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(1921) 11 PRI CK 0010

In the Privy Council

Nalam Pattabhiram Rao and others — APPELLANT

Vs

Mandavilli Narayanamoorthy and others — RESPONDENT

Date of Decision : 17-11-1921

Acts Referred:

Citation : (1922) AIR(PC) 102

Hon'ble Judges : Lawrence Jenkins, John Edge, Carson, Atkinson, Buckmaster, JJ.

Advocate : Douglas Grant, Dube, De Gruyther, for the Appearing Parties.

Judgement

Sir Lawrence Jenkins, J.

This is an appeal from a decree of the Madras High Court, dated the 17th January 1917, reversing a decree passed on the 24th July 1913, by the Temporary Subordinate Judge of Rajahmundry.

The Defendants Nos. 2 to 49 are members of a Hindu family known as the Nalam family. Their common ancestor was Nalam Bhimanna, who died in or about 1848, leaving seven sons and three daughters. The sons were Virayya, Venkanna, Ramanna, Vallabbaravudu, Pattabhiramanna, Subbayya, and Chalamayya. The daughters were Kamamma, Venkamma and Jaggamma.

The fifth of the sons, Pattabhiramanna, separated from his brothers in 1870. The Defendants Nos. 2 to 49 are the descendants of the six brothers who continued joint, and they are the Appellants in this appeal.

Kamamma married Mandavilli Butchi Kamanna, and the only child of that marriage was Peda Pattabhiramanna. He died in 1881, leaving an adopted son Chinna Pattabhiramayya, who died in 1895 without issue but survived by his widow, Mandavilli Seetharam. She is Defendant No. 1.

The original Plaintiff was Mandavilli Narayanamoorthy, a son of Mandavilli Butchi Kamanna by second marriage, and so a half-brother of Peda Pattabhiramanna. On his death his sons, Mandavilli Venkata Gopala Row, and Mandavilli

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Satyanarayanamurty, were substituted as parties in his place. They are the Respondents in this appeal.

In 1896 the members of the Nalam joint family, as then constituted, separated, but the partition was not completed until 1900. Though there were only six branches, the family property was divided into seven shares. One share was allotted to each branch, and the remaining seventh share was allotted as : three-eighths to Defendant No. 1 as the representative of Kamamma, four-eighths to the issue of the second daughter, Venkamma, and one-eighth to charity at Rajahmundry.

The purpose of this suit is to impugn this partition and establish the Plaintiffs'' claim as heir in reversion to one-seventh of the Nalam properties.

In the plaint it is alleged that Nalam Bhimanna arranged that Pattabhiramanna should do business with his sons and be given an equal share along with his sons, and that this was agreed to by the sons; that the partition of 1896 was made only with the evil intention of disinheriting the reversioners and there was no legal necessity for it; and that the cause of action arose from November 1900.

By the plaint it is prayed that a decree may be passed "declaring that the division effected among the members of the families of Defendants Nos. 2 to 49 concerning the joint property wherein the first Defendant was entitled to one-seventh share, is invalid after the first Defendant''s lifetime, so far as it relates to the 1st Defendant''s share of the property, and cannot affect the reversioners."

It will thus be seen that the Plaintiffs'' claim is based on an alleged right in Peda Pattabhiramanna to a share in the Nalam joint family property. It was rejected by the first Court, but on appeal the claim was affirmed by the High Court and a decree passed in the Plaintiff''s favour. The right asserted could not have been an inherent one, and so an arrangement under which it is alleged to have accrued is set up.

This arrangement is pleaded and the following issue was settled :-

"1. Whether Nalam Bhimanna agreed, as alleged in para 5 of the plaint, to give a share in his family properties to Pattabhiramanna along with his sons, and whether the sons of Bhimanna assented to that arrangement?"

The burden of establishing this agreement and the sons'' assent to it is on the Plaintiff, and it is necessary to see whether this burden has been discharged.

First the Plaintiff seeks to rely on a statement in the Will of Peda Pattabhiramanna, dated the 11th July 1881, in these terms :-

"After my father, Butchi Kamanna Garu married Kamamma, the eldest daughter of Nalam Bhimanna Garu residing at Mandapeta, I was born to her. But as she died 10 days after I was born, my mother''s father, the said Bhimanna Garu, his wife Papamma Garu, and his seven sons, Virayya and others, had since then kept me in their house, supported me, and educated me and taught me wisdom and

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business.

"As they arranged to get my second maternal uncle, Venkanna Garu''s daughter married to me and to give me a share equally along with my maternal uncles without my having anything to do with the property of my natural father, I was attending to their business matters carried on at Mandapeta, Vizianagaram, Cocanada, Berhampore, Rajahmundry, Tallarevu, Madras and other places for some time jointly with my maternal uncles and for some time myself singly."

