
(2002) 06 MAD CK 0034

In the Madras High Court

Case No : A.S. No. 989 of 1987 and C.M.P. No's. 19955 and 19956 of 2001

Ramalingam

APPELLANT

Vs

Palaniammal, Kanna Mani and Kalai Selvi

RESPONDENT

Date of Decision : 01-06-2002

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : (2002) 06 MAD CK 0034

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : A. Amal Raj, for the Appellant; R. Subramanian, for Hema Sampath, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The suit is filed by the appellant's son for partition of his half share in item Nos.1 to 10 of the suit properties and in

favour of the appellant's wife, the first respondent herein for maintenance and other reliefs. The appellant is aggrieved on two grounds. According

to him, the first respondent is not entitled to any maintenance since she has left the marital home without any just and reasonable cause demanding

that certain properties shall be settled on her and as regards, the claim for partition it is his case that not all the suit properties are liable for partition;

some of the items shall be excluded; some of the items are self-acquired.

2. The written statement of the appellant admits that these properties are all ancestral. The following extract from the written statement is relevant.

The first plaintiff did not come to her brother's house in November, 1982. This defendant did not meet first plaintiff. This defendant did not

demand that first plaintiff should hand over the jewels. This defendant did not hit

the first plaintiff with a stick. This defendant did not cause cigarette

burn injury on 1st plaintiff's face. All the allegations in paragraph IV of the plaint are all false and are hereby specifically denies.

3. From the additional written statement filed on 16-06-1986 where he has stated that only 1 acre and 18 cents of the suit property should be

considered as ancestral property and the remaining has to be considered as self-acquired.

4. There was one Kannusamy whose son is the appellant herein. Kannusamy left behind several properties and they devolved jointly on the

appellant and his brother, Ramalingam as ancestral properties. On 30-12-1977, there was a registered partition and ever since, the appellant and

his brother are in possession and enjoyment of the properties that were separately allotted to them. It is to be noted that in this partition deed dated

30-12-1977, the appellant was allotted a greater share than his brother. Some extracts of Ex-A12 of the partition deed may be relevant to learn

the reason for this unequal allotment.

@,jdoapy; fz;l brhj;Jf;fs; aht[k; ek; ,UtUf;Fk; bghJtpy; ghj;jpag;gl;l bghJ FLk;g brhj;Jf;fs;.@

Therefore, there is no dispute that this properties are joint family properties. It further states that the first party, namely the appellant shall discharge

the various debts and the second party, namely the brother is not bound to discharge the debts. The recitals are as follows:

@1k; egh; ,Jtiu bgw;Ws;s gpuhkp!hp nehl; fld;fs; Tl;Lwt[r'';ff; fld;fs; mh;gd; ng'';f; fld;fs; Mfpa rfykhd fld;fisa[k; 1k; egnu jd; brhe;j bghJ

bghWg;gpYk; nkw;goahd A Schedule brhj;Jf;fis bfhz;Lk; igry; bra;Jf;bfhs;s ntz;oaJ/ nkw;go fld;fspy; 2k; egUf;F ahbjhU bghWg;g[k; fpilahJ/

nkw;go fld;fis 1k; bghWg;gpy; bfhLf;fntz;o tif bra;ag;gl;Ls;sjhy; mjd; epkpj;jk; 1k; egh; mila[k; A Schedule mjpfkfh epyk; xJf;fg;gl;Ls;sJ/ ,dpnky;

ghfk; bra;Jbfhs;s ntz;oa ntW ahbjhU brhj;Jk; fpilahJ/@

5. The learned counsel for the appellant argued that the appellant had discharged all the debts without any detriment to the properties allotted to

him under Ex-A12 and out of his own earnings. Therefore, the excess area that has been allotted to him in this partition deed for the purpose of

discharging debts should be treated as his self-acquired. The submission of the learned counsel is that if he had utilized the extra lands that were

allotted to him for the purpose of discharge of debts, then, those properties would not be available to the second respondent herein for partition. It

is because instead, he had discharged the debts out of his own self-acquired income and these properties are still available and intact and therefore,

they should be deemed to be his self-acquired property. It is also submitted that when Kannusamy Nadar died, the second respondent was not

born and hence, he is not entitled to claim a share in the property that had already devolved the party, the father.

6. The learned counsel for the respondent on the other hand would submit that the duty to discharge the debt was a pious obligation and it is not as

if the appellant had taken upon himself an obligation which was not bound to perform. The most that the appellant can claim is that since he had

discharged the debts out of his own funds the respondent herein is bound to take a share in the liability to repay the debts also.

