

(1930) 12 MAD CK 0007
In the Madras High Court

Rama Ayyar

APPELLANT

Vs

Meenakshi Ammal and Others

RESPONDENT

Date of Decision : 19-12-1930

Acts Referred:

Citation : AIR 1931 Mad 278 : (1931) 33 LW 384

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—Defendant 1 is the appellant. His father one Subbier filed a suit against him for partition of joint family property on 18th

August 1922. The summons in the suit was served on the defendant by affixing it on the door on 16th September 1922. On 15th September 1922

(i. e., one day before the service of the summons) Subbier settled some portions of his half share of the property on two of his daughters and

simultaneously executed a ""will"" with respect to the other properties. He died on 1st April 1924 but even by that time the suit had not been tried.

The persons entitled under ""the settlement"" and the ""will"" were after contest brought on as his legal representatives as plaintiffs 2 to 6 and defendant

10 and they got a. decree for a half share of the property. The first Court's decree was confirmed on appeal by the appellate Court.

2. In second appeal it is argued that on the date of the ""will"" and ""settlement"" (that is, 15th September 1922) the father had no power to execute

them as the declaration of his intention to divide contained in the plaint was not communicated to the defendant till 16th September 1922 and as he

for that reason still remained a member of an undivided Hindu family at the time

of the execution of those documents. In reply it is contended that by the mere presentation of the plaint for partition in a suit in which notice has been served on the defendant the plaintiff becomes divided from the other members of the joint family and that the status of division in such a case takes effect from the date of the plaint and not from the date when the notice of the suit is communicated by the Court to the defendant.

3. The question in this form has not arisen for determination in any of the Courts but there is a decision on the point in the Judicial Commissioner's

Court reported in *Rachhpali v. Chandesardei* A.I.R 1924 Oudh 252 to which I shall refer in the course of this judgment. If the appellant's

contention is accepted it would follow that his father had no power to execute the will and settlement in question as he was on the date when they

were executed still a member of an undivided family since the notice was served on the defendant by Court only the next day after the execution of

the documents, that is on 16th September 1922.

4. In considering this question it is not necessary to refer to cases earlier than the well-known Privy Council decision in *Suraj Narain v. Iqbal*

Narain [1913] 35 All. 80 in which occurs the following passage:

The principle applicable to cases of separation from the joint undivided family has been clearly enunciated by this Board in *Revan Prasad v. Radha*

Beeby [1848] 4 M.I.A. 137 and the well-known cases of *Appovier v. Rama Subba Aiyan* [1866] 11 M.I.A. 75. What may amount to a

separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into

a tenancy in common must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself

and to enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed.

5. Beyond stating the principle in broad terms their Lordships of the Privy Council did not further explain what would constitute

a definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty

and when, that intention can be said to be unequivocal and clearly expressed as they were of opinion that the application of these tests must

depend upon the facts of each case. Naturally enough cases arose where Courts

were called upon to consider how far the general principle enunciated by their Lordships of the Privy Council would apply to the particular facts and circumstances of the case before them. Each party has relied on the observations in these cases in support of its respective contentions.

6. In *Pothi Naikin v. Naganna Naicken* [1915] 28 I.C. 625, Sankaran Nair, J., referring to these observations held that:

It is open to a member of an undivided family governed by the Mitakshara law to effect a separation between himself and the other members of the family by a declaration to that effect made to the other members. The declaration must be clear and in such a form that it is not open to him afterwards to say that he still continues as a member.

7. In that case the unequivocal intention to separate was found expressed in an unregistered partition deed. In *Soundararajan v. Arunachalam*

Chetty [1916] 39 Mad. 159 the question arose:

whether a member of a joint Hindu family becomes separate from the other members by the fact of suing them for partition

and it was referred to a Full Bench for decision. The learned Judges of the Full Bench answered the question in the affirmative. In the course of the

judgment in this case, Sadasiva Ayyar, J., examined the question

whether the filing of the suit for partition would constitute in the language of the Privy Council a definite and unambiguous indication by one member

of his intention to separate himself and enjoy his share in individuality "and" whether such intention is made "unequivocal" by the filing of the plaint

and becomes "clearly expressed" to the other coparceners by the summonses served on them in the suit.

