

(1958) 12 AP CK 0018
In the Andhra Pradesh High Court
Case No : Appeal No. 1186 of 1953

Sri Rekapalli Virabhadru and Others	APPELLANT
Vs	
R. Suryanarayanamurthy and Others	RESPONDENT

Date of Decision : 16-12-1958

Acts Referred:

Citation : AIR 1960 AP 636

Hon'ble Judges : Satyanarayana Raju, J;Munikanniah, J

Bench : Division Bench

Advocate : B.V. Subrahmanyam, V.V. Krishnamurthy and sicNarayanachari, for the Appellant; P. Somasundaram, P. Suryanarayana, N. Rajeswara Rao, Sankara Sastri and T. Veerabhadrayya, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—This appeal is against the dismissal of the suit filed by the sons of the 1st defendant for partition of the family properties by the Subordinate Judge of Amalapuram.

2. The 1st defendant instituted an application O. P. No. 25 of 1951, for guardianship of the minor plaintiffs and for the custody of the 1st plaintiff in the suit and the eldest daughter Subbalakshmi. The court of the Subordinate Judge, Amalapuram allowed this application and against this C. M. A. No. 659 of 1953 has been filed. But as the 1st plaintiff has attained majority and the daughter Subbalakshmi is now in the custody of the 1st defendant, the C. M. A. has been dismissed as withdrawn. We are therefore here concerned only with the appeal against the judgment and decree in the suit.

3. A few facts which are undisputed may first be set out. The plaintiffs who were minors on the date of the suit are the sons of the 1st defendant by his first wife Satyavati. The first defendant married Satyavathi in 1932 and lived happily together till her death on 24-9-1948. The 1st defendant married a second wife after the death of Satyavathi i.e., in November 1948 and the second wife joined

the 1st defendant in January 1950. The 1st defendant who belonged to Vadapalli owns Ac. 16-24 cents in that village but sold, some of these properties after 1944 with a view to acquire valuable wet lands at Narendrapuram near Modekurru where his father-in-law was living. The sales of Vadapalli lands so effected till 1946 were of the extent of 12 acres and odd which fetched a price of Rs. 8,160/-. During that period he acquired at Narendra- puram Ac. 10-71 cents of land for Rs. 8,170/-. These purchases are comprised in items 1 to 11 of the plaint A schedule. He had also acquired a house at Modekurru after selling his house at Vada palli in 1947. He also sold in 1947 under Exhibits B. 12, B. 13 and B. 14 and also in January 1950 under Exhibit B-34 the remaining lands in Vadapalli. Among the acquisitions made during this period are some lands belonging to his father-in-law. During the period from 30-9-1946 to 22-3-1950 the account in regard to the transactions relating to sales and purchases of land by the 1st defendant and the income from those lands and expenditure of the incomes and realisations on account of the 1st defen- dant have all been noted in Ex. B-I which was an account kept by his father-in-law. Ex. B-37 relates to the account for the subsequent period upto 30-3- 1951 and this alone has been maintained by the 1st defendant. The 1st defendant also performed the 1st plaintiff's thread-marriage in June 1950.

The grand-father of the 1st plaintiff as well as the uncle attended this function as they were all in good terms till then. But on 31-7-1950 Venkate-swarlu (D. W. 7) a maternal uncle of the minor plaintiffs, issued Ex. B-40 demanding partition on the ground that it is not beneficial to the interest of the minors to live with their father, the 1st defendant. The suit out of which this appeal arises had thereafter been filed on 21-11-1950 by P. W. 1 who is one of the maternal uncles of the minor plaintiffs, but adopted to another family, and not by D. W. 7.