7. The learned counsel relied on the judgment reported in Kasirajan Vs. Ramasamy Nainar (1992 LW 89). The learned counsel also submitted

that there was absolutely no merit in the appellant's case that the first respondent had left the marital home out of her own accord. He would refer

to the wound certificate Ex-A16 as well as the evidence of P.W.2 who is a Doctor, who had stated that the wounds found on the body of the first

respondent were caused by cigarette butt. Not only he had treated her with physical cruelty, it was also on record that he was living in adultery

with one woman called Arun. Exhibits had been marked like electoral rolls which would show that this Arun was living in the same premises as the

appellant and the first respondent, and the electoral rolls also describes her as the wife of Ramalingam.

8. The learned counsel submitted that the Trial Court had rightly come to the conclusion that it was the appellant who had made it impossible to the

first respondent to remain in the marital home and therefore, he is bound to pay maintenance. The learned counsel also submitted that the appellant

is not entitled to take advantage of his own wrong and having driven the first respondent out of the marital home by his own conduct cannot now

be heard to say that since she went of her own accord she is not entitled to claim maintenance. The Court should see the circumstances which

compelled the first respondent to leave the marital home.

9. The following decisions were relied on for the purpose of supporting the respective cases.

- (a) C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another,
- (b) Additional Commissioner of Income Tax Vs. P.L. Karuppan Chettiar 1991 LW 529
- (c) A.C.A. Ganapathi Mudaliar and Others Vs. Arumugathammal (Died) and Another,
- (d) Vasudeva Naicker, (Died) and Others Vs. T.A. Madhavan and Others,
- (e) P. Periasami (Dead) by Lrs. Vs. P. Periathambi and Others,
- (f) K. Sadagopan Vs. K. Yamunan 2002 II CTC 641
- (g) State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai,
- (h) 1992 LW 89 (cited supra)

10. The question of maintenance:

It is to be seen whether the first respondent left the house out of her own accord, or whether she was forced to leave. One line from the evidence

was extracted by the learned counsel for the appellant to show that she had stated that she left for her father's house in 1971 itself, stating that

unless the settlement deed is executed in her favour she would not stay in the marital home. This does not appear to be correct. Because even as

per the evidence D.W.1, the appellant herein, the first appellant was living with him until 1978 and the daughter, who is the third appellant herein

was born in 1976. The evidence on the side of the appellant is very unclear as to when the first respondent actually went out of the marital house.

Ex-A13 is the notice issued by the appellant and it is dated 15-12-1982. It is the categorical statement of P.W.1, the suit notice was issued while

she was staying with him. If so, the statement in P.W.1's evidence that she left for her mother's house because he did not settle properties on her

in 1971 cannot be correct and in any event one stray sentence cannot be extracted when not only her evidence but also the evidence of D.W.1,

the appellant and D.W.3, the appellant's brother are to the contrary. Therefore, the case that she left in 1971 merely because he refused to

execute the settlement deed has been proved false. It must be seen now whether her leaving the marital home is without any just and reasonable

cause. For this purpose the respondent has marked Ex-A16 and has examined

P.W.2. P.W.2, is a Government Doctor who has no reason to speak falsehood. He has stated that on 02-12-1982, the respondent came to him and he found the burn marks on her feet and on her face and it could have been caused by a cigarette butt. He has also said that he has issued Ex-A16. Ex-A16 speaks clearly of the nature of the injury caused to the first respondent. The first respondent's case is that on that date when she and the appellant met he beat her and he also burnt her with the cigarette butt. So there is oral and documentary evidence of physical cruelty. In addition she has also marked some exhibits to show one Arun who is the teacher was living with him. 02-12-1982, is the date of the injury and 15-12-1982 is Ex-A13, the notice. This notice stated clearly the nature of the conduct of the appellant. It refers to his wayward life, his addiction to drinks and his associating himself with a concubine by name Arun and that he had kicked and beat not only the first respondent but also the children and in the last week of Chithirai he had driven her out of the house and she has stated that on the second of this month when the appellant came to the respondent's house and asked her to handover the jewels she refused and therefore, he pressed the smoking cigarette butt on her face and beat her heavily. No reply has been given to this. It was open to the appellant to state at this stage that since he had already settled properties on her under Ex-B1 he was not liable to give her any maintenance. If the incident on 2nd December is false he ought to have denied at this stage. But he chooses to stay quiet. This is not to say that the allegations are proved merely because the no reply was given to Ex-A13. In the written statement no mention has been made of the suit notice, though it has been received by the appellant and the acknowledgment has been marked as Ex-A14. However, for the first time in the additional written statement he has said that after receiving the notice he had requested the appellants to Panchayat to avoid litigation and the respondent had instigated the appellant not to reply to the notice and so he whole-heartedly believed her assurance and that is why he did not give the reply notice. No date is given of the Panchayat and therefore, it is not possible for the Court to come to the conclusion that the case regarding the Panchayat is true. When the allegations regarding physical cruelty as well as the illicit relationship with Arun has not been satisfactorily rebutted by the appellant, the

