

(1968) 03 SC CK 0020
In the Supreme Court Of India
Case No : ?Appeal (civil) 613 of 1965

G. Narayana Raju

APPELLANT

Vs

G. Chamaraju & Others

RESPONDENT

Date of Decision : 19-03-1968

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : AIR 1968 SC 1276 : (1968) 3 SCR 464

Hon'ble Judges : V. Ramaswami, J;J. C. Shah, J;G. K. Mitter, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Ramaswami, J.—The plaintiff G. Narayana Raju filed O. S. 34 of 1951-52 in the Court of District Judge, Mysore for partition and separate possession of suit properties mentioned in the various schedules of the plaint. The first defendant is the brother of the plaintiff. The second defendant is the widow of Muniswami Raju, the eldest brother of the plaintiff. The third defendant is the legal representative of the plaintiff's mother. She is now the appellant having been brought on record as the legal representative of the deceased plaintiff. The case of the original plaintiff was that he, the first defendant and Muniswami Raju (husband of the second defendant) were the sons of one Gopala Raju and were all members of the joint family. Gopalaraju died in May 1931 and after his death the plaintiff and his brothers continued to be members of the joint family. The joint status of the family was served by the issue of a registered notice by the first defendant to the plaintiff in July 1951. An ancestral house in Nazarbad belonging to the family was acquired by the City Improvement Trust Board in or about the year 1909. Out of the compensation paid for that house and supplemented by the earnings of the members of the joint family, the house item No. 1 of Schedule 'A' to the plaint was purchased by Gopalaraju in or about the year 1910. Subsequently item No. 2 of Schedule 'A' was also purchased by Gopalaraju from the income of item No. 1 supplemented by the earnings of the

members of the family. All the other items of properties mentioned in Schedule 'A' and other Schedules attached to the plaint were acquired out of the income from item 1 and 2 of Schedule 'A'. It was further alleged that the business known as "Ambika Stores" was also the joint family business and all the properties mentioned in Schedules except items 1 and 2 of Schedule 'A' were acquired out of the income of the members of the family including the income from the business of Ambika Stores. The plaintiff accordingly claimed that he and the first defendant would each be entitled to get 5/14ths share and the second and third defendants would each be entitled to get 2/14ths share. In the alternative the plaintiff pleaded that if for any reason the Court held that the properties stand in the name of Muniswami Raju and were not acquired with the aid of the joint family nucleus, he and the second defendant were entitled to equal shares as co-owners of the joint family business. The suit was mainly contested by the second defendant who asserted that the properties mentioned in all the Schedules of plaint were self-acquisitions of Muniswami Raju and constituted his separate properties. It was alleged that Muniswami Raju was the only earning member of the family at the time of the acquisition of items 1 and 2 of Schedule 'A' properties and the plaintiff and the first defendant were employed in petty jobs in Wesley Press. Muniswami Raju later on employed the plaintiff in his shop as a salaried servant and the latter had no proprietary right in the business of Ambika Stores. After consideration of the oral and documentary evidence the District Judge held that the plaintiff, first defendant and Muniswami Raju were not divided and that the only property which was divisible was item No. 1 of Schedule 'A' and there was not sufficient ancestral nucleus for acquisition of the other properties and that all properties except item No. 1 of Schedule 'A' were the self acquisitions of Muniswami Raju, that Muniswami Raju never blended his properties with that of the joint family, that the plaintiff was only an employee under Muniswami Raju and therefore he was not entitled to the alternative relief claimed by him. Accordingly, the District Judge granted a preliminary decree holding that the plaintiff was entitled to 2/7ths share in item No. 1 of Schedule 'A'. The plaintiff took the matter in appeal to the Mysore High Court. By its judgment dated March 25, 1960 the High Court affirmed the decree of the trial court with the modification that besides item No. 1 of Schedule 'A' item No. 2 also should be held to be joint family property and the plaintiff was entitled to partition of his share in this item also. The High Court cancelled the direction of the District Judge that the plaintiff should account for the moneys and properties of Muniswami Raju in his hands before he is given possession of his share.

2. This appeal is brought by certificate on behalf of the plaintiff from the judgment of the Mysore High Court dated March 25, 1960 in R.A. No. 155 of 1953.

