

(1948) 08 MAD CK 0052
In the Madras High Court

R. Nilakanta Iyer

APPELLANT

Vs

Ramanarayana Iyer and Others

RESPONDENT

Date of Decision : 20-08-1948

Acts Referred:

Citation : (1948) 61 LW 768 : (1948) 2 MLJ 504

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—This petition arises out of a suit for partition instituted by the plaintiff. The correctness of the finding of the learned Subordinate Judge under issue No. 15, which was taken up for preliminary adjudication has been challenged in revision by the plaintiff. Issue No. 16 was also decided, and against that decision C.R.P. No. 1735 of 1947 was filed by the fourth defendant, but that petition was not pressed and was eventually dismissed.

2. In the suit for partition that the plaintiff instituted, he impleaded his brothers, defendants 5 and 6, his father the first defendant, and his mother, the second defendant. Besides, the third defendant, the daughter of the family, and the fourth defendant, her husband, were also made party defendants.

3. Two items of property in which the plaintiff claimed a share were leases, one the lease of certain properties in Thiruvaduthurai and the other a lease of certain other properties in Narasingampettai village both in Tanjore District.

4. The plaintiff's case with reference to the Thiruvaduthurai lease was set out in paragraph 15 of the plaint. The lease itself admittedly stood in the name of the fourth defendant. The plaintiff's case was that the first defendant had a third share in this lease for which he paid Rs. 6,000 to the fourth defendant even before the lease was taken by the fourth defendant:

so far as the first defendant's share is concerned, the fourth defendant is only a benamidar.

Defendants 4 and 1 in the statements that they filed admitted that the first defendant had originally advanced a sum of Rs. 6,000 to the fourth defendant with a request that the fourth defendant should assign to the first defendant a third share in the lease if the fourth defendant got it. The fourth defendant pleaded further that he eventually decided not to give any share in that lease to the first defendant, and that he returned this amount of Rs. 6,000 to the first defendant.

5. The plaintiff's case with reference to the Narasingampettai lease was set out in paragraph 14 of the plaint. The lease deed stood in the name of the fourth defendant and one K.S. Chidambaram Iyer who was not a party to the suit. That a half share in this lease belonged to this Chidambaram Iyer was common ground. The plaintiff's case was that the other half share belonged to the family of the first defendant and his son.

The lease deed of Narasingampettai stands in the name of the fourth defendant who has no interest in the lease and is only a benamidar for the family of plaintiff and defendants 1, 5 and 6.

Dealing with the plea of the first defendant and the fourth defendant that the first defendant had given up his interest in the lease after obtaining a sum of Rs. 4,000 from the fourth defendant, the plaintiff averred:

the whole story is false and has been invented to defraud him and defendants 5 and 6 after he sent notices to defendants 1 to 4 demanding partition.

The answer to these allegations was in paragraphs 8, 9 and 10 of the written statement filed by the fourth defendant. He contended that the original acquisition of a half share in the lease, excluding Chidambaram Iyer's half share, was for the fourth defendant alone, and that subsequently, at the request of the first defendant, he assigned his half share to the first defendant. Again, when the first defendant expressed his inability to manage that property, the fourth defendant took it back and paid the first defendant a sum of Rs. 4,000.

6. It was principally on the fourth defendant's contention that issue No. 15:

whether the suit is bad for misjoinder of parties and causes of action?

was framed. The learned Subordinate Judge held that, with the claims against the fourth defendant as they stood, the suit, which was primarily one for partition, was bad for misjoinder of parties and causes of action. The learned Subordinate Judge called upon the plaintiff to elect against which defendant or defendants he would proceed with his suit and to amend the plaint suitably. It is that order which the plaintiff seeks to set aside in this revision petition.

7. No doubt as was observed in *Shanmukha Nadar v. Arunachala Chetti* (1921) 42 M.L.J. 97 : ILR 45 Mad. 194:

partition is the occasion of a comprehensive settlement of the extent of the family estate available for division and of the deductions which have to be made

from that estate on account of family liabilities.

