
(1915) 11 MAD CK 0077
In the Madras High Court

Appathurai Aiyer's daughter Thyalambal APPELLANT
Vs
Nanit Pattar's Son Krishna Pattar and Others RESPONDENT

Date of Decision : 26-11-1915

Acts Referred:

Transfer of Property Act, 1882 — Section 2

Citation : 32 Ind. Cas. 955

Hon'ble Judges : Srinivasa Aiyangar, J; Coutts Trotter, J

Bench : Division Bench

Judgement

Coutts Trotter, J.—It will be convenient to dispose of these two appeals together, as they arise out of the same series of transactions between the same parties. The plaintiff is a widow who was the wife, during his life-time, of a younger son, the second son, of Krishna Pattar, the 1st defendant in the action; the other two defendants being Ananthanarayana Pattar and Vydianatha Pattar, his other two sons, one older and the other younger than the plaintiff's deceased husband. She sues the family of her husband for maintenance, alleging that there are family properties, moveable and immovable, out of which she is entitled to be maintained, her husband having been during his life-time a co-parcener in that family property. The answer made by the defendants is that these are not, and never were, family properties and that they were in their origin the self-acquisitions of the 1st defendant, that they have always remained so and that nothing has taken place which, either in fact or by construction of law, has divested them of their character as self-acquisitions and converted them into family properties. Now before dealing with the considerations of law applicable, it is as well to see exactly what the facts proved are.

2. The 1st defendant Krishna Pattar began, so far as we know, to engage in business somewhere about the year 1870, because the earliest document exhibited in the case which relates to his transactions in business is Exhibit V, which shows that in that year, 1870, he had started a kuri or chit fund. The amount was not large; the total amount was Rs. 350. Other similar transactions

follow into which it is unnecessary to go. But it may be presumed that by the year 1882 he had made some profits out of these transactions, and by means of them had acquired some property. In the year 1882 a suit was brought for partition against Krishna Pattar by his elder brother, Sami Sastri, and after that litigation had been pending for some time, it was settled; and the settlement which is dated the 21st August 1883 resulted in this: that Krishna Pattar was to pay a sum of Rs. 1,125 to his brother and receive from him certain interests which the elder brother had in various kuris; and there was a division of certain properties whereby one brother got the ancestral house and the other got another house belonging to the family. The learned Judge observes, possibly with justice, that the only nucleus of property which can be supposed to have passed to the 1st defendant on that occasion was the house, and that cannot be a source of future accretions, because it was needed for his residence. In the course of that litigation the 1st defendant put in a written statement in which he asserted that the allegation in the plaint that he and his brother were undivided was untrue; that they had been separated for years, and speaking of the properties which he alleged to have been in his exclusive possession he said this: "I hold those properties under my control and my family and myself enjoy them by virtue of the right thus derived." That document was dated the 6th February 1883, and it is said that there is nothing to show that at that time he had a son at all. But we find that his eldest son was obviously of age by the year 1900, so that it seems clear that he was born by the date of this written statement. Besides this sentence which I have already read, there occurs the following statement: I also hold in my possession and control certain property which my family and myself are enjoying by virtue of the purchase I made." Now it is urged upon us that that document in itself points to this: that the purchases which were being made by the 1st defendant, even if they came out of his self-acquired funds, were regarded and spoken of by him as being property in which his family had a vested interest.

3. The next document is a document dated the 15th December 1900 (Exhibit C) and which is a kuri agreement defining the contract between the persons who were to take shares in the kuri and the persons who were to receive the moneys and manage it, and those latter persons were the 1st defendant and his eldest son Ananthanarayana Pattar, the 2nd defendant in this case. The agreement recites that the kuri was started for "our family necessity by the father and son." It is suggested that the only meaning that can be attached to that is that the enterprise, and, therefore, consequently the whole profits of it, were treated as a joint affair between the father and the son.

4. The next document of importance is a mortgage-bond of the 3rd of October 1902 (Exhibit A) purporting to be executed in favour of the 1st defendant and his son Ananthanarayana Patter, the 2nd defendant, by two mortgagors. That document was executed in favour of both. Those mortgaged properties were eventually purchased by Mr. T.R. Rama Chandra Aiyar, a well-known practitioner in these Courts; and having purchased the equity of redemption, he wished to

