

(1949) 09 MAD CK 0018
In the Madras High Court
Case No : A.A.O. No. 107 of 1948

Sri Muthangi Butchi Ramayya

APPELLANT

Vs

Gurralla Venkata Subbarao and Others

RESPONDENT

Date of Decision : 06-09-1949

Acts Referred:

Partition Act, 1893 — Section 4(1)

Citation : AIR 1950 Mad 214 : (1949) 62 LW 810

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Raghava Rao, J.—The appellant before me was defendant 6 in the original suit which was laid for recovery of a one-tenth share out of a

two-third share of a whole property, the other one-third of which defendant 6 had become owner by virtue of a court auction purchase of the

interest of one Krishnarao, a member of the family of the plaintiff and the other defendants to the present suit, by defendant 6 himself as his

execution creditor. After the purchase, defendant 6 in fact filed his own suit for partition and recovery of his one-third share in the right of

Krishnarao and before the final decree in that suit was actually passed, defendants 1 to 5 in the present suit, of whom defendant 2 is the father of

the plaintiff in the present suit, applied to buy up the share of the present defendant 6 who was the plaintiff in the former suit, under the provision of

Section 4, Partition Act. Defendants 1 to 5 in fact were given the chance to buy up the share in accordance with the provision of that section of the

Act, but, they did not avail themselves of it. The present plaintiff who is the respondent before me, claims that he is entitled to assert his own right to buy up the share of the present defendant 6 by force of the provision of Section 4 of the Act which, according to him, confers upon him an individual right of his own irrespective of the rights of his father defendant 2 or of the other members of his branch of the family who were parties to the former action.

2. This claim of the plaintiff is answered by defendant 6 in a two-fold way: firstly, by saying that there is no individual right such as is sought to be asserted by the plaintiff who must be held bound by the conduct of his father, defendant 2, who actually along with his brothers did not avail himself of the right given by the decree in the former suit u/s 4, Partition Act, and, secondly, by saying that the present suit is not within the purview of Section 4, Partition Act and that consequently there is no right such as is claimed by the plaintiff which can be asserted by him. The learned District Munsif who tried the suit gave effect to both the pleas which were made by defendant 6 and accordingly dismissed the suit as against him. On appeal taken to the Subordinate Judge he rejected both the pleas and decreed the suit.

3. Both the points taken in the original suit by defendant 6 are repeated here by his learned counsel ; but, it is not necessary for me to deal with the first of them, as on the second, I have come to the distinct conclusion that the plaintiff-respondent must fail. The view that I take of the section is that there must be a suit at the instance of a transferee of a share of a dwelling house for partition and then, if any member of the family being himself a share-holder in respect of the dwelling house, undertakes to buy the share of the transferee-plaintiff, the Court shall make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder. This is the view which necessarily follows on the language of the section, and, if effect were given to the language, as indeed has been done in a Bombay case reported in *Khanderao Dattatraya v. Ballkrishna Mahadev*, 46 Bom. 341 : A. I. R. 1922 Bom. 121, there is no doubt but that this appeal must succeed and the plaintiff must fail as there is no suit by a stranger-purchaser of a share here and now. It is said, however, by Mr. Suryanarayana, the learned counsel for the

respondents, that there are two other decisions, one of the Calcutta High Court and the other of the Nagpur High Court, reported respectively in

Satyabhama De Vs. Jatindra Mohan Deb and Others, and AIR 1937 4 (Nagpur) , which support what has been described in the latter of the two

decisions as a more liberal interpretation of the section on which he is placing reliance. I have examined the two decisions and I do not think that

they afford any real assistance to the learned counsel for the respondents with reference to the contention that he has advanced, namely, that

although there is no suit now and here by a stranger-transferee of a share, his client may be allowed to buy up defendant 6's share on the spirit, if

not on the letter of the section. Even without deciding that a more liberal construction of the section is permissible than is warranted by its letter as

virtually held in those cases, I am still of opinion that the present case can well be distinguished from them on the facts. In fact, neither of the cases

actually dissents from the case in Khanderao Dattatraya v. Balkrishna Mahadev, 46 Bom. 341: A. I. R. 1922 Bom. 121. The Nagpur case makes

no reference at all to the Bombay case while the Calcutta case which refers to it does not disapprove of it but only distinguishes it. In both the

cases there is one peculiar feature which distinguishes them from the case before me, viz., that the stranger-transferee happened in those cases

himself to apply for partition with the result that it became open to the Court notionally and virtually to regard him as plaintiff and, thereafter, to

regard the original plaintiff as himself or herself entitled to ask for the relief u/s 4 on the basis that there was a suit in the eye of law by the stranger-

transferee himself for a partition. I am not sure that this sort of strain put upon the situation in those cases was rightly put. It is hardly necessary for

me, however, to pronounce on the exact soundness in this respect of the two cases which, as I have pointed out, are on the view of facts taken

therein distinguishable. The case before me does not accordingly attract the Calcutta or the Nagpur case. I may state, however, that the view of

law taken by the learned Chief Justice in the Bombay case seems to my mind, if I may say so with respect, to be the only sound view possible,

which accords with spirit as well as the letter of the section and which, unlike the view taken in the Nagpur and Calcutta cases does not extend the

spirit of the section beyond its letter. The equity of the statute, as it is sometimes called, cannot override its plain language, and the contention of the

respondents" learned counsel must accordingly be repelled.

4. In these circumstances, I have no hesitation in reversing the judgment and decree of the lower appellate Court on the basis of my decision on the point which I have dealt with, and in allowing the civil miscellaneous appeal and restoring the decree of the trial Court with costs to the appellant throughout.

5. No leave.