(1955) 09 AP CK 0014

In the Andhra Pradesh High Court

Case No : Appeal No. 612 of 1950

Ramanujacharyulu and Another APPELLANT

Vs

Panduranghacharyulu and Others RESPONDENT

Date of Decision : 30-09-1955

Acts Referred:

Citation : (1955) 09 AP CK 0014

Hon'ble Judges : Subba Rao, C.J;Satyanarayana Raju, J

Bench : Division Bench

Advocate : M. Ramakrishna, for the Appellant; M.S. Ramachandra Rao and M. Krishna Rao, for the Respondent

Judgement

Subba Rao, C.J.—This is a Defendants'' appeal against the decree and judgment of the learned Subordinate Judge of Guntur in O. S. No. 4 of 1948, a suit filed by the 1st Respondent for partition of the plaint schedule properties.

2. The following genealogy may usefully be referred to for appreciating the facts and the contentions of the parties.

______________________________ | | Venkata Ramanujacharyulu Seshacharyulu | ______________________________ | | | Rangacharyulu Ramanujaeharyulu Krishnamacharyulu= (Plaintiff) (1st Defendant) Venkatanarasamma | (2nd Defendant) 5th Defendant | ________________ | | 3rd Defendant 4th Defendant

The persons shown in the genealogy comprise a joint Hindu family. The 2nd Defendant''s husband, Krishnamacharyulu predeceased his father Venkata Ramanujaeharyulu, leaving his widow 2nd Defendant and daughter''s Defendants 3 and 4. Venkata Ramanujacharyulu died in the latter part of the year 1947. The Plaintiff, claiming items 6 to 12 of the plaint A schedule as joint family properties and items 1 to 5 as having been acquired from and out of the income of the said properties, filed the suit for partition and for possession of his hall share therein.

3. The 1st Defendant pleaded that items 6 to 12 were archaka service inams and were not partible, that items 1 to 5 were purchased by his father from and out of the income earned by him as a physician and as a musician and that his father had disposed of the same in his favour under a will executed prior to his death.

4. The learned Subordinate Judge, on a consideration of the evidence and the law applicable thereto, held that items 6 to 12, though archaka service inams, were liable to be partitioned and that items 1 to 5 were purchased by the 1st Defendant''s father from and out of the joint family income. In the result, he held that the entire plaint schedule properties were joint family properties liable to be partitioned between the Plaintiff and the 1st Defendant. In that view, he passed a preliminary decree in favour of the Plaintiff for partition of the plaint A schedule properties except the portion of the house covered by Exhibit B-10 into two equal shares and for separate possession of one such share. Defendants 1 and 5 preferred the above appeal.

5. Learned Counsel for the Appellants contends that items 1 to 5 of the plaint A schedule were purchased from and out of the personal income of Venkata Ramanujaeharyulu earned by him in his profession as a musician and as a physician and that, in any view, the income from the archaka service inams was his personal income and that even if the said items were purchased from and out of that income, they would only be his self-acquisitions. On the other hand, the learned Counsel for the 1st Respondent argues that there was no reliable evidence to prove that Venkata Ramanujacharyulu had any professional income, that the properties were only purchased from and out of the income of the archaka

6. The following are the particulars of items 1 to 5 of the plaint A schedule purchased by Venkata Ramanujacharyulu.

Items Date Extent Sale Deed Price Rs. A.P. 1 24-10-1912 8 acres 10 cents out of this 5 acres 22 1/2 cents were purchased under. Exhibit B-36. Rest of the item 1, 442 0 0 1933 to 1944 2 acres 80 cents Exhibits B-13 to B-16, B-23 and 888 0 0 5-10-1926 32 cents Exhibit B-12 300 0 0 16-7-1924 Two vacant sites Exhibit B-12 300 0 0 20-3-1929 B-38 446 0 0 3-07-1930 Vacant site 110sq yds. Exhibit dB-39 96 40

7. From the aforesaid details, it will be seen that the purchases cover the period from 1912 to 1944. The following particulars indicate the Amounts spent for the purchases in the various years.