pay off the mortgage and get an unencumbered property. Accordingly he went down to Coimbatore in February 1907 for that purpose. When he got to Coimbatore, he had an interview with the 1st defendant. A very remarkable conversation took place between them there, and the conversation broadly was this that the 1st defendant evinced a desire to sign the discharge, i.e., the endorsement of payment on the mortgage-bond himself. Mr. Rama Chandra Aiyar pointed out that that would not do, that the document stood in the names of both the 1st defendant and the 2nd and that he was not going to be satisfied with anything less than the signatures of both of them. Thereupon the 1st defendant said that that might be done, but that, at any rate, he would insist upon a statement being put on the document that the money that had been lent was his money and no body else's. Mr. Rama Chandra Aiyar asked why? He said "Oh, I have an object in doing that". Thereupon Mr. Rama Chandra Aiyar asked him "is your object to defeat the daughter-in-law's claim for maintenance?" and he admitted it was. At that time the only concern of Mr. Rama Chandra Aiyar was to get the two signatures on this document. So he permitted the 1st defendant to endorse upon this mortgage this statement: out of the principal sum of this bond executed in favour of both of us upon the advance made of the money of Krishna Pattar, one of us, etc." Of course if the money which formed the advance was advanced by Krishna Pattar solely, and if he advanced it with a view solely to increase his own property and had no idea of its being family property, the fact that he made that endorsement carries the case no further. But I cannot follow the learned Subordinate Judge at all in excluding the possibility, as he does, that this was done for the deliberate purpose of creating evidence in his favour to defeat the claim for maintenance, if such a claim be made; and I certainly, speaking for myself, can never find a man manufacturing evidence in support of a claim without having a very lively suspicion roused in my mind that that claim is not an honest one. It is not an infallible test, but it goes a good way to show that the claim was not an honest claim. After that matters went on and we observe that a considerable time after the date of this endorsement nearly three years later another kuri agreement was executed on the 10th February 1910 (Exhibit D) in which, as before, the persons who contracted as stakeholders were Krishna Pattar and his son Ananthanarayana Patter. It is said by Mr. Anantha Krishna Aiyar well, there you see in spite of his trying to defeat his daughter-in-law's claim by making this endorsement on the mortgage, why here you have him three years later openly and quite ingenuously writing the "kuri deed just as he did before." I do not think that is a conclusive argument. His daughter-in-law was very very slow in making her claim, and I think that his suspicions and anxieties on that subject had been lulled to sleep by the delay and that he reverted to the former practice of carrying out these transactions in the joint names of himself and his son.

5. Now the question arises, what in those circumstances is the legal position? As I understand it--I have some diffidence on matters of Hindu Law--as I understand it, the way in which the case for the respondent is put is this. It is

said, you cannot divest an interest which lies in one person in favour of that person together with others without effecting what in fact is a transfer of property. Property is transferred from a single owner to a number of owners, and it is said the first principle to start with since the Transfer of Property Act is that a transfer of Immovable property by one person to others cannot be effected except by a registered deed. On the other hand, it is said this is a matter to which the Transfer of Property Act does not apply and the Hindu Law is saved from its operation in matters of this kind. Now, therefore, the question is, does the Hindu Law contemplate and provide for a case of property which was originally the self-acquisition of one member passing into the category of family property? On a consideration of the authorities which have been cited to us, it seems to me clearly laid down by decided cases that the Hindu Law does contemplate such a condition. If a man has property which he has acquired by his own exertions, but shows conclusively by his subsequent conduct and subsequent dealings with that property that his intention was that it should be regarded, and he himself regards it, as being property in which his family has a share, then that becomes thenceforward family property under the Hindu Law. The first authority cited to us is *Rampershad Tewarry v. Sheochurn Doss* 10 M.I.A. 490 The material passage is at page 505 where this is said: "Upon the facts it must be admitted that the evidence falls far short of proof that the ancestral property contributed in any material degree to the acquisition of the funds employed in trade which formed the bulk of the property in dispute. The family was, however, an undivided family, and there was a nucleus of ancestral property." Their Lordship state that the nucleus was infinitesimal. "It may be further admitted that Deenanath laid the foundation of the future fortune of the family. But there is no proof that he kept as separate, or treated as separate, property that which he acquired at Agra. On the other hand, it is shown that many years before his death he associated his brothers with himself as partners, and that thenceforward they carried on business together, each contributing by his exertions to the increase of the common stock.... There is nothing prima facie improbable in the hypothesis that he brought his earlier gains voluntarily into the common stock, making them the capital on which he and his brothers were to trade. All future gains being made by their joint exertions would according to the general principle of Hindu Law", be the joint property of the family whilst undivided, and be partible as such on a partition. There is no proof of any special contract... which impressed the character of partnership as distinguished from joint or separate property, in the Hindu sense of these terms, upon the property in question." And thereupon, their Lordships found that in the case of that property, although originally acquired by one of the brothers, starting with a nucleus of family property which was infinitesimal, yet they found that that self-acquired property of the one brother having been used as capital for the joint business of the whole family the whole property became impressed with the characteristics of family property. The next case which I propose to refer to is *Sudarsanam Maistri v. Narasimhulu Maistri* 26 M.K 149; 11 M.L.J. 353. It is a very elaborate and learned judgment of Bashyam Aiyangar, J.. The material

