

(1962) 02 AP CK 0002

In the Andhra Pradesh High Court

Case No : Appeal No 238 of 1958 and C.M.P. No. 2737 of 1961

Dadi China Apparao and Others

APPELLANT

Vs

Dadi Narasimha Rao and Another

RESPONDENT

Date of Decision : 08-02-1962

Acts Referred:

Citation : AIR 1962 AP 515

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : M. Krishna Rao No. 2737/61 and Appellants in No. 238/58, for the Appellant; C. Rama Rao and C. Poornaiah, (in both cases), for the Respondent

Final Decision : Dismissed

Judgement

Seshachalapati, J.—This appeal arises out of a suit instituted by the 1st respondent, Dadi Narasimha Rao, for the partition of the properties described in plaint Schedule A to D and separate possession of 1/12th share in A schedule properties and 1/14th share in Schedules B, C and D, and for past and future profits.

2. The plaintiff and the 6th defendant, Dadi Suryanarayana are uterine brothers. They are the sons of Dadi Ranganayakulu, the permanently kept concubine of Dadi Suranna. The 5th defendant, Dadi Appayamma is the legally wedded wife of Dadi Suranna, and defendants 1 to 4 are his legitimate sons by her. Dadi Suranna died on 23-11-1944. The plaintiff was then a minor. After attaining majority, he demanded a share in Suranna's properties, which was refused by defendants 1 to 4. The plaintiff then launched the present action claiming that being a son of a permanently kept concubine of Dadi Suranna, he is entitled to his lawful share in the family properties recited in the Schedules A to D. The plaintiff has asked for 1/12th share in A schedule properties, and in which the 5th defendant has no interest. In regard to the properties described in Schedules B, C and D he has asked for 1/14th share as under Act XVIII of 1937 (Central) the 5th defendant also would be entitled to one share. He has also asked for

profits.

3. Defendants 1 to 4 filed a written statement which was adopted by the 5th defendant, contending that the properties recited in the schedules attached to the plaint were the joint family properties of defendants 1 to 4, and their father, and that after the death of Dadi Suranna, all the properties devolved upon defendants 1 to 4 by survivorship, that the plaintiff was not a coparcener with them, that neither he nor the 6th defendant has any share in the plaint schedule properties, that as the plaintiff, the 6th defendant and their mother Ranganayakulu are entitled to maintenance, certain properties were gifted to them under two instruments of gift dated 6-8-1934 (Ex. B. 12) and dated 7-1-1934 (Ex. B. 13). It is the further case of the contending defendants that on 26-5-1945, a relinquishment-deed was executed by Dadi Ranganayakulu and the 6th defendant, and the plaintiff (who then being a minor was represented by his brother and the guardian, the 6th defendant) relinquishing all their rights in the properties of Suranna and defendants 1 to 4. It is, therefore, contended that the plaintiff is precluded from bringing the present suit for partition. The correctness of certain items in Schedules A and B is impeached. The existence of the properties recited in Schedules C and D was denied.

4. Upon those contentions, the learned Subordinate Judge, framed the necessary issues and found: (i) that the defendants 1 to 4 acquired right to a share on the death of Suranna in the plaint Schedule properties: (ii) that the plaintiff is not estopped from claiming a share in the suit property by reason of the two gift-deeds and the relinquishment-deed already referred to; and (iii) that item 5 of Schedule A and items 1 and 2 and 4 of the B schedule were also liable to partition, and that the moveables described in Schedules C and D were in existence and also liable to partition, in which the plaintiff was entitled to his share.

5. The law relating to the rights of a son by a female slave (Dasi) in the case of a Sudra's estate is now well settled. The principal textual authority therefor is to be found in the three verses in Chapter I Section 12 of Mitakshara, (as translated by Colebrooke) which are in these terms:

1. The author next delivers a special rule concerning the partition of a Sudra's goods: "Even a son begotten by a Sudra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share; and one, who has no brothers, may inherit the whole property, in default of daughter's sons".

2. The son, begotten by a Sudra on a female slave, obtains a share by the father's choice, or at his pleasure. But, after (the demise of) the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share; that is, let them give him half (as much as is the amount of one brother's) allotment.

However, should there be no sons of a wedded wife, the son of the female slave

takes the whole estate, provided there be no daughters of a wife nor sons of daughters. But, if there be such the son of the female slave participates for half a share only.

3. From the mention of a Sudra in this place (it follows that) as son begotten by a man of a regenerate tribe on a female slave does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he, receives a simple maintenance"" (Stoke's Hindu Law Books) (vide also P. 72 Book I of the Digest Hindu Law by West and Buhler).

