. (Then follows the description of the properties.) All these lands have been given to you along with the appurtenances for meeting the livelihood of you and your family members. Hence, you and your successors, i.e. your natural born male descendants should enjoy the properties from generation to generation and live happily. The Samsthan will not interfere with the lands any longer. Only you and your natural male descendants should enjoy the property. You shall also pay the joodi to the Government hereafter. (The disputed words have been given here in bold.)

21. The translation made by the High Court Translator reads as below :

> You are my younger brother and you have been residing with me only in jointness uptil now. As you have been recently thinking of residing separately yourself by receiving some properties for your maintenance, I found it proper to give you some property for your maintenance as befits our Samsthan and have given you for your maintenance the 'Desgat' lands of our Khata situate in the below mentioned Villages in Taluka Chikodi Sub-District, Belgaum District. Particulars thereof are as under : Lands situate at Village Nanadi. (1) Bagayat Land of No. bearing Survey No. 189 measuring 14 acres 23 guntas assessed at Rs. 20-0-0. The land together with a well valued at Rs. 1000. (2) The land measuring 8 acres 30 guntas assessed at Rs. 41-8-0 out of Survey No. 187 is bounded on the east by a land in our possession out of the same No. on the west by the Village limits, on the south by the land No. 196 and on the north by the land bearing Survey No. 198. In the land enclosed within the aforesaid boundary there is a well. This well has two "Varavantas" i.e. one on the Eastern side and another on the southern side. It has 10 'motes'. Out of the 'motes' of that well we are to get water with 3 'motes' and you are to get water with 2 'motes'. Repairs to the said well also are to be carried in that portion only and the expenses required to remove the mud, etc., are also to be borne in the proportion itself.

#Value Rs. 1000 : Lands situate at the Village Umarani. Rs. No. Acres Assessment3. 99 26-30 14-0-0 } The said 3 lands are entire4. 100 9-38 9-0-0 } No. and are valued at Rs.5. 101 26-34 7-0-0 } 1000 together with the appurtenant thereof.Land situate at Majare Kempatte in the Village Nandikurli.6. 120 24-18 9-0-0##

This land of entire No. together with the appurtenances thereof is valued at Rs. 400.

The lands as mentioned above are given to you for your maintenance and the maintenance of your descendants. Hence, you and your descendants, i.e. natural male descendants should enjoy the said lands continuously and live happily. In respect of the said lands given to you you will not be put to any trouble from the state (Samsthan) in any manner but, the said lands are to be continued with you and your natural male descendants. You should go on paying the joodi payable by you to the Government in respect of the said lands in our possession are given to your possession today. To the above effect the deed of maintenance is duly executed.

22. A comparative study of the above extracts would show that except for the English rendering of the word "Vibhaktarahave" by the learned trial Judge, there is no substantial difference between the two translations. The Marathi word "Vibhaktarahave" according to my learned Brother on this Bench, who has working knowledge of Marathi, is a compound of two words, namely, "Vibhakta" and "Rahave". "Vibhakta" appears to have its root in the Sanskrit word "Vibhaga". "In the Mitakshara, Vijnanesvara defines the word "Vibhaga" which is usually rendered into English by the word "partition" as the adjustment of diverse rights regarding the whole, by distributing them in particular portions of the aggregate". (See para 448 of Mayne's Hindu Law, 11th Ed.). "Rahave" means "living". In view of this etymological analysis, it cannot be said that the learned trial Judge's interpretation of the word "Vibhaktarahave" as equivalent to "live separately after division", was literally wrong. Even the learned Judges of the High Court, (who did not claim to know Marathi), have not held in categoric terms that this translation of "Vibhaktarahave" made by the trial Judge is grammatically wrong. What the learned Judges appear to say is that the context in which the word "Vibhaktarahave" has been used, gives it a meaning different from its grammatical sense, so that it cannot be understood as signifying an intention to divide, but connotes only a desire to live separately. The learned Judges have sorted out four features from the context of the deed, Ex. 39, which, according to them, militate against the literal interpretation of the word "Vibhaktarahave" and negative the theory of division of status. Those features - it will bear repetition - are : (i) The deed is styled as one for maintenance; (ii) It was executed by Narayanarao only; (iii) The lands under the deed were given to Ramachandrarao and his descendants in the male line for maintenance only; (iv) The total extent of 'Desgat' lands was over 8000 acres. Ramachandrarao should have claimed half of the entire 'Desgat' area and not remained contented with about 90 acres given to him under the deed (Ex. 39).