Explaining the persons who should be made parties to a suit for partition, the Civil Rules of Practice and Circular Orders, Vol. I, lays down at page 261:

In every suit for partition of property, all persons entitled to share therein, or to maintenance, shall be joined as parties, and if it is alleged that any co-owner has alienated any portion of the joint family property or his interest therein, in circumstances rendering the alienation not binding on the co-owners, the alienee shall be made a party to the suit and the plaint shall set out the particulars of the alleged alienation.

In Mayne Hindu Law and Usage, 10th edition at page 570, the learned author observed:

Ordinarily a suit for partial partition does not lie, but in this sense, a suit for partial partition will lie when the portion excluded...is held jointly with strangers to the family who have no interest in the family partition.

That, of course, does not by itself help to decide the question at issue, whether in the suit for partition as the plaintiff framed it, he could ask for an adjudication on the issue, whether the acquisition of the two leases, the Thiruvaduthurai lease and Narasingampettai lease, made in the name of the fourth defendant, was benami for the benefit of the family of the first defendant.

8. In Ramakrishna Iyer v. Krishna Iyer (1907) 18 M.L.J. 85, it was held that a suit for partition impleading the debtors of the family with a view to the determination of the nature and amount of the debts so as to bind the debtors was bad for misjoinder of causes of action. The learned Judges observed:

It is, however, the well-established practice in a suit for partition to add persons claiming to be in possession as alienees of the property sought to be partitioned, and this practice is certainly justified by convenience.

It was probably this principle of convenience that was extended in Shanmukha Nadar v. Arunachala Chetti (1921) 42 M.L.J. 97 : ILR 45 Mad.194 to include within the scope of a suit for partition the validity or otherwise of simple money decrees obtained by creditors against the family. At page 200, however, in dealing with contentions of some of the creditors, the learned Judges observed:

Firstly it is urged that the suit offends against Order 11, Rule 4, because it is a suit in effect for the recovery of Immovable property and no other cause of action, such as is involved in the claim for the setting aside of the 7th to 18th defendants' decrees as collusive, should be joined with it. One possible answer is that these are claims in which the reliefs sought are based on the same cause of action and another possible answer is that in case the leave of the Court is asked for, as the wording of the rule implies that it can be asked for, that leave may be given.

The question for consideration now is, is there any justification to extend, on

grounds of convenience or on other grounds, the principle, that persons who are not members of the family could be joined as parties to a suit for partition between members of a coparcenery, to cover cases of claims of the family as a unit against the strangers to the family who have no interest as such in the partition.

9. The position of the debtors of the family was referred to in *Ramakrishna Iyer v. Krishna Iyer* (1907) 18 M.L.J. 85. To similar effect was the decision in *Venkanna v. Sarayya* (1908) 19 M.L.J. 102. In that case the plaintiffs who were coparceners with the first defendant sued for partition of their properties and for dissolution of a partnership in which the coparceners and the other defendants impleaded in the case had a joint interest. Sankaran Nair, J., held that the suit was bad for misjoinder of causes of action. Pinhey, J., went further and held that the suit was bad not only for misjoinder of causes of action but bad also for misjoinder of parties.

10. It was principally on *Annapurna Debia v. Gopalmani Debia* (1922) Cri.L.J. 530, that the learned advocate for the plaintiff-petitioner relied in support of his contention, that the claim against the fourth defendant, that the Narasingampettai and Thiruvaduthurai leases were acquired by him benami for the benefit of the first defendant, could and should be investigated in the suit for general partition of the assets of the joint family of the plaintiff and defendants 1, 5 and 6. Mookerjee, J., observed thus at page 534:

The substance of the matter is that a suit for partition may and does often involve the investigation of disputed questions of title, and an attempt to avoid them can only lead to needless multiplicity of litigation.

That observation has to be construed with the discussion that preceded it. No doubt earlier, Mookerjee, J., pointed out:

It frequently happens that, in joint families, properties stand in the names of female members. In a suit for partition of the family estate, the plaintiff may include such properties and join the ladies as defendants so that they may be bound by the result of the litigation; if they contend that the properties belong to them personally, the matter must be investigated and decided.