Even treating this as a statement which suggests an inference as to a fact in issue, still it cannot be proved by or on behalf of the person who made it or his representative in interest (Evidence Act, sects. 17 and 21).

Therefore standing alone, the statement in the Will cannot be proved by or on behalf of the Plaintiff as evidence of what it asserts.

To escape from this difficulty the Plaintiff contends that the course of dealing in the family the conduct of Peda Pattabhiramanna in relation to the properties in his possession and the independent status which he held and enjoyed, the conduct of the executors in acting on the Will, and the treatment of him by the family, support the view that the statement in the Will is true.

Thus it has been contended that the Will was acted on by the executors, who were members of the Nalam family, with the result that the statement was adopted as true.

What happened is this. Property was purchased with the joint funds of the family, and the transfer was taken in the name of Peda Pattabhiramanna. On his death it became necessary to obtain a transfer from his name, and accordingly, on the 6th October 1882, a petition was presented on behalf of Nalam Kamaraju and his brother Nalam Venkatarayaloo, to the Deputy Collector and Deputy Registrar of Grants and Certificates, Madras, praying for the issue of a certificate.

In the application it was stated that the property had been acquired by inheritance, the grantee or registered holder being the brother-in-law of the Petitioners, and that the registered holder being on the point of death, wrote and delivered a Will stating that the two brothers-in-law might take a fresh certificate after his death. There is a clause in the Will to that effect. The certificates were issued as prayed. Though this may be properly regarded as an assent by the two executors that the Will was duly executed, it cannot be treated as an admission by the members of the family that the statement in the Will, on which reliance is now placed, was true. What was done by the executors was a requisite or at any rate convenient step for the purpose of procuring a transfer in the Registry, but cannot be deemed an admission of title in the sense urged by the Plaintiff.

The High Court was influenced by the idea that account books had been kept back, and if there was any real foundation for this, there might be ground for considering whether there was a presumption that these accounts, if produced, would be unfavourable to the Defendants. But when regard is had to all the facts

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disclosed, there is no justification for the view that books were improperly withheld, as is conclusively shown in the judgment of the first Court.

Nor do their Lordships think that the items in the accounts that have been produced when properly considered really support the Plaintiff''s case; for it has to be borne in mind that Peda Pattabhiramanna was a son-in-law and in management of the branch where he resided, and it is no matter for surprise if he was treated with favour.

And in this connection it is significant that the family of Vijjapu, also a son-in-law, and engaged in the family business, was treated with similar favour, and yet it never has been suggested that this was evidence or even pointed to a right of participation in the Nalam family property.

But over and above, this infirmity in the Plaintiff''s proof, the dealings with the property are inconsistent with the right he claims. According to his case Peda Pattabhiramanna acquired his share before the date of Ex. I, which is a Cadjan leaf dated the 24th August 1849. It embodies the terms drawn up by the seven sons for the guidance of the Nalam family in reference to the joint family property. Peda Pattabhiramanna was not a party to it, nor does it contain any reference to any share of his in the property.

The first Court relied on this exhibit as genuine. The High Court, however, doubted its authenticity, but on grounds that do not satisfy their Lordships, and they prefer to accept the appreciation of the Subordinate Judge as to its genuineness.

On the 15th of December 1870, a partition deed, Ex. II, was executed, when Pattabhiramanna separated from the Nalam family. This document contains no reference to any share such as that now claimed. It treats the property, after deduction of the separating brother''s share, as divisible into seven shares, six of which were to belong to the remaining six branches, while the seventh share was to be dealt with by these six branches as they liked. These branches continued joint till 1896. In that year the partition now attacked began. Its terms have already been set out.

In the plaint it is described as "made only with the evil intention of disinheriting the reversioners of the said property and not bonafide." But no such case is proved. In its omission of all notice of a one-seventh share as belonging to the line of Kamamma, this partition is in precise accord with the dispositions of 1849 and 1870, and it is difficult to suppose-that they were both made without the knowledge of Peda Pattabhiramanna. Moreover, the members of the six branches did not gain by the omission; they did not keep for themselves the one-seventh share, but allotted it in the manner indicated.

Then again it is significant that the lines of the two daughters both benefited, and that Appalaraju, the first Defendant''s father took part in this allotment, and never suggested that the one-seventh share belonged to his daughter, or that

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she had any better claim than the line of Venkamma the sister.

Nor did the first Defendant herself demur to the allotment which was made. On the contrary, she expressly assented to it. This the Plaintiff treats as a relinquishment and in effect an invalid alienation of the one-seventh share to which he claims to be reversionary heir.

In their Lordships'' opinion the Plaintiff has failed to prove the arrangement or agreement under which a share is alleged to have been given to Peda Pattabhiramanna, and they will humbly advise His Majesty that the decree of the High Court ought to be reversed and the suit dismissed with costs in both the lower Courts.

The Respondents must also pay the costs of this appeal.

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