

Subramania Reddi

Vs

Venkatasubba Reddi

Civil Appeal Nos. 461-465 of 1980

(K. Venkataswami, S. Rajendra Babu JJ)

09.02.1999

JUDGMENT

Rajendra Babu J.

1. Ramakrishna Reddy had three sons, Veeraswami Reddy, Venkatasubba Reddy and Krishna Doss, and a daughter, Seethalakshmi Ammal. Veeraswami Reddi died in 1965 survived by defendant No. 3, Sreeramulu Reddy. He has three daughters, who are not concerned with the present litigation. Venkatasubba Reddy, (the first defendant in the suit when the proceedings arose) through Kanthamnal (4th defendant in the suit), has three sons and two daughters. Venkatasubba Reddy died on 31.10.1972. Defendants Nos. 5 to 9 are three sons and two daughters impleaded in the suit, and Ramathilakammal, the other daughter was impleaded as respondent No. 21 in the appeal. The third son of late Ramakrishna Reddy was the second defendant in the suit, who had married the 12th defendant whose son is the plaintiff Subramania Reddy. Seethalakshmi Ammal, the 10th defendant is the daughter of Ramakrishna Reddy. The 11th defendant has been impleaded as lessee of some of the items of the suit properties. Defendants Nos. 13 to 17 and 19 and 20 are either alienees or mortgagees of suit properties.

2. Plaintiff, Subramania Reddy, brought a suit for partition and separate possession of the various properties set out in the schedules to the plaint. The case set up by him is that the three sons of Ramakrishna Reddy succeeded to their father's property and though the eldest son Veeraswami Reddy. 'A' schedule properties are those which have been left behind by Ramakrishna Reddy. 'B' schedule properties consist of some properties admittedly standing in the names of the first and second defendants, but claimed by the plaintiff as acquisitions of or accretions to the joint family properties. 'C' schedule property stands in the name of the tenth defendant in which the plaintiff claims one-sixth of share. he asserts that the said property had been purchased out of joint family funds, stood merely in the name of the tenth defendant. 'D' schedule consists of a rice mill and a cinema house at Lachivakkam. 'E' schedule consists of movables alleged to belong to the joint family.

3. Three sons of late Ramakrishna Reddy namely, Veeraswami Reddy, Venkatasubba Reddy and Krishnadas Reddy purchased properties in the names of one or the other but that all the same out of the assistance of joint family funds. The plaintiff contended that Seethalakshmi ammal, the 10th defendant having no resources of her own to purchase the property at madras with her three brothers having contributed funds for the purchase of the same that property should be treated as brought into common hotchpot for the purposes of division. The plaintiff alleged that between 1965 and 1967 an attempt had been made to partition all the available joint family properties wherein the three brothers, at the instigation of the first defendant, were impleaded to allot some properties

belonging to the joint family to the tenth defendant. The first defendant insisted on making a provision to Seethalakshmi ammam inasmuch as he had given one of his sons to 7th defendant in adoption to her. The plaintiff was not inclined to accept the proposals for partitioning the joint family properties on that basis. For the reasons enumerated by him the mode of division was not acceptable to him as mostly liabilities were saddled to him. Faced with this situation, the plaintiff stated that the family continued to be joint and remained undivided. When he insisted on division of joint family properties, the first defendant took the stand that the joint family had already been divided in 1958 and 1959, as per the partition deeds, marked as Exhibit A-105 and A-106 and that is conclusive of the issue that the plaintiff would not be entitled to anything more than what has been allotted to each of them. Plaintiff relied on Exhibit A-115 to contend that the partition effected pursuant to Exhibits A-105 and A-106 were not acted upon. Thus, the first defendant refused to give any share to the plaintiff other than the one provided under Exhibits A-105 and A-106. His case is that the said two documents were only nominal deeds made by the family to evade land ceiling laws and that in spite of the alleged partition in 1958 and 1959 the family continued to be joint and there was an attempt to factually partition the joint family properties only in the years 1966-67. He contends that his father, the second defendant in the suit, was merely a tool in the hands of first defendant overwhelmed by his brooding presence. Though his father was a party to the partition deeds under Exhibits A-105 and A-106, they were all drawn up when he was a minor and they are unfair and inequitable as they do not give legitimate share to the plaintiff. Initially, an attempt was made to demonstrate that Exhibits A-105 and A-106 were a result of fraud, undue influence and coercion but that point was not pursued. Documents at exhibit A-115 came into existence in the year 1966-1967, is clear proof that there was no partition as joint family in the year 1958 or 1959 and if really there was such a partition, there is no need to bring into existence the documents Exhibit as A-115. Plaintiff further put forth his case that certain other properties which are given to the family under Exhibits A-94 and A-95, are joint family properties inasmuch as they have blended with the other properties.

