

(1946) 07 MAD CK 0017
In the Madras High Court

Godavarthi Venkanna

APPELLANT

Vs

Godavarthi Venkatanarayana

RESPONDENT

Date of Decision : 16-07-1946

Acts Referred:

Citation : AIR 1947 Mad 49 : (1947) ILR (Mad) 382 : (1946) 59 LW 466 :
(1946) 2 MLJ 193

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

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant is the defendant in the action which has given rise to this second appeal. He has contested

the plaintiff's claim in the three Courts below and in this Court with a persistency and vigour worthy of a better cause, but in this Court he has

accepted some of the findings below, as contest was no longer possible.

2. The plaintiff is the defendant's adopted son. He sued in the Court of the Subordinate Judge of Narsapur for a decree for partition of the family

estate. The defendant denied that he had ever adopted the plaintiff and pleaded that the property which the plaintiff claimed to be joint family

property belonged to him in his own right. The Subordinate Judge held that the plaintiff had been adopted by the defendant and that the properties

were joint family properties. The plaintiff averred in his plaint that there had been a partition between the defendant and his father but that

subsequently there had been a re-union. The defendant said that this plea of re-union was not raised in the plaint and that this question should not

be gone into. The Subordinate Judge held in favour of the plaintiff on all the issues raised by the defendant. On appeal the District Judge of West

Godavari agreed with the findings of the Subordinate Judge and they were concurred in by Chandrasekhara Aiyar, J., who heard the second

appeal. This appeal is from the judgment of the learned Judge.

3. In this Court, the finding that the plaintiff is the adopted son of the defendant has been accepted and it has also been accepted that the plaint was

sufficiently widely drawn to raise the issue with regard to the factum of re-union. Two questions have however been strenuously argued here,

namely (1) whether the re-union was lawful and (2) whether the properties settled by the defendant's father upon the defendant under a deed

dated the 28th April, 1933, could be regarded as ancestral properties in the hands of the defendant. The Subordinate Judge held that if there had

not been a reunion, the properties were ancestral and therefore the plaintiff was entitled to a share. The District Judge did not discuss this matter

but the Subordinate Judge did and Chandrasekhara Aiyar, J., agreed with him.

4. The partition between the defendant and his father took place on the 6th April, 1914. Under the terms of the division the father received as his

share all the properties described in schedules A and B to the plaint, except item 1 in Schedule A and the third item in Schedule B. The defendant

was apparently of wayward habits and dissipated all his properties, except one which he sold to his father on the 24th November, 1918. On the

28th May, 1917, the father executed a will under which he left the whole of his property to the defendant's wife, but by a will dated the 31st

January, 1922, he left his properties to his son and daughter-in-law jointly. The date of the re-union has not been found, but it took place sometime

between 1922 and 1929. On the 28th April, 1933, the testator revoked his second ""will and settled the properties which he had received at the

partition with his own father and the property which he had bought from his son on the 24th November, 1918, on his son during his (the settlor's)

lifetime. It was distinctly provided that the son should have no right of alienation and that he should maintain his father to his father's satisfaction. In

the event of his not fulfilling these conditions the father was to have the right of revoking the settlement. On the settlor's death the son was to take

the properties absolutely. We are not concerned with what bearing this document has upon the plea of re-union because the factum of re-union has

now been accepted, but the validity of the re-union is challenged on the ground

that the defendant had no properties to bring back to the joint family and the possession of some of the family properties by the defendant was, it is said, a condition precedent to a lawful re-union with his father. This contention is based on the following statement in the Mitakshara: Effects which had been divided and which are again mixed together are termed re-united. He to whom such appertain is a re-united parcener. (Chapter II, Section 9, placitum 2.)

It is contended that these words must be construed strictly and that there cannot be a mixing together of effects unless both parties to an agreement

to re-unite possess some property which belonged to the family before partition.

5. In this connection stress has been laid upon the statement in the judgment of the Privy Council in *Ram Narain Chowdhury v. Mt. Pan Kuer*

(1934) 68 M.L.J. 139 : L.R. 62 IndAp 16 : ILR 14 Pat. 268 where their Lordships said that where the text of the Mitakshara is clear and

unambiguous recourse to other authorities is excluded. This certainly does not mean that the placitum which we have just quoted must be read as

requiring the present possession of family property by all parties to an agreement to re-unite. Their Lordships were concerned with a very definite

statement in the Mitakshara that there could only be a re-union between persons of a particular relationship, namely, father, brother and paternal

uncle. The commentator would naturally not have in mind a case where one of the coparceners after the partition had lost the whole of his share in

the family estate as a result of riotous living.

6. To read the passage quoted in the way contended by Mr. Satyanarayana Rao on behalf of the appellant would mean ignoring settled principles

of Hindu Law. The joint status does not depend on the possession of property. The joint family may have no property at all, but one member may

be wealthy in his own right. If he is, it is open to him to allow his private property to be treated as family property and if he does so, it becomes

family property. We are of opinion that the fact that the defendant had dissipated the whole of his share of the family estate did not prevent an

agreement between him and his father to re-unite and the father treating his property as joint family property.

7. This disposes of the legal objection to the re-union, but we may mention that in the course of his argument, Mr. Satyanarayana Rao relied on the

judgments in *Gopal Chunder Daghoria v. Kenaram Daghoria* (1867) 7 W.R. 35 and *Rusi Mandli v. Sundar Mandli* ILR (1910) Cal. 703. In

neither of these cases was this question raised. In fact there is no reported case in which it has been raised. All that the reported cases have

decided is that joint living and joint management of property in themselves are not proof of re-union. A re-union must be proved as the Privy

Council observed in 7 CWN 642 (Privy Council) like any other fact. The re-union has been proved in this case and it has only been challenged on

the technical plea which we have dealt with.

8. We agree with the Subordinate Judge and Chandrasekhara Ayyar, J., that even if there had been no re-union the plaintiff would have been

entitled to a decree for partition of the properties mentioned in the plaint on the ground that on the death of his grandfather they became the

ancestral property in the hands of his father. The estate granted to the defendant during the lifetime of his father was quite a different estate from

that which he was to take on the death of his father. On the death of his father the properties were to become his absolutely. Having received them

from his father they became ancestral in his hands.

9. The plaintiff is clearly entitled to a decree for partition and the defendant's appeal must be dismissed with costs.