appellant's duty to pay maintenance to his wife remains undischarged. The other defence to resist the payment of maintenance is that he had settled

the property under Ex-B1 settlement deed. The original has not been marked. According to the appellant, the original is with the first respondent.

But P.W.1, has not been cross-examined whether she is in possession of original, Ex-B1. Therefore, it is difficult to believe that the original of Ex-

B1 was given to the first respondent. The recitals of this document would show that item Nos.6 to 8 of the suit properties were settled on the first

respondent without any right of alienation, without any right to create mortgage or any other encumbrance and that after her death they should go

to any child that will be born to her and the appellant and in case there are no children it will revert back to him and his heirs. Though, of course,

there is a recital that possession was handed over to the first respondent on that date, it is also stated that the patta will continue to stand in his

name. There must be something to show that possession was given to the settlee and that she was enjoying the said properties. Absolutely there is

no evidence as to the same. Admittedly the patta continues to be in the appellant's name. Even the title deeds or the original of Ex-B1 has not been

proved to be handed over to the first respondent. In these circumstances, it is very difficult to believe that the settlement deed was intended to take

effect or that it came into force. The first respondent as P.W.1 has categorically denied that possession of these suit properties was ever given to

her. Therefore, in the absence of any evidence to show that properties were settled on P.W.1 under the original, this defence also fails. Therefore,

the decree for maintenance granted by the Trial Court stands confirmed.

11. The right to claim partition:

Under Ex-A2, the partition deed between the appellant and his brother about 3.28 acres were given to the appellant. The appellant's case is that

he got a larger share only to discharge certain debts and when he had discharged the debts out of his own income leaving the properties unscathed;

the properties so saved by clearing the debts out of his own income should be deemed to be self-acquired. Therefore, item Nos.1 to 4 should be

removed from the claim for partition. Though this is an interesting proposition it is difficult to accept this for as seen from the decisions cited above,

the liability to pay the family debts is a pious obligation.

12. In 1992 I LW 89(cited supra) this Court held that the liability of payment of debt imposed on the son is based on the Doctrine of pious

obligation. Therefore, the appellant cannot claim any special equities in his favour merely on the fact that he had discharged his father's debt.

Further in the same decision, the learned Judge had held that any partition of the family property without making a provision for payment of debt

due by the family would not prevent the creditor from proceeding against the family property. Therefore, the fact that these properties were set

apart for payment of debt would only mean that any creditor proceeding against the debtor or his sons would not be prevented from proceeding

against the other family properties. To protect them from a creditor's grasp some properties are set apart for discharge of the debts. On that

account the appellant cannot claim that these properties should be treated as self acquired properties.

13. In A.C.A. Ganapathi Mudaliar and Others Vs. Arumugathammal (Died) and Another, was a case where the Doctrine of pious obligation was

dealt with and the learned Judge had referred to the various authoritative texts on Hindu Law and to show that a creditor may enforce payment of

the personal debt of the father, not being illegal or immoral, by attachment of sale of the entire interest of the father and sons in the family property

and the sons are liable to discharge such debts.

14. State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai, was relied on where the Supreme Court dealt with the incidents of co-

parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in

the ancestral properties of such person, secondly, that such descendants can at any time work out their rights by asking for partition. In this case as

has been observed already there has been admission that the suit properties are ancestral and therefore, the respondent is entitled to bring this suit

and P. Periasami (Dead) by Lrs. Vs. P. Periathambi and Others, was relied on by the learned counsel for the appellant to show that the properties

acquired by the sons from his father's who acquired them with his funds cannot be treated as joint Hindu family property and therefore, according

to the learned counsel the after born grandson cannot claim partition. But as stated earlier all these decisions will have no application because it has

been admitted by the appellant that it is the ancestral property. In *Vasudeva Naicker, (Died) and Others Vs. T.A. Madhavan and Others*, it was

held that a joint family property is liable for legitimate debts in the absence of anything to show that the debts for which those properties were

allotted were not legitimate debts and the son is liable to discharge the same and in this case the appellant had discharged the same but that would

not change the character of the ancestral property into a self-acquired property. *Mulla's Hindu Law*, 17th Edition was referred to and in particular,

the following passages were relied on.