4. With this background, the pleadings in the case may be referred to in order to find out what the main contentions of the respective parties are But before doing so, it is necessary to point out that the plaintiffs originally filed the suit against their father and defendants 2 and 3 and it did not impeach the alienations in respect of item 12 of the plaint A schedule in favour of 4th defendant. But later on the plaintiffs filed I. A. No. 353 of 1951 and the Court by an order dated 17-9-1951, ordered the addition of this defendant and the incorporation of the reliefs against him in the plaint

5. The plaintiffs alleged that they and the 1st defendant constituted members of a joint family which owned the properties mentioned in Schedule A.B.C. and D to the plaint, that the 1st defendant's father was carrying on money lending business and that the 1st defendant himself was in possession of cash to the extent of over Rs. 5,000/-, that the plaint A schedule lands alone fetch an annual net income, of 100 bags of paddy and about 2,000 cocoanuts, and that a large amount of income remained as surplus every year in the hands of the 1st defendant after meeting the family necessities, and that there are no debts due by the family. In the plaint the sales of Vadapalli lands by the 1st defendant had

been attacked as being for inadequate and low price.

It is stated that the 1st defendant is likely to alienate all the family properties, that he is acting under the instructions of his second wife and her people, that he is secreting some cash and outstanding due from the debtors, and that therefore it is necessary to effect a partition to prevent the minors' property being dealt with to their detriment. The plaint further alleges that the 1st defendant had been contracting some bogus debts with a dishonest intention. The 1st defendant is also charged of having neglected the minors and for abandoning them. On these allegations the plaintiffs pray for a partition and separate possession of their 2/3rd share of the family properties.

6. The allegations in favour of defendants 2 to 4 are attacked on the ground that the 1st defendant had no necessity to sell any family properties, that items 12 to 16 of the plaint A schedule were sold to these defendants for low prices and that it was not to the benefit of the minor plaintiffs to sell the lands at Vadapalli as they were fetching good income. The plaintiffs therefore claimed an account of their share of the incomes from these alienated properties.

7. The 1st defendant denied that he was acting against the interest of his minor sons and stated that he did not neglect or abandon them. He contended that his second marriage has provoked his father-in-law and his brothers-in-law to take away the minor plaintiffs, with a view to get this suit filed and disrupt the family. According to him, the eldest son and the eldest daughter were taken away from his house during his absence, that the second son and the second daughter are still living with this defendant at Modekurru, that the so-called next friend should be considered as an absolute stranger to the family having no interest whatsoever in the minor children and that he is put up only by his father-in-law to secure undue benefit for his family that he was therefore obliged to file a petition (O. P. No. 25 of 1951) for the custody of his son and daughter.

He denied that he has been selling away the ancestral properties without legal necessity. He stated that he migrated with his family to Modekurru near Narendrapuram at the instance of his father-in-law and on account of this he sold his properties at Vadapalli and purchased lands from time to time at Narendrapuram with the sale proceeds. According to him, the sales effected by him fetched the best possible prices and the sale proceeds were utilised for family necessity. He stated that the dry lands in Vadapalli without irrigation facilities did not yield good income while those purchased at Narendrapuram are wet lands yielding better income. His case is that he had done all this at the instance of his father-in-law and that all the transactions were managed by his father-in-law. He averred that he had also expended large amounts for the treatment of his sickly wife, and that he contracted the debts shown in Schedule III to his written statement for purposes binding on the members of the family.

8. Defendants 2 to 4 contended that the alienations in their favour were supported by legal necessity and they were for family benefit.

9. The issues framed in the suit are in respect of these contentions. But the ground relating to the abandonment or neglect of the plaintiffs do not call for any adjudication in this appeal as Mr. B. V. Subrahmanyam, the learned counsel for the appellants, has stated that he is not canvassing the finding which held against the plaintiffs on this point. The main question which therefore arises for consideration in this appeal is whether this claim for partition on behalf of the plaintiffs is for the benefit of the minors.