6. It is unnecessary to refer to the very many decisions rendered by the High Courts in India by way of an exegesis of the above text of Vignaneswara in view of the decision of the Privy Council in AIR 1931 294 (Privy Council) . On a consideration of the texts and the decided cases, the Judicial Committee observed thus:

the illegitimate son of a Sudra by a continuous concubine has the status of a son, and that he is a member of the family; that the share of inheritance given to him is not merely in lieu of maintenance, out in recognition of his status as a son; that where the father has left no separate property and no legitimate son, but was joint with his collaterals, as in the present case, the illegitimate son is not entitled to demand a partition of the joint family property in their hands, but he is entitled as a member of the family to maintenance out of that property

The statement of the law by the Judicial Committee has in terms been approved by their Lordships of the Supreme Court in Gur Narain Das and Another Vs. Gur Tahal Das and Others, . Fazl Ali J., however, observed that the above statement of the law may be supplemented by three other well settled principles, namely first, that the illegitimate son does not acquire by birth any interest in his father's estate and he cannot, therefore, demand partition against his father during the latter's life time, secondly, that on his father's death, the illegitimate son succeeds as a coparcener to the separate estate of the father along with the legitimate son (s) with a right of survivorship and is entitled to enforce partition against the legitimate son(s), and, thirdly, that on a partition between a legitimate and an illegitimate son, the illegitimate son takes only one-half of what he would have taken if he was a legitimate son. From these authoritative pronouncements, it may be taken as established that an illegitimate son of a Sudra born of an exclusively and continuously kept concubine, though he cannot demand a partition during the life time of his father, still, he is entitled to claim against the legitimate sons of his putative father partition if the father had died divided from his collaterals.

7. In this case, there is no dispute first, that Dadi Suranna was a sudra by caste; secondly, that the plaintiff's mother Ranganayakulu was his permanently kept concubine and that the plaintiff and the 6th defendant are Surennna's sons through her; and thirdly, that Dadi Suranna died divided from his brother

Latchanna, who was the only collateral. Upon those facts, and in view of the well recognised rule of law, there can be no answer to the plaintiff's claim for a share on partition of Suranna's estate.

8. In the trial Court, the principal contention of defendants 1 to 4 would appear to have been that the plaintiff could claim a share only in the separate or self-acquired properties of Dadi Suranna, and that the suit properties in which the plaintiff claims a share are the joint family properties belonging to Suranna and defendants 1 to 4, which devolved upon the latter by survivorship on the demise of their father. Mr. Poorniah, however, contends that in Exs. B-12 and B-13, the properties were described as the self-acquisitions of Suranna, and inasmuch as defendants 1 to 4 are parties to Ex. B-13, they cannot contend now to the contrary. The description that the properties are self-acquired in those instruments must obviously be limited to the lands conveyed therein. It cannot mean that all other properties of Suranna are also self-acquired. I assume (without deciding) that Suranna had ancestral property from the income of which he made subsequent acquisitions, such that the property that he died possessed of was ancestral and joint family property. Further, neither on principle nor decided authority is there a foundation for the contention that the right of an illegitimate son of a Sudra who died divided from his collaterals is limited only to the self-acquired properties of the putative father.

In *Ranoji v. Kandoji*, ILR 8 Mad 557 at p. 561 Muttusami Ayyar, J., observed that:

there is no question that the right of the illegitimate son extends not only to his father's acquisitions but to ancestral property which may have come to the father's hands.

In *Karuppannan Chetti v. Bulokam Chetti*, ILR 23 Mad 16 it was observed that there is no textual authority for the position that an illegitimate son of a Sudra can succeed only to the self-acquired properties of his putative father. In *Ramalinga Muppan v. Pavadai Goundan*, ILR 25 Mad 519 and *Annayyan v. Chinnan*, ILR 33 Mad 366 the same view was taken. On a review of the relevant authorities, *Curgenvan* and *Sundaram Chetty, JJ.*, have held in *Raju Thambiran Vs. Arunagiri Thambiran and Others*, as follows:

An illegitimate son of a Sudra becomes a coparcener with the legitimate sons on the death of his putative father and there being no collaterals involved, is entitled to sue for partition irrespective of the fact whether the property left by the father is ancestral or self-acquired.

I, therefore, hold that the plaintiff is entitled to his share in the suit properties.

