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**(1944) 11 MAD CK 0021**  
**In the Madras High Court**

Ekollu Subbarami Reddy

APPELLANT

Vs

Ekollu Chenchuraghava Reddy and Others

RESPONDENT

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**Date of Decision :** 23-11-1944

**Acts Referred:**

**Citation :** AIR 1945 Mad 327 : (1945) ILR (Mad) 714 : (1945) 58 LW 27 :  
(1945) 1 MLJ 151

**Hon'ble Judges :** Alfred Henry Lionel Leach, C.J

**Bench :** Division Bench

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**Judgement**

Alfred Henry Lionel Leach, C.J.—This appeal raises a question with regard to the powers of a ,"" grandfather when he effects a partition

between himself, his son and the sons of a I deceased son. There are other questions involved in the appeal and in order to appreciate them it is

necessary to state in some detail the claim set out in the plaint, the pleas advanced by the defendants and the course of events in the Courts below.

2. The following pedigree shows the relationship between the parties:

Ekollu Boyi Reddi

\_\_\_\_\_ | \_\_\_\_\_

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Chenchuraghava Reddi (d. 1917) subbareddi

\_\_\_\_\_ | \_\_\_\_\_

| |

(By first wife) (Subbarami (By second wife Kamalammal third  
Reddi, plaintiff). defendant).

\_\_\_\_\_ | \_\_\_\_\_

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Subbareddi (d. in 1931) (Married Chenchuraghava

subbamma, the 2nd defendant). Reddi (1st defendant)

3. In 1923 the joint family consisted of Boyi Reddi, his second son Subbareddi, and the three sons of his elder son Chenchuraghava Reddi, who

had died in 1917. By his first wife Chenchuraghava Reddi had one son (the plaintiff), and by his second wife he had two sons, one of whom died in

1931. The other is the first defendant. We will refer to Boyi Reddi as "" the grandfather."" There were living in the family house his wife, the second

wife of Chenchuraghava Reddi and Subbamma, the wife of Subbareddi, the grandson who died in 1931. The women were not on friendly terms

and the grandfather decided that it would be better to have a partition of the family properties. Accordingly he set aside for himself what was

apparently far less than his real share in the family estate. The rest he divided into two portions, one of which he gave to his son Subbareddi and

the other he gave to his grandsons. It is common ground that so far his action was in accordance with the powers given to him by Hindu law. There

is authority for this and it is to be found in the judgment of this Court in Nagalingam Pillai Vs. Ramachandra Tevar, . He did not, however, stay his

hand there. He divided the properties set aside as the share of Chenchuraghava Reddi's branch into three parts one of which he allotted to the

plaintiff and the other two parts he gave to his other two grandsons, who were represented by their mother, the third defendant. The plaintiff was

not living with his step-mother. On his mother's death he went to live with his maternal grandfather in whose charge he was. The maternal

grandfather appears to have acquiesced in the grandfather's division of the family estate and to have accepted on behalf of the plaintiff the portion

which the grandfather had allotted to the plaintiff. The plaintiff and his step-brothers were all minors at the time. The main question in the appeal is

whether the grandfather had the right of dividing among his grandsons the properties which fell to Chenchuraghava Reddi's branch.

4. The action of the grandfather was not questioned when the plaintiff became of age and he did not question it until he filed the present suit on the

30th October, 1937. His half brother Subbareddi had died six years before and the plaintiff maintained that he was entitled not to one-third of the

properties set aside by the grandfather for his father's share but to a half as Subbareddi's interest had devolved upon him and the first defendant.

The suit was for a partition of the properties on this basis. The first defendant resisted the suit and pleaded that the properties which the grandfather

divided in 1923 were his own acquisitions and therefore he was entitled to do what he liked with them. The suit was filed in the Court of the

District Munsiff of Kavali who framed ten issues on the averments in the pleadings. He proceeded however, to decide the case without inquiring

into the question whether the properties dealt with by the grandfather in 1923 belonged to the joint family or whether they belonged to him

absolutely. He assumed that they belonged to the joint family and held that even so the grandfather was entitled to divide amongst his grandsons the

properties which would have fallen to the share of their father had he been alive.

