

(1954) 07 AP CK 0012
In the Andhra Pradesh High Court
Case No : Appeal No. 443 of 1949

Kompella Ramamurthy and Others	Vs	APPELLANT
Kompella Venkatasubbarayudu and Others		RESPONDENT

Date of Decision : 15-07-1954

Acts Referred:

Citation : AIR 1954 AP 34 : (1954) 67 LW 1195

Hon'ble Judges : Subba Rao, C.J;Umamaheswaram, J

Bench : Division Bench

Advocate : K. Bhimasankaram, for V.V. Sastri, Appellant Nos. 2 and 3, for the Appellant; A.G. for Respondents Nos. 2 and 3, K.B. Krishnamurthi, K. Satyanarayana and T. Narayanachari, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—This is a Plaintiff's appeal against the decree and judgment of the Court of the Subordinate Judge of Kakinada in O.S. No. 43 of 1947, a suit filed by the appellant for partition of the plaint schedule properties into two shares and for delivery of one. share to him. The Plaintiff is the son of the 1st Defendant, Venkatasubbarayudu. The 3rd Defendant is alleged to be the son of the 1st Defendant by the 2nd Defendant Saradamba. The Plaintiff filed the aforesaid suit for partition of the plaint schedule property into two equal shares on the allegation that the 3rd Defendant was an orphan brought by Defendants 1 and 2 from Vizagapatam hospital and that he was not born to them. The 4th Defendant is a tenant in respect of item 2 of "A" schedule.

The Defendants, "inter alia", contended that the 3rd Defendant was born to the 1st and 2nd Defendants, and that, in any view, the Plaintiff became divided in status from the 1st Defendant on 26-1-1916. The learned Subordinate Judge accepted the case of the Defendants that the Plaintiff became divided in status and also found in their favour that the 3rd Defendant was born to the 1st and 2nd Defendants. In the result, he dismissed the suit with costs. The Plaintiff has preferred the above appeal.

2. Mr. Bhimasankaram, learned Counsel for the appellants, contended that the finding of the learned Judge that there was severance in status between the Plaintiff and the 1st Defendant was not supported by the evidence in the case. The only document on which the said finding of the learned Subordinate Judge was based is Ex. B-41, the written statement filed by the Plaintiff in O.S. No. 61 of 1912. That suit was filed by Kompella Venkatarao, as the adopted son of a brother of the Plaintiff's father, for partition of the family properties. To that suit, he made the Plaintiff and also the 1st Defendant parties. In that suit, the Plaintiff filed the following written statement.

As the argument of the learned advocate merely turned upon the interpretation of Ex. B-41, it may be convenient at this stage to read that document, particularly as it happens to be a short one:

1. The plaint allegations are all true and valid.
2. It is true that the Plaintiff is the adopted son of late Thommannavadhanulu and that the late Thommannavadhanulu died divided.
3. It is true that late Thommannavadhanulu prior to his death delivered possession of the Plaintiff's entire property to the 1st Defendant for managing it during his (Plaintiff's) minority.
4. This Defendant has no objection at all to a decree being passed according to the Plaintiff's suit.
5. This Defendant prays for division and allotment of even the share of the property to be got by this Defendant in this suit. He will later on pay the court-fees required therefore.

The question is whether, by reason of the filing of the written statement by the Plaintiff, a division in status was effected between the Plaintiff and the 1st Defendant.

3. The law on the subject is fairly well-settled. A definite and unambiguous indication of the intention of one member to separate himself from the family and to enjoy his share in severalty will amount to a division in status. But the difficulty lies in the application of the said principle to the facts of each case. That such a declaration of intention could be indicated in any document also does not admit of any doubt. It follows that such an intention may be declared in a plaint, or in a written statement or in any other document. Another condition for effecting severance is that such a declaration will have to be communicated. Whether such a communication is made or not is really a question of fact in each case.

Applying the aforesaid principles to Ex. B-41, it appears to us that such a declaration is clearly discoverable in the document. Venkatarao presumably claimed in the plaint filed by him that he was the adopted son of the 1st Defendant's brother and he asked for the division of the joint family properties.

To that suit, the Plaintiff filed a written statement Ex. B-41 admitting the claim of Venkatarao. He admitted that Venkatarao was the adopted son. He also admitted that he was en-title to a share in the joint family properties. After making those admissions in clear terms, he asked the court for division and allotment of his share in the properties. When the Plaintiff admitted that the property was divisible and claimed that the property falling to his share should be allotted to him, we have no doubt that the said prayer clearly implies an expression of his intention to divide from the other members of the family.

