
(1974) 03 MAD CK 0042
In the Madras High Court

Lakshmi Ammal

APPELLANT

Vs

Meenakshi Ammal and Others

RESPONDENT

Date of Decision : 25-03-1974

Acts Referred:

Citation : (1978) 87 LW 542 : (1975) 2 MLJ 199

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—One Panju Sastrigal of Pavattakudi village, Nannilam Taluk had two sons by name Ramaswami and Sambamoorthy, the 1st plaintiff herein. Sambamoorthy was adopted by one Ananthanarayana Iyer in or about the year 1890. Subsequent to the adoption, Sambamoorthy was married to one Ponnammal. Sambamoorthy had a son Halasyam and daughter Laxmi, the 2nd plaintiff in the suit. Halasyam died on 3rd July, 1961 and the 1st defendant is his widow. Defendants 2 to 5 in the suit are the tenants in possession of the suit properties. Pending the suit the 1st plaintiff Sambamoorthy died on 13th July, 1962 and his daughter, the 2nd plaintiff was brought on record as his legal representative.

2. The plaint A Schedule properties are pannai lands of an extent of 5 acres 24 1/3 cents. Schedules B to B-3 are lands under tenancy with defendants 2 to 5 and measure an extent of 7 acres 58 2/3 cents. The B schedule are two houses in Pavattakudi village and the C schedule relates to movables and cattle. The A schedule pannai lands were in possession and cultivation of the 1st plaintiff's son Halasyam till his death on 3rd July, 1961 and thereafter continued to be in possession and cultivation of the 1st defendant. The D schedule houses are also in possession of the 1st defendant. After the adoption sometime between 1896 and 1902 Sambamoorthy left the village for Madras. He was doing sweet-meat sales business originally as an assistant, then as a partner with one Subramania Iyer and later he purchased the partnership business itself and became its sole proprietor. Out of the earnings from this business the 1st plaintiff purchased the

suit properties and a number of other items of properties; some items had been disposed of by him and an extent of 4 acres 28 cents of nanja land apart from the suit properties were also stated to be in the possession of the 1st plaintiff through his tenants. He had also purchased a house in Mayavarani which was in his occupation till his death. After his death the 2nd plaintiff got into possession of these 4 acres 28 cents and the house in Mayavaram.

3. It is the case of Sambamoorthy that the suit properties and others are his self-acquired properties, that he did not get any immovable properties or cash or any other property either from his natural father or his adoptive father or from anybody else, that he saved substantially when he was assisting in various sweetmeat stalls and that with that money he became a partner with Subramania Iyer. With the earnings from that business he was able to purchase the other partner's share and became the sole proprietor of the business. All the suit properties were acquired out of the income from this sweet-meat business during the period between 1910 and 1925 when the 1st plaintiff's son Halasyam was just a minor he having been born only in 1910. By his last will and testament dated 27th August, 1961, Sambamoorthy had bequeathed all his properties to his daughter, the 2nd plaintiff, after the death of his son Halasyam. On these allegations he had filed the suit for possession of the suit immovable and movable properties and for mesne profits.

4. In the written statement filed by the 1st defendant she contended that the adoptive father had considerable immovable properties and cash and the adoption itself was made with a view to secure these properties. There were also ancestral properties belonging to the natural father in which Sambamoorthy was also given a share.

5. The 1st plaintiff while young invested his ancestral funds and became a partner in a sweet-meat shop run at Madras and a little later purchased the other share in the partnership also with the ancestral funds. With the income from the business the suit properties were purchased and the plaint schedule properties and the house in Mayavaram and the 4 acres 28 cents which are in possession of the 2nd plaintiff are all joint family properties in which Halasyam, the husband of the 1st defendant had an equal share. She further pleaded that the plaint schedule properties were allotted to Halasyam even during his lifetime at a tentative partition and division and it is only in pursuance of that partition Halasyam was put in possession of the plaint schedule properties. She further pleaded that the will alleged to have been executed by the 1st plaintiff was neither true nor valid in law, that it was executed under undue influence and coercion of the 2nd plaintiff and her husband. In fine she asked for a decree for partition of the plaint schedule and other properties set out in the written statement if it were to be found that the tentative partition is not acceptable.