4. The contesting defendants including the father of the plaintiff denied the claim of the plaintiff, by taking a clear and categorical stand that the partition had taken place as per terms of Exhibits A-105 and A-106 and they are real transactions acted upon and the plaintiff was merely egged upon by others to reopen a completed partition on false allegations. The contesting defendants other than the father of the plaintiff further stated that the property, the house at Madras belonged to the tenth defendant. The properties were inherited by the first defendant from third parties under two wills, Exhibits A-94 and A-95 and, therefore, are the absolute properties of the first defendant and apart from the properties divided under Exhibits A-105 and A-106, there are no other properties except the rice-mill which was kept in common enjoyment by turn by all the three branches by taking upon management once in two years. The properties had been allotted to the tenth defendant, who is a childless widow, inasmuch as certain properties belonging to the husband of the tenth defendant got annexed to the joint family properties and for that reason and for other reasons, certain adjustments had to be made based on equities. The individual members of the joint family had purchased certain properties but not out of joint family funds and they are their separate properties. After trial and on examination of numerous documents and oral evidence being adduced by the plaintiff and the defendants, the trial court held as follows :

- (1) That Exhibit A-105 and A-106 are valid and binding documents and they are not sham and nominal and they have not been brought into existence as a result of fraud, undue influence or coercion;
- (2) The plaintiff cannot seek to revoke a partition effected earlier as under Exhibits

A-105 and A-106 as his father had represented in those proceedings as his guardian;

(3) The properties left out of Exhibits A-105 and A-106 are those which are lands in Senchiagaram village and the rice mill though under the management of the third defendant and the plaintiff would be entitled to a preliminary decree for partition in those properties kept in common by the family members;

(4) The other properties situate in the village of Panapakkam, standing in the name of the first defendant, are his separate properties, he having purchased them after he secured the properties from his maternal relations under the two wills, Exhibits A-94 and A-95 and that such legacies are not intended for the benefit of the joint family;

(5) The house at Madras set out in 'C' schedule is a separate property of the tenth defendant.

5. On the basis, the trial court dismissed the suit mainly, except as indicated above that certain common properties were directed to be partitioned. Against the said decree of dismissal, plaintiff filed an appeal and reiterated several contentions which had been urged before the trial court.

6. The third defendant, who had remained *ex parte* at the trial stage, woke up from inertia and sought for securing certain public records for scrutiny at the appellate stage and such an application having been allowed, the plaintiff took advantage of the same to urge for reception of those records by way of additional evidence. The High Court by an order made on 16.1.1978 felt that it was just and proper that all parties should be given an opportunity to scrutinise such additional records and for that purpose, sent back the case to the court below to submit its finding on the following three questions :-

(1) Whether the statements said to have been made and signed by the first defendant and other contain their signatures and whether such documents have been duly signed by them ?;

(2) What is the impact of such statement on the point at issue in the case ?; and

(3) Whether there was an earlier partition in 1958-59 as suggested by the defendant ?

7. The trial court gave finding on these aspects that certain statements had been made by the first defendant and other defendants before a Public Officer, namely, the Settlement Officer, for grant of patta. Secondly, that the additional documents let in do establish that there was no real partition in 1958-59 and that in 1967 there was an attempted partition. Thirdly, the subsequent conduct of the partition disclosed in the record that there was concluded partition in 1958-59 and that Exhibit A-105 and A-106 have not been acted upon.

8. The High Court thereafter, examined the matter again with reference to the findings recorded by the trial court and was unable to accept the findings recorded by the trial court. On this aspect of the matter, the High Court was of the view that there was a partition in the family as per the documents at exhibit A-105 and A-106 and Exhibit A-115 clearly indicated that there was a partition of the family and there was an attempt to re-partition the properties with the consent of all to set at naught the earlier partition. The High Court further noticed that Exhibit A-115 was not signed by the plaintiff and desired to enter into a family arrangement to settle certain differences among the members of the family. The plaintiff's father disowned the said documents and asserted that certain blank papers given during the life time of Veeraswamy Reddy for the purpose of raising a loan had

apparently been used by the plaintiff at the instance of the third defendant. The third defendant, who had remained *ex-parte*, though made an application at the appellate stage seeking additional evidence curiously enough, when it was ordered, did not take any active part thereafter.

