

(1949) 07 MAD CK 0061

In the Madras High Court

Case No : Second Appeal No's. 486 and 487 of 1946

Guruswami Goundan and Others

APPELLANT

Vs

Marappa Goundan and Others

RESPONDENT

Date of Decision : 22-07-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1950 Mad 140 : (1950) ILR (Mad) 665

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : T.M. Krishnaswami Iyer, P. Ramachandra Reddi, C.A. Vaidhyalingam, T. Venkatadri and K. Ramachandra Rao, for the Appellant; K. Bhashyam, T.R. Srinivasan and S. Gopalaratnam, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—These are connected appeals and can be disposed of by a common judgment. S. A. No. 486 of 1946 arises out of O.

S. No. 398 of 1943 on the file of the Court of the District Munsif of Gobichettipalayam in which the appellants were defendants 1 to 5. Appellant

5 having died pending the second appeal, appellant 6 was brought on record as his legal representative, The appellants in S. A. No. 487 of 1946

which arises out of O. S. No. 119 of 1943-on the file of the same District Munsif's Court were plaintiffs and defendants 2 and 3 in that suit. The

contesting respondent in both the second appeals is the same individual and he was the plaintiff in O. S. No. 398 of 1943 and defendant 1 in O. S.

No. 119 of 1943. In order to-appreciate the contentions of the parties, it will be convenient to set out the relation between them as shown in the

plaint in O. S. No. 898 of 1943 and set out in the judgment of the learned

Sudbordinate Judge in para. 12 of his judgment

AMMAVASAI GOUNDAN (Deft. 6)

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Karuppa Goundan (died) Marappa Goundan

Marakkal (died)

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Marappa Goundan (Plff.)

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Gurusami Goundan (Deft. 1) Veerappa Goundan (D.2)

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| Minor Karuppa alias Muruga (Deft. 5)

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Minor Nagappa (Deft. 3) Minor Karuppa (Deft.5)

O. S. No. 398 of 1943 was filed by the contesting, respondent for specific performance of an agreement for partition entered into between him

and defendants 1 and 2 therein on 14th July 1941 and for possession of the plaint B-I schedule properties. The contention of the defendants-

therein was that the agreement was invalid and not binding and that the grandfather of plaintiff and defendants 1 and 2 (defendant 6) had not

renounced his right in the joint family properties. The trial Court found that defendant 6 did not relinquish his share in the joint family properties. It

also found that the agreement of partition on which the plaintiff based his case EX. P-2, was invalid and inoperative for various reasons, one of

them being the inequality in the division of the properties and therefore O. S. No. 398 of 1943 was dismissed. With regard to O. S. No. 119 of

1943, the learned District Munsif held that it has to be decreed. The plaintiff in O.

S. No. 398 of 1943 took up the matter in appeal and the learned Subordinate Judge finding that the relinquishment by defendant 6 was true, and that as between defendants 1 and 2 on the one side and the plaintiff on the other, EX. P-2 was an operative and valid document decreed the suit in reversal of the decision of the District Munsif.

2. On the basis that defendant 6 had not relinquished his share in the family properties, he had sent a registered notice on 27th January 1942 to his grandsons expressing his intention to divide; and thereafter on 6th February 1942 he executed a settlement deed in favour of his great grandsons defendants 3 to 5 in O. S. No. 398 in respect of his one-third share in the plaint properties. On the basis of this settlement, defendants 3 to 5 in O.

S. No. 398 filed O. S. No. 119 of 1943 for partition and recovery of possession of the one-third share of their great grandfather settled upon them

under Ex. D-I dated 6th February 1942. The plaintiff in O. S. No. 398 was the contesting defendant there and he repudiated the alleged settlement

on the ground that long prior to that, the settlor, Amavasai Goundan, had relinquished his share in the family properties. As the District Munsif

had found that the alleged relinquishment did not take place, he gave effect to the settlement and passed a preliminary decree for partition in favour

of the plaintiffs in O. S. No. 119 of 1943, As stated already, the plaintiff in O. S. No. 398, who was defendant 1 in O. S. No. 119 of 1943,

aggrieved by this preliminary decree for partition, filed an appeal in which the same question had to be discussed. The appeals against O. S. Nos.