23. In our opinion, none of these features, if appreciated in the right perspective, detracts from the conclusion that there was a division of joint family status as a result of an intimation to Narayanarao by Ramachandrarao, of his intention to separate, followed by allotment to Ramachandrarao in furtherance of that division, the lands mentioned in Ex. 39. The four features listed above rested on erroneous assumptions. Even according to the High Court, both the brothers were, at the time of execution of the document Ex. 39, labouring under an erroneous belief that the 'Desgat' lands were impartible and held by the eldest member of the family in the male line, while the junior members were entitled only to maintenance. The High Court has expressly upheld the finding of the trial Court that no custom was established, according to which, the 'Desgat' lands of the family were impartible and vested only in the eldest male member of the family to the exclusion of the junior

members. The High Court has further not disagreed with the trial Court's finding, that no custom of primogeniture in this family has been established.

24. Once it is held that this two-fold assumption or belief about the impartibility of the estate and its devolution in the male line by rule of primogeniture, was fallacious, the said four features stemming therefrom, lose their significance. These features which purport to give the transaction (Ex. 39) the colour of a mere maintenance arrangement as distinguished from an absolute transfer or allotment, have to be credited with no more substance than phantoms conjured out of phantasy, probably by the sole executant of the deed with a self-serving motive. In any case, they are words of vain show or form lacking reality. We have therefore, to peel aside this jejune and illusory cover, to reach at the kernel and concentrate on the crucial features of the document Ex. 39.

25. We are unable to accept Shri Desai's argument that the process adopted by us would involve contravention of Section 92 of the Evidence Act.

26. Firstly, in this process, which is essentially one of construction of the deed, Ex. 39, no question of contradicting, varying, adding to or subtracting any term of the disposition is involved. The deed, Ex. 39, falls into two distinct parts : The first of them comprises the preamble or the preliminary recital of a past fact. This part does not contain any term of disposition of property. Such terms are confined only to the second part. Section 92 prohibits only the varying of terms of the documents, not the memoranda or recitals of facts, bereft of dispositive terms, particularly when the correctness of the whole or any part of the recital is in question. We are primarily concerned with this preliminary recital which does not fall under the dispositive or operative portion of the document. The question is, whether or not this recital of a past oral intimation by Ramachandrarao to Narayanarao had caused severance of joint family status. It is settled law that a clear intimation by a coparcener to the other coparcener of his intention to sever the joint status need not be in writing. For theses two-fold reasons, the bar in Section 92 against the admissibility of extrinsic evidence for the purpose of showing that the insertion of the words "for your maintenance" in the recital is wrong, unmeaning and the coinage of the executant's own brain, is not attracted.

27. Secondly, there is ample authority for the proposition that when there is a dispute in regard to the true character of a writing, evidence de hors the document can be led to show that the writing was not the real nature of the transaction, but was only an illusory, fictitious and colourable device which cloaked something else, and that the apparent state of affairs was not the real state of affairs. [See Chandi Prasad Singh v. Piari Bibi (CA 75 of 1964, decided on March 16, 1966) and Bhagwan Dayal v. Mst. Reoti Devi (supra).]

28. This preliminary recital in the deed Ex. 39 (as translated by the learned trial Judge), with due emphasis on the word 'recently' and 'Vibhaktarahave', coupled with the surrounding circumstances and natural probabilities of the case, definitely raises the inference that some time in the recent past, prior to the date of the deed, Ex. 39, Ramachandrarao had clearly and persistently intimated to his coparcener, Narayanarao, his intention to sever the joint family status and to hold and enjoy his share of the joint family property in severality. The immediate and inexorable consequence of this intimation was disruption or division of the joint status, which, in the eye of Hindu law, amounted to 'partition. From that date onwards, which preceded the date of the deed, Ex. 39, Narayanarao and Ramachandrarao ceased to be coparceners and held the former coparcenary property as tenants-in-common. Thus, at the time of execution of the deed Ex. 39, the joint family status did not exist; it had already been put an end to by Ramachandrarao's intimation to Narayanarao, of his intention to divide and separate.

29. If that be the true position, it was not open even to Ramachandrarao, much less to Narayanarao, to nullify the effect of the communication of the former's intention which had resulted in severance of the joint status, by revoking or withdrawing that communication. Ramachandrarao could not get back to the old position by mere revocation of the intention. A coparcenary is purely a creature of Hindu law; it cannot be created, or re-created after disruption, by the act of parties, save insofar that by adoption a stranger may be introduced as a member thereof, or in the case of reunion. [See paragraphs 214 and 325 of Mulla's Hindu Law and this Court's decision in Puttrangamma v. Ranganna (AIR 1968 SC 1018 : (1968) 3 SCR 119 : (1968) 2 SCJ 668); Bhagwan Dayal v. Mst. Reoti Devi (supra).] There is no evidence that after the severance of the joint family status, there was a reunion.

30. As before the High Court, here also, an argument was raised that the preliminary recital in the deed, Ex. 39, being qualified, furnishes little or no evidence for a finding that Ramachandrarao had declared and intimated in clear and unambiguous terms his intention to sever the joint family status.

