
(1971) 08 MAD CK 0015
In the Madras High Court
Case No : Second Appeal No. 616 of 1968

Kamakshi Ammal

APPELLANT

Vs

Balakrishna Pillai

RESPONDENT

Date of Decision : 09-08-1971

Acts Referred:

Citation : AIR 1972 Mad 236 : (1972) 85 LW 79

Hon'ble Judges : Raghavan, J

Bench : Single Bench

Judgement

1. The plaintiff in O. S. No. 331 of 1963 on the file of the court of the District Munsif of Arni, is the appellant herein. In the trial court, there were

two suits, O. S. No. 274 of 1963 filed by the son against the father and daughter, and O. S. No. 331 of 1963 filed by the father and daughter

against the son. O. S. No. 274 of 1963 was a suit for declaration of title and for an injunction restraining the father and daughter from interfering

with his possession and O. S. No. 331 of 1963 was a suit for partition and separate possession of the father's half share and for allotment of that

half share to his daughter--the second plaintiff in that suit, and for other reliefs.

2. The allegations in O. S. No. 274 of 1963 were, that the plaintiff was the son of the first defendant and the second defendant was the daughter of

the first defendant and sister of the plaintiff; and that the plaintiff A and B schedule properties belonged to the joint family of the plaintiff and the first

defendant; that while they were living together, misunderstandings arose between women-folk and in 1948 the joint family properties were divided,

the A schedule properties being allotted to the share of the son and the B schedule properties to be enjoyed by the father and his wife for their

lifetime without any power of alienation and after their lifetime to go to the son absolutely. The plaintiff's case is that this arrangement was given

effect to and the plaintiff (son) has also prescribed his title by adverse possession; that while the first defendant, the father, was in such enjoyment

of the properties, the plaintiff allowed him to mortgage one item of the B schedule properties for maintenance; that the plaintiff's mother died in or

about 1961 and after her death the father gave up possession of the B schedule properties in favour of the son in order to discharge the mortgage

and that he alone was maintaining the first defendant. The plaintiff alleged that while so, the second defendant, who is the sister of the plaintiff,

obtained a settlement from the father, who was mentally deranged; that the abovesaid settlement deed was obtained by coercion; that the first

defendant had no manner of right in the suit properties and that the settlement deed executed by him was null and void.

3. The first defendant (the father) filed a written statement in that suit, contending that there was no partition in 1948; that after his wife's death in

or about 1961, he was not cared for; that he left for his daughter's house and was living with his daughter, the second defendant, and while living

there, he executed a settlement deed by which he gave half share in the suit properties to his daughter; that the settlement deed was perfectly valid

and there was no coercion or undue influence over him and that the suit should be dismissed.

The second defendant (the daughter) adopted the written statement of the first defendant.

4. The case of the plaintiffs (the father and the daughter) in O. S. No. 331 of 1963 was similar to the written statement filed by the father in the suit

O. S. No. 274 of 1963, filed by the son. The further contention raised by the father was that the son was not treating him fairly and his position

became intolerable, resulting in his leaving for his daughter's house; that he was expressing his desire to divide the properties for about a year prior

to suit, that he was actually divided in status from the son, that he thereafter executed the settlement deed on 11-2-1963 in favour of his daughter

and put her in possession and that the case put forward by the son was absolutely false.

In this suit, the son filed a written statement, more or less on the same lines as the plaint in the suit filed by himself.

During the pendency of the suits, the father died and the daughter was recognised as his legal representative.

5. The trial court held that the partition pleaded by the son was not true, that the allotment in the manner pleaded by him was also not true, that the

son was not solely entitled to the suit properties that the title by prescription pleaded by the son was not true, that the son had no exclusive

possession of the suit properties and that the suit was barred by limitation and adverse possession. He further held that the father would be entitled

to a half share in all the suit properties and that as he (father) validly settled his share in favour of his daughter, she would get his share. The learned

District Munsif also held that the father became divided in status before the settlement was executed, and that the father and son were not getting

on well for some time in consequence of which the father expressed his desire to get divided. In the result, the son's suit, O. S. No. 274 of 1963,

was dismissed, and in the suit filed by the father and the daughter, O. S. 331 of 1963, a preliminary decree for partition and separate possession of

the father's half share to be allotted to the daughter was passed.