1912 ... Rs. 1442-0-0 1924 ... 87-0-0 1926 ... 300-0-0 1929 ... 446-0-0 1930 ... 96-4-0 1933 ... 347-0-0 1934 ... 66-0-0 1935 ... 75-0-0 1941 ... 250-0-0 1944 ... 150-0-0

8. The Defendants'' specific case in the written statement is that Venkata Ramanujacharyulu was a Rajahvydya and Bhuthavydya that he was well-read in the shastras and was officiating at religious functions in other parts of the

country, that he was a harikatha kalakshepan, a musician and a violinist and that he was earning from all these sources. We shall first consider the evidence adduced in support of this definite case.

9. The 1st Defendant as D. W. 4 says that his father was doing rajavydyam, bhutavydyam and pratishtas, that he was giving music performances and harikathas and that the lands were acquired by his own exertions. But in cross-examination, he cannot give any details of the pratishtas performed or the medical treatment given by his father, except making a general statement that he was getting Rs. 2,000 or Rs. 3,000 from pratishtas. There are no accounts to support his evidence. It is not possible to accept the interested evidence of this witness as regards his father''s other sources of income.

10. D. W. 5 is the son of one Nagayya. He says that Venkata Ramanujacharyulu treated his father and that his father was paying Plaintiff''s father for medicine. He speaks to Exhibits B-30, B-31 and B-50, the correspondence that passed between his father and Venkata Ramanujacharyulu. In cross-examination, he describes the manner his sister was treated by Venkata Ramanujacharyulu. He and his father took his sister in a jutka to the Plaintiff''s father and got her examined and took medicine from him. He does not know how much his father paid Plaintiff''s father. Though he has accounts, he cannot say whether the said accounts contain any details of the payments, made to Venkata Ramanujacharyulu.

11. D. W. 1 says that Venkata Ramanuja-(August) 1957 Andh. Pra. D.P./18 service inams and that the archaka service imams being heritable and partible properties, the acquisitions made out of that income also formed part of the joint family properties.

Sale Deed. Price

Rs. A. P.

Exhibit B-36. Rest of the item 1,442 0 0

no document.

Exhibits B-13 to B-16, B-23 and 888 0

B-37 0

Exhibit B-12 300 0 0

Exhibits B-11 87 0 0

B-38 ... 446 0 0

Exhibit B-39 96 4 0

charyalu was doing a little bit of practising in medicine and that ho gave him some pills but he did not pay for them. Exhibits B-30 to B-33, B-50 and B-51 no doubt show that Venkata Ramanujacharyalu was prescribing medicines but there is absolutely no evidence to show that he was doing it for remuneration. He appears to belong to that class of persons, who with false ideas of humanitarian work indulge in administering medicines, of which they know nothing to incredulous and illiterate villagers without expecting any payment for it. But we cannot say on the evidence that he was getting any income worth mentioning. To establish that he was a violinist, the 1st Defendant relies upon Exhibit B-29, the invitation issued in the year 1922, for a harikatha performance. The fact that he gave a performance does not by itself prove that he was a violinist, by profession, or, that he was getting any income. Exhibits B-25, B-26, B-27 and B-34 no doubt establish that he was conducting certain ceremonies in temples such as samprokshana and pratishta. D. W. 3 would have it that the Plaintiff''s father was paid Rs. 400 at the time of the installation of the idol in the Ramalayam built in their village. He also says that he was also paid small amounts for performing pratishta and sankhustapanam. But he admits that the trustee was not keeping accounts and there was no record to show that any amounts were paid to him. Though he says that one Chenchayya got accounts to show how Rs. 20,000were spent for the Ramalayam, the said accounts were not produced. The evidence, to say the least, is vague and we cannot accept the evidence of the payment of Rs. 400 unsupported as it is by a receipt or by relevant accounts. Exhibit B-34 of the year 1930 shows that a person from Chirala asked Plaintiff''s father if he could perform Naga Pratishta. Exhibit B-35 of 1945 is a similar letter from one Narasimham to the Plaintiff''s father in regard to "Anjaneya Yattram Billa". The aforesaid documents only prove that Venkata Ramanujacharyulu''s services were requisitioned for some religious ceremonies but they do not establish that he received any appreciable amounts as remuneration for his services.