398 and 119 of 1943 were A. S. Nos. 78 and 86 of 1945 respectively. They were heard together by the learned Subordinate Judge who allowed

both the appeals with the result that O. S. No. 398 was decreed in favour of the plaintiff and O. S. No. 119 was dismissed. Hence the two second

appeals by defendants 1 to 5 in O. S. No. 398 of 1945 who were the plaintiffs and defendants 2 and 3 in O. S. No. 119 of 1943.

3. Mr. T.M. Krishnaswami Aiyer appearing for the appellants raised three important points, all of which will be considered seriatim. His first

argument was that the finding of the learned Subordinate Judge regarding the renunciation by Amavasai Goundan is unsound and is opposed to

law. It is further alleged that there is no legal evidence to support the finding. The plaintiff in O. S. No. 398 of 1943 stated in paragraph 5 of his

plaint that in or about the year 1982, defendant 6 (Ammavasai Goundan) agreed to receive a maintenance allowance of four putties of paddy every year for himself and his wife and relinquished all his interest in the family property. It was alleged that since that time the plaintiff in O. S. No. 398 as well as defendants 1 and 2 therein and their children alone constituted the joint family of which the plaintiff's deceased father Karuppa Goundan was the manager. In their written statement, both defendants 1 and 2 as well as defendant 6 denied the alleged oral relinquishment, defendant 6 pleading that he did not renounce his right in the family properties and that it was false to say that he was receiving maintenance. His case was that since he was old, and since Karuppa Goundan, his eldest son, was looking after the family affairs, he was living with his daughter in another place, managing her properties. The question therefore was definitely put in issue and considered in great detail by the trial Court under issue No. 1. The learned District Munsif held that since there was no documentary evidence to prove the oral renunciation and the payment of four putties of paddy a year as maintenance, none of the plaintiff's witnesses had any knowledge of the alleged agreement. He considered the evidence of P. W. 1, the plaintiff himself, that prior to twelve years of the date of his giving evidence, defendant 6 was not given maintenance but was messing in his daughter's house, Defendant 6 's wife, the grandmother of the plaintiff, was living in the family house. In view of the plaintiff's evidence that no maintenance was given to defendant 6 prior to 12 years and since defendant 6 was living in Nallikoundanur, it was incredible that any maintenance was ever given and therefore defendant 6 would not have relinquished his right. The learned District Munsif also considered the absence of any mention about the alleged relinquishment in the reply notice Ex. P-6 sent by the plaintiff to defendant 6 's notice Ex. P-5. Then he considered the evidentiary value of the registration copy of the partition deed, Ex. P-I, dated 9th June 1937 as well as the unregistered deed of agreement of partition, Ex. -P. 2, dated 14th July 1941. The non-inclusion of Ammavasai Goundan in EX. P-I along with the circumstance that he was an attesting witness in Ex. P-2 was considered. The trial Court was of opinion that defendant 6 did not take part in the execution of EX. P-2 ; nor was he present at the time of its execution. The learned Munsif believed the evidence of defendant 6 that when he attested EX. P-2 it was not read

out to him and when the plaintiff brought it to Nellikoundanur for taking his signature, it was affixed without knowing the contents of the document

though the plaintiff stated that the agreement recited two shares which defendant 6 did not agree to. The learned District Munsif considered the age

of defendant 6 at that time, about 85 or 90. Defendant 1's evidence as D. W. 1 was also considered. From these and other documents, the learned

District Munsif concluded that there should have been no renunciation as claimed in the plaint but that defendant 6 was only living with his daughter

to manage her estate and he had no intention, nor did he, by any overt act, agree to renounce his share. The learned Subordinate Judge also

considered the same evidence in sufficient particularity of detail. In para. 13 of his judgment, he considers the evidentiary value of Exs. P-1 and P-1

(a) and in para, 14 he discusses the effect of the attestation in EX. P-2 by defendant 6. Discussing Exs. P-3 and P-4 along with the notices Exs. P-