11. But it should be remembered that even independently of any claim of title the presence of the female members of the family is necessary in suits for partition to settle their claims, if any, for maintenance. When a female member of a family is impleaded rightly, other questions between such a member, who is a necessary party to the suit, and the other members of the family may also arise for adjudication. We are not concerned now with the question, whether such other matters also should be adjudicated upon--principally a claim of title paramount put forward by such a female member. The principles that underlay his decision were explained by Mookerjee, J., in no unmistakable terms:

The principle appears to us to be undoubtedly sound that where there is a

conflicting claim to a share in the land under the same right under which the partition is sought, the determination of the conflict is incidental to the partition and cannot be avoided before partition is directed.

Just before and after that observation are other observations of Mookerjee, J., which puts its meaning beyond doubt:

We need not discuss whether an adverse claimant, who has no community of interest with the parties to the suit, is in no view a co-tenant with them but stands out on his own independent right, and denies all right in his adversaries, can be drawn into a partition suit for decision of the question of title paramount.

Mookerjee, J., pointed out that:

Where the conflicting claim to a share is under the same right under which partition is sought, such a case does not fall within the category of claims utterly hostile where each demands not a share but the whole.

12. It is obvious that Order II, Rule 3, CPC should be read with. Order 1, Rule 3 in deciding what constitutes a misjoinder of parties and misjoinder of causes of action. In the present case the claim of the plaintiff as representing his family consisting of himself and defendants 1, 5 and 6 against defendant 4 with reference to the two leases in question was that the title vested in the family and that defendant 4 was only a benamidar. But defendant 4's claim was one of title paramount, which the averments in the plaint itself disclosed. Applying the principles laid down by Mookerjee, J., in *Annapurna Debia's case* (1923) CRI.L.J. 530 it should be fairly obvious that such a claim cannot be tacked on to a general suit for partition. It is obvious that the share in these two leases is not based under the same right under which the partition is sought. It is not as if defendant 4 was prepared to concede a share to the family. He claimed the whole of the interest in these two leases. in which the plaintiff claimed a share. I am unable to see any real substance in the contention of the learned advocate for the plaintiff-petitioner, that where the transaction is alleged to be benami, the legal title must be deemed to have vested all along in the family of the first defendant. That in no way answers the question, whether the claim of defendant 4 with reference to that property was hostile to, the family as a whole. That precisely is the position of the fourth defendant in this suit.

13. To sum up, I see no justification to extend the principles underlying Order 1, Rule 3, CPC to cover in this case, the plaintiff's claim as against the fourth defendant with reference to the Thiruvaduthurai and Narasingampettai leases. No doubt, issues 8, 9 and 10, as they have been framed in the suit, would appear to be based on assumption, that there was an alienation of the half share in the Narasingampettai lease when the first defendant parted with that half share in favour of the fourth defendant for Rs. 4,000. But that transaction was challenged as false by the plaintiff. The plaint itself did not disclose even an alternative case, that the transaction could be viewed as one of alienation of property that at one time belonged to the joint family, and that such an alienation effected by the first

defendant was not valid. The issues were raised not only on the basis of the pleadings in the plaint but also on the pleadings of the first defendant and the fourth defendant. But in considering the questions of misjoinder of causes of action and misjoinder of parties, we have to be guided principally by the averments in the plaint. Whether, if the plaintiff had put forward or were to put forward even an alternative case of an alienation of a half share in the Narasingampettai lease, the Court, in deciding the validity of that alienation, could go into the earlier transactions and decide whether the original acquisition of that half share was for the fourth defendant or was benami for the benefit of the first defendant, does not arise for consideration at this stage. On the averments as they stand in the plaint, the lower Court was right in holding that it was a clear case of misjoinder of parties and misjoinder of causes of action.

14. The petition fails and is dismissed with costs of defendant 4. The plaintiff will be given six weeks from now to notify his election in accordance with the directions of the lower Court.