passage is at page 154: "The main family and its branches may possess joint property not only by operation of law but also by act of parties. Property acquired without the aid of joint family property, by one or more individual members thereof,--whether they belong to different branches or to one and the same branch of the family--may by act of parties be incorporated with the joint property of the main family or of one of its branches; and a stranger may also give property to the family as a whole or to one of its branches as a corporate body. Even if the undivided family is not possessed any nucleus of property which has come to it as unobstructed heritage, it may be that, by act of parties, property acquired jointly by all the members, or separately by one or more members thereof, can be Aggressed with the character and incidents of unobstructed heritage or joint property belonging to the main family or to any of its branches. Property devolving by inheritance as obstructed heritage" on all the members of a joint family, or upon any one of them, may likewise be impressed with the character of joint family property." That is a clear statement that property, even where there is no starting nucleus of property inherited from ancestors, may become family property subject to the ordinary incidents of the Hindu, Law. The next case is *Laldas Narandas v. Motibai* 10 Bom. L.R. 175. It is a judgment of Chandavarkar, J., and what he says is this: "if Narandas (the defendant in that case) and his sons acquired their property by their joint labours and were besides joint in food and worship, they must be regarded as having constitute a joint Hindu family, even though there may have been no nucleus of property which had come down to Narandas from his father or grandfather or great-grandfather. For the formation of a co-parcenary in Hindu Law such a nucleus is not absolutely necessary, provided the persons constituting it stand in the relation of father and son or other relation requisite for a co-parcenary system and these persons by living, messing and worshipping together and throwing all the property acquired jointly into one common stock manifest their intention to deal with one another and with outsiders as members of a coparcenary system under the Hindu Law." And he goes on to hold on the facts proved in that case that the property had acquired the character of joint family property. That decision is followed in two decisions of the Bombay Court by Beaman, J. The first is *Hari Das Velji v. Velji Chaturbhuj* 15 Bom. L.R. 584, where he expressly decides that the members of a joint Hindu family may by their intention expressed in their conduct impress upon any property, which did not possess it before the character of joint family property, and he further goes on to lay down that not only may that be done, but that any member of a point Hindu family who desires to retain his self-acquisitions for himself should do so in express terrors and keep them apart carefully from the joint property of the family, or else he will fail to preserve to them their character of self-acquisitions. The second case decided by the same learned Judge was *Karsondas Dharamsey v. Gangabai* 10 Bom. L.R. 184. In the case he re-affirmed and abided by his decision in the earlier case. Both of those decisions have been alluded to and have been followed by a learned Judge of this Court, Bakewell, J., in *Madhavaiya Chetty v. Damodaram Chetty* (1912) M.W.N. 972. That is only a nisi prius

decision, but at the same time it shows that the doctrine laid down by Beaman, J., cannot be considered to be peculiar to the Bombay Presidency. Such being the state of the authorities, I feel constrained to accept the view enunciated in those cases that it is possible in law for a member of a Hindu family who has got self-acquired properties to convert them, if he chooses, into family property in which the other members of his family will have a vested interest.

6. The only question that remains is this. Whether in my view of the law the facts in this case point to the conclusion that the 1st defendant did convert his property into family property or not. I think it quite impossible to distinguish one set of property from another and indeed the a priori improbability of a man, without any expressed disposition to separate, desiring to hold some of his properties as separate property and some as joint with his sons is very great. But suffice it to say that there is no evidence in this case of any intention on the part of the 1st defendant to draw any distinction in tenure between the different classes of property. Having regard to the documents, having regard to the association of his eldest son with him in two utterly different sets of transactions, the kuri business and the taking of a mortgage of land. I think that the inference must be drawn that he intended to make the property, and regarded it, as family property. If his son had been associated with him in the kuri transaction alone, the inference might be less strong; for he might very well have thought that for the purposes of that particular business a young man with possibly a commercial attitude should be associated with him. No such consideration could possibly apply to the taking of the mortgage. A lame story is told by the 1st defendant that it was done at the instance of a mortgagor. That is not a very credible story think it was probably done at the instate of the 2nd defendant himself, who having been treated as a sharer in the previous transactions wished to assert his right. With regard to the other sons, it is very uncertain as to what the plaintiff's deceased husband's age was It is, therefore, impossible to draw any inference from his name not appearing in any of the documents which record the transactions entered into by the father, as he may have been a minor at all the material dates. With regard to the 3rd son, the 3rd defendant, his name would not appear in any event because he was admittedly a minor throughout. In these circumstances I come to the conclusion that the 1st defendant has ever since the year 1882 elected and wished to treat this property as family property, and that the documentary evidence in the case, coupled with the extremely unsatisfactory nature of the oral evidence on his behalf, is sufficient proof of that to enable me to act upon it. I, therefore, hold that these suit properties are properties out of which this lady has a right to be maintained.