3. The first question to be considered in this appeal is whether the business of Ambika Stores was really the business of the joint family and whether the plaintiff was entitled to a partition of his share in the assets of that business. It was contended on behalf of the appellant that the business of Ambika Stores

grew out of a nucleus of the joint family funds or at least by the efforts of the members of the joint family including the appellant. The contention of the appellant has been negatived by both the lower courts and there is a concurrent finding that the Ambika Stores was the separate business of Muniswami Raju and it was neither the joint family business nor treated as joint family business. It is well-established that there is no presumption under Hindu law that a business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate. The question therefore whether the business was begun or carried on with the assistance of joint family property or joint family funds or as a family business is a question of fact. - (See the decisions of the Judicial Committee in AIR 1943 40 (Privy Council) and in AIR 1948 108 (Privy Council) and of this Court in *Chattanatha Karayalar Vs. Ramachandra Iyer and Another*, . In the present case there is a concurrent finding of both the lower courts that the business of Ambika Stores was a separate business of Muniswami Raju and it was neither a joint family business nor treated as joint family business. The concurrent finding of the lower courts on this issue is upon a finding of fact and following the usual practice of this Court, it is not now open to further scrutiny by this Court under Art. 133 of the Constitution.

4. It was, however, contended on behalf of the appellant that the finding of the lower courts is vitiated in law because of the circumstance that they have not taken into account three important documents, Ex. D, Ex. E and Ex. DDD. We are unable to accept this argument as correct. It is manifest on a perusal of the judgment of the High Court that all the documents have been examined regarding the issue whether the business of Ambika Stores was a joint family business or whether it was a separate business of Muniswami Raju. As regards Ex. D, the High Court has, after examining the evidence adduced, remarked that the mere fact that item No. 2 of Schedule 'A' was given as a security by Muniswami Raju did not result in any detriment to the joint family property and it cannot therefore be held that the business of Ambika Stores grew out of the joint family funds or with the aid of the joint family funds. On behalf of the appellant reliance was placed on the recitals in Ex. E, a deed of mortgage dated July 26, 1928 executed by Gopalaraju, Muniswamiraju and the appellant in favour of the Mysore Bank. The property that had been mortgaged under this document is item No. 2 of Schedule 'A'. The recital is that the borrowing from the Bank was for the business and trade of the executants and for the benefit and use of their family. There is also a recital in an earlier portion of the document that the business was being carried on for the benefit of the family, but it is not quite clear as to whether this related to the business carried on by Narayana Raju or whether it was intended to relate to some business carried on by all the three executants. It is possible that the appellant had other business of his own carried

on on his own account at that time and it cannot be assumed that the borrowing under Ex. E must have been for the purpose of Ambika Stores. It should be noticed that Muniswami Raju has been described in the document as the proprietor of Ambika Stores which description is not consistent with the contention of the appellant that the business was a joint family business. The High Court has, in this connection, referred to Ex. I an application dated February 14, 1929 by the appellant to the City Co-operative Bank, Mysore wherein the appellant has said that he was getting a decent earning by doing out-of-door commercial business with Ambika Stores. There us also the recital in Ex. I that Muniswami Raju was the proprietor of Ambika Stores. Having regard to this recital in Ex. I it is not unlikely that the appellant had some business of his own at the material time and it cannot be assumed that borrowing under Ex., E, was for the purpose of Ambika Stores business only. The High Court has also dealt with the effect of Ex. DDD, mortgage deed produced on behalf of the appellant. It is true that in this document the appellant and Muniswami Raju have been described as proprietors of Ambika Stores. The finding of the High Court is that this recital was made in the document for the purposes of borrowing from the Bank. Reference was made in this context to a letter dated May 5, 1931, Ex. 75 written by Muniswami Raju as proprietor of Ambika Stores, to the Bank of Mysore. In this letter, he has requested the Bank to take note of the fact that he has authorised the appellant to accept drafts, and sign letters etc. on behalf of the firm. There is another letter, Ex. 76, dated April 14, 1934 written by Muniswami Raju to the Bank of Mysore wherein Muniswami Raju has been described as the proprietor of Ambika Stores and there is an intimation to the Bank that the appellant Narayana Raju was authorised to sign for the firm. In the context and background of these circumstances it is evident that though both the appellant and Muniswami Raju were described as proprietors of Ambika Stores the description was only for the purpose of borrowing money from the Bank, as contended for by the respondents. In this connection the High Court has also taken into account Ex. 75(b), a letter written by Muniswami Raju. In this letter Muniswami Raju has described himself as the proprietor of Ambika Stores and has instructed the Bank that he has cancelled the authority given to the appellant to operate on his Current Account with the Bank. It is therefore not possible for us to accept the contention of the appellant that the finding of the High Court that the business of Ambika Stores was the exclusive business of Muniswami Raju is vitiated in law.

