
(1964) 04 MAD CK 0003
In the Madras High Court
Case No : Appeal No. 327 of 1959

Gunna J. Krishnan and Others APPELLANT
Vs
G.K. Rengachari and Others RESPONDENT

Date of Decision : 16-04-1964

Acts Referred:

Citation : AIR 1965 Mad 340 : (1965) ILR (Mad) 350 : (1965) 78 LW 81

Hon'ble Judges : Ramamurti, J;Anantanarayanan, J

Bench : Division Bench

Judgement

Ramamurti, J.

(1) The appeal arises out of a suit, O. S. No. 176 of 1954, Sub Court, Tiruchirapalli, filed by the first respondent herein, for partition and separate

possession of his one-ninth share, after taking an account of the properties, cash, business assets, bank deposits, jewellery, moveable etc. The

plaintiff's suit has been substantially decreed as prayed for by him, and the plaintiff's father, the first defendant in the suit, the latter's wife, the 2nd

defendant, and their son (the plaintiff's step brother), the third defendant, are the appellants in the present appeal. In order to appreciate the

relationship between the parties, the following genealogical tree is set out.

The case of the plaintiff, who is the son of the first defendant through his first wife is that after the death of the plaintiff's grandfather, Guna Jeer

Bhagavathar in 1901 his four sons, i.e., the plaintiff's father and the plaintiff's three uncles, were under the guardianship and protection of their

mother, Ahilandammal, that they have been carrying on a business in javuli to start with in a small scale, that with the aid of such meagre nucleus as

existed and by joint labour and exertion, the business expanded from time to

time, that in 1919 the eldest brother, G. Radhakrishna got himself divided from his three brothers, and went out of the family, that at the time all the assets of the family consisting of the stock in trade, debts, outstanding, ancestral house were divided with the aid of certain well wishers and panchayatdars, that under the scheme of division the brother, Radhakrishnan, was given his one fourth share and the other three brothers took (together and as one unit) the other three-fourth share, and that there after the other three brothers carried on the business in javuli under the name and style of Gunnaji Krishnan and Bros, and the business expanded and flourished considerably from time to time and out of the income and assets of the said business all the suit properties were purchased and acquired. The plaintiff's father's case is that as and when the sons of the three brothers attained majority, they also attended to and participated in the business, that during the years 1946-48 when the plaintiff was employed in the railway office at Golden Rock the plaintiff attended to the business during his leisure hours and holidays, that after 1948 the plaintiff completely attended to the afore-said business, Gunnaji Krishnan and Bros.

The plaintiff has filed the suit for partition on the ground that from 1951 disputes have arisen between the members of his family, particularly between the three brothers, that the dispute took a serious turn about Deepavali time in 1954 on account of the wrongful conduct and unhelpful attitude of the first defendant. There were charge and counter-charges between the first defendant and his brothers and the plaintiff, each charging the other with sequestration of assets consisting of the stock in trade, and outstandings and cash deposit in the banks. The complaint of the plaintiff is that in 1951, the plaintiff was driven out of the house by the first defendant and he was living separately with his father-in-law and all attempts on the part of the plaintiff to obtain his legitimate one-ninth share in all the family properties proved futile, as the first defendant took sides with the second wife and her son and denied the right of the plaintiff to a share putting forward that the properties in question are not joint family properties but the self-acquired properties of himself and his two brothers. The immovable properties have been set out in the A schedule while the stock in trade of the business, the outstandings and bank deposits have been set out in

the B schedule; the C schedule consisting of the moveables and the jewels. The plaintiff also claimed that the moneys deposited in the names of the female members of the family and in particular in the name of the

second defendant, his step-mother, are also joint family properties, having been so done out of the business of Gunnaji Krishnan and Bros.

(2) The seventh defendant, one of the brothers, died during the pendency of the audit, leaving behind him his three sons, defendants 8, 9 and 10

and his wife, the 11th defendant. The other two branches namely, of the two brothers (the 4th and 7th defendants) supported the case of the

plaintiff substantially, and it is unnecessary to refer to certain matters on which there was some contest between themselves and the first defendant

with regard to the separate business which they claimed to have been carrying on and with regard to certain deposits in the banks.

