

(1925) 01 MAD CK 0044
In the Madras High Court

Challa Laksmakka

APPELLANT

Vs

Challa Bala Rangappa

RESPONDENT

Date of Decision : 26-01-1925

Acts Referred:

Citation : AIR 1926 Mad 388

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The plaintiff (appellant) instituted this suit for the recovery of the suit properties on the ground that they belonged to her

deceased husband who obtained, them for his share in a partition between himself and his three brothers, one of whom was the father of the

defendant. The defendant's case is that the defendant's father and the plaintiff's husband were given a joint share while the other two brothers

took each a separated share and on account of , the death of the plaintiff's husband the properties survived to him and that she has no right to

them. The necessary issue for trial was first recorded by the District Munsif as follows : "" Whether the plaintiff's husband was divided from

defendant's father and whether defendant has, therefore, no right to resist plaintiff's suit ? "" Some time after, this issue was amended by the District

Munsif in the following form: "" Whether plaintiff's husband was not divided from other members of his family. "" As the amended issue stands, it is

clear that the burden of proving that there was no division as alleged lay on the defendant. The District Munsif held that the defendant did not prove

that the plaintiff's husband did not get divided from the other members of the family as set up in the written statement and that the evidence showed

that the plaintiff's husband got divided from each of his other brothers. On this finding the plaintiff's suit was decreed. On appeal the learned

Subordinate Judge held that the burden of proof as regards partition was wrongly thrown on the defendant and that it was the duty of the plaintiff

to prove that her husband effected an out and out severance from the defendant's father and his other brothers and since she had not done so he

reversed the decision of the District Munsif and dismissed the plaintiff's suit.

2. It is argued, before me by Mr. Govindaraghava Aiyar that, in the circumstances of the case, the lower appellate Court's decision as regards the

party on whom the burden of proof lay is wrong and that this fact vitiates the whole judgment. In order to understand this argument, it is necessary

to mention that all the brothers prior to the actual division of the properties executed Ex. IV, which is called a mukhtiarnama, appointing some

arbitrators to effect a final division of their properties. The material portion of this mukhtiarnama runs as follows : Already, three years ago, not

having been on good terms among ourselves, we were living separately and the lands and the debts due by us to outsiders were, however, held in

common ; but dispute having arisen among us thereby we have appointed you this day for the purpose of putting a stop to our dispute and for

finishing the division of our assets and liabilities. There fore, we shall abide only by the decision given by you. If we, however, do not act according

to your advice but raise objection, the Court of Justice need not accept our statement. This mukhtiarnama has been executed with our consent.

(Note. -In this translation of mukhtiarnama after the word and I have substituted "" for finishing the division of our assets and liabilities "" in the place

of "" for making a settlement of division in respect of our assets and liabilities "" (as I am informed that that is the correct translation of the document.)

It is clear that it is this Ex. IV to which reference has been made in para. 3 of the plaint and also in para. 2 of the written statement, though there

may be a slight discrepancy with regard to the date of; the transaction as given in those paragraphs of the pleadings. The argument that is now

advanced is that this document effects a complete severance of interest between the various brothers on account of the unequivocal declaration

contained therein by the four brothers of their intention to divide the properties ; in short, that it amounts to a partition between the brothers to be

followed up later on by actual division of the properties. If this construction of the document is accepted, it would then follow that the plaintiff has proved the separation of her husband from his other brothers by partition, and then it would be for the defendant to prove that no such out and out partition took place, what actually happened being that the defendant's father and the plaintiff's husband were given a joint share while the other brothers took each a separated share; in other words, the burden of proof will be on the defendant to show that the plaintiff's husband was not divided from the other members of his family as alleged in the plaint.

3. Numerous cases were cited to me by Mr. Govindaraghava Ayyar to show that this reference to arbitration really amounted to a severance of

interest between the brothers. As we are concerned solely with the construction of the document, no useful purpose will be served by a discussion

of those cases ; but I would refer to one case, namely, Kasam V. Jorawar Singh AIR 1922 P.C. 353, in which their Lordships of the Privy

Council had to construe an arbitration agreement which is very much like the present one. In that case the substance of the document is given as

follows : ""On December 4, 1905, all the members of the family signed a kararnama appointing one Ghasi Ram as arbitrator to partition the

property and agreeing to accept whatever partition he might make. "" Later on it is stated in the judgment that "" the arbitrator divided the property

into two lists...The formal division was not at once carried out...but after his death the lists appear to have been acted upon by all the persons

interested."" Their Lordships held that this document effected a severance of the joint estate. In the same way it appears to me that a severance of

interest has been created by Ex. IV, and the arbitrators were appointed simply to finish this severance already effected by the division of the assets

and liabilities. It is argued by Mr. Rajagopalachariar for the respondent that no severance of interest can be said to have taken place in this case

inasmuch as it appears from the arbitrator's evidence that when they divided the properties a joint share was given to the plaintiff's husband and

the defendant's father. In my view, this difference does not affect the question whether under Ex. IV there was a severance of interest between the

various brothers.

4. The severance of interest being thus proved by the plaintiff, it will be for the

defendant to prove the special plea that he has set up. In my view, the issue was properly amended by the District Munsif, though this amendment was made very late. As I consider that the learned Subordinate Judge's judgment is vitiated on account of the burden of proof being wrongly placed on the plaintiff, I think the District Court of Anantapur should be called upon to reconsider the evidence on record in the light of the above remarks and submit a fresh finding on the amended issue. I order accordingly. No other point was argued before me in the second appeal. The finding should be submitted before the 1st of August. Time for objections : ten days.

5. [In compliance with this order the District Judge of Anantapur submitted the finding that there was a complete partition between all the four brothers in 1909.

6. After the return of the said finding the judgment of the High Court was follows]

7. It has been now found by the lower Court that there was a complete partition between all the brothers in 1909. It cannot be said that this finding

has been arrived at without considering the defendant's case or his evidence ; for the learned District Judge says in para. 8 of his order that the

defendant's evidence about the partial partition is either worthless or false. It may also be pointed out that no specific case of reunion was ever set

up by the defendant,

8. Accepting the finding, the lower (appellate) Court's decree is set aside and the decree of the District Munsif is restored with costs here and in

the Court below.