5. On the other hand, it was contended on behalf of the respondents that the finding of the High Court is supported by proper evidence. The business of Ambika Stores was started by Muniswamiraju as the proprietor thereof at a time when Muniswamiraju himself was comparatively well-off as a result of his partnership with Krishnaswamy Chetty & Co. In the year 1925 the partnership with Krishnaswamy Chetty & Co. was dissolved by a document Ex. D. The entire business with all the assets and liabilities was taken over by Muniswami Raju while the widow and son of Krishnaswamy Chetty were given a house estimated

by the appellant himself at Rs. 3,000/- and furniture worth Rs. 400/-. Muniswami Raju changed the name of the shop after taking it over into Ambika Stores and continued the business as is apparent from Exs. XVIII, XXVI and XXVI(A). There is also evidence that at the time when Ambika Stores was started other members of the family were not in a financial position to make any contribution to purchase such a business. The appellant joined Wesley Press in 1912 on a salary of Rs. 8 or Rs. 9 p.m. and he was drawing Rs. 27 p.m. in 1927 when he resigned from the Press. The first defendant joined Wesley Press in 1910 on a salary of Rs. 10 p.m. and he was continuing to work there till the institution of the present suit. The income of the property item No. 2 of Schedule 'A' was Rs. 15 p.m. and the income from pounding rice for which there is no satisfactory evidence was also negligible. Therefore, the earnings of the members of the family other than Muniswami Raju were hardly sufficiently to maintain the family at the time when the business of Ambika Stores was started. The High Court has found that the family did not have sufficient nucleus and that Muniswami Raju was not a partner of Krishnaswamy Chetty & Co. on behalf of the family but that he was a partner in his own right. The High Court has observed that there is no evidence to show that the family supplied the money or that the family had enough means or that Muniswami Raju was representing the family when he started the business of Ambika Stores. As we have already said, the finding of the High Court and of the District Judge is a concurrent finding on a question of fact and Counsel on behalf of the appellant has been unable to make good his argument that the finding is vitiated in law on any account.

6. We pass on to consider the alternative argument put forward on behalf of the appellant, namely, that even if the business of Ambika Stores was started as a separate business of Muniswami Raju, it became converted at a subsequent stage into joint family business. It was argued on behalf of the appellant that the business of Ambika Stores was thrown by Muniswami Raju into the common stock with the intention of abandoning all separate claims to it and therefore the business of Ambika Stores lost its character of a separate property and was impressed with the character of joint family property. It is a well-established doctrine of Hindu law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upon it. The doctrine has been repeatedly recognized by the Judicial Committee [See *Hurpurshad v. Sheo Dyal* 3 I.A. 259 and *Lal Bahadur v. Kanhaiya Lal*] 34 I.A. 65. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred merely from acts which may have been done from kindness or affection [See the decision in *Lala Muddun Gopal v. Khikhinda Koer*] 18 I.A. 9. . For instance, in *Naina Pillai and Others Vs. Daivanai Ammal and Another*, where in a series of documents, self-acquired property was described and dealt with as ancestral