5 and P-6, the learned Judge had to consider the credibility of defendant 6's, evidence as D, W. 2. He came to the conclusion that defendant 6

was not without advice or help, that he could not be easily fooled by the plaintiff to attest a document the contents of which he did not know or he

did not care to enquire. The lower appellate Court later on proceeds to consider the oral evidence of P. W. 1, the plaintiff, as well as the other

witness P. W. 2. The writer of Ex. P-2 was examined as P. W. 6. In the succeeding paragraphs, the learned Judge discusses the evidence of

defendant 1 as D. W. 1 and also once more considered the evidence of defendant 6 as D. W. 2. After setting out the salient portions of the

evidence of the witnesses in the previous paragraphs, in para. 19 of the judgment he considered the entire effect of the oral and documentary

evidence regarding renunciation. He then found that it is quite likely that the plaintiff and defendants 1 and 2 agreed to pay maintenance to defendant

6. In the opinion of the learned Judge, defendant 6 was more concerned with his daughter's family in another village and, therefore, it is not

improbable that he would have allowed his sons to divide as between themselves all the joint family properties relinquishing his share in them. The

effect of defendant 6's wife residing in the joint family was also considered and the conclusion was that that fact does not detract from the case of

relinquishment of his rights by defendant 6 in the joint family properties. The learned Judge specifically stated that he saw no reason whatever to

disbelieve the evidence of the plaintiff's witnesses. He emphatically stated that he refused to believe that defendant 6 blindly signed Ex. P-2 without knowing the contents thereof and finally the learned Judge concluded that the renunciation as alleged by the plaintiff is true, though there was no documentary evidence to substantiate it.

4. It is difficult to say that the finding of the learned Judge is not based on evidence. The lower appellate Court has not omitted to consider any portion of the evidence on which the trial Court relied. Mr. T.M. Krishnaswami Aiyar invited my attention to various portions of the evidence of P.

W. 1 and the so-called admissions made by him therein. He also drew the attention of the Court to the evidence of the defendant 6 examined as D.

W. 2. Having carefully considered all these materials placed before me, I find it difficult to say that the finding of the learned Subordinate Judge is

not based on legal evidence. It may be that he should not have believed the evidence of P. Ws. 1 and 2. It is just possible that another appellate

Court might come to a different conclusion and might agree with the trial Court. But that is no reason to say that the finding is vitiated by any error

of law which would justify my interference in second appeal. I would, therefore, hold that the learned Subordinate Judge's view regarding

renunciation should be accepted.

5. Then comes the question of law which was mooted during the course of the appellants' arguments which has to be considered in detail. The

plaintiff's case was, as I have already stated, that defendant 6 agreed to receive maintenance and renounce his rights in the joint family properties.

At one stage, Mr. T.R. Srinivasan appearing for the respondent wanted to contend that defendant 6 renounced his right in the properties absolutely

and the grant of maintenance to him of four putties of paddy as alleged by the plaintiff was not a condition precedent to the renunciation but that it

was only a subsequent arrangement by which the descendant of defendant 6 agreed to give him something. I do not think that that is a proper

construction to be put upon the plaintiff's case. It is definitely a case of renunciation of one's rights in joint family proper, ties on condition of being

paid maintenance during his lifetime. The question then arises whether the Hindu law as administered in our Courts recognises the renunciation of a