5. The plaintiff appealed to the Subordinate Judge of Nellore. The Subordinate Judge agreed with the District Munsiff and further expressed the

opinion that the arrangements made by the grandfather for the partition of the properties could be upheld as a family settlement because it was

necessitated by strife between the female members of the family. Consequently the Subordinate Judge dismissed the appeal. The plaintiff then

appealed to this Court. The appeal was heard by Horwill, J., who concurred in the judgment of the Subordinate Judge, although he doubted

whether Nagalingam Pillai Vs. Ramachandra Tevar, could be regarded as actual authority for the proposition that a grandfather was in the same

position as a father under Hindu law in this respect. The appeal is from the judgment of Horwill, J.

6. It is in our opinion manifest that the partition effected by the grandfather cannot be upheld on the basis that it constituted a family settlement. The

grandfather was not the lawful guardian of the plaintiff or of his half brothers. In Karinagiseti Chennappa Vs. Karinagiseti Onkarappa, a Full

Bench of this Court held that the father of a Hindu minor is his lawful guardian and in his absence, the mother fulfils that position. When both the

father and mother are dead, no relative can be regarded as the lawful guardian, without an order of the Court. The properties allotted to the

plaintiff's half brothers were accepted by their mother on their behalf and she was their lawful guardian, as their father was then dead. The maternal

grandfather of the plaintiff accepted the properties allotted to the plaintiff, but the maternal grandfather was not his lawful guardian. The minor was living with him and under his protection, but this did not entitle him in law to act on behalf of the plaintiff. Therefore nothing which his grandfathers did could bind him in the matter of the partition, and having no legal guardian, he could not be required to accept the partition on the basis that it represented a family settlement. Moreover the defendants did not plead that the partition should be upheld on this ground. There is no suggestion in their written statements that the arrangements made by the grandfather constituted a family settlement. Their case was, as we have seen, that the properties belonged to the grandfather absolutely and that he was entitled to do with them as he liked. The fact that it was no part of the defendant's case that the partition represented a family settlement is an additional reason for disagreeing with the observations of the Subordinate Judge and of Horwill, J. in this connection.

7. The decision of the appeal depends on whether the Courts below were justified in placing the grandfather in the same position as the father in the matter of the partition of a joint family estate. Aiyavier Vs. Subramania Aiyar and Others, is certainly no authority for the proposition that the grandfather has the same powers as the father, although it is direct authority for the proposition that a grandfather can separate from his grandsons. If the joint family merely consisted of himself and his grandsons, the grandfather would be entitled in law to take a half and leave the other half to the grandsons; but it is quite a different matter to say that when a joint family consists of a father, a son and the sons of a deceased son, he can divide the third share which would have fallen to his deceased son had he lived among that son's sons. The father is the lawful guardian of his son, but the grandfather is not the lawful guardian of his grandsons unless he is so appointed by an order of the Court.

8. Therefore in this case the grandfather had no authority to say that the properties which were allotted to his elder son's branch should be divided in a particular way amongst the members of that branch. He could allot to the branch its share of the family estate but he could not sub-divide the properties forming the share. The grandsons as between themselves were joint and they would take the properties allotted to them jointly. No case

has been quoted to us in which this question has directly arisen, but there does not appear to be any room for doubt as to the answer to be given.

It may be mentioned that in Mulla's "" Principles of Hindu Law "" the same opinion is expressed, but there is no discussion of the question. (See 9th edition, page 392).

9. It follows that in our judgment the plaintiff cannot be compelled to take as his full share in the family estate the properties which his maternal

grandfather accepted on his behalf. Since his half brother Subbareddi is dead, he is entitled to a half share of all the properties set aside by his

grandfather for his father's branch, subject to a provision for the maintenance of his step-mother and the widow of his deceased half brother. That

is, of course, if the properties which the grandfather divided in fact constituted the family estate. This question has not been considered and

consequently it is necessary to remand the case to the trial Court to decide it and also the other issues which were left without decision. There will

be an order accordingly. The District Munsiff will hear and decide all the remaining issues in the light of this judgment and having done so, he will

pass a fresh decree.

10. The appellant is entitled to his costs here, before Horwill, J., and before the Subordinate Judge. The costs of the trial Court will abide the result

of the further hearing. The appellant is also entitled to a refund of the court-fees paid on the various memoranda of appeal.