6. Though the learned Subordinate Judge found that Sambamoorthy did not inherit any properties from his adoptive father and the properties which he got from his natural father and mother cannot be considered to be ancestral property

in his hands, for reasons which are not clear, he gave a finding that the suit properties are the joint family properties of Sambamoorthy and his son Halasyam. On the question of tentative partition he found against the defendants. He also found that though the will was true it was invalid and inoperative so far as the share of Halasyam was concerned and that the 2nd plaintiff could derive title only in respect of a half share in the suit properties. In the result, he held that the 2nd plaintiff Was not entitled for recovery of possession of the entire suit properties but that she was entitled for partition and separate possession of the half share of the 1st plaintiff. Mesne profits were directed to be decided in the final decree proceedings. The plaintiff has preferred this appeal.

7. The first question that arises for consideration in this appeal is whether the sweet-meat business was founded by Sambamoorthy with the ancestral or joint family funds so as to make the acquisition of the properties out of the profits from that business as joint family properties.

8. It is now well-settled that there is no presumption in Hindu Law that a business standing in the name of a member of a Hindu family is joint family business even when that member is the manager or the father, and that unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family or the joint family funds the business remains separate"-- G. Narayana Raju Vs. G. Chamaraju and Others, .

9. It is the case of the appellant that Sambamoorthy did not get any properties of the natural family and that his adoptive father also had no properties; it is only with the small savings he made when he was serving as assistant in various sweetmeat shops that he had established the business and that therefore the business was not a joint family business. There was a dispute as to whether the adoption of Sambamoorthy was in the year 1890 or subsequent to 1896. This point would be considered at a later stage in this judgment.

10. It is in the evidence of D.Ws. 1 and 3 that sometime prior to 1886 Ananthanarayana Iyer, the adoptive father was owning 15 mahs of land in the village Pavattakudi. Out of that he sold on 8th August, 1886 under Exhibit A-84 10 mahs and 50 kullis of land. By another document Exhibit B-5 dated 11th June, 1889 he sold an extent of 8 mahs and 40 Kullis to Sambamoorthy himself, who was then not adopted by him. The total extent thus sold under Exhibits A-84 and B-5 exceeds 18 mahs, While the evidence of the defendants was that he was owning only 15 mahs of land. It might be that subsequent to Exhibit A-84 and before Exhibit B-5 Sambamoorthy had acquired certain lands. We have no evidence to show that apart from the properties dealt with in these two documents Ananthanarayana Iyer was in possession of any other properties.

11. The learned Counsel for the respondents contended that if Ananthanarayana Iyer did not have any properties at the time of adoption it is improbable that he would have adopted Sambamoorthy or that the natural father would have agreed

to give him in adoption especially when there is evidence to show that the natural family had certain ancestral properties of its own. It is true that very often especially in certain communities adoption is resorted to more with secular motives. It need not always be so. The religious considerations are so strong and it could outweigh any mercenary interest in such cases. Further we have the evidence in this case that in spite of the adoption Sambamoorthy was given a half share in the properties of the natural family and the other half being allotted to his natural brother. Therefore, in the absence of any evidence to show that the adoptive father had any property movable or immovable at the time of adoption we cannot assume that he had any properties. As already stated, there is no evidence to show that the adoptive father was having any other property than those which he had disposed of under Exhibits A-84 and B-5. We therefore confirm the finding of the Court below that Sambamoorthy did not get any property from the adoptive family.

12. It is seen from Exhibit B-4 dated 20th May, 1896 which is a lease deed executed by Ramaswami, Sambamoorthy and their mother Krishnammal that the natural family was at least in possession of 6 acres and 7 cents of land on that date. The rent payable under that document was 90 kalams of paddy. Ramaswami and Sambamoorthy had also advanced a sum of Rs. 1,000 on a mortgage under Exhibit B-6 dated 2nd January, 1902. On 16th June, 1902 Sambamoorthy and Ramaswami. executed two documents--one of them Exhibit A-4. by which Ramaswami assigned his half share in the mortgage right in favour of Sambamoorthy and under the other document (Exhibit B-7) Sambamoorthy assigned his half share in immovable properties measuring 6 acres 7 cents above referred to in favour of Ramaswami. Thus Sambamoorthy became entitled to the entire mortgage sum of Rs. 1,000 due under Exhibit B-6-mortgage and Ramaswami became full owner of the immovable properties. The question for consideration is whether the sum of Rs. 1,000 due under the mortgage-bond is ancestral property in the hands of Sambamoorthy. It is the contention of the learned Counsel for the appellant that after the adoption the adopted son loses all his rights in the natural family and. becomes a member of the adoptive family, and that any property inherited or obtained from the natural family would not be ancestral property in his hands because it is not property got from his father. On. the other hand, the learned Counsel for the respondents submitted that the recitals in Exhibit B-7 show that what he conveyed under that document to his brother Ramaswami was his share in the properties of the natural family and that when once he got the property as per his share in the natural family whether the inheritance was prior or subsequent to the adoption the property is ancestral in his hands. In support of this contention, the learned Counsel for the respondents relied on certain decisions which may now be noticed.