12. From the aforesaid evidence it is clear that Venkata Ramanujacharyulu was taking some interest in medicine, religious ceremonies and music but there is no evidence to prove that he was earning sufficient income from and out of which he could have purchased any properties. If so, the next question is how did he acquired the aforesaid five items of property. The 1st item is of the extent of 8 acres 10 cents 5 acres 22 1/2 cents out of that extent were purchased in 1912 for a sum of Rs. 1,442. There is no document to show how the balance was acquired. The 1st Defendant''s version in his words is as follows:

The first purchase was in 1912. I was then 15. The consideration was Rs. 1,100 or Rs. 1,200. My father had cash of Rs. 1,200 with him which he earned by doing pratishtas, etc. 1 cannot say in how many years Rs. 1,200 was earned by him the gave it to me during one year on live or six occasions. He earned Rs. 1,200 in that year and gave it to me. I kept the money in the box. We did not lend the money to any one else.

When the first purchase was made in 1912, this witness was 15 years old it is impossible to believe that the father would have entrusted Rs. 1,200 to him who was only a boy in "his teens to be kept in safe custody for purchasing property. It is also in evidence that Venkata Ramanujacharyulu was indebted even before 1912. It is not likely that when he had cash of Rs. 1,200 he would not have discharged the debts but kept the amount with his son. The version of the 1st Defendant is not only unnatural but unconvincing. We must say it is a deliberate lie. If this story is rejected, as it must be, there is no positive evidence on the side of the 1st Defendant to establish how that purchase was made. On the other hand, the case of the Plaintiff at the trial was that his father borrowed the amount from the father of D. W. 1 under a promissory note & discharged the debt by leasing out the service inam lands to him.

13. P. W. 2, who is a neighbour of Venkata Ramanujacharyulu, says that he was enjoying 50 acres of service inam lands and that he purchased the other lands by borrowing and discharged the debt by leasing out the lands to the creditor. So too, P. W. 3 says in his evidence that V. Buchayya got the lands purchased for Plaintiff''s father and took the lands on lease and adjusted the rents towards that debt. D. W. 1, in his evidence, admits that the Plaintiff''s father borrowed from his father and executed promissory notes and thai the service inam lands were leased out to him the cannot say what was the original principal advanced by his father or the year when the original indebtedness started. He admits that they were tenants of 33 acres of Plaintiff''s inams from the time of his father. He cannot say'' whether Plaintiff''s father purchased lands during his father''s life-time and stales that he does not know whether his father advanced monies for purchasing lands and adjusted the rents of the lands towards the debt. Though this witness denies knowledge of the crucial facts, it is clear from his evidence that his family had been tenuats for over a long period of time and that his father was advancing monies to the Plaintiff''s father on promissory notes and getting them discharged from and out of the rents payable to him. Though some promissory notes were produced, the earlier promotes were not filed. This witness, in our view, is helping the 1st Defendant and he has deliberately suppressed the earlier promissory notes.

14. The promissory notes produced in this case lend support to the Plaintiff''s version that Venkata Ramanujacharyulu was borrowing amounts and discharging them from and out of the income of the archaka service inam lands. Exhibit B-43 dated 18th August, 1913, is the promissory note executed by Venkata Ramanujacharyulu in favour of one Jonnalagadda Tatayya for Rs. 150 for the purchase of inarm lands. The endorsements on that promissory note indicate that a sum of Rs. 100 was paid on 30tb May, 1914 and Anr. sum of Rs. 69-15-5 was paid on 22nd May, 1915, in full discharge of the promissory note. This promissory note amount might have been utilised for the purchase of the balance of the land in item 1 not covered by Exhibit B-36. Exhibit 0-4 is the promissory note dated 2!st October, 1918, executed by Venkata Ramanujacharyulu in favour of Vellanki Butchayya, father of D. W. 1, for a sum of Rs. 1,849-9-6. This is in renewal of the earlier promissory note dated 22nd October, 1915. The earlier promissory note is not produced and perhaps, if produced, it might have shown

