

(1921) 04 MAD CK 0015
In the Madras High Court

Kodali Kristnayya and Others

APPELLANT

Vs

Kodali Guravayya and Others

RESPONDENT

Date of Decision : 26-04-1921

Acts Referred:

Citation : AIR 1921 Mad 443 : (1921) 41 MLJ 503

Hon'ble Judges : Phillips, J;Krishnan, J

Bench : Full Bench

Judgement

Phillips, J.—The defendant's appeal against the partition decree having been dismissed, it remains to consider the cross appeal filed by the

plainiiffs. The subordinate Judge has found that at the time of the reunion, the 1st defendant brought into the common stock property worth Rs. 40

more than the 1st plaintiff's father and he has in consequence given plaintiffs a decree for only 9/20 of the property instead of one half share. Even

if he is right in law, the amount of the share has been wrongly calculated ; for if the 1st plaintiff's father contributed Rs. 400 and 1st defendant Rs.

440 out of the total Rs. 840, as has been found, the respective shares would be 10/21 and 11/21. However, we have now to consider whether

there should be this unequal distribution of the property. It is contended for the plaintiffs that a reunion between the parties restores them to their

original status and that when a partition is effected, the shares are the same as they would be at the original partition irrespective of the amount of

capital contributed by each coparcener. This is certainly the "law in the Bombay Presidency. We find that in the Printed Judgments of the Bombay

High Court Vol. I. p. 67; it was held that where after partition, the coparceners reunite, they are restored to their original position notwithstanding

that the portion brought on reunion may be unequal. In "Pranjivandas Shivilal v. I charam I.L.R.(1915) 39 Bom. 734 the same principle was

affirmed. We see also that in Prankishen Paul Ghowdry v. Mothooramohan Paul Ghoudry 10 M.I.A. 403 the Privy Council held that a reunion of

a brother to the family remitted him to his former status as a member of a joint Hindu family and it is was further held that, where one of the

coparceners had acquired property during the period of separation, if the monies employed for that acquisition were drawn from the joint estate, it

followed that on reunion the other brother was entitled,, upon the general principles of the Hindu"" Law, to "share in that property as an acquisition

made by the use of the joint funds! No doubt in that case there was a written agreement entered into between -the brothers, but the Privy Council

based their decision not only on the express provisions of the deed but on the general principles of the Hindu Law. If we follow that decision here,

it is quite clear that the. property acquired by the 1st defendant during the period of separation must in the absence of evidence to the contrary, be

presumed to have been acquired from the funds which he received out of the family estate, and that being so, the plaintiffs would be entitled to

share" in those acquisitions and therefore on partition to an equal share in the whole estate. The view that the coparceners are entitled

proportionately to the capital they contribute on reunion is based on a passage in Smrithi Chandrika Ch. XII, para. 41 ,That passage appears to

have been indirectly applied in; the case reported in Manjanatha v. Narayana ILR (1882) Mad. 362 but there is no such provision in the

Mitakshara which is the main authority in this Presidency. The effect of that provision is to hold that there is no reunion in an undivided family, as

such but only the constitution of a tenancy in common between the previous joint coparceners, each holding a definite share in the coparcenery.

This appears to be opposed to the primary idea of a joint family in which there are no definite shares and the members take by survivorship, and it

is this view that has apparently found acceptance in this Court as well as in 10 M.I.A. 403. In Narasimhacharlu v. Venkata Singaramma 19 M.L.J.

719 it was held that succession in a reunited Hindu family governed by Mitakshara Law is by survivorship and in Kristnayya v. Venkatramayya

(1909) 19 M.L.J. 713 a Full Bench of this Court held that this contention of proportionate shares could not be supported by any text of the Hindu

Law and was opposed to the fundamental conception of the status of an undivided Hindu family or of a reunited Hindu family. Whether this

passage in Smrithi Chandrika was quoted before the Learned Judges in that case does not appear from the report ; but it was quoted in a later

case reported in Narasimhacharlu v. Venkata Singaramma 9 M.L.J. 719 in which a Bench of this Court declined to accept the authority of the

Smrithi, Chandrika and followed the previous Full Bench ruling. There is one case Alamelumangathayarammah v. Namberumal Chetty 23 I.C. 824

in which a single judge of this Court Sankaran Nair, J. held the contrary view ; but the large balance of authority is in favour of the view that on

reunion the members of the family are remitted to their original status. In that view the plaintiffs are entitled to as equal share of the family property

from the defendants and the decree must be modified accordingly.