This could be so, having regard to the averments in the pleadings if firstly the plaintiffs establish that the 1st defendant sold the properties belonging to the joint family without necessity and secreted the realisations; secondly that other assets also like the Incomes from the family lands have also been secreted and thirdly that the 1st defendant created false debts. Before examining the evidence in regard to these matters, we may in passing notice the fact that the 1st plaintiff has since attained majority. But that will not alter or change the consideration which ought to weigh with a court in regard to the claim for partition by the minor plaintiffs. Further the question concerning the alienations in favour of defendants 2 to 4 will not arise for immediate consideration unless the findings of this court in regard to the above matters are in favour of the plaintiffs.

10-14. It will be convenient to consider the transactions regarding the sales and purchases of lands dividing them into those prior to 30-9-1946 from which date the account book, Ex. B-I was kept and those which have taken place after the date. (After going through the evidence their Lordships continued).

15. From the above, it follows that the alienations made by the 1st defendant have not been speculative or risky but are beneficial and advantageous to the family. It is not also proved that the 1st defendant has been ill-disposed towards his children or that he created any spurious or false debts; and inasmuch as the plaintiffs have not made out abandonment or neglect, it cannot be said that they succeeded in establishing anything against the first defendant which could be taken as going against the interests of the family of the plaintiffs and the defendants.

16. On behalf of the appellants, it is also contended that the first defendant had collected many of the outstandings due to him but did not utilise realisations for family purposes, but that from out of the sales and these collections, a large sum of cash remained with him. It has been the case of the 1st defendant that the moneys remaining to the credit of his account have been lent by the father-in-law only and that he was not even in possession of the promissory notes relating to those transactions. The 1st defendant, however, made attempts to some suits against the persons shown as debtors of his accounts, but as he could not produce the promissory notes the defendants have pleaded discharged or payment to the father-in-law or the brothers-in-law.

It is therefore, very surprising that though the 1st defendant could not realise any

amounts, he still blamed as though he collected them. In this appeal, the appellants have filed C. M. P. No. 6620 of 1958 for admission of those judgments dismissing the suits filed by the 1st defendant against his debtor as additional evidence. Another judgment in O. S. No. 136 of 1953 on the file of the District Munsif's Court, Razole, which is a suit filed by the 1st defendant against the maternal uncles of the plaintiffs for rendition of account had also been dismissed; and the plaintiffs seek to file this judgment also as additional evidence.

It is stated in the affidavit in support of this petition for additional evidence that as these judgments which are the subject matter of the additional evidence were delivered later than the dismissal of the suit against which this appeal is and as the minor 1st plaintiff has elected to continue the suit, these documents are relevant and constitute additional evidence which ought to be admitted. But we do not think, in the view we have already taken in regard to the outstandings and the suppression of the promissory notes by the father-in-law without being handed over to the 1st defendant, we require these documents to enable us to pronounce the judgment in this appeal; nor could it be said that the averments in the affidavit disclosed any substantial cause for the admission of these documents as additional evidence.

17. It needs now to be considered whether partition demanded by the plaintiffs is in their interests. As has been already observed, the 1st defendant could not have been actuated by any motive to act against the interests of the plaintiffs till the death of his first wife which happened on 24-9-1948. The 1st defendant again married in November 1948 but his second wife joined him only in January 1950. It is evident that there has been no ill-feelings between the 1st defendant and the family of his first father-in-law till March 1950 for, this father-in-law was looking after the entire affairs of the 1st defendant and the Upanayanam of the first son had taken place with the concurrence and full co-operation of the family of this father-in-law.

But on 31-7-1950 a registered notice (Ex. B-40) was issued by D. W. 7, one of his brothers-in-law, therein it has been alleged that he has not been properly looking after the plaintiffs since his remarriage or caring for the welfare and educational interests of his children but secreting incomes of the joint family and fabricating vouchers as evidence (sic) borrowing and that therefore it is injurious for (sic) plaintiffs to remain joint with the 1st defendant. (sic) instance has been pointed out as supporting these allegations between the period from the time the second wife joined the 1st defendant in January (sic) and the time of giving the registered notice. (sic) considering the evidence, their Lordships (sic).

18. We have therefore no hesitation in agreeing (sic) the lower court that the suit has not been conceived for the benefit of the minors and that the partition is not in the interests of the minor plaintiffs.

