
(1929) 01 MAD CK 0036
In the Madras High Court

Soundararaja Aiyangar and Others

APPELLANT

Vs

Rukmani Ammal and Another

RESPONDENT

Date of Decision : 14-01-1929

Acts Referred:

Citation : AIR 1929 Mad 500

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This appeal arises out of a suit for a declaration and for some-incidental reliefs. The facts of the case may be shortly stated. Plaintiff 1 had two brothers, Rangaswami Ayyangar and Varahaswami Iyyangar. Varahaswami Iyyangar died in January 1890 but before his death he adopted plaintiff 1's second son, Krishnaswamy Iyyangar. Plaintiff 1's two other sons are now plaintiffs 2 and 3. The whole family constituted a joint family and continued joint until 1915. It is admitted that plaintiff 1's brother Rangaswami Iyyangar was living an extravagant life which ended in large indebtedness and suits and decrees against him. The rest of the family found this situation inconvenient. By this time Krishnaswamy Iyyangar has taken a law degree and became a High Court Vakil and had settled for practice at Negapatam. He found that the only way of saving the family was by a suit for partition and getting rid of Rangaswami Iyyangar. Krishnaswami Iyyangar addressed a letter, Ex. Z to his uncle in-which he informed him that the plaint was ready, and a suit would have to be filed unless the addressee agreed to some-reasonable course which will be acceptable to the other members of the family. The result was that the plaint was filed in July 1915. This plaint was filed by the present plaintiff 1. Krishnaswami Iyyangar was arrayed as defendant 7. The present plaintiffs 2 and 3 were not parties to that suit. Rangaswami Iyyangar and his children and Krishnaswami Iyyangar's adoptive mother were defendants 1 to 6 and 8. Exs. III (a) and III (b) are the written statements of the "Contesting defendants, that is, defendants 1 to 6 and defendant 7. Defendant 7 adopted the position taken up in the plaint. The plaint prayed for the appointment of a commissioner and for division of the

property into three shares and for other consequential reliefs. The suit was never tried but was compromised. A compromise petition was filed which is Ex. 1. Para. 1 of this compromise petition says:

The plaintiff and defendant 7 shall take items 1 to 6 (one to six) of the plaint Schedule 1 and items 46 and 47, 49 and 52 in equal shares "i. e. the plaintiff shall take one half and defendant 7 one half.

2. The other clauses of the compromise deed mention the properties that were to be taken by defendant 1 and provide for debts and outstandings. Clause 10 says:

All the disputes amongst the plaintiff, defendant 1 and defendant 7 have thus been settled as aforesaid; in future they shall not have any claim against one another. Both the parties pray that a compromise decree be passed as they have come to a settlement.

3. A decree was passed in terms of the compromise and Ex. 1 was incorporated into it. Rangaswami Iyengar having been separated from the family by this compromise decree the present plaintiffs and Krishnaswami Iyyangar continued to live together up to 1919 when Krishnaswami Iyyangar died. Immediately after his death, his widow, the present defendant 1 claimed to have succeeded to his one third share of the original property or half share of the property that was allotted to the present plaintiff 1 and Krishnaswami Iyyangar in the compromise decree on the ground that he died a divided member. The plaintiff's denying her claim brought this suit for a declaration that she is not so entitled. The Subordinate Judge agreeing with defendant 1's contention disallowed the main contention of the plain-stiffs but gave a decree for certain other reliefs. The plaintiffs appeal.

4. The main question that has to be decided in appeal is what is the effect of the compromise and the compromise decree in O.S. No. 25 of 1915? It is contended by the appellants that the object of that compromise was only to separate Rangaswami Iyyangar and to keep the plaintiff and defendant 7 joint. Whatever might have been the intention, it was effected only by means of a suit filed by plaintiff 1 only. Krishnaswami Iyengar was arrayed as defendant 7. It is established law that by filing a suit for partition the plaintiff becomes separated from the joint family as from the date of the filing of the suit, This rule is subject only to this exception, namely, if the suit is withdrawn the original undivided status continues. This exception does not cover the present case.