2. A further objection is taken By the plaintiffs that the 1st defendant has not properly shown the outstandings due to the family. The Subordinate

Judge has held that as plaintiffs have been unable to prove what exactly these outstandings were they are not entitled to demand an account, and

has based his opinion on the principle that a Hindu Manager cannot be called upon for an account. The principle stated thus broadly goes a little bit

too far. No doubt a Hindu manager is not responsible for the manner in which he has disposed of the family income in the past, except in the case

of a fraud or misappropriation, but when a partition is demanded he cannot evade his liability to give an account of the assets of the family as it

existed at the time of partition, This question has formed the subject of various decisions, and on a consideration of these decisions it was held in

Parmeshwar Dube v. Gobind Dube ILR (1915) Cal. 459 , that in an ordinary suit for partition in the absence of fraud or other improper conduct,

the only account the Karta (or manager) is liable for, is as to the existing state of the property divisible and the parties had no right to look back

and claim relief against the past inequality of the enjoyment of the members or other matters This was the view taken after considering most of the

cases which have been quoted before us now, and with respect, I must express my concurrence with that view and with the further view that the

parties are not bound to accept the statement of the Karta as to what the properties consist of and that the manager is the accountable party and

the Court can order an account to be taken.

3. A further question which then arises is in what way is the manager to be made to account. Primarily he should (being the, person in the best

position to know the facts) be compelled to prove the assets available at the date of the partition and if he fails to adduce such evidence as he can

or ought to adduce, a presumption may be made, against him. In the present case, a commissioner was appointed to take charge of the property

and the accounts, but the 1st defendant evaded production of a box containing all current documents belonging to the family. Admittedly the 1st

defendant had been lending but monies, for we see from a list, Exhibit EE. which according to the 1st defendant, was prepared about 1909 that

there were outstandings due to the family to the extent of 5 to 6 thousand rupees. The 1st defendant now only admits a total of Rs. 3,300 whereas

plaintiffs estimate the amount at Rs. 18,000. I think it is quite clear that the 1st defendant has not acted quite fairly in this case and the Subordinate

Judge remarks that he has strong reasons to suspect that the defendants have not been fair in putting before the court all the current documents

relating to the joint family money lending business. In this state of the evidence any reasonable presumption can be drawn against the 1st defendant.

He had admittedly been paying Income Tax regularly on an income derived presumably from his money-lending business. He first paid a tax of Rs.

20 and then it was raised to Rs. 28 one or two years ago. It is not disputed that the family properties produced paddy largely in excess of the

family requirements and that the family income is greater than the necessary expenditure. In order to bring in an income of Rs. 1,000 which is the

income which is taxed at Rs. 20 the first defendant must have had a capital of not less than 11 or 12 thousand rupees, assuming that he got interest

on the whole amount at 9 per cent, which is, I think a" fairly liberal figure. He all along had a capital of Rs. 12,000 and he has not shown how that

has been reduced to the figure of Rs. 3,000 and odd which he now puts forward. I would therefore hold that the outstandings amount to Rs.

12,000 and the plaintiffs are entitled to their share therein. The decree will be modified accordingly. Defendants will pay plaintiffs" Costs in this

appeal.

Krishnan, J.

4. I agree with my learned brother that plaintiffs are entitled to get an equal share with the defendants of all the joint property, item 40 of A

Schedule and the lands described in Exhibits XXVII and XXVIII have been found not to be joint property and that finding was not disputed

before us and those lands are rightly excluded, from the partition.