(3) The first defendant (with whom his second son, the third defendant joined) contested the suit on the ground that his father left no assets

whatsoever, that he and his brothers carried on their own separate business as hawkers in javuli, that from the time of the death of the father till

1919, the four brothers, were carrying on, though jointly, a separate business of their own, that in 1919 there was a division by metes and bounds

between all the four brothers, and that the subsequent business which was carried on under the name and style of Gunnaji Krishnan and Bros by

himself and other two brothers was their own separate business, in which the plaintiff was not entitled to any right or share, and that all the

properties involved in the suit were acquired out of the business assets and the income of the business, Gunnaji Krishnan and Bros, that on 14-2-

1943, there was a partition and dissolution of the business between himself and defendants 4 and 7, and that the plaintiff is not entitled to make any

claim in respect of any of the assets as jointly family properties. The first defendant levelled certain charges against the other brothers, which it is

not necessary to refer to at this stage. The second defendant the step-mother of the plaintiff claimed that the deposits and properties standing in her

name are her stridhana properties and the plaintiff cannot claim any share therein.

(4) The learned Subordinate Judge in a carefully considered judgment came to the conclusion that all the properties involved in the suit are joint

family properties involved in the suit are joint family properties. He held that under the arrangement of 1919, the eldest brother Radhakrishnan

alone separated himself and went out of the family, while the other three brothers continued joint in status, and carried on the business of Gunnaji

Krishnan and Bros, as members of a joint family right through, that the three brothers became divided in status only in February 1943, and that

thereafter they carried on business as partners, but that the first defendant used his share of the family assets in that business, and that therefore the

plaintiff will be entitled to his one-ninth share in all the family properties. He also held that so far as defendants 4 and 7 were concerned, whatever

they have withdrawn after February 1943, should be debited against them in their account, while taking the account of Gunnaji Krishnan and Bros.

(5) At this stage it may be noticed that while the case of the plaintiff was that the three brothers continued to be joint in status right through, the

Subordinate Judge found that the brothers were joint in status only till February 1942, and that they became divided thereafter, and that the

business which was carried on thereafter was only a partnership business and not a joint family business. Defendants 1 to 3 have preferred the

present appeal.

(6) The question for decision lies in a very narrow compass and on a consideration of all the aspects of the matter, we have come to the clear

conclusion that the findings of the learned Subordinate Judge are perfectly correct, and the present appeal is frivolous one and totally devoid of

substance. The first defendant has become a tool in the hands of his second wife, the second defendant, and he has no scruples in putting forward

all kinds of false and untenable pleas. His hatred to the plaintiff is so much that he has gone to the extent of denying completely the plaintiff's rights,

and also setting up his second wife to put forward wholly dishonest and untenable claims to substantial sums of money deposited and standing in

her names. A perusal of his oral evidence, in the light of the documentary is a person who has no regard for truth and no reliance can be placed

upon his evidence.

(7) As observed earlier, the question for decision lies in a very narrow compass and a great portion of the documentary evidence that has been

adduced in this case is unnecessary, besides being irrelevant. In his pleading, in

his evidence before the trial court, and in the course of arguments

both in the trial court, as well as before us, the first defendant accepted the position that all the properties involved in the suit have come out of the

income and assets of the javuli business carried on in the name and style of Gunnaji Krishnan and Bros from 1919, further, the first defendant does

not claim any other source of income whatsoever for any of those acquisitions.

(8) It is again the accepted case of the defendants that the business, Gunnaji Krishnan and Bros, was carried on with the assets which the three

brothers (together and as one unit) obtained at the partition of the year 1919, when the eldest brother Radhakrishnan went out of the family. The

main question, therefore, naturally relates to the nature and character of the business which the three brothers carried on from 1919 vis-a-vis the

plaintiff, though born subsequently in the year 1924.

(9) The prior history of the family, as may be gleaned from the documents and the oral evidence, taken along with the recitals of the partition

arrangement, Ex. A. 4 dated 18-6-1919, and the scheme of that arrangement, lead, in our opinion, to the clear conclusion that whatever interest,

share and right which the first defendant had in the said business both legally and factually, were clearly joint family properties vis-a-vis the plaintiff.

