

(1935) 08 MAD CK 0008
In the Madras High Court

S.J. Rangachari and Ors.

APPELLANT

Vs

G.R. Narayana Ayyar and Another

RESPONDENT

Date of Decision : 29-08-1935

Acts Referred:

Citation : AIR 1936 Mad 119 : 162 Ind. Cas. 713

Hon'ble Judges : Varadachariar, J;Cornish, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by three brothers for the recovery of possession of certain lands and for rent and mesne profit Section

Defendant No. 3 in the case is another brother of the plaintiffs and they had an elder brother by name Parthasarathy Ayyangar who died in January

1916. The lands in dispute in this suit were purchased by Parthasarathy Ayyangar in his name under Ex. C in 1911. The plaintiffs claim that these

lands were the joint family property of themselves and defendant No. 3 and the deceased Parthasarathy Ayyangar, that on "Parthasarathy

Ayyangar's death they devolved by survivorship on the remaining brothers and that as the result of a partition between the brothers in 1918 the

lands had, been assigned to the plaintiff Section Defendant No. 1 came into possession as a usufructuary mortgagee from the widow of

Parthasarathy Ayyangar under Ex. 8, dated October 1919, and under that arrangement he was entitled to remain in possession for a period of

three year Section Parthasarathy Ayyangar's widow Alamelu Ammal died in 1920 and some time later defendant No. 4 who is Parthasarathy

Ayyangar's daughter by another wife executed a further usufructuary mortgage in favour of defendant No. 1 in the year 1922 entitling him to

remain in possession for another term of three year Section His interest in the property came to an end on the expiry of the term under this later

arrangement and it is common ground that the possession of the property was delivered to the plaintiffs early in 1926. The question of title had to

be fought out between the plaintiffs and defendant No. 4 but as they had settled the matter between themselves by a compromise, it has become

unnecessary for the Court to deal with this question except to the extent involved in the plaintiff's claim for rent and mesne profits for the years

1918 to 1925.

2. The other contesting defendant in the case is defendant No. 2 who came into possession under a lease, Ex. H, in October 1916, by defendant

No. 3 in defendant No. 2's favour. The lease was in the first instance for a term of only one year. There was, however, another lease, Ex. H-1, in

January 1918. Later on when differences arose between defendant No. 3 and Alamelu Ammal in respect of their respective titles to the suit lands,

Alamelu Ammal who wished to assert her own claim thereto seems to have sought the aid of defendant No. 1, an influential man of the locality and

entered into the arrangement of usufructuary mortgage with him. Soon after this defendant No. 2 seems to have been persuaded to attorn to

defendant No. 1, so that the claim for rent and mesne profits that remains for decision is one in which defendants No Section 1 and 2 are

interested.

3. The plaintiffs claim that the suit lands are joint family property is sought to be supported on three grounds: (1) that the funds out of which they

were purchased were joint family funds, as Parthasarathy Ayyangar must be held to have, collected moneys lent out by his father; (2) that the

purchase, even if made by Parthasarathy Ayyangar out of his own earnings, must enure to the benefit of the joint family because Parthasarathy

Ayyangar had received special education at the expense of the family and by reason thereof his earnings fell in the category of joint family property;

(3) that Parthasarathy Ayyangar must be held to have thrown them into the joint family stock and treated these along with the other admitted

properties of the joint family as joint family property. (Their Lordships after discussing the evidence on the first and third point held the suit

properties were not joint family properties and continued.) It only remains to

deal with the argument of the appellant's learned Counsel on the question of law that as Parthasarathy Ayyangar had been educated by his father for a special profession, namely, the medical line, the earnings made by him in the exercise of that profession must be regarded as joint family property. There is very little authority in support of this contention.

Mr. Venkatarama Sastriar mainly relied on the text of the Mitakshara that the gains of science will be partible unless they have been acquired without detriment to the father's estate (pitri dravya aviroohena). He did not seriously attack the finding of the learned Subordinate Judge that Parthasarathy Ayyangar's father had no ancestral property in his hands and that, therefore, the expenses of Parthasarathy Ayyangar's, education must have been met only out of his father's earning Section But he contended that the translation of the Mitakshara passage in this connection as applicable only to expenses out of the father's "ancestral estate" is inaccurate because the text only refers to pitri dravya. Whatever may be the literal interpretation of the Mitakshara which, it cannot be denied, made no distinction between self-acquired property of a father and ancestral property in his hands so far as their co-parcenary character was concerned, though wider powers of disposition were recognised in the father over his self-acquisitions, it is impossible at this time of the day to apply the, text of the Mitakshara literally. As pointed out in a note in West and Buhler's Hindu Law, Edition 3, at p. 727, the possibility of regarding as partible the earnings of a son educated by a father out of his own earnings was questioned by Sir Thomas Strange himself (see 2 Strange's Hindu Law, p. 376), The matter must now be taken as practically concluded by the reasoning of the Judicial Committee in Velio Chetty v. Soorayya Chetty 1 M 232 : 4 I A 109 : 3 Sar. 698 : 3 Suther 387 : 1 Ind. Jur. 323 , where their Lordships indicate that if the expenses of the son's education had been borne by the separate estate of his father over which he had an absolute power of disposition, it will not be a detriment to the joint estate in the proper sense of the expression and the foundation for a claim of partibility in respect of the earnings of a son so educated will fail.

4. The way that their Lordships refer to this case in a later judgment of theirs, Metharam Ram Rekhiomal v. Revachand Ram Rakhiomal 45 C 666 : 44 Ind. Cas. 269 : AIR 1917 P C 105 : 45 I A 41 : 22 C W N 377 : 4 PLW 197 :

34 M.L.J. 327 : 7 L W 361 : 23 M L T 218 : 16 A L J 281 :

27 C L J 345 : 20 Bom. L R 566 : (1918) M W N 587 : 12 S L R 116 , also confirms this view. We are not, therefore, prepared to accede to the

contention that by reason of Parthasarathy having been educated at the expense of the father, his earnings must necessarily be regarded as joint

family property and that, therefore, the suit property must be regarded as joint family property properly passing to his brothers by survivorship. The learned

Subordinate Judge was right in deciding against the plaintiff's claim on the basis of survivorship. At the end of his argument, the appellant's learned

Counsel suggested that apart from any decision that we may arrive at on the question of title, defendant No. 2 must be held to be liable for rent on

the basis of Ex. H-1, because he had accepted a lease from defendant No. 3. It was argued that as by reason of the partition between defendant

No. 3 and the plaintiffs, these lands and the rents accruing therefrom had been assigned to the plaintiffs, the plaintiffs were entitled to claim rent on

the basis of Ex. H-1, apart from any proof of title. This seems to us to put the argument based on estoppel too high. It will follow from what we

have already held that the title to the property was in the widow of Parthasarathy Ayyangar and after her death, in defendant No. 4. If defendant

No. 1 had been put in possession by them and defendant No. 2 had attorned to defendant No. 1, we are unable to hold that defendant No. 2 was

not entitled to rely on this attornment and payments made in pursuance thereof to defendant No. 1 as an answer to the plaintiffs' claim. The appeal

accordingly fails and is dismissed with cost Section