31. We are unable to accept this argument. It has to be borne in mind that this document has been let in evidence more than 70 years after is execution. Narayanarao and Ramachandrarao and all others who might have given evidence with regard to the circumstances of this recital in particular, and the deed in general, are long dead and gone. There is no dearth of authority for the proposition that in such a situation, it is permissible to draw reasonable inferences to fill the gaps or details obliterated by time. (See Chintamani Bhatla Venkata Reddi v. Rani of Wadhwan (47 IA 6, 10 : AIR 1920 PC 64) and Sree Sree Iswar Gopal Jieu Thakur v. Pratapmal Bagaria (1951 SCR 332 : AIR 1951 SC 214 : 1951 SCJ 285).)

32. The preliminary recital in the deed, therefore, assumes importance. Read in the light of the surrounding circumstances and in the perspective that the 'Desgat' land was partible, coparcenary property of the two brothers each of whom had an equal interest therein and an equal right to get his share divided and thereafter enjoy it in severality, this recital establishes with a preponderance of probability, that some time before the execution of the deed, Ex. 39, Ramachandrarao had communicated to his brother, in clear, unmistakable terms his intention not only to separate in residence and user and put an end to commensality, but also to sever the unity of ownership and enjoy his share in severality. The result was division of the joint status.

33. Once it is found that the division of the joint status preceded the execution of the deed Ex. 39, then the disposition made thereunder could only be a step towards the implementation of that division and in recognition of Ramachandrarao's right to have his share, wholly or partly demarcated and specified for separate enjoyment as an absolute and exclusive owner thereof. While giving the land measuring 118 or 120 acres to Ramachandrarao in recognition of the latters equal right in the Desgat Narayanarao had no power to impose the futile condition that the land was being given to Ramachandrarao and his male lineal descendants for maintenance. As already discussed, this insertion by the executant from an ulterior self-serving motive, was devoid of substance; it could not be attached any greater importance and reality than the phantasmic assumption, from which it was conjured up; a fortiori, when in the deed Ex. 39, there is no stipulation that in the event of Ramachandrarao's male line becoming extinct, the land would revert to the 'Desgat', and Narayanarao or his descendants would have a right of re-entry.

34. We are in agreement with the trial Court that the expression "Potgi" (maintenance) or "Nirwahkrit" in the deed cannot be construed as conferring an estate with restricted rights of 'ownership', limited to the lifetime of Ramachandrarao and his lineal male descendants. The deed

evidences a permanent transfer or allotment of about 118 or 120 acres of land to Ramachandrarao to be enjoyed from generation to generation to the entire exclusion of Narayanarao and his descendants. In terms, Narayanarao did not reserve any right of reversion in favour of himself and his branch in any circumstances. Irrigation rights also with regard to the land transferred or allotted under this deed, were divided. It was further provided that from the date of the deed, payment of joodi to the Government in respect of this land, shall also be the exclusive liability of Ramachandrarao and his descendants.

35. The inference that this land, measuring about 118 acres was given to Ramachandrarao in partial implementation of division of joint family status or partition, receives further confirmation from the following circumstances : (a) From the date of the deed Ex. 39, till Ramachandrarao's death in 1955, for a period of about 53 years, the lands disposed of by the deed, throughout remained in the full, exclusive and uninterrupted enjoyment of Ramachandrarao. The relevant entries in the revenue records during this period, also, stand exclusively in his name as owner-in-possession thereof. (b) After the abolition of Watans in 1951, Ramachandrarao alone applied for re-grant of this land in his favour, under the Watan Abolition Act. The plaintiffs were, at all material times, admittedly aware that Ramachandrarao had applied for the re-grant of this land exclusively in his favour, but they never objected and tacitly assented to the same. On the other hand, the plaintiffs applied and obtained re-grant of the 'Desgat' lands (other than those which were the subject of the deed Ex. 39), in their favour to the exclusion of Ramachandrarao.

36. In the light of the above discussion, we are of opinion (i) that there was partition or division of the joint family status some time prior to the execution of the deed Ex. 39, and (ii) that the disposition of about 118 or 120 acres made under that deed was, in substance, and absolute allotment of that land to Ramachandrarao, towards implementation of that division of partition in recognition of the latter's right to have his share demarcated by metes and bounds to be enjoyed exclusively, in severality.

37. Point No. 1 is thus found in favour of the appellant. In view of the above finding that the suit property was the separate, divided property of Ramachandrarao at the date of his death, and under the traditional Hindu law, would go by succession to his daughter, the appellant herein, to the exclusion of the plaintiff collaterals, it is not necessary to decide Point No. 2 canvassed by the appellant.

38. In the result, for all the reasons aforesaid, we allow this appeal and dismiss the plaintiffs' suit with cost throughout.

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