Doddi Atchayyamma

Vs

Doddi Venkata Ramanna and Another

Civil Appeal No. 1589 (N) of 1970

(D. A. Desai, O. Chinnappa Reddy JJ)

20.04.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. Kanakayya, Appanna (Sr.), Jogulu, Ramulu and Venkataswamy were five brothers. Appanna (Sr.) died in 1916, leaving behind him an adopted son Appanna (Jr.). Appanna (Jr.), we may mention, was the natural son of Jogulu, one of the five brothers. Kanakayya died in 1917 leaving a son, Parupilli. Ramulu ands Venkataswamy died in 1918 leaving no issues. Jogulu died in 1951 leaving behind him his widow Seethayamma (2nd defendant) and a son Venkata Ramanna (1st defendant). Jogulu's other natural son Appanna (Jr.), who was given in adoption to Appanna (Sr.), died in 1949 leaving behind him his widow, Atchayyamma (plaintiff). Atchayyamma filed a suit, out of which the present appeal arises, for partition of the plaint A & B Schedule properties and for separate possession of a half share of the properties, alleging that her husbands Appanna (Jr.) and Jogulu were members of a joint family. The defendants denied the adoption of Appanna (Jr.) by Appanna (Sr.) and further alleged that the suit for partition was between the parties about 12 years go under which the plaintiff had received the parties about 12 years ago under which the plaintiff had received cash and golds in lieu of her claim to her husbands"s share of the properties. The trial court found that the adoption of Appanna (Jr.) by Appanna (Sr.) was true and that the case of family settlement set up by the defendants was false. The suit was decreed as prayed for. The defendants appealed to the High Court. Before the High Court, it was not longer contended that the adoption was not true or that there was a family settlement. A point was raised that there was a family partition long long ago between the five brothers and that the present suit of the plaintiff was, therefore, not maintainable. The High Court founds that there was a partition amongst the members of the family in 1914 and therefore, the plaintiff could not claim any share in the suit properties. The appeal was allowed and the suit for partition was dismissed. The plaintiff has appealed to this Court, after obtaining a certificate under Article 133 of the Constitution from the High Court.

2. We are afraid it is impossible to upholds the judgment of the High Court. If the adoption of Appanna (Jr.) by Appanna (Sr.) was not true and if the so-called family settlement pleaded by the defendants was also not true, then Appanna (Jr.) would be a member of a joint family along with Jogulu and the first defendant and there was no way of denying the claim of the widow of Appanna (jr.) to a share in joint family properties. That was why the defendants very cleverly accepted, before the High Court, the adoption as true and contended that there was a prior partition between the five brothers in 1914. The High Court also found, on the evidence, that there was a partition between the five brothers in 1914. This finding has not been challenged before us. We may, therefore, proceed on the basis that there was a partition between the five brothers in 1914. We may also refer to certain other admitted facts here. In 1931, Parupilli, son of Kanakayya filed O. S. No.

249 of 1931 in the court of the District Munsif (Vishakhapatnam) for repartition of plaint schedule properties alleging that his uncle Jogulu had taken a bigger share of the properties than to which he was entitled. Jogulu and Appanna (Jr.) were the defendants in that suit. The suit ended in a compromise, the terms of which have been set out in the compromise decree Ex. A-6. The compromise was to the effect that all the family lands should be divided into five equal shares by metes and bounds and that the plaintiff was to be given two out of the five shares, while the defendants were to be given three out of the five shares. If in the course of the division, it was found that the plaintiff or the defendants were in possession of more land than to which they were entitled, due adjustment was to be made. If it was not possible to so effect a partition, the court was to appoint a Commissioner to divide the properties by metes and bounds in the manner agreed to. It is important to notice here that the shares and the properties to which Jogulu and Appanna (Jr.) were entitled were not separately defined in the compromise, but Jogulu and Appanna were together to be given three out of the five lots into which the properties were to be divided. Appanna (Jr.) was a minor at the time of the compromise and if we bear in mind the circumstance that Appanna (Jr.) was but the natural son of Jogulu, the entire scheme of the compromise becomes clear. Obviously Jogulu and Appanna (Jr.) were to take the prorates which they were together to get under Ex. A-6 jointly and their further rights inter se were to flow from A-6 notwithstanding the earlier partition between the brothers in 1914. Once this becomes clear, we do not see how the claim of the widow of Appanna (Jr.) can possibly be denied to a share in the properties. The learned counsel argued that some of the present plaint properties were subsequent acquisitions by Jogulu and the widow of Appanna (Jr.) could not lay any claim to a share in those properties. We do not agree. The properties which fall to the shares of Jogulu and Appanna (Jr.) under Ex. A-6 were taken by them jointly and there is nothing to indicate that Jogulu had any separate income of his own from which he could have acquired the other properties. Having regard to the paucity of evidence, we are entitled to presume in the circumstances of the case that the properties acquired by Jogulu in his name were acquired with the income from the joint properties of himself and his natural son Appanna (Jr.) We are clearly of the view that the judgment of the High Court was wrong. Accordingly, the appeal is allowed with costs throughout, the judgment and decree of the High Court are set aside and the judgment and decree of the trial court are restored.

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