member's rights in the joint family properties on condition that he is paid

something towards maintenance. In this case, the person who has renounced his rights is the head of the family, being the ancestor of all the other members. No direct case bearing on the subject has been brought to my notice by any of the learned counsel. In *Peddayya v. Ramalingam*, 11 Mad. 406, Muthuswami Aiyar and Shephard JJ. had to consider the effect of the release by one coparcener of his share in the property in favour of another coparcener and not in favour of all the rest of the coparceners and the learned Judges held that such a release is valid relying upon the texts of Manu and Yajnavalkya, to the effect that a coparcener is competent under Hindu law to renounce his share. This was followed by Sadasiva Aiyar and Napier JJ. in *Thangavelu v. Doraiswami Pillai*, (1915) 27 M. L. J. 272 : A. I. R. 1915 Mad. 113 where it was held that a gift by a father of all his interest in the family property in favour of his son being supported by natural love and affection can be upheld as a relinquishment. They further held that a relinquishment to be effective need not necessarily be supported by consideration, nor need it be in favour of all the remaining coparceners. To the same effect is the decision in *Veerammal v. Kamu* 2 M. L. W. 850 : A. I. R. 1916 Mad. 342. After the decision of the Privy Council in AIR 1936 264 (Privy Council) , it was considered that the principle laid down in the aforesaid decisions required reconsideration and, therefore, the matter came up before the Pull Bench in *Subbanna v. Balasulba Reddi*, I. L. R. (1945) Mad. 610: A. I. R. 1945 Mad. 2 where after considering the previous authorities, Leach C. J. in delivering the judgment of the Full Bench held that a member of a joint Hindu family governed by Mitakshara law cannot give his interest in the family estate to one of several coparceners if they remain joint in estate. In such circumstances, he can relinquish his interest but the relinquishment operates for the benefit of all the other members, It is therefore clear that the law recognises the relinquishment of a member's right in the joint family properties which would enure for the benefit or all the other members thereof. Two propositions emerge from these decisions namely: (1) that it is competent for a member of a joint Hindu family to renounce, or relinquish, his interest in the joint family properties; and (2) that such renunciation or relinquishment operates in favour of all the remaining members of the coparcenary which, in spite of

the renunciation by one member, continues joint and that the number of members alone gets reduced. A negative proposition is also established that a member cannot relinquish his share in the properties in favour of any other member but should do it only for the benefit of all the remaining members of the joint family. These decisions were relied upon by the learned counsel for the appellants for contending that a relinquishment should be absolute without any kind of reservation or condition and that if a member purports to give up his rights in the joint family properties reserving a right to maintenance as a condition precedent to his renunciation, such a relinquishment will not be valid. It is argued that since defendant 6 retained a right to receive maintenance at the rate of four putties of paddy from the remaining members of his family, his action in giving up his proprietary rights in the joint family property would not amount to a renunciation and as such he still continues to be a member of the joint family. That there cannot be a relinquishment with a reservation to maintenance is not clear from the decisions mentioned by me above. The questions which the Full Bench had to consider were whether a renunciation was possible and whether it should be for the benefit of all the remaining members. There is no direct authority, as I stated already, on the point and we have to seek guidance for a decision on this question from the original texts themselves.

6. In J. R. Gharpure's "The Collections of Hindu Law Texts, No. IX" "Manusmriti with the Bhashya of Bhatta Medhatithi", at page 774 occurs the following:

Hkzr` .kka ;Lrq usgsr /kua "kĩċ½% LodeZ.kkA

I fuHkkZT;k% Lodkna"kkfRadfPpiċ½Roksithoueu~AA

This passage in Manu which is the root text on which renunciation is founded has been translated by very eminent authorities. "The Institutes of

Manu" translated by Sir William Jones, 3rd Edn., page 258, Chap. IX, placitum 207, is to the following effect:

If any one of the brethren has a competence from his own occupation, and wants not the property of his father, he may debar himself from his own share, some trifle being given him as a consideration, to prevent future strife.

In the sacred Books of the East edited by F. Max Muller, vol XXV, at page 375, the same placitum is translated thus:

But if one of the brothers, being able (to maintain himself) by his own occupation, does not desire (a share of the family) property, he may be made separate (by the others) receiving a trifle out of his share to live upon.

J.C. Ghose in his ""The Principles of Hindu-Law"", vol. 2, first edition, at page 340, says :

When the son has no desire to take his share of the paternal wealth from his own ability to acquire wealth, the father should separate him by giving him what little he may accept.

At page 97 of the same book ""The Mitakshara,"" Chap, I, S. 11, para. 12, the following passage, occurs:

To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, anything whatsoever, though not valuable may be

given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son may have no future claim

of inheritance."" The question is how far these texts can be applied and it depends upon the meaning to be put on the last passage in the Manu's

text. ""Kimchiduthathvopajeevanam"". In Sir William Jones' translation, it appears as if the word ""Upajeevanam"" is translated as consideration,

whereas. Max Muller's is ""to the effect to live upon"". In the translation of Smriti Chandrika, at page 340 of Ghose's book no separate expression

appears for this. Mr. Bhashyam contends that the word should be translated as ""maintenance"". I would unhesitatingly accept the meaning given to

the word as ""something to live upon"" as found in Max Muller's translation.

