

Lakshmi Ammal and Others

Vs

Chakravahthi and Others

Civil Appeals Nos. 484 to 487 of 1988

(G. N. Ray, M. Srinivasan JJ)

31.03.1998

ORDER

1. These appeals are directed against the judgment dated 27-4-1987 passed by the Madras High Court in AS No. 324 of 1981 and Tr AS No. 789 of 1982. The plaintiff-respondent Chakravahthi filed OS No. 7 of 1977, inter alia, contending that the partition effected in 1969 between the father of the said plaintiff and three sisters of his father being Defendants 1, 2 and 3 was inequitable and invalid and in any event the interest of the plaintiff who was in his mother's womb had not been safeguarded. Defendants 1, 2 and 3 who are the appellants in this Court, however, contended that although the document in question was mentioned as a deed of partition, the same was in reality a deed of family arrangement and such family arrangement was legal and binding. It was also contended that there had not been inequitable distribution of the property to the parties under such deed of family arrangement.

2. The trial court accepted the contentions made by the defendants and came to the finding that the alleged deed of partition was in fact a deed of family arrangement and indicating reasons it also came to the finding that there had not been no (sic) inequitable distribution by the said family arrangement. Therefore, the suit instituted by the plaintiff was dismissed. On appeal being taken before the High Court, by the impugned judgment, the High Court has come to the finding that the said deed was a deed of partition and such deed of partition was not equitable. Such decision of the High Court is impugned in this appeal.

3. Mr Chowdhury, the learned Senior Counsel appearing for the appellants, has submitted that although it was mentioned in the impugned deed as a deed of partition, the recitals in the said deed clearly indicate that it was a family arrangement. It has been mentioned in the deed that over the claim of share of the property amongst the parties to the said deed, disputes were raised by the members of the family and in respect of such disputes, a decision was given by the Panchayat and the parties were put in possession of the properties in question. Mr Chowdhury has submitted that the learned trial Judge has referred to the decision of this Court to the effect that for the purpose of family arrangement, a bona fide claim by some of the members of the family who may not be lawful owners of the property must exist so that in order to settle the dispute, family arrangement is made. It is not necessary that the parties being members of the family and claiming right in the property are in law entitled to some share. As the basic features of family arrangement were fulfilled, the said deed must be held to be a valid family arrangement. The High Court has gone wrong in proceeding on the footing that it was a deed of partition and not a deed of family arrangement. Mr Chowdhury has also submitted that such deed cannot also be challenged on the ground of undue influence being exercised on Sundaramoorthy, father of the plaintiff for obtaining such deed because Sundaramoorthy had not challenged such deed within the period of limitation

even though he had died in 1974 and the deed was executed in 1969.

4. Mr Chowdhury has also submitted that the High Court has also not come to the finding that any fraud had been practised by the defendant-appellants in getting the said deed of family arrangement executed in 1969. The trial court has indicated that the valuation of the property in the respective share of the parties to the said deed does not support the case of inequitable distribution. The deed makes it quite clear that in the share of Sundaramoorthy, mere valuable properties had been allotted. Therefore, there is no basis for holding that the said deed had resulted in inequitable distribution to the parties to the deed. Such finding, therefore, cannot be interfered. Moreover, in the document itself, valuation of different items of property was mentioned. It has not been established that there was no basis for such valuation as mentioned in the said document.

5. In our view, the said contention of Mr Chowdhury has force. We may also indicate that even if it is assumed for argument's sake that the document was a deed of partition and such deed of partition was liable to be discarded on the score of not protecting the minor's interest or of the unborn plaintiff, and consequently fresh determination of share of the parties is to be made, it should be noted that Chinnammal, the mother of Sundaramoorthy being alive when the Hindu Succession Act, 1956 came into force, she became an heir of Rajagopala Naidu and inherited in equal share with Sundaramoorthy. In that event, the defendants being the daughters of Chinnammal who died only in 1981, will inherit the share of Chinnammal. Therefore, in the event of a fresh partition, the plaintiff will not be entitled to claim the share in the properties which otherwise had come in his share by the said deed of family arrangement. In the aforesaid circumstances, we allow these appeals and set aside the impugned judgment of the High Court by upholding the finding made by the trial court about the validity of the said deed of family arrangement. Parties will bear their own costs throughout.