6. The son filed two appeals A. S. 326 of 1966 and 327 of 1966 in the court of the Subordinate Judge of Vellore against the decree and judgment

in the said two suits. The learned Judge reversed the judgment of the trial court. The learned Judge held that the oral partition of 1948 was not true

and that the father did not become divided in status from his son and consequently the settlement deed executed by the father in favour of the

daughter was invalid. In the result O. S. No. 274 of 1963 filed by the son, claiming the entire properties, was decreed, and the suit O. S. No. 331

of 1963, filed by the father and daughter, for partition and separate possession, was dismissed. This second appeal has been filed by the daughter

against the judgment in A. S. 327 of 1966.

7. Mr. N. R. Raghavachari, the learned counsel for the appellant, contends that on the facts and circumstances, the inference drawn by the lower

appellate court, that there was no division in status between the father and son, is wrong. His contention is that after the death of the mother in

1961, the father was not maintained by the son, with the result that he went and lived with his daughter, and that the inference of division in status

could be drawn from the circumstance that he came to live separately with his

daughter in 1961 after misunderstandings arose between the father and son and that he lived there continuously till his death, during which period the document in question was executed and the circumstance therefore justified there being a division in status between him and the son. On the other hand, the learned counsel for the respondent contends that the division in status could not be spelled out from Exs. B 2 and B 3, which are letters written by the father to his son-in-law expressing his intention to become separate. The learned counsel contends that this not having been communicated to the son, they are ineffectual to create a division in status. On this question, the decision of the Supreme Court in Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, overruling the decision of Viswanatha Sastri, J. in Adiyalath Katheesumma and Another Vs. Adiyalath Beechu alias Umma and Others, is directly in point. The following headnote extracted from the judgment sets out the position:--

It is settled law that a member of a Joint Hindu family can bring about his separation in status by a definite and unequivocal declaration of his intention to separate himself from the family and enjoy his share in severalty. The Hindu law text support the proposition that severance in status is brought about by unilateral exercise of discretion... One cannot however, declare or manifest his mental state in a vacuum. To declare is to make known, to assert to others. "Others" must necessarily be those affected by the said declaration. Therefore a member of a joint Hindu family seeking to separate himself from others will have to make known his intention to the other members of the family from whom he seeks to separate.

The process of manifestation may vary with circumstances. What form that manifestation should take would depend upon the circumstances of each case. Thus the knowledge of the members of the family of the manifested intention of one of them to separate from them is a necessary condition for bringing about that member's severance from the family. It is implicit in the expression "declaration" that it should be to the knowledge of the person affected thereby. An uncommunicated declaration is no better than a mere formation or harbouring of an intention to separate. It becomes effective as a declaration only after its communication to the person or persons who would be affected thereby.

In the present case, even Exs. B 2 and B-3, which are letters addressed to the son-in-law by the father, may not amount to a communication of the intention to separate to the person affected. But, there are other circumstances in this case which justify the conclusion that there has been a division in status between the father and the son. Though there is no writing by the father, communicating his desire to the son to separate, the facts and circumstances justify the conclusion that he has been demanding his share orally. The daughter, who has been examined as D. W. 1, has stated:

My brother and our father were quarrelling. My father asked by brother to get his share divided and he wanted to live with me. I am at Nalloor, 32 miles away from Kozhappalur, with my husband. A year before his death, misunderstandings arose between my father and brother. Even earlier to that, there was no cordial relationship between my father and brother, especially after my mother's death. Till the death of my mother, there was no much of misunderstanding. Till my mother's death, my father lived with my brother. My father was 72 years old when he died.

The circumstance that the father lived with the daughter after the mother's death is another circumstance which has to be taken into account in his connection. It is not necessary that the intention to separate should be in writing. A member of a joint Hindu Family, seeking to separate himself from others, will have to make known his intention to the other members of the family from whom he seeks to separate. The process of manifestation may vary with circumstances. When the son (P.W. 1) was in the witness box, this question was put to him, and although he denied that his father mentioned to him about the separation, the facts established would show that he communicated his intention to separate from the son. In this view, the settlement deed executed by the father in favour of his daughter is valid.

8. In the result, the second appeal is allowed and the decree and judgment of the learned Subordinate Judge, Vellore, are set aside and the decree and judgment of the trial court are restored. There will be no order as to costs. No leave.

9. Appeal allowed.