8. After stating the circumstances in which the plaint may be said to contain unequivocal and unambiguous declaration of the plaintiff's intention to

separate the learned Judge stated thus:

If that intention is communicated through the Court by summonses issued to the defendants (the remaining coparceners; in that case, such clear

expression of intention becomes fully effectual to create division in status. I take it that the phrase "clearly expressed" means clearly expressed to

the definite knowledge of the other coparceners.

9. In the present case it is not questioned that the plaint contains unequivocal"

declaration of the plaintiff's intention to separate himself from the joint family. Having regard to the observations of the learned Judge in the passage above referred to, Mr. Rajah Ayyar for the appellant argues that in a case where the unambiguous declaration to separate is contained in the plaint it becomes clearly expressed to the other coparceners only when the summonses are served on them in the suit and that therefore divided status arises only from that time and does not arise by the presentation of a plaint and that in this view the decision in Soundararajan v. Arunachalam Chetty is authority for the position that the appellant's father in the case before us was not divided at the time when the will and the settlement were executed by him, though the plaint in the suit was filed a month anterior to that date. It is argued on the other side that the decision is a clear authority in support of the contention that on the date of the presentation of a plaint containing an unequivocal declaration of an intention to separate, the plaintiff obtains the status of a divided member. It seems to me on a careful perusal of the judgment that the precise question I am called upon to decide in the present case did not arise for decision in the Full Bench case but I think the decision is an authority for the proposition that in a case in which the notice of the plaint containing the declaration of the unequivocal intention of the plaintiff to separate is served on the other coparceners severance of status takes effect from the date of the plaint.

Viewed in this way the decision supports the respondents.

10. In *Girija Bai v. Sadasiv Dhundiraj* AIR 1916 P.C. 104 their Lordships of the Privy Council held that the conduct of the plaintiff a member of a joint Hindu family governed by the Mitakshara law in indicating by a notice in a registered letter his intention to separate himself and to enjoy his share in severally coupled with a suit for partition was as unequivocal and clearly expressed an intention as could be made and that amounted to a separation with all its legal consequences. In the course of their judgment their Lordships pointed out that once the decision has been unequivocally expressed it clearly intimated to the cosharers his (plaintiff's) right to which he admittedly has a title unimpeachable.

11. Mr. Rajah Ayyar emphasises this observation to show that the severance of status can take effect only from the date of the service of the notice of the plaint on the defendants and not from the date of the presentation

of the plaint; but it is clear from the judgment that in making the observations their Lordships were only combating the positions that agreement between the coparceners is essential to the disruption of the joint status or that the severance of rights can only be brought about by actual division and distribution of the properties. This decision and the observations of Sadasiva Ayyar, J., in Soundararajan v. Arunachalam Chetty are strongly relied on by the appellant in support of his contention. It may be observed that in this case their Lordships point out that severance of status is a matter of individual volition and from this it is argued by the respondents that the mere assertion of it in the plaint is enough to bring about the plaintiff's severance from the joint family. Mr. Ramaswami Ayyar for the respondents, besides relying on the above decisions, relied upon a series of Privy Council decisions and also upon some decisions of this Court to show that the severance of joint family status commences from the date of the institution of the suit. I shall briefly refer to those cases; but it must be observed that in most of those cases the decision turned upon the question whether the severance takes place from the date of the commencement of the suit or from the date of the decree. The present question did not arise for decision in those cases but the principle underlying those decisions seems to support the respondent's contention.

12. In Ramalinga Annavi v. Narayana Annavi AIR 1922 P.C. 201 their Lordships of the Privy Council held that the institution of a suit for partition by a member of a joint Hindu family effects a severance of joint status of the family and a member of the family is not entitled to have a provision made in the partition for his marriage expenses although he marries before the decree in the suit is made. The question in controversy in that suit was whether the joint family status continues till the decree for partition. In AIR 1925 49 (Privy Council) it was held by their Lordships that the filing of a plaint claiming partition by a member of a joint Hindu family if the plaint has been withdrawn before the trial, does not result in the family being separate at a later date, although it is evident that an intention to separate had been entertained by the plaintiff. In that case their Lordships pointed out that if the suit is decreed the date of the severance from the joint family will, if nothing else be proved, be treated as the date when the suit was instituted. This case also does not directly deal with the point I have to

decide in this case. In the same report, Krishnaswami Thevan v.