9. Mr. Krishna Rao, the learned counsel for the appellants, however, contends that on the facts of this case, the plaintiff is really precluded from filing the suit for partition. It is necessary to refer to a few facts upon which this contention is based. By an instrument (Ex. B-12) dated 6-8-1934, Dadi Suranna gifted to Ranganayakulu an extent of 3-52 cents of land situate in Jagapathi Nagaram

village. In that instrument, it is recited that, Ranganayakulu requested that some maintenance provision might be made to her and that in pursuance thereof the doner was executing the gift-deed with the recitals and provisions contained therein. On 7-1-1943, Ranganayakulu, Suranna and defendants 1 to 4 executed a gift deed of the very property covered by Ex. B-12 aforesaid in favour of the two sons of Ranganayakulu, the 6th defendant and the present plaintiff (the plaintiff then being a minor represented by the 6th defendant) executed a relinquishment-deed (Ex. B-9) dated 26-5-1945, in favour of defendants 1 to 4.

In that deed, it is stated that after the death of Suranna, the executants of Ex. B-9 requested the defendants 1 to 4 through mediators to give, the 6th defendant and the plaintiff something in addition to what has already been given to them by defendants 1 to 4 and their father and that the defendants paid Rs. 1400/- before the Sub-Registrar in Full settlement of the right of Ranganayakulu for maintenance and other claims of her son, the 6th defendant, and the plaintiff. On 25-4-1949, the 6th defendant for himself and as the guardian of his minor son and minor brother (the plaintiff) conveyed the properties covered by Exs. B-12 and B-13 through defendants 1 to 4 by an instrument, Ex. B-4 for a sum of Rs. 10,000/-. The share to which the minor plaintiff was then entitled to was deposited with the ex. zamindar of Kirlampudi, and Ex. B-10 an indemnity bond was also executed by the 6th defendant in favour of defendants 1 to 4 for a sum of Rs. 5000/-.

10. Upon those facts, it is contended by Mr. Krishna Rao that by reason of Ex. B-9 the plaintiff is precluded from demanding a partition and separate possession of his share. Reliance particularly is placed upon the following recital in Ex. B-9:

Therefore, we relinquished all our rights we had and we executed this relinquishment-deed in your favour and delivered the same to you.

It is argued that the words "all our rights" in the passage above extracted, include the right to partition. I am not prepared to assent to this contention. In the first place, there is clear evidence that when Ex. B9 was executed the right of the plaintiff to partition was never in contemplation of the parties. The second defendant as D. W. 6 states thus:-

Plaintiff and his brother raised a dispute that the property given under Ex. B-12 was not sufficient for their maintenance.

Their mother also raised a similar dispute. All of them wanted some more money to be paid to them. I and my brother did not know that plaintiff and his brother had any right to a share in our family properties. We took legal advise before taking Ex. B-9.

In the face of this evidence, it is hard to believe that by Ex. B-9 the plaintiff's right to partition can be said to have been relinquished. In the second place, Ex. B-9 cannot be sustained as a compromise of doubtful claims as the plaintiff was then a minor, and as any arrangement entered into by a de facto guardian would

not be binding upon him. The learned Subordinate Judge has discussed this question in paragraph 14 of his judgment and it has not been shown to me how his conclusion is wrong. I, therefore, hold that there is no substance in the contention that the plaintiff is estopped from instituting the present action for partition.

11. It is then contended that the conduct of the plaintiff disentitles him from claiming the present relief. The learned counsel contends that even though in the trial Court, the plaintiff took up an attitude that he did not know anything about the earlier transactions and that he did not know of any sale of any property by the 6th defendant, as a matter of fact, he had knowledge of the sale by the 6th defendant under Ex. B-4 and the purchase by the 6th defendant of lands from Karri Nayanamma for the amount representing the plaintiff's share of the purchase money paid under Ex. B-4. This allegation is sought to be made good by seeking to admit as additional evidence in C. M. P. No. 2737 of 1961, a certified copy of an instrument of sale executed by the plaintiff in favour of one Lingametti Nukalanna and Somaraju. The reception of this document is opposed. I do not think the objections for the admission of this document are very serious. I therefore, allow C. M. P. No. 2737 of 1961. But the further question is how far the recitals in the document now admitted have a bearing upon the present case.

It is true that there is a reference in the sale-deed that the 6th defendant sold the plaintiff's share in the ancestral property and acquired out of the proceeds the lands from Karri Nayanamma. I do not think that the recitals in the sale deed show that the plaintiff is estopped from filing the suit. The lands sold under Ex. B-4 were those in respect of which Ranganayakulu, Suranna and defendants 1 to 4 executed Ex. B-13, which refers only to the rights of the maintenance. I am, therefore, of opinion that the recital in the sale-deed now admitted as Ex. B-18, as to sale by the 6th defendant, does not mean that the plaintiff has ratified any arrangement whereby his mother or his brother had bartered away his right to claim a partition.

12. The findings of the learned Subordinate Judge on other issues have not been challenged before me. There is no substance in this appeal. It fails and is accordingly dismissed with costs.