7. From the above original texts, it is clear that a junior member of a joint Hindu family can renounce his rights in the family properties after being

given something for his means of livelihood. But the authorities presuppose that such a person should be able to maintain himself by his own

exertions. Mayne's Hindu Law, 10th Edn., page 565, Art. 454, contains the following :

Separation of a coparcener may be effected by renunciation of his interest in the family property. Yajnavalkya says "The separation of one, who is

able to support himself and is not desirous of partition, may be compelled by giving him some trifle." The Mitakshara states The male issues of a

coparcener who renounces also loses their claim." But this can apply only to afterborn sons unless at the time of renunciation, his sons and

grandsons are adults and consent to it. The giving of a trifle is only as a token and is not essential,

To the same effect is the law stated in the Principles of Hindu Law by Mulla at page 315.

8. Apararka's Commentary on Yajnavalkya is also to the same effect: .

The separation of one who is able to support himself and is not desirous of participation (may be completed) by giving some trifle.

All these authorities envisage only the renunciation by a son and not by the father or grand, father who happens to be the head of the family as in

the present case. No specific text or authority showing that the father could renounce his rights in joint family property by taking a trifling or

something for his means of livelihood has been cited. But Mr. Bhashyam argues that it is open to the father to make a division of the property

among his sons, either by taking a share himself or by giving up his rights. If he decides to renounce his share on condition of being paid

maintenance every year, it must be understood that he was effecting a partition among his descendants and cutting himself off. According to the

texts cited above, if a son can renounce his rights, it stands to reason that the father, who can compulsorily effect a partition under the Hindu law,

can renounce his rights after taking something for maintenance. This kind of renunciation can be interpreted in various ways, It may be a gift by the

father of his share to the Sons; it may amount to an alienation of his share; or an effacement of his rights. But since the Full Bench decision in

Subbanna v. Balasubba Reddi, I. L. R. (1945) Mad. 610 : A. I. R. 1945 Mad. 142, has held that an alienation or a gift of his share is not possible,

the only way in which his action can be properly construed is either an effacement of his own rights by not taking anything or partitioning the

property among the sons after taking maintenance. Whether his right to maintenance can be construed as a charge on the family property, does not

arise for consideration here. If the sons regularly give him the maintenance, the question of a charge does not arise, and therefore whether a charge

exists or not need not be considered. It seems to me therefore that the renunciation of his rights in property by defendant 6, after agreeing to

receive maintenance of four putties of paddy every year for his livelihood is valid and therefore defendant 6 has no longer any share in the property

which can be settled upon defendants 3 to 5. The partition ought to be in equal shares between the plaintiff on the one side and defendants 1 to 5

on the other.

9. The next question that has been argued by Mr. T.M. Krishnaswami Aiyar is that in the partition agreement which is sought to be specifically

enforced, the properties set apart are unequal with very much of a weightage in favour of the plaintiff. The learned District Munsif discussed the

matter in great detail in paras. 19 to 21 of his judgment. The learned appellate Judge's consideration of the question was rather brief and scanty as

is evident from para. 20 of his judgment. I would certainly have called for a finding on that aspect but for the fact that whatever may be said with

regard to such inequality when we consider the shares of defendants 3 to 5, the partition agreement is binding between the plaintiff on the one hand

and defendants 1 and 2 on the other. The learned Subordinate Judge has left open the question as to whether it is binding on defendants 3 to 5 as

unnecessary for the disposal of this suit. That being so, it will be unnecessary at this stage to call for a finding.

10. Defendants 3 to 5 are at liberty to question the correctness of the partition in separate proceedings.

11. The above discussion disposes of all the points that have been raised in both the second appeals and since I agree with the learned Sub-

ordinate Judge that defendant 6 has renounced his share in the properties after getting a maintenance of four putties of paddy a year and such

renunciation is valid under the law, the second appeals fail and are dismissed. In the circumstances of the case, I direct that both the parties do

bear their own costs in this Court. The dismissal of O. S. No. 119 of 1943 will not prevent the plaintiffs there from bringing a regular suit for

partition of their legitimate share of the family properties. Leave refused.