7. The only question is as to what that maintenance shall be. The learned Judge has awarded her Rs. 100 per annum in cash and further 200 paras of paddy, which is said to work out at the rate of another Rs. 100 per annum, on the supposition that this Court might hold that she was in law entitled to maintenance. We think Rs. 100 in cash was a quite proper sum; but we think 200 paras of paddy excessive and we reduce that by one half. The order will be

that the plaintiff is to be given maintenance at the rate of Rs. 100 in cash and 100 paras of paddy per annum. The maintenance will be payable once in six months, on the 5th January and the 5th July each year. The arrears of maintenance will be at the rate of Rs. 100 a year. The plaintiff will also be entitled to Rs. 3 per mensem for house rent. This appeal will be allowed with costs throughout proportionate to the amount recovered.

8. With regard to the other appeal, Appeal No. 321 of 1914, that is an appeal by the defendants against a judgment ordering them to return to the plaintiff certain moveable properties or in the alternative their value. Those properties are claimed by the plaintiff as the heir of her husband as to some items; as to others she claims to be the owner on the ground that the things were given to her for her own use at the time of her marriage. It is suggested that these articles are what may popularly be called wedding presents. It was at one time suggested by Mr. Ananta Krishna Aiyar that where presents are given in these circumstances the presumption would be that they became part of the joint family property of the husband. That seemed to me--I speak with all diffidence on account of my small knowledge of these affairs--it seemed to me an extravagant hypothesis, and as my learned brother very emphatically resisted that opinion, I feel on safe ground in rejecting it. With regard to the presents given to the wife such as clothes and jewels, they were intended to be enjoyed by herself. But we think certain items have been allowed which we think should not be allowed. There are certain sums of cash, items 23, 42 and 43 of the plaintiff schedule, which Mr. Rangachariar very properly and wisely abandoned. It is impossible to identify these sums of cash and follow the particular coins in the hands of the defendants. There are other items such as vessels, clothes and so forth, items 41, 44, 45, 46, 49 and 50, which are of so perishable and transient a nature that we think it would be quite ridiculous to make an order upon the defendants in respect of these after the lapse of more than ten years. This appeal is, therefore, allowed as to a sum of Rs. 924. Deducting that from the amount allowed by the learned Judge there will be an order directing the defendants to pay the plaintiff Rs. 1,930-4-0. Each side will bear its own costs.

Srinivasa Aiyangar, J.

9. I agree to the order proposed by my learned brother. Whether a member of a joint Hindu family who owns Immovable property as his self-acquisition can convert it into joint family property without an instrument in writing registered in the provinces where the Transfer of Property Act is in force, I think, admits of doubt. Section 2 of the Transfer of Property Act to which Mr. Rangachariar referred has no application whatsoever to this case. Any rule of Hindu Law would not be affected by the provisions contained in Chapter II of that Act. I find some difficulty in understanding the conversion of individual property into joint family property except by way of a transfer. That transfer may be by way of a gift, or it may be by way of an exchange; and it is also possible that it may be by way of a sale. It is no doubt true that the Transfer of Property Act does not provide for all

kinds of transfers; but on analysis it will be found that such a conversion would partake of a character of one or the other of these transactions. It may be possible for one member of a family to acquire property on behalf of the family, although it may be by his own exertions. But I do not think it necessary to come to a final determination on either, of these two questions; for, as has been pointed out in the judgment of my learned brother, so early as 1883 1st defendant said that from 1869, long prior to the coming into force of the Transfer of Property Act, he was in possession of properties belonging to the family and which were enjoyed by the family. Whether there was an original nucleus or not, prior to 1882, so early as 1866, and later, the family was possessed of properties according to the admission made by the 1st defendant himself. There is nothing to show that the later acquisitions were not made out of funds which then were family funds, and the evidence in the case clearly leads to the conclusion that the 1st defendant treated the whole property as family property.

10. It is unnecessary for me to go in detail over the facts dealt with in the judgment just now delivered by my learned brother. I, therefore, agree to the order proposed.

11. This case having been set down for being spoken to this day, the Court delivered the following

JUDGMENT

12. Parties be at liberty to apply to the lower Court to vary the security or substitute other security.