5. No doubt the Smrithi Chandrika states clearly that when a second division takes place between reunited brothers who had once divided before,

the share to be given to each is not equal but is proportionate to the value of the property each brought into the common stock at the-time of the

reunion. See Chapter XII, p. 1, III translation Ghose's Hindu Law Vol. II page 406. As pointed out by my learned brother the relevant rules of

Smrithi Chandrika have not been followed in some of the reported cases in the Presidency, see *Narasimhacharlu v. Venkata Singaramma* 19

M.L.J. 719, and *Kristnayya v. Venkatrantayya* (1905) 19 M.L.J. 723 though in one case they were followed, see *Alamelumangathayarammah v.*

Namherumal Chetty (1914) 23 I.C. 824 . In the view I take of the facts of this case it is not necessary for me to express my opinion as to which of

the above views is correct and I refrain from doing so., In the case before us though there was a partition in 1867 and separate properties were

allotted to the 3 brothers it was only one brother Ramanna that actually separated himself off. The other two seem to have lived together and

enjoyed their properties in common, the 1st defendant managing the properties as he was the more capable man though he was younger than his

brother Viranna. This is proved by the evidence on plaintiff's side which I think is reliable. At any rate there is clear documentary evidence Exhibit

V that in 1692fc the brothers were living as a joint family with the 1st defendant as the manager. The evidence does not show when exactly they

reunited but I think the probability is that they all along enjoyed the properties jointly though they were divided. I am unable to accept the position

taken up by the Subordinate Judge that they reunited for the first time in 1892 and that in doing so the 1st defendant put property worth Rs. 440

into the common stock whereas the 1st plaintiff's father's contribution was only worth Rs. 400. In my opinion the evidence is not sufficient to

prove any such definite case. If there were additions made to the joint stock by 1892 the presumption is that they must have been acquired by the

1st defendant from the joint funds in his hands and were therefore also joint property to which the brothers were, equally entitled. See Prankishen

Paul Chowdry v. Mothooraniohun Paul Chowdry 19 M.L.J. 719. There is thus no reason to differentiate between the shares of the plaintiffs and of

the defendants in this case. Plaintiffs should get a share and the credit given to the 1st defendant in the decree for Rs. 140 should be struck off.

6. The next point has reference to the outstandings due to the joint estate. It is now well established that the managing member of a joint Hindu

family is not liable to account for his management for the purpose of making him responsible for any mismanagement by him in the past or for any

loss caused by him thereby to the joint estate except perhaps where he has been guilty of fraud or misappropriation, see Balakrishna Iyer v.

Muthusami Iyer ILR (1908) Mad. 271. But when a partition suit is brought and it becomes necessary to decide what the joint properties are which

are available for division, the parties not being agreed about it, the managing member may find it necessary to explain what became of the joint

properties such as have been traced to his possession prior to the date of the partition to avoid an inference being drawn against him that they are

still subsisting in his hands. For such a purpose he may have to give an account of what he did with such properties lest he be debited with them at

the time of the partition. This is one way in which a managing member may be called upon to account in a partition suit, It seems to me that it is also

open to the Court in such a suit to call upon the managing member as the person best acquainted with the affairs of the family to give an account of

its available assets and to allow the other members to surcharge it. As pointed out by the learned Judges in Parmeshwar Dube v. Gobind

Dube I.L.R. (1915) Cal. 459 which is the latest case which has been brought to our notice on the point the other members of the family are not

bound to accept the word of the Karta or of the Manager as to what the divisible properties are: they can ask for and the Court can order an

account to be taken of the joint properties. Though the managing member is not ordinarily liable to give an account when a partition suit is brought,

he may become liable to do so in the instances above mentioned.