that it was in renewal of an earlier one of the year 1912. Towards this promissory note, on 13th June, 1919, a sum of Rs. 800 was paid in cash. On 12th June, 1923, Anr. sum of Rs. 30 was paid, totaling Rs. 830. The learned Counsel for the Appellants contended that this amount was paid from the makta on 16 acres 65 cents pertaining to the share of Venkata Ramanujacharyulu in the archaka service inams for faslis 1329 to 1332, i.e., 1918-19 to 1921-22. Exhibit B.-3 dated 16th June, 1923, is a promissory note executed by Venkata Ramanujacharyulu in favour of Butchayya in renewal of Exhibit B-4 for the balance of the amount due under Exhibit B-4 and for additional payment. Towards this promissory note, the maktas from the service inams for 1334 to 1342 faslis at Rs. 325-9-0 were credited. Exhibit B-2 dated 20th December, 1925, is Anr. promissory note executed by Venkata Ramanujacharyulu the father of the Plaintiff and the 1st Defendant in favour of Butchayya, for a sum of Rs. 710. The consideration for that promissory note is a sum of Rs. 676-13-0, the balance due under the earlier promissory note dated 20th July, 1922 and a sum of Rs. 33-2-3 received in cash. It was renewed on 1st June, 1929, by Exhibit B-5 for Rs. 820-14-0. The endorsement shows that the lease amounts due under the kabuliyat of 1st December, 1922, for faslis 1333 to 1338 were credited towards Ex. B-2. So too, in the case of Ex. B-5, the maktas for faslis 1339 to 1342 at Rs. 223 per year were credited. For the balance of the amount due under Exhibit B-5, Anr. promissory note was executed, viz., Exhibit B-8, dated 21st July, 1933.

15. It will, therefore, be seen from the aforesaid documents which are consistent with the oral evidence, that Venkata Ramanujacharylu was borrowing from Butchayya and leasing out the service inams to Butchayya to enable him to discharge his debt and the endorsements show that the rents were duly credited towards the promissory notes. The transactions of Butchayya carry us up to 1915 and the evidence of D. W. 1 indicates that there were transactions even earlier. As the earlier promissory notes were not produced, and as we have held that Venkata Ramanujacharyulu has no other independent source of income, the reasonable inference is that the first item of the property was purchased by borrowing by Venkata Ramanujacharyulu and the said debt was discharged by leasing out the service inam lands to Butchayya, who credited the rents due towards the promissory notes. In this, view we agree with the learned Judge that ft has been established in this case that the 1st item was purchased by Venkata Ramanujacharyulu with family funds.

16. The next question is from what source the other items were purchased. It will be seen from the aforesaid particulars of the purchases that the other items wore purchased between 1924 and 1944, i.e., during a period of 20 years and they were for small amounts. It is in evidence that the service inams are of the extent of 50 acres 65 cents. Items 6 to 8 of the total extent of 37 acres HO cents are situated in Tadikonda. Item 9 of the extent of 12 acres 85 cents is situated in the village of liadepurarn. Out of the total extent of 50 acres 65 cents, hall of it was owned by Seshacharyulu, the paternal uncle of Ramanujacharyulu till the year 1925. Alter 1925, as Seshacharyulu died without any issue his share also

devolved upon Vcnkata Ramanujacharyulu. The result is that, till the year 1925, Venkata Ramanujacharyulu was in possession of half the aforesaid extent and, thereafter, the whole extent. It is in evidence that he came into possession of 4 acres 90 cents comprised in items 10 to 12, the wet lands in Kaza, in 1932. The learned Judge found, on the evidence, that Venkata Ramanujacharyulu was getting an income of Rs. 375 - in respect of his 25 acres till 1912, that thereafter lie was getting Rs. 500 every year till 1925 that, after 1925, when Seshacharyulu''s share also devolved upon him, he was getting a total income of Rs. 1,000 per year and that from 1932 he was also getting some income from the Kaza lands. But it is contended by the learned Counsel for the Appellants that all these lands were under lease to Butchayya and that the income therefrom was being credited towards the promissory note debts and, therefore, there was no balance in the hands of Venkata Ramanujacharyulu to purchase items 2 to 5. But this argument ignores the fact that the entire rent was not credited towards the promissory notes. The endorsements on Exhibits B-2 to B-5 show that sometimes the entire rent and sometimes portions of the rent were credited. Further, by 1925, Venkata Ramanujacharyulu purchased 8 acre''s 10 cents and by 1932 he came into possession of Anr. 5 acres of Kaza lands. He was, therefore, admittedly in possession of sufficient nucleus of joint family funds to purchase the small items from time to time. We have already held that the evidence adduced on the side of the Defendants is worthless and that it has not been established that the said items were purchased from the income from any other source. In the circumstances, when there was sufficient nucleus from and out of which these items could have been purchased, the burden shifts to the other side and they have failed to prove that the said items were purchased from Venkata Rananujacharfulu''s separate income.