(10) The documentary evidence, about the early history of this family shows that in 1897 the father of the first defendant, Gunnaji, sold his share in

the family house to his brother, Ramaswami Chettiar, for a sum of Rs. 300 with a view to purchase a residential house for himself and for his family

expenses. At the time of that sale, three sons were born to him, Radhakrishnan, Krishnan and Venkatachalam, and all of them were minors. After

the death of Gunnaji, under Ex. A. 2 dated 23-1-1903, the house item 1 of Sch. A, was purchased in the name of the mother, and her four minor

sons, Radhakrishnan, Krishnan, Venkatachalapathi and Alagiri, for a sum of Rs. 650. This property is admittedly joint family property. Under Ex.

A. 3 dated 3-12-1908, a mortgage was executed over this property by the mother and the sons, to secure a sum of Rs. 470 in regard to a chit

fund transaction, and this document shows that the chit has already been drawn and utilised by the members of this family, evidently in connection

with the business which they were carrying on at that time. The next important document is Ex. A. 4 dated 18-6-1919 by which time it is in

evidence that some misunderstandings had arisen between the eldest brother Radhakrishnan, ranged against the other three brothers.

With the help of certain panchayatdars a partition was effected by which Radhakrishnan took his one-fourth share and went out of the family.

From this document it is clear beyond doubt that the four brothers up to that date had no self-acquired or separate properties, and that all the

properties belonging to them were joint family properties. The document itself shows that the four brothers were carrying on business as undivided

members of the family after the death of their father. Learned counsel for the appellant attempted an argument that as the father did not leave any

ancestral nucleus worth mentioning the business which the four sons carried on should be regarded as their own separate business, and not joint

family business. There is absolutely no substance in this contention.

(11) The law is well settled that if members of a joint family who are joint in status and carry on business and acquire property by their joint labour

and exertions without the aid of any ancestral nucleus the presumption is that the property so acquired by them would be joint family property in

which the sons of the acquirers would get a right by birth, unless it is proved that the acquirers intended to own the property as co-owners

between themselves, in which case alone it will be joint property as distinguished from joint family property. The presumption is in favour of its

being regarded as joint family property. Vide Mayne's Hindu Law, 11th Edn. page 345; S. 281; and Mullah, 12th Edn. pages 333-334. In this

case there is not only no proof to rebut the presumption; but on the other hand the very deed, Ex. A. 4, proceeds on the footing that all the

properties are joint family properties. The recitals in the document, the tone and the terms, the background of the case as well as the oral evidence

all lead to this conclusion. The position, therefore, is that in 1919 the share of the business assets and other assets which the three brothers as one

unit obtained under that partition arrangement would undoubtedly be joint family property in their hands.

As to what happened thereafter is a matter on which there is no controversy. The three brothers thereafter carried on business in the name of

Gunnaji Krishnan Bros, and admittedly the entire properties involved in the suit represent the accretions and augmentations of the assets which got

into the hands of the three brothers in 1919 under Ex. A. 2. The document, Ex. B. 1 dated 14-1-1943 is very clear and specific leaving no doubt

in the matter. The first defendant who was examined as D.W. 3 at page 273 line 39 has stated as follows: ""All the suit immovable properties were

purchased with the funds of Gunnaji Krishnan and Bros"". Again at pages 275 he has stated as follows:

Radhakrishnan Chetti got for his share, outstandings, and cash and javulis. He got one-fourth share in the outstanding, cash and javuli. I,

defendants 4 and 7 jointly got three-fourth share in the properties. In that partition A schedule item 1 fell to our three-fourth share. We got

outstandings and javuli as per Ex. A. 4. I am aware of the partition evidenced by Ex. A. 4. Nine persons effected that panchayat, None of them

are alive. Prior to Ex. A. 4. I and my brother divided the moveables. Before the date of Ex. A. 4, I, defendants 4 and 7 began to do business

under the style of Gunnaji Krishnan Bros and from 1-3-1919 with the property got by us with Ex. A. 4. That business is run until now. With the

income from that business we have been buying other properties and also conducting the business on a larger scale. The original capital for the

business of Gunnaji Krishnan was the assets realised under Ex. A. 4. Between the date of Ex. A. 4 and the death of my father I and my three

brothers jointly conducted business. The monies and credits and property earned by us were divided under Ex. A. 4.