9. The High Court critically examined the findings recorded by the trial court and gave cogent reasons in the course of the order to accept or reject the same. The High Court examined the circumstances in which exhibit A-115 came into existence. The rice mill was being managed by the third defendant. He had applied for grant of a licence for the rice mill. The documents at Exhibit A-115 were used only to negate the presumption on the part of the Settlement Officer that it was proamboke land. The claims made in Exhibit A-115 did not result in effacement of the registered partitions in the years 1958 and 1959 as per Exhibit A-105 and A-106. The Exhibit A-115 was an incomplete record which did not contain the signatures of all the members of the joint family. It could only be deemed to be another attempt to make a first partition on the basis that there is no partition as such, but is not such as would tilt the balance to hold that the earlier partitions are sham and nominal. The third defendant was responsible for bringing into existence the proceedings in which Exhibit A-115 and statements had been made by him before the Settlement Officer and other Settlement Officer who had kept himself out of the box subsequently. Therefore, no significance will be attached to Exhibit A-115.

10. He remained *ex-parte* in the original proceedings. It looks to us as though this defendant was hunting with the hound and running with the hare and was not, therefore, a reliable witness. This conduct of the defendant was severely criticised by the High Court. The Subordinate Judge did not refer to the original findings of the trial court which had discarded Exhibits A-112 to A-116 as inadmissible in evidence. The learned Judges of the High court agreed that this finding of the trial court made originally had to be accepted as they do not throw any light, much less abundant light, upon the only issue, whether Exhibit A-105 and A-106 are sham and nominal. These documents were sought to be brought on record after the death of the first defendant. He could not controvert PW.3 who said that Exs. A-112 and A-116 were written by the first defendant. Neither the third defendant nor the plaintiff make any reference to these documents in the plaint or in the written statement. Even the tenth defendant is unable to identify it as she was not sure whether she has signed Ex.A-115 or not. On this basis, the High Court analysed the evidence on record and concluded that the appellant plaintiff had rested his case on mere surmises and conjectures. It is against this judgment that the plaintiff is on appeal before us by special leave.

11. The learned counsel for the appellant urged before us that no reliance could have been placed on the findings of the trial court before calling for further findings. Secondly, the gift of a house to the tenth defendant was improper. Thirdly, that there was sufficient nucleus in the joint property to conclude that various properties are accretions to the joint family properties and should be made subject matter of partition. Fourthly, even those properties which are treated as self acquired properties or separate properties of different parties in the suit or separate properties of different parties in the suit also resulted in blending.

12. On the first question, it is clear that the High Court while calling for further findings after giving opportunity to all parties made it clear that it was only a tentative conclusion to call for findings and would not mean that a finding recorded earlier cannot be accepted. It was in the context of the parties desire for an opportunity to scrutinise the additional records which were sought to be produced in the High Court in the appeal which were sent back to the courts below to submit its findings. Therefore, the entire matter had to be examined again and we find no substance in the first contention at all.

13. On the property allotted to the tenth defendant, the learned counsel for the appellant sought to raise a contention that the partition deeds proceeded on the basis that her husband was illatom son-in-law which was not true and, therefore, no property could have been allotted to her and, if at all the son-in-law was entitled to any share in the property, the same should have been allotted to him and not to her. We have carefully gone through the recitals in the documents and the evidence recorded by the trial court with reference to findings recorded by the High Court in this regard. It appears that the husband of the tenth defendant had brought in certain properties which got blended with the joint family properties. That fact taken along with the fact that she had become widows and issue-less was the consideration to make a sort of family arrangement and, therefore, property had been given to her. Or that basis the trial court and the High court sustained the allotment of properties to her. The courts below have come to this conclusion after a thorough examination of the pleadings and evidence. There is no reason to disturb the same.

14. On the third question that there was sufficient nucleus of joint properties and as a result of the gains arising out of such properties the defendants have acquired certain properties which are treated as separate properties. The trial court as well as the High Court have carefully examined these aspects and have rightly come to the conclusion that they are again a separate properties of the parties concerned. If the members in the family themselves have treated certain items of properties as separate properties of the other members and on that basis a partition had been effected which has been found to be reasonable and proper by the courts below, we do not think we can reappreciate that evidence and come to the another conclusion.

15. The question of blinding of properties was not considered by the High Court on the basis that there was no plea. The learned counsel for the appellant relied upon *B. Shah v. Presiding Officer, Labour Court Coimbatore & Ors., AIR 1978 SC 12*, to submit that no specific plea of blending is required. We will assume for the purpose of this case that this legal position is correct. Even so, the result will not be different because there is no evidence of blending of separate property in the joint family property. Again the whole matter rests on appreciation of evidence. When there are concurrent findings on the question of fact we do not think we can reappreciate the same. Indeed the appellant wanted even properties inherited by the first defendant under a will should also be included in the joint family properties and should be treated as having got blended with other properties. We do not think such a course is permissible at all and there was no reason for the first defendant to bring in the properties inherited by him from his relation on his maternal side to blend with the property of the joint family.

16. In the circumstances, we find absolutely no merit in the appeals. The appeal should dismissed with costs. We quantify Advocate's fee as Rs. 5000/-.