17. Further, in this case the facts elucidated in the evidence disclose that Venkata Ramanujacharyulu did not make any distinction between his personal income and the income from the joint family properties. Indeed, he had no occasion or necessity to make that distinction. He had two sous and one son predeceased him. They were admittedly in possession of 50 acres of service inam lands from 1925. Venkata Ramanujacharyulu purchased 8 and odd acres in 1912. He was also borrowing monies from time to time. He was leasing out the family lands for the purpose of discharging the promissory note debts. There is nothing on record to show that, even if he had earned any income by other means, he kept, it separate. On the other hand, what must have happened is that all the members of the family were living together, messing together, borrowing amounts and discharging the debts from and out of the family income. Even if some of the personal income went in discharge of the debts, it could not make any difference for there was a clear case of blending and the said income also would have become joint family income. For the aforesaid reasons, we hold that items 1 to 5 are joint family property liable to partition.

18. Learned Counsel then raised a point of law. He argues that, even on the basis that items 1 to 5 were purchased from and out of the income of the

archaka service inam lands, the income was the personal income of Venkata Ramanujacharyulu and, therefore, the acquisition made out of that income also were his separate property. The argument is that though, the archaka service inam lands are heritable property, they are only partible among members of the same decree and, therefore, so long as Venkata Ramanujacharyulu was alive, his sons had no right to the income from that property. The law on this subject is now fairly well settled. One of us (The Chief Justice) had occasion to deal with the nature of archaka service inams in the context of the right of a widow to succeed to the said property under the Hindu Women''s Rights to Property Act in Panangipalli Suryanarayanacharyulu and Another Vs. Panagipalli Seshamma (died) and Another, . After considering the relevant authorities on the subject, it was stated at page 78 (of Mad LJ): (at p. 105 of AIR) as follows:

It will, therefore, be seen that archakatvam office is heritable property governed by Hindu Law of succession. The office is jointly enjoyed by, all the heirs and for convenience it is performed by turns. The property pertaining to the office can be partitioned among the office-holders so long as the services are duly performed. Only the alienation of the property is prohibited. We therefore hold that the right to archakatvam service of the office of archaka is heritable property and therefore governed by the provisions of Act XVIII of 1937.

19. This view was accepted by the Supreme Court in Angurbala Mullick Vs. Debabrata Mullick, . There, the question was whether "shebait" was property within the meaning of Act XVIII of 1937 as amended by Act II of 1938. Their Lord-ships held that "shebaitship" is heritable property within the meaning of that Act. In dealing with that question, incidentally at page 299 they made the following remarks approving the reasoning of the aforesaid decision:

We think that a very proper view of the effect of this decision of the Federal Court has been taken by a Division Bench of the Madras High Court in Panangipalli Suryanarayanacharyulu and Another Vs. Panagipalli Seshamma (died) and Another, There the question arose in connection with the rights associated with the office of archakatwam, which is a hereditary religious office and the holder or holders of it for the time being are beneficially entitled to enjoy the income of the endowed property. It was held that the principle laid down by the Federal Court in Umayal Achi v. Lakshmi Achi, AIR 1945 PC 25 (C), has no application to a case relating to the office of archakatwam. It is pointed out by the Madras High Court that though the observations of the learned Judge in the Federal Court are wide, the decision proceeded only on the main ground that the Act governs succession to property beneficially owned by the propositus. In our opinion, the same reasons apply to the ease of a hereditary shebait of a private debutter........