13. In Mahableshtar Narayanbhat Devte Vs. Subramanya Shivrām Joshi, , it was held that a share coming to a Hindu on partition belongs absolutely to him and on his being adopted such a share does not become divested. This decision was followed in Bahinabai Shrivani Patil Vs. Kisanlal Kunjilal Shet and Others, , To the

same effect is the decision in *Shyama Charan Chattopadhyaya Vs. Sricharan Chattopadhyaya*, .

14. But it should be seen that even in the case of the sole surviving coparcener it was held by this Court in *Venkata Narasimha Appa Row Vs. Rangayya Appa Row and Others*, , that an adoption into another family of the only surviving member of a joint family in whom the family estate has vested solely and absolutely does not in law operate to divest him of all his rights in such estate. All these cases related to acquisition of properties of the joint family prior to the adoption but having regard to the fact that by an adoption into some other family the adopted person completely loses all his rights in the natural family, any property which he gets from his natural family subsequent to the adoption could not be treated to be the ancestral property in his hands. On adoption the person to whom he is adopted becomes the adoptive father and only properties inherited from him thereafter could be called ancestral properties and any property got by him from his natural family will be in the nature of a gift from his natural family and not ancestral in his hands. It seems to be strange that a property inherited by him before adoption should continue in his hands even after adoption as ancestral property but if he had got the same property from his natural father after the adoption it could not be considered to be ancestral property. But law does not always run on logical lines. The question therefore arises as to when the adoption took place and whether Sambamoorthy was given a share in the natural family before adoption or after adoption. It is seen from Exhibits B-4 and B-6 that the adoption could not have been before 1896 and it was some time between 1896 and 1902. In Exhibits B-5, dated 20th May, 1896 which is a lease deed executed by Ramaswami, Sambamoorthy and their mother Krishnammal, Sambamoorthy is described as the son of Panju Sastrigal and not as adopted son of Ananthanarayana Iyer. It is only in Exhibit B-6 of the year 1902 we find that he is describe, as the adopted son of Ananthanarayana Iyer. It could therefore fairly be inferred that the adoption was sometime after Exhibit B-4 dated 20th May, 1896. Even by the time of Exhibit B-4 the father of Sambamoorthy was dead and both Ramaswami and Sambamoorthy were described as the owners of the property. While conveying his share under Exhibit B-7, dated 16th June, 1902 Sambamoorthy described his right in the property as his half share and specific portion is described in the document as the property belonging to the assignor with specific boundaries. One of the boundaries is recited as the share belonging to the assignee. We could therefore safely infer that he had already obtained a specific portion even prior to his adoption. Since the mortgage right in the sum of Rs. 1,000 was given in consideration of his assigning a share in the immovable properties that amount would be considered to be ancestral property. But mere existence of ancestral property is also not enough to conclude that the business carried on by Sambamoorthy was joint family business. There must be proof that the ancestral property was sufficient and productive enough and the income from the property Was utilised for the purposes of the business--vide *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, . *Sandanam Pillai Vs.*

Somasundaram Chettiar and Others, and Narayanswami Mudaliar v. . Ratnasabapathy Mudaliar (1937) 11 M.L.J. 906 : AIR 1938 Mad. 136.

15. We have the evidence in this case that even prior to 16th June, 1902, the date on which the assignment of the mortgage was executed in favour of Sambamoorthy, the said Sambamoorthy had left for Madras and was doing business. The assignee Sambamoorthy is described in this document as living in Madras and as having come down to the village from Madras for the purpose of having the assignment. The evidence in this case shows that the mortgage was discharged only sometime in the year 1907. Even by that time Sambamoorthy had become a partner in the business with one Subramania Iyer. Therefore no part of the income could have been utilised for the purposes of the business. We therefore hold that the sweet-meat business conducted by Sambamoorthy was not joint family property.

16. As already stated there is no dispute that the suit properties were acquired only from and out of the income from the sweet-meat business. It follows that the properties were the self acquired properties of Sambamoorthy and the disposition by will in favour of the 2nd plaintiff is valid. In view of this finding, no other point arises for consideration.

17. In the result, this appeal is allowed, the judgment and decree of the Court below are set aside and the suit is decreed as prayed for. But having regard to the relationship of the parties and the circumstances of this case there will be no order as to costs.