¶216. Undivided coparcenary interest - The Supreme Court has summarised the position and observed that the coparcenary property is held in

collective ownership by all the coparceners in a quasi-corporate capacity. The incidents of coparcenary are, first, the lineal male descendants of a

person upto the third generation, acquire on birth ownership in the ancestral properties of such person. Secondly, that such descendants can at any

time work out their work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire

property conjointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common; fifthly,

that no alienation of the property is possible unless it is for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a

deceased member passes on his death to the surviving coparceners.

¶223 Ancestral Property - All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property.

(a) A inherits certain property from his father. A has a son B. The property so inherited is ancestral in A's hands, and it must be held by him in

coparcenary with B. B can enforce partition of it against A, in which event he will be entitled to one-half. If B continues joint with his father, the

whole property will pass to him by survivorship on the father's death.

15. *C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another*, para No.12 was referred to and it is extracted as follows:

So far as the first ground is concerned, the foundation of the doctrine of equal ownership of father and son in ancestral property is the well known

text of Yagnavalkya: vide Yagnavalkya Book 2, 129 which says:

The ownership of father and son is co-equal in the acquisitions of the

grandfather, whether land, corody or chattel.

It is to be noted that Vijnaneswar invokes this passage in Chap.I Sec. 5 of his work, where he deals with the division of grandfather's wealth

amongst his grandsons. The grandsons, it is said, have a right by birth in the grandfather's estate equally with the sons and consequently are entitled

to shares on partition though their shares would be determined "per stirpes" and not "per capita".

This discussion has absolutely no bearing on the present question. It is undoubtedly true that according to Mitakshara, the son has a right by birth

both in his father's and grandfather's estate, but as has been pointed out before, a distinction is made in this respect by Mitakshara itself. In the

ancestral or grandfather's property in the hands of the father, the son has equal rights with his father; while in the self-acquired property of the

father, his rights are unequal by reason of the father having an independent power over or predominant interest in the same: vide Mayne's Hindu

Law, 11th Edition, page 336. It is obvious, however, that the son can assert this equal right with the father only when the grandfather's property

has devolved upon his father and has become ancestral property in his hands. The property of the grandfather can normally vest in the father as

ancestral property if and when the father inherits such property on the death of the grandfather or receives it, by partition, made by the grandfather

himself during his life-time. On both these occasions the grandfather's property comes to the father by virtue of the latter's legal right as a son or

descendant of the former and consequently it becomes ancestral property in his hands.

16. In these circumstances, I see no reason to interfere with the findings of the Trial Court. A civil miscellaneous petition was filed for accepting as

additional evidence a release deed registered as document No.13/97 under which the respondent wife is supposed to have released her rights in

the suit property for valuable consideration. The learned counsel for the respondent would submit that such a document was never executed by her

and in any event no amount was given to her by the appellant.

17. According to the learned counsel for the appellant, however, he was forced to bring about this document. This document cannot be received

as evidence without examining the witness. Therefore, the civil miscellaneous

petitions are dismissed. In any event if and when the respondent chooses to execute the decree for maintenance it is open to the appellant to take such defence as are available to him including that of discharge.

And the dismissal of the miscellaneous petitions shall not stand in his way.

18. In Additional Commissioner of Income Tax, Madras Vs. P.L. Karuppan Chettiar, Karur 1991 L.W. 529 (FB) was relied on by the learned

counsel for the appellant to show that this property is a separate property. There the Full Bench considered the effect of S.8 of the Hindu

Succession Act and held that upon the death of P, a Hindu, after the Act, his son will inherit the property (whether it was ancestral or not) to the

exclusion of the grandson.

19. In this case, Ex-B2 shows that the appellant had taken part in this partition representing his deceased father's branch. This is admitted by the

learned counsel for the appellant. The pleadings are also to the effect that the properties are ancestral; and not that S.8 would apply; and the

appellant would take it excluding his son. In fact the objection of the appellant was restricted only to item Nos.1 to 4 as ground No.23 in the

Memo of grounds would show. So on the facts of this case that decision will not apply.