Pulu Karuppa Thevan AIR 1925 Mad. 717, it was held by Spencer and Devadoss, JJ., that a suit by a minor for partition has the effect of creating

a division of status from the date of the plaint. This decision was followed in Sri Ranga Thathachariar v. Srinivasa Thathachariar AIR 1927 Mad.

801.

13. In Syed Kasam v. Jorawar Singh AIR 1922 P.C. 353 it was pointed out by the Privy Council that:

it is settled law in the case of a joint Hindu family subject to the law of the Mitakshara, a severance of status is effected by an unequivocal

declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place; and the

commencement of a suit for partition has been held to be sufficient to effect a severance in interest even before decree.

14. Of all the decisions referred to by the respondents' learned Counsel the decision in Kawal Nair v. Budh Singh AIR 1917 P.C. 39 seems to

support him the most. In that case their Lordships of the Privy Council observed that:

the judgment of the Judicial Committee in the recent case of Girja Bai v. Sadashiv Dhundiraj renders it beyond question that the commencement of

this suit for partition effected a separation from the joint family. It is immaterial, in such a case, whether the cosharers assent. A decree may be

necessary for working out the result of the severance, and for allotting definite shares but the status of the plaintiff as separate, in estate is brought

about by his assertion of his right to separate, whether he obtains a consequential judgment or not.

15. If, as pointed out by the Privy Council the severance of status is a matter of individual volition, then on principle, it must follow that that

severance can be brought about so far as the plaintiff is concerned by an assertion of his right to separate in a plaint. It is clear from the Privy

Council cases referred to that the assent of the cosharers is not necessary for effecting the severance, nor is a decree necessary to bring it about. If

the severance of the joint status can be brought about by individual volition, and the assent of the cosharers is not necessary for it, then, I fail to see

how it can be said that there could be no severance so far as the plaintiff in a

suit is concerned unless the intention is actually communicated to the other coparceners. This position is clearly not opposed to the ruling of the Privy Council which states that the unequivocal intention of the separating coparcener to be effective must be "clearly expressed" to the other coparceners. Notice to the other cosharers of the plaintiff's intention to separate would be necessary to make the severance operative against them so that they may know he is claiming his share of the joint family property from the date of the plaint and that the severance is final; but it cannot, I think, be a condition precedent to bring about a severance of the joint family status so far as the plaintiff is concerned. To make this severance effective as against the remaining coparceners notice no doubt would be necessary. It has been held that the mere filing of the plaint does not necessarily effect a final severance in status, for a plaintiff may withdraw his declaration of intention and then no severance is effected : see *Ganapathy v. Subramanyam Chetty* AIR 1929 Mad. 738, but when notice is served the severance of the joint family status must be deemed to continue from the presentation of the plaint. I think the general principles underlying the Privy Council decisions support the contentions of the respondents.

16. This very question arose for decision in *Rachhpali v. Chandesardei* a decision of the Oudh Judicial Commissioner's Court. In that case relying

on the Privy Council decisions *Girija Bai v. Sadashiv Dhundiraj Kaval Nair v. Budh Singh*, *Ramalinga Annavi v. Narayana Annavi* and *Syed*

Kasam v. Jorawar Singh the learned Judges held that the plaintiff's status as a divided member commences from the date of the presentation of the

plaint and that the service of notice of the plaint is not a condition precedent to effect such severance. It may be stated that in that case the learned

Judges found in appeal that as a matter of fact notice of the suit was served on the defendant prior to the execution of the will by which the

properties were gifted away.

17. In the present case, as already stated, notice of the plaint was in fact served upon the other coparceners though the "will and the settlement

were executed before the service of this notice. I have no doubt that the plaintiff's status as a divided member commenced from the date of the

plaint and not from the date of the service of notice. Having regard to the decision in *Soundararajan v. Arunachalam Chetty* and the other decisions

referred to I must uphold the respondents' contention and dismiss the second appeal with costs.

18. I must observe, before concluding this judgment that in this case there is evidence that the defendants knew from the plaintiffs' vakil before the execution of the "will and the settlement" that the suit for partition had been instituted by the plaintiffs. Mr. Ramaswami Ayyar desired to argue that if the actual knowledge by the defendants of the institution of the suit is necessary to effect a severance of the joint family status, this knowledge would serve the purpose; but in the view I have taken above this argument was not proceeded with.