7. Now in the case before us the plaintiffs have shown by Ex. EE a list of outstandings prepared by the list defendant himself that there were on its

date outstandings due to him; presumably as the manager, of about Rs. 6,000 and they contend that as the family lands produced paddy largely in excess of family requirements leaving about 20 puttis to be sold every year as the Subordinate Judge finds that amount was likely to have largely increased by the interest obtained on it as time passed and they ask that the defendant should be debited with that amount with interest calculated at a reasonable rate which they put at 9 per cent, till the date of suit as the 1st defendant has not satisfactorily accounted for or proved that he had spent any portion of the amount. Taking the date of Ex. EE as 1903 as the debts included in it would seem to indicate and adding 9 per cent, interest which is very ordinary rate for men of this class to get, for "1-2 years and making allowance for bad debts the amount would ""have increased to over Rs. 12,000 by the date of the suit. Except making Vague statements that he spent large sums of money for the marriage of his daughters, etc., statements which are quite unreliable, he has given no help to the court by producing proper evidence or accounts to decide how much money is still outstanding to the credit of the joint estate. As pointed out by the learned Subordinate Judge he has acted most dishonestly in this case by keeping away from the court the box containing the documents evidencing his money dealings and the court has also found it proved, and there is no appeal against it, that in two instances at any rate he actually took renewals of bonds for debts due to the joint estate in the names of third parties apparently for the purpose of deceiving the other members. Every presumption must therefore be made against him. The fact that he paid income tax on his money dealings of Rs. 20 first and subsequently of Rs. 28 a year would also indicate that he was working with a capital of something like Rs. 12,000/-. Taking all these circumstances I am inclined to agree with my learned brother that if we take the outstandings to be Rs. 12,000 and make him liable to account for a half share of it, Rs. 6,000, to the plaintiffs leaving him to collect and appropriate the whole of the outstandings himself we shall not be far wrong.

8. The learned Subordinate Judge has stated all the circumstances referred to above but has refused to draw the obvious inference against the 1st defendant because he thought he would thereby be making him account for his management. That, as I have explained above, is not correct. When

plaintiffs succeeded in showing that the defendant had in his hands in 1903 Rs. 6,000 belonging to the joint estate the burden was shifted on to him

to show by reliable evidence that he had spent that money to avoid the inference that it was still in his hands in an augmented form. If the money

had been spent, the ways in which it was spent could not be questioned unless there was fraud or misappropriation for that would amount to

making him account for his management, but the fact that it was spent had to be proved by him like any other fact. It was not sufficient for him

merely to assert that he had spent it. I think the learned Subordinate Judge confused the two positions and thus failed to draw the proper inference.

9. It was further contended for him that plaintiffs having a list of outstandings which they alleged to be due to the joint estate or to have been

collected by the 1st defendant and having gone to trial regarding the existence of such items they could get a decree only for such of the items as

were proved against him, but they could not ask for or get a decree on a general account. For this argument reliance was placed on the case in

Balakrishna Iyer v. Muthuswami Iyer (1908) ILR 32 Mad. 271 already cited. But that case is very different from this case. The observation relied

on at page 275 refers to moneys collected by the Manager and not to outstandings payable to the family by third parties. What was ruled in that

case was that plaintiff having alleged that the Manager had collected certain specified sums of money belonging to the joint family and had kept

such moneys in his hand he must prove his allegation and that it was not open to him to ask for a general account from the Manager for the

purpose. That case has no bearing on the question before us. Here the plaintiffs while adducing evidence to show the existence of certain

outstandings which the Manager had tried to secrete by taking fraudulent renewals in the names of third parties alleged and proved facts to show

what the general extent of the outstandings were. They were entitled to do so and there is no reason why the decree should be confined to the

specific items which they have been able to prove and why a decree should not be given for what the court finds to be the real extent of the

outstandings.

10. No other part of the decree has been challenged? before us in this appeal. In the result the decree of the lower court must be modified by

giving plaintiff's 40 and in those included in Ex. XXVII and XXVIII in favour of the defendants and by making the 1st defendant liable to the plaintiffs for Rs. 6,000 in being allowed to collect the whole of the outstandings. The rest of the decree will be confirmed. The defendants must pay the plaintiffs their costs of this appeal.