4. Mr. Bhimasankaram argued that the mere filing of a plaint does not amount to a declaration of an intention to divide and that, in any event, the filing of a written statement will not have that effect. In support of his argument, he relied upon the decision of a Division Bench of the Madras High Court consisting of Rajamannar C.J. and Satya-narayana Rao J. in - "Radhakrishna v. Satyanarayana AIR 1949 Mad 173 (A). There the learned Judges after considering the evidence in that case came to the conclusion that by filing a plaint a division in status was effected between the parties. But in the course of the judgment Satyanarayana Rao J. who delivered the judgment, made some observations on which the learned Counsel for the appellant strongly relied.

At page 179, the learned Judge observed, after citing the observations of Sadasiva Iyer J. in -"Soundavarajau v. Arunachallam Chetty AIR 1916 Mad 1170 (FB) (B), as follows:

From this it follows that it is not every plaint or every suit for partition that brings about a division in status from the moment the suit was instituted and the summonses in the suit were served on the other coparceners. It must contain a clear and unambiguous intention on the part of the coparcener suing that he wishes to treat himself as a divided coparcener from the moment the plaint was filed.

At a later stage, the same learned Judge proceeded to state:

The mere claim for a partition need not necessarily imply a fixed determination and-communication of an intention to divide the title and hold the property in severalty. It is merely a piece of conduct from which an inference for or against the expression of such an intention may be deduced according to the facts and circumstances of each case.

Relying upon the aforesaid observations, learned Counsel for the appellant contended that the mere filing of a plaint for partition does not "Ipso facto" amount to the declaration of an intention to divide. In our view, those observations only state the well-settled principle of law, viz., that to constitute a severance in status, there should be a clear declaration of an intention to divide. We may also mention that subsequent to the aforesaid decision, another Division Bench of the Madras High Court consisting of the Chief Justice and one of us (Umamaheswaram J.) explained the observations found in the judgment.

It is possible to visualise a plaint in a partition suit where the relief for division is conditional on the court refusing another main relief claimed by a party. Perhaps the learned Judge was contemplating the case of a plaint in such a suit where no unconditional declaration of an intention to divide is made. Ordinarily, in a suit for partition, we cannot conceive a plaint without containing allegations of an intention to divide, for the object of filing a suit for partition is to convert joint status into a separate one. That cannot be done without alleging that the parties are members of a joint family, that the Plaintiff intends to divide himself from the other members of the family and therefore, he may be given that relief.

But it is said that though ordinarily the plaint in a partition suit may contain such allegations, a written statement filed therein may be different. In a partition suit, it is well established that for certain purposes all the parties are in the position of Plaintiffs. To that extent there cannot be a difference in principle between a member of a joint family, who happens to be a Plaintiff and a member of a joint family who is arrayed as a Defendant. In so far as he asks for relief of partition the Defendant will be in the same position as a Plaintiff. If so when the Defendant in Ex. B-41 admits that the property is joint family property and has no objection for a share being given to the Plaintiff and asks for a share to be given to himself, there cannot be a possible doubt that he intended to sever himself from the other members of the family. We, therefore, hold on a construction of Ex. B-41 that there was a clear and unambiguous intention to divide on the part of the Plaintiff.

5. Mr. Bhimasankaram then contended that the second condition is not complied with in this case. He says that there is no evidence to prove that such an intention to divide was communicated to the 1st Defendant. In O.S. No. 61 of 1912 after the written statements were filed, the suit was compromised, and one of the terms of the compromise was that the 11th Defendant (Plaintiff)

if he so desires shall later on get his share separately separated from the 2nd Defendant's share and he shall not pray for any relief in this suit.

To that compromise decree, the Plaintiff, the 1st Defendant and Venkatarao were parties. When the relief claimed by the Plaintiff was distinctly left over for consideration in a subsequent suit in a compromise decree to which the 1st Defendant was a party, it must be hold that the contents of Ex. B-41 must have been communicated to him. Further this aspect of the case was not raised in the Court below nor has it been questioned in the grounds of appeal filed here.

6. For the aforesaid reasons, we agree with the Court below that there was a division in status between the 1st Defendant and the Plaintiff in the year 1912. It is conceded that, on this finding, no other questions arise in the appeal.

7. The appeal fails and is dismissed with costs-one set.