(12) In the fact of these clinching admissions of the first defendant, taken along with the express recitals in the partition deed, Ex. B. 11, dated 14-

2-1943, no other conclusion is possible except that all the properties involved in the suit are joint family properties. The three brothers got into

possession of ancestral nucleus consisting of business and business assets, and with the same they continued and carried on the business. Even

today the share of the joint family assets pertaining to the shares of the three brothers continue to be embarked in the business. The fact that in

1919 the business and the business assets were not very large cannot affect the legal position. It is not competent to a managing member of a joint

family who gets into management of the family business and its assets, though small in nature, to claim the subsequent expansion and accretions to

the business and augmentations thereof as his own separate property on the ground that they are the result of his special skill and labour, and that

the other members of the family should be restricted only to their share in the value of the assets at their inception. In the case of a running business, even though the capital invested may be comparatively small, it might conceivably produce substantial income, which may well form the foundation of the subsequent acquisitions. The position is a fortiori where apart from the acquisitions the managing member had no other assets or sources of income.

(13) In this connection reference may be made to a recent Bench decision of this court in *The Commissioner of Income Tax Vs. S. Rm. Ct. Pl.*

Palaniappa Chettiar, a managing member who became a director of a company would be regarded as joint family property where the director

acquired the requisite number of shares by utilising joint family funds. The law was summed up in these terms at page 66:

The true view is that the manager of a joint family cannot gain a pecuniary advantage by utilising the family assets or funds, and claim that

advantage as his own separate property, merely on the ground that in the process of gaining that advantage an element of personal service or skill

or labour is involved. The character of the income has to be determined, taking into account the basic foundation from which it emanates. In all

cases where the income is traceable to family property, it must partake of the joint family character, and it would not be open to the manager or

any other member of the family to claim it as his own individual and separate income.

The limits of the doctrine of detriment as bearing upon the character of the acquisition of a managing member of a joint family came up for decision

before a Bench of this court in *R.V. Manicka Mudaliar Vs. V.M. Thangavelu and Others*, to which one of us was a party. In that case it was held

that where members of a joint family acquire shares in a company and unite and form themselves into a partnership to obtain the managing agency

of the company under a scheme of integrated transaction, it would be a proper inference to draw that the contract of agency was a result of the

holding of the shares, and that the contract of agency and the remuneration acquiring therefrom would be joint family property. Jagadisan J.

delivering the judgment of the Bench explained the position thus:

It is true that the test of self-acquisition is that it should be "without detriment to

the father's estate" (See Mayne's Hindu Law, 11th Edn. page 352). The relevant Hindu Law text of Yajnavalkya is as follows:

Whatever is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials does not

appertain to the co-heir. Nor shall he who recovers hereditary property which has been taken away give it up to the coparceners; not what has

been gained by science". This text of Hindu law does not throw and light on the degree of detriment necessary to attribute, to the acquisition of the

character of joint family property. The court cannot undertake the impossible task of fixing the minimum standard of "detriment". It is of course

clear that some detriment is necessary; this can only mean that it should not be vague or merely sentimental but should be something real. What

would be the position of the "detriment" were trifling and unsubstantial, we do not propose to consider as the question does not arise in this case. It

seems to us that the question whether or not an acquisition was made to the detriment of the family estate is very largely one of fact".

Learned counsel for the appellant, placing considerable reliance upon the Bench decision of this court in Sivaramakrishnan Vs. Kaveri Ammal and

Others, contended that the acquisitions made out of the business of Gunnaji Krishnan Bros should be regarded as the separate properties of the

three brothers, and that the plaintiff cannot claim anything more than his share in the value of the assets as per the partition arrangement of 1919.

We are wholly unable to see how this Bench decision in any way supports the appellant's contention on the facts of the instant case. In that case a

sole coparcener raised money for business on the security of the ancestral property and had discharged that mortgage before the birth of a son, it

was held that the business and its acquisitions could not be regarded as joint family property, as the same were acquired without any detriment to

the parental estate.