20. The Supreme Court again in a recent decision reported in Raj Kali Kuer Vs. Ram Rattan Pandey, , in considering the question whether the office of a poojari can be held by a female, accepted the principle that priestly office is property. At page 51 (of Mad LJ): (at p. 498 of AIR), Jagannadha Das, J., observed:

On the same analogy as that of a shebaiti right, the right of a hereditary priest or poojari in a temple must also amount to property where emoluments are attached to such an office. Indeed, some of the decisions which have recognized the shebaiti right as property appear to be cases where the shebaiti right combines the priestly office of a pajari of the idol with the office of the manager of the temple who in South India is known by the name of Dharmakarta. As early as Mitta Kanth Audhikarry v. Nirunjan Adhikarry, 22 Suth WR 437 (E), it was recognized that hereditary priestly office in a family is property liable to partition.

21. The earliest case, wherein the rights of the members of a joint family to partition a religious office is considered is 22 Suth WR 437 (E). There the suit was for partition of the property given to a family for worship of the idol. Couch, C. J., at page 438 says:

The suit is founded upon the right of the Plaintiff as one of several owners of this which may be described as property to a partition. No doubt, the Plaintiff is entitled to that; and the decree of the first Court was right in awarding it. But that decree has not made provision for the term which each of the three persons the Plaintiff and the two Defendants should have.

In Mancharam v. Pranshankar ILR Bom 298 (F), Melvill, J., made the following observations:

Hereditary offices whether religious or secular are no doubt treated by the Hindu text writers as naturally indivisible; but the modern custom whether or not it be strictly in accordance with ancient law has sanctioned such partition as can be had of such property by means of a performance of the duties of the office and the enjoyment of the emoluments by the different coparceners in rotation.

22. Venkataramana Rao, 1., in (Vedavyasa) Alasinga Bhattar and Others Vs. (Vedavyasa) Venkatasudarsana Bhattar and Others, , considered the question whether the hereditary right of trusteeship can be enjoyed by rotation. In dealing with that question, the learned. Judge expressed the view as regards religious office as follows:

In the case of religious offices with emoluments attached thereto, usage has always been to permit partition and heritability in the various branches according to the laws of inheritance applicable to private property.

23. Strong reliance, is placed by the learned Counsel for the Appellants on the judgment of Mack, J., in Seshayya v. Seetharamma, AIR 1949 Mad 839 (H). There the members of a family partitioned swastivachakam service inam lands and were enjoying separately definite extents. One of the sharers, Venkatappayya died leaving his daughter. The Plaintiff, his divided brother filed the suit claiming to succeed to Venkatappayya in preference to his daughter. The earned Judge held that sex was no bar for inheritance and that the daughter of Venkatappayya had a preferential right to the property. All the parties assumed and, indeed, the learned Counsel appearing for them argued on the basis that

the said service inam was heritable and also partible. The learned Judge accepted the finding of the learned Subordinate Judge. The result was that the suit was dismissed. But the learned Judge went further and made some observations to the effect that, after the enactment of Section 58 of the Madras Hindu Religious Endowments Act the members of the family had to right to divide the religious service inam between them selves. These observations are obiter. We do not agree with the learned Judge that Section 58 expressly or by necessary implication made any departure from the preexisting law. That section only indicates that where the office was hereditary, the next in the line of succession would be entitled to succeed. The section does not derogate from the Hindu Law right of succession in the case of heritable property or abrogate the customary law of partition among the members of the family.

24. The law on the subject is therefore well-settled. The office of an archaka when emoluments are attached to it, is heritable and partible property. So long as the services are duly performed, the incidents of that property are analogous to those of any other heritable or partible property under Hindu Law. If the office is jointly owned by the family, the property, which goes with the office, is also joint family property. So long as there is no partition among the members of the family, it follows that the income from the property is joint family income.

25. The argument of the learned Counsel that the income from such a property is income only of persons in the family of the same degree is not supported either by authority or custom. We hold that items 6 to 12 were joint family properties and, therefore, the property purchased from the income thereof is joint family property. For the aforesaid reasons, we agree with the conclusions arrived at by the learned Judge.

26. The appeal fails and is dismissed with costs.