

(1956) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : Second Appeal No. 930 of 1953

Mallipudi Narasimhamurthy

APPELLANT

Vs

Mallipudi Nagabhushanam

RESPONDENT

Date of Decision : 09-02-1956

Acts Referred:

Citation : AIR 1956 AP 255

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : C. Ramarao, for the Appellant; P. Ramachandra Rao, for the Respondent

Judgement

Viswanatha Sastri, J.—Defendant 1 is the appellant in this second appeal. One M. Mallayya, who died on 16-8-1943 left two sons, the elder of whom was the plaintiff born to him in 1903 by his second wife. Defendant 1 was the other son born to Mallayya by his third wife. They formed members of a joint Hindu family. The family owned some lands and also held the office of village Munsif.

According to the plaintiff, Mallayya gave up his office of village Munsif in favour of his eldest, son, the plaintiff, some 13 years before his death which occurred in 1942. The father voluntarily gave up his appointment in favour of his son & got the latter appointed as Village Munsif. Mallayya was aged about 80 years at the time of his death according to the plaintiff. Evidently, he was feeling that he had become far too old to discharge the duties of the office and therefore had the office transferred in favour of his son.

2. The plaintiff and defendant 1, who are step-brothers, appear to have been living amicably for a considerable time after their father's death. The present suit concerns two items of property, the first item being S. No. 495/3 of the extent of ac. 2-44 cents and the second item being ac. 1-62 cents in S. No. 379/2. The plaintiff, the elder brother of defendant 1, brought the suit for a declaration of his title to these two items of property and for recovery of

possession of the same after ejecting defendant 1, his younger brother, and defendant 2 who is said to be the lessee of the property.

The case of the plaintiff is that those two items of property were his self acquisitions having been purchased in his name under Ex. A-1 dated 7-10-1941 and Ex. A-3 dated 28-2-1941. Ex. A-1, which relates to the first item, was a purchase for Rs. 500/- and Ex. A-3, which was for Rs. 150/- was a purchase of item 2. While the plaintiff claims that these two items are his self-acquisitions, defendant 1's claim is that they are joint family properties and that the plaintiff is therefore not entitled to treat him as a trespasser or to an injunction restraining him from remaining in possession of the property.

On the question whether the properties now in suit are joint family properties or the self-acquisitions of the plaintiff, the Courts below differed, the trial Court holding that the properties were joint family properties and the Appellate Court holding that (hey were the self-acquisitions of the plaintiff.

3. The learned Advocate for the respondent has referred me to the decision of the Madras High Court with regard to the character of the acquisitions made by the members of the joint Hindu family. He argued and in my opinion quite correctly that unless it is shown that there was a substantial nucleus of joint family property from the income of which, after meeting the family expenses, the property subsequently acquired could have been purchased, it could not be assumed that the subsequent acquisition was joint family property. He also argued and again quite correctly that if property is acquired by a member of a joint Hindu family the onus of proving that the acquisition is for the benefit of the family, is upon person setting up the plea. Again he argued and again correctly, that the property, which was originally self-acquired might become joint family property, if the acquirer intentionally throws it into the common stock and thereby abandons his exclusive claim over the property but the onus of proving this fact is on the person setting up the plea.

Whether an item of joint family property acquired by a member of a joint family belongs to the joint family, or to the acquirer as his self-acquisition, has to be decided in the light of the foregoing considerations.

4. The burden of proof to show that the two items of property, Survey Nos. 495/3 and 379/2 which were acquired by the plaintiff in his name belonged to the joint family of the plaintiff and defendant 1 is upon the latter. Though this is so, there are admissions made by the plaintiff which shift the onus on to him to prove that what he admitted is not true.

It was observed by the Judicial Committee in - Chandra Kunwar v. Chaudhri Narpat Singh". ILR 29 All 184 (A), that although the onus was on the defendant to prove a particular fact, the proof of an admission of that fact by the plaintiff shifted the onus on to the plaintiff on the principle stated in - "Slatterie v. Pooley", 1840 6 M & W 664 at p. 669 (B), "that what a party himself admits to be true may reasonably be presumed to be so," and until the presumption was

rebutted the fact admitted must be taken to be established."

5. In the present case defendant 1 gave a notice to the plaintiff, Ex. A-27 dated 1-8-1949, claiming a partition of the two items of properties now in dispute along with other properties treating them as joint family properties belonging to the plaintiff and defendant 1. In para 2 of Ex. A-27 it was distinctly asserted that the joint family possessed the A schedule lands and among the A schedule lands are found Survey Nos. 493/3 and 379/2.

6. Partition was claimed by defendant 1 in respect of these two items of lands as well as other joint family properties. The plaintiff gave a reply through his lawyer, Ex. B-1 dated 18-8-1949 and in this reply it was definitely stated that the plaintiff had no objection at all to divide and give the half share of defendant 1. With regard to the properties comprised in Sch. A to the notice. Ex. A-27, the plaintiff stated that Survey No. 485/1 comprising ac. 1-8 cents included in Sch. A was not joint family property but was the property of his wife having been purchased by her with her "streedhanam" funds.

With regard to two items of property now in dispute he stated that he had borrowed money from outsiders and with such borrowed money he had, for the benefit of the family, purchased the lands comprised in survey Nos. 495/3 and 379/2. The plaintiff called upon the defendant to undertake liability for a half share of the debts borrowed for the purpose of these acquisitions and stated that he had no objection whatever for partition of the properties.

There was, therefore, a clear admission in Ex. B-1 that the two items of properties with which we are concerned, were joint family properties in which defendant 1 was entitled to a share. Several months after the notice, Ex. B. 1, the plaintiff gave another notice. Ex. B. 2, dated 24-4-1950, stating that he had, by mistake, omitted to mention the fact that survey Nos. 495/3 and 379/2 were his self-acquisitions acquired during the life-time of his father Mallayya and that defendant 1 had no right whatever in the aforesaid properties. This was obviously an afterthought.

It could not be that he committed a mistake and made an admission to the effect that (sic) two items of property had been purchased for the benefit of the family with borrowed funds and that he had no objection to defendant 1 getting a half share of those properties. He made matters worse when he gave evidence as P. W. 1. He stated that the recitals in Ex. B-1 with regard to the joint family character of the lands and to his readiness to give a half share of the lands to defendant 1, were not written according to his instructions. He further went on to state that the recital in Ex. B-4 that the statements in Ex. B-1 were made by a mistake was not correct and that he did not give instructions to the Vakil who drafted Ex. B-4 that he made a mistake at the time when Ex. B-1 was issued.

All this frantic effort to get rid of the clear admission made by the plaintiff in Ex. B-1 is unavailing. We must therefore take it that the two items of property, survey Nos. 495/3 and 379/2. were joint family properties in which defendant 1

has a right to a share. If there are any family debts, either incurred for the acquisition of these items of properties or for other family purposes, defendant 1 would no doubt be liable to bear his share of those debts. That, however, is not a matter on which anything need be said in the present litigation.

7. For these reasons I reverse the decree of the lower appellate Court and restore that of the District Munsif with costs here and below. No leave.