The Bench had to consider the main question as to whether the mere fact that money was raised on the security of joint family property for carrying

on a business was by itself (regardless of any other consideration) sufficient to clothe the business and its acquisitions with the character of joint

family property and the Bench decided that as an abstract proposition of law no such claim could be made. The Bench elaborately dealt with the

scope of the implications of the doctrine of Hindu Law that whatever detriment to the father's estate shall be regarded as the self acquisition of the acquirer in the light of the principles enunciated in several decisions of the various High Courts. We are of the opinion that this decision, far from supporting the appellant is clearly against his contention and it is sufficient to refer to the statement of the law in that judgment at page 164 (of Mad LJ): (at pp. 711-712 of AIR).

(14) In this connection it is necessary to refer to the Bench decision of the Bombay High Court in Ayyangouda Basangouda Ayyangoudar Vs.

Gadigeppagouda Huchangouda Ayyangoudar, which has been referred to with approval in Sivaramakrishnan Vs. Kaveri Ammal and Others, . The

following observations in the judgment of Wasoodew J. at page 203 may be extracted as the principle contained therein has direct application to

the facts of the instant case:

If profits were made from business stated with the proceeds of the sale of ancestral property, the investment made from these profits would in my

opinion form part of the ancestral coparcenary property. Ordinarily, if such investments were made by the father or manager as head of the family,

they would partake of the character of ancestral property, for the investor was clearly accountable to the other coparceners; see Jugmohandas

Mangaldas v. Mangaldas Nathubhoy, ILR 10 Bom 528, May be in his ""Hindu law and Usage"" 10th Edn. para 277 page 355, has cited various

authorities on the point, and has dealt with the principle of accretion to the acquisition of property out of savings of ancestral property by a

manager. I do not think the position of the sole surviving coparcener who has invested the ancestral funds in a fresh business started by him, should

be different merely because he was the sole owner of the entire property at the time of the investment. I think the principle of accretion could

properly be applied to the profits made form investment of the ancestral funds by the sole surviving coparcener prior to the adoption"".

In this case, the share of the assets, obtained by the three brothers at the family partition continued to be embarked in the business right upto the

moment of the suit and the detriment thereby is amply satisfied. Further the rule that whatever is the outcome of the ancestral property would

partake of the character of joint family property is fully satisfied. We have

therefore no hesitation in negating the first defendant's claim as to self acquisition.

(15) Learned counsel for the appellants drew our attention to some passages in the oral evidence, but it does not serve any purpose as it is obvious that the merits of the rival contentions of the parties should be judged upon the recitals and the terms contained in ancient documents, and not in the light of the perjured and interested testimony of the first defendant. In the fact of the recitals in the document to which the first defendant is a party, it is futile for him to contend that the business is his separate business.

(16) A reading of the partition deed, Ex. A. of the year 1919 and latter memo of arbitration of the year 1943, Ex. B. 1, would suggest that there was a division in status amongst all the four brothers, while the learned Subordinate Judge was inclined to take the view that between 1910 and 1943, the three brothers (excluding Radhakrishnan) continued to remain as members of a joint family. The learned Subordinate Judge has referred to several pieces of documentary evidence consisting of the Income Tax returns, assessment, admissions by the first defendant himself to show that the three brothers were conducting themselves as members of a joint family. In the view, we are taking of the fact of the cases, it is unnecessary to refer to that aspect of the matter, because, in our view whether the three brothers carried on the business after 1919 whether as members of a joint family or as members of a divided family it makes no difference as far as the rights of the plaintiff are concerned. One fact, however, must be mentioned that after 1919 the consciousness of the three brothers was undoubtedly that the properties were joint family properties, in which their issues would acquire a right by birth. At no point of time did they ever entertain the idea that the acquisitions were their own separate acquisitions.

There is ample evidence that the sons of the three brothers took great interest in the business, participated in the business activities, and were throughout regarded and dealt with as having equal rights in the business. Further the plaintiff gave up his job with a view to attend to the business.

(17) The next point that requires consideration is whether the plaintiff's rights and claims are in any way affected if the partition arrangement of 1919 brought about a division in status among all the four brothers inter se. If the theory of joint family is ruled out, the business which the three

brothers carried on in the name and style of Gunnaji Krishnan and Bros. must either be a partnership business or as co-owners. But so far as the plaintiff is concerned, his father, the first defendant, representing his branch, has invested the one-third share of the assets pertaining to that branch in the said business of Gunnaji Krishnan and Bros, and whatever the first defendant is entitled to out of the business, out of its income and out of the subsequent expansion and accretions, will have to be shared between the first defendant and the members of his branch.