joint family property, it was held by the Madras High Court that the mere dealing with self-acquisitions as joint family property was not sufficient but an intention of the coparcener must be shown to waive his claims with full knowledge of his right to it as his separate property. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention, by his waiving or surrendering his special right in it as separate property. A man's intention can be discovered only from his words or from his acts and conduct. When his intention with regard to his separate property is not expressed in words, we must seek for it in his acts and conduct. But it is the intention that we must seek in every case, the acts and conduct being no more than evidence of the intention. In the present case, the High Court has examined the evidence adduced by the parties and has reached the conclusion that there was no intention on the part of Muniswami Raju to throw the separate business of Ambika Stores into the common stock, nor was it his intention to treat it as a joint family business. Counsel on behalf of the appellant referred to the recital in Ex. E describing the properties being those of the executants and that the borrowings was for trade and benefit of the family and it was argued that there was a clear intention on the part of Muniswami Raju to treat the business as joint family business. We have already referred to this document and indicated that the recitals were probably made for the purpose of securing a loan and cannot be construed as consent on the part of the members of the joint family to treat the business as the joint family business. Further, there is ample evidence to show that in all succeeding years before his death Muniswami Raju had always described himself and conducted himself as the sole proprietor of Ambika Stores. Such an attitude on the part of Muniswami Raju was not consistent with any intention on his part either to abandon his exclusive right to the business or to allow the business to be treated as joint family business. Exhibits XXXV to XLVI are all documents executed by third parties in favour of Muniswami Raju in which Muniswami Raju has been described as the proprietor of Ambika Stores. Exhibits III, XXIII, XXIV, 51, 52, 56, 58, ZZ, AAA series and BBB are all communications addressed by institutions like Banks etc., in which Muniswami Raju has been described as the proprietor of Ambika Stores. It may be stated that the appellant himself has admitted in his evidence that he was not drawing any moneys from the business of Ambika Stores and that whenever he wanted any money, he would ask Muniswami Raju and obtain it from him. If really the appellant had considered himself to be a co-owner equally with Muniswami Raju, such conduct on his part is not explicable. It was urged on behalf of the appellant that there was no documentary evidence to show that the appellant was being paid any salary by Muniswami Raju, and that prior to Muniswami Raju's death, it was the appellant who was in the entire management of Ambika Stores when Muniswami Raju was ill and after the death of Muniswami Raju also it was the appellant who had been in management. All the books of account and other documents pertaining to the business of Ambika Stores had

been admittedly entrusted to the appellant. But it is not explained on behalf of the appellant as to why the documents were not produced on his behalf to disprove the case of the respondents that he was a salaried servant. It is therefore no unreasonable to draw an inference from the conduct of the appellant that the Account Books, if produced in court, would not have supported his case. We accordingly reject the argument of the appellant that the business of Ambika Stores became converted into joint family business at any subsequent stage by the conduct of Muniswami Raju in throwing the business into the common stock or in blending the earnings of the business with the joint family income.

7. It was finally contended on behalf of the appellant that, in any event, the appellant became a co-owner of the business along with Muniswami Raju by reason of contribution of his own labour towards the development of the business. In our opinion, there is no substance in this argument. It is evident that the appellant gave up his job in Wesley Press and joined Ambika Stores about 9 or 10 months after it was started by Muniswami Raju. The appellant does not state in his evidence that he was a co-owner when he joined Ambika Stores. On the other hand, in Ex. 68 which is an application dated March 20, 1928 by the appellant to the City Co-operative Bank, the appellant has described himself as a clerk in Ambika Stores and Muniswami Raju has been described as his proprietor. There is no satisfactory evidence on behalf of the appellant to show as to when and under which circumstances his status of a clerk changed to that of a co-owner. In another application, Ex. I which is of the year 1929 the appellant has described Muniswami Raju as the proprietor of Ambika Stores and he has described himself as doing out-door commercial business with Ambika Stores. Again, in Ex. C which is a loan application made in 1932 by both the brothers, Muniswami Raju has been described as the proprietor of Ambika Stores while the appellant has been described as a General Merchant of Mysore. Reference was made on behalf of the appellant to recitals in Ex. DDD, a mortgagee deed dated June 20, 1934 in which Muniswami Raju and the appellant have been described as proprietors of Ambika Stores. We have already dealt with this document and for the reasons already mentioned we hold that the description of the executants was only given for the purpose of borrowing from the Bank and it had not the legal effect of making the appellant a co-owner of the partnership business. There is no evidence of any assertion by the appellant during Muniswami Raju's life-time of his being a co-owner of the partnership business, nor is there any evidence of recognition by Muniswami Raju of any such right of the appellant. On the other hand, there is sufficient evidence to show that whatever the appellant did in connection with the business was only done with the authority conferred by Muniswami Raju. In our opinion the High Court has rightly rejected the claim of the appellant that he was a co-owner of the partnership business.

8. For the reasons expressed we hold that this appeal has no merit and it must be dismissed with costs.

R.K.P.S

9. Appeal dismissed.