

(1909) 10 MAD CK 0017
In the Madras High Court

Devi Bhagavalu

APPELLANT

Vs

Tadpatri Veeravadhanta and Others

RESPONDENT

Date of Decision : 27-10-1909

Acts Referred:

Citation : (1910) 20 MLJ 79

Judgement

1. Defendants Nos. 1, 2 and 3 owned amongst themselves four vriths, 13 visam and one pie of land in the agraaharam of Sangalsa. In 1876 there

was an award of arbitrators on a submission made by them dividing the common properties. That document is Exhibit H. The plaintiff purchased

half a visam of land from the 1st defendant on 28th March 1897 out of the lands that had fallen to the 1st defendant in the division made by the

award. The District Munsif gave the plaintiff a decree for his half visam by directing a division of the entire property of the three brothers.

2. The District Judge has dismissed the suit. The first question to be decided is whether the plaintiff was entitled to the division, and this turns on the

right understanding of the provision contained in Exhibit H. Exhibit H says : "" Time is fixed for the partition of the said paddy fields up to the end of

the year Sarvajit (1887-1888). So it is settled that each should enjoy the lands allotted for his share until then, and that, at the end of the said term,

they should again divide the said lands so that the profits and losses are equal and then enjoy

Time is fixed for the partition of the said palmyra topes and mango tope lauds up to the end of the year Sarvajit (1887-1888). So it is settled that,

until then each should enjoy the lands allotted to his share according to the above arrangement, and that, at the end of the said term the profits and

losses should be made equal and the said lands divided by the parties equally.

3. What is the effect of the foregoing clauses ? The arbitrators do not make a final division of the properties. They direct enjoyment separately of

the plots specifically assigned to each of the sharers and instead of making a final partition direct a future division to be made in the year Sarvajit. It

is clear that, subject to the separate enjoyment of the shares allotted to each, the parties are entitled jointly or as tenants-in-common to all the

properties temporarily divided until the division to be made after Sarvajit. Every part of the property comprised in this allotment is subject to the

common ownership to be finally terminated by partition after Sarvajit. The plaintiff, as the purchaser of an undefined half visam, or of definite plots

amounting in extent to a half visam, must be entitled to claim a partition after Sarvajit as the second and third defendants would, notwithstanding the

alienation of a portion of the lands by the 1st defendant, be entitled to claim a partition against the 1st defendant. It is impossible to construe Exhibit

A as a contract entered into by defendants Nos. 1 to 3--see Krishna Panda v. Balaram Panda I.L.R.(1896) M. 290. Soornavalli Ammal v.

Muthayya Sastrigal ILR (1900) M. 593 and Bajahhari Saha Barrikya v. Behari Lal Basak I.L.R (1906) 33 C. 881. Their joint-tenancy or

tenancy-in-common which existed before the award Exhibit H is not finally put an end to, but continues to remain till the end of Sarvajit though

subject to separate enjoyment of special allotments till then. No objection was taken in the written statements of the contesting defendants, and no

issue was framed as to whether the plaintiff as a mere purchaser of a portion of the property allotted to the 1st defendant under the award was

entitled to claim a partition under the terms of the award. And the District Judge, in paragraph 8 of his judgment, distinctly concedes that "" as a

purchaser from the 1st defendant the respondent (plaintiff) stands in his shoes and if the 1st defendant can now claim re-partition from his brothers

respondent can claim a re-division."" We may usefully add the remarks of Freeman in his book on Co-Tenancy at p. 279 in support of the District

Judge : "" If, however, there remain any States wherein the Courts really intend to assert that a conveyance by one co-tenant of part of the common

property is void, in any other sense than that such conveyance will not operate against or diminish or impair the rights of the non-assenting co-

tenants. Such courts are, falling into minority, as the more recent decisions tend strongly towards the recognition of such conveyance as a valid

transfer of all the grantor's interest in the property therein described, entitling the grantor to certain rights that the co-tenants of the grantor cannot

wantonly disregard""--Section 204. The District Judge, however, comes to the conclusion that the 1st defendant must be deemed to have elected to

forego the privilege he possessed of claiming a fresh division at the end of the Sarvajit by his failure to preserve his share intact. Some portion of

these lands which had fallen to the 1st defendant was sold for arrears of Kattubadi under a decree obtained by the Zemindar against defendants

Nos. 1 to 3 and other sharers. Assuming for the sake of argument that the 1st defendant was responsible for the sale of a portion of his property

because he could have avoided it by payment, the property sold must be held to have been impressed with the liability to re-partition at the end of

Sarvajit in the same manner that the half visam purchased by the plaintiff in private sale was itself liable to re-partition if the 2nd and 3rd defendants

chose to insist upon it.

4. It cannot be therefore said that the 1st defendant lost his right to re-partition by the sale of a portion for arrears of rent. The District Judge

himself points out that if the property, when sold, had been the joint property of the three brothers, they could have no complaint that it was not

kept available for re-partition. All that can be said is that the properties divided by the award in Sangavalsa being liable to re-partition the plaintiff is

not entitled, any more than the 1st defendant was, to claim a re-partition of a portion of the properties divided omitting those that were sold for

arrears of rent and have come into the hands of the 1st defendant's wife (the 4th defendant) as transferee of the purchaser in auction. We may

refer, by way of analogy, to suits by purchasers from one of several co-parceners in a Hindu family of his share in a portion of the family property

where the whole family property is required to be partitioned for the purpose of assigning the plaintiffs their share. See Mayne's Hindu Law,

Section 494. We must, therefore, hold that the plaintiff was entitled to maintain the suit for the recovery of his half visam by a repartition.

5. It remains, however, to consider whether in the above view the suit was rightly conceived without the 4th defendant having been impleaded as a

party in the first instance. The remarks already made are sufficient to show that no re-partition could be made without the lands in the possession of

the 4th defendant being brought into hotch-pot. At the time the 4th defendant was added as a party more than 12 years had elapsed from the end of

Sarvajit and the suit would, as against her, be barred by limitation. And as she was a necessary party the whole suit was liable to be dismissed. See

Imam-ud-din v. Liladhar ILR (1892) A. 524. Kalidas Kariel Das v. Nathu Bhagvan ILR (1883) B. 217. If relief could be given to the plaintiff

against defendants Nos. 1 to 3 without joining the 4th defendant and including the lands bought by her, the claim must be dismissed as against her

merely--Ramkinkar Biswas v. Atikulchundra Chaudhri ILR (1907) C. 519. That being impossible the whole suit fails. We would, on this ground,

support the decree of the District Judge and dismiss the second appeal, but without costs.