(18) It is settled law that if the managing member of a joint family enters into a partnership with strangers, the managing member alone is the partner of the business, and the junior members are not entitled to interfere with the partnership business, so long as it is a going concern. But the moment a dissolution of the business takes place and a junior member files a suit for partition, in that partition suit all the family properties will have to be included, including the assets of the dissolved partnership, so that in the presence of the manager as well as the erstwhile partners of the dissolved partnership, an account may be taken and the share of the managing member in the assets of the dissolved partnership be ascertained for the purpose of division. The only obstacle or the disability which the junior member would suffer is that so long as the partnership concern is a going concern, the junior member has no right to interfere with the business, and he or they can act only through their accredited representative, the manager who has entered into the partnership. The stranger-partners are entitled to object to any interference on the part of the junior members in the partnership business, and the junior members cannot assert any rights of their own as against a stranger partner. But as observed earlier, if a dissolution had taken place or if strangers partners have no objection to the accounts of the partnership being taken, the managing member cannot possibly raise any objection. It is enough to refer to the statement of the law in Mullah 12th Edn. S. 234, sub-section (3); page 350. Vide also Mayne page 386 S. 308.

(19) In this connection reference may also be made to the judgment of a Bench decision of this Court in Pentapati Venkataramana and Others Vs. Pentapati Varahalu and Others, in which Varadachariar J. after adverting in Grandhe Gangayya Vs. Grandhe Venkataramiah and Others, has

indicated the modus operandi by which the relief can be given to the junior members of the family, when the managing member enters into a partnership utilising joint family assets. The fact that in the plaint the plaintiff has made a claim on the footing that the business of Gunnaji Krishnan and Bros and its accretions and acquisitions are all joint family properties is no reason for denying the plaintiff relief in respect of the same properties on the basis that Gunnaji Krishnan and Bros is not a joint family business owned in co-ownership. The plaintiff cannot be prejudiced on account of any defect or mistake in the pleading, especially as in the instant case, despite the arrangement of 1919 the brothers, as observed earlier, have acted and conducted themselves as members of a joint family.

It is certainly not a case in which after the partition arrangement of 1919 the brothers acted, as members of a divided family but yet the plaintiff seeking relief as though they are members of a joint family. In any event, no argument can be advanced by the first defendant regarding the precise legal basis on which the plaintiff claims a share in the suit properties so long as the members of the other branch are quite willing and agreeable (in this suit itself) to a division of the assets of Gunnaji Krishnan and Bros, and the ascertainment of whatever is payable and allottable to the first defendant. Whatever view may be taken, the position remains the same so far as the plaintiff is concerned.

(20) As regards the claim made by the second defendant in respect of moneys and properties standing in her name was entirely agree with the reasoning and findings of the learned Subordinate Judge in paragraphs 29 and 30 of the judgment. In fact, learned counsel for the appellants could not advance any serious argument against the correctness of this finding, to establish the second defendant's ownership of the same. In his evidence at page 272 the first defendant has admitted that his wife and all moneys taken from the business of Gunnaji Krishnan and Bros.

(21) Some argument was advanced regarding the moneys alleged to have been taken separately by the members of the three branches, including the plaintiff, it is needless to observe that these are matters to be considered in the stage of the final decree of proceedings when all equities and rights between the parties will be determined. We do not express any opinion about the merits of that controversy. No serious argument was

advances with regard to the findings of the learned Subordinate Judge on the other issues, by learned counsel on either side. Even otherwise we

are satisfied that the view taken by the learned Subordinate Judge on those issues are correct.

(22) In the result, we confirm the judgment and decree of the learned Subordinate Judge and dismiss the appeal. We are of the clear opinion that

this appeal is a frivolous one and the first defendant, out of spite and vindictiveness is protracting the proceedings, putting every obstacle in the

plaintiff getting his one-ninth share in the suit properties. The first defendant is taking sides with his second wife and her son as against the plaintiff.

The first defendant should therefore pay the plaintiff his costs of the suit and the appeal out of his share of the assets but not personally. The other

respondents shall bear their own costs of the appeal.

(23) Appeal dismissed.