5. The learned advocate for the appellants referring to the deposition of plaintiff 1 argues that defendant 7 was arrayed as a defendant and not as co-plaintiff merely to avoid paying double Court-fees This may be one of the motives but assuming it was one of the motives, the consequences cannot be avoided. Rather than pay higher Court-fees the parties were willing that all the three branches should become divided. Again, it is difficult to avoid the inference that probably there was also another motive in the mind of Krishnaswami Iyyangar, who it is said, drafted the plaint and conducted the whole litigation. He was a lawyer by

profession. He was aged about 30 or 31 at the time of the suit. He had no children by that time. Possibly he thought that by separating the interests of all the branches by means of that suit he would not only be getting rid of an unpleasant member of the family, Rangaswami Iyyengar, but he would also be safeguarding the rights of his wife. If he happened to die without any children, he would be providing for her amply instead of leaving her a maintenance-holder dependent on his natural father and brothers. Probably both these motives operated and Clauses (1) and (10) of the compromise petition must have been drafted with reference to such intention. If the plaintiff and defendant 7 were both arrayed as co-plaintiffs, it might be said that Clause (1) standing by itself was only a clause defining the shares and did not mean anything more. But having regard to, the fact that both were not plaintiffs and also having regard to the terms of Cl (10) it is impossible to whittle away the effect of Clause (1).

6. We have not got to deal here with a case where a member of a family is being separated from the family leaving his sons in the family, in which case at first sight it might be thought that there is something incongruous in the father separating from his children. Even this difficulty was not to be found in *Rajagopala Iyyengar v. Singaravelu Thevan* [1919] 10 M.L.W 438 but no such question arises here. Krishnaswami Iyyengar represented a separate branch. However friendly he might be with his natural father and brothers both before and after that suit, he having represented an independent branch it was proper to construe the decree as evincing the intention to separate all the three branches.

7. Mr. Bhashyam Iyyengar referred us to the case in *Ram Pershad Singh v. Lakhapati Koer* [1903] 30 Cal. 231. In that case three plaintiffs jointly sued in an earlier litigation and they got a decree for three-fifths. The question arose in a later litigation as to what is the effect of the decree. Their Lordships of the Privy Council while conceding that the effect of the earlier decree might be consistent with separation or jointness, proceeded to examine the later conduct of the parties and with reference to such conduct they found that they were separated. Mr. Bhashyam Iyyengar relying on the facts of that case urges that Ex. I by itself is not necessarily indicative of an intention to separate. As I already said Clause 1 by itself may perhaps not be enough but with Clause 10 and with the fact that the plaintiff and defendant 7 were not Co-plaintiffs, the present case stands in a different position from *Ram Pershad Singh v. Lakhapati Koer* [1903] 30 Cal. 231.

8. The case in AIR 1925 132 (Privy Council) relates only to defining shares in revenue papers and Collector's register. Some general observations in AIR 1925 49 (Privy Council) were relied on but we do not see anything in these observations preventing us from adopting the construction indicated. Another case relied on before us is *Ambika Dat v. Sukhmani* [1876] 1 All 437. At this distance of time, we find it difficult to say if that case would be now similarly decided. On the facts, however, it is unnecessary to say anything more. If the other members were cousins or distant relatives it may be that the conduct of

Krishnaswami Iyyangar after the decree can be explained only on the footing that the decree is abandoned or showed an intention to re-unite. But seeing he was living with his father, and that he was a dutiful son, it is not proper to construe that he gave up the rights created under Ex. 1. After all there is nothing in the latter's conduct to show that he intended to remain joint with his father because all the conduct that is relied on is consistent with all being tenants-in-common. That being so, we cannot say that the later conduct of Krishnaswami Iyyangar for the three years between 1916-1919 showed an intention to re-unite or abandon the position created by the decree. The decree of the Subordinate Judge must be affirmed. The appellant fails and is dismissed with costs.