19. Mr. B. W. Subrahmanyam has further contended that since the 1st plaintiff after attaining majority has elected to continue the proceedings, he should be

considered as having effected a division In status from the date of the filing of the suit and is entitled to have a decree in his favour irrespective of any finding that the suit itself, when it was instituted, is not for the benefit of the minor plaintiffs, A few facts need to be recollected: The suit out of which this appeal arises, as already stated, has been filed on 21-11-1950. The 1st plaintiff attained majority on 8-8-1956.

He swore to an affidavit on 28-8-1958 electing to continue the appeal and filed an application for this purpose on 3-9-1956. The lower court dismissed the suit on 20-7-1953 holding that the partition is not for the benefit of the minors and this appeal has been preferred on 20-10-1953. The object underlying the present attitude of the 1st plaintiff is to claim a 1/3rd share, as after the birth of another son in 1956, there has been a fluctuation in regard to the 1st plaintiff's interest in the joint family.

20. The learned counsel for the appellants relied upon the decision in M. Ramarao. v. M. Venkata Subbayya, AIR 1937 Mad 274. There the plaintiff who was the son of the 1st defendant by his first wife attained majority while the suit was pending and elected to continue the suit. Venkataramana Rao J. opined at page 276:

"It is open to the minor on attaining majority to elect to abandon or continue the suit. If he elects to continue, he adopts the act of the guardian and puts his own imprimatur on it and the court is no longer called upon to pronounce its opinion in it; the minor becomes separated from the date of plaint."

In that case the 1st plaintiff having elected to continue the suit became a divided member from the date of the plaint. A recent decision of the Nagpur High Court in Rukhmabai v. Ramratan Harikisan AIR 1951 Nag 350 while relying upon the ratio in Mannava Rama Rao Vs. Mannava Venkata Subbayya and Others, went a step further in applying this principle to the case of a minor who had attained majority at the stage of the appeal. It is stated there that the appellant was a minor at the date of the institution of the suit and also at the date of the decision by the first court. However that court was prepared to hold:

"As the appellant has now attained majority and wants to go on with the suit, the decision given by the learned Judge on issued no longer stands in the way of the continuation of the suit." That court no doubt set aside the finding of the trial Judge on the first issue which went against the minor plaintiff since it held that in the absence of any waste or extravagance or mismanagement of any kind harmful to the interests of the minor, no permission could be given to continue the suit for partition and remanded the suit for fresh trial. But we are unable to accede to the application of the principle adumbrated by Venkataramana Rao J. in AIR. 1937 Mad 274 (supra) as applying even to a case of a minor who attains majority at the stage of the appeal and then elects to continue the proceedings for it is obvious that if a minor becomes a major and elects at the stage of the suit before any pronouncement is made by the trial court, it would certainly be a

case where the trial court in so far as that the plaintiff is concerned, "is relieved from the obligation from pronouncing its opinion whether it is in the interests of the minor to decree the suit for partition or not".

See Mannava Rama Rao Vs. Mannava Venkata Subbayya and Others, .

But when a minor plaintiff attains majority during the pendency of an appeal, that fact by itself of his electing to continue the appeal will not have the effect of reversing the finding of the trial court or operate to set at naught the finding that the partition is not in the interests of the minors. A fortiori this will be the case even in respect of a minor who elects to continue the appeal. Moreover the expressing of an intention by an erstwhile minor when he attains majority after the suit has been dismissed would tantamount to a fresh assertion of a right which the Court has refused to recognise.

The reversal of that finding of the trial court in the appeal may indeed revive the rights of the quantum minor for partition as on the date of the suit; but it is inconceivable how the decision of a court binding upon a party could be flouted by a unilateral declaration, however, unequivocally it might be, to partition the family properties with retrospective operation. Whatever might be the position when compromises are made with mutual consent, the sanctity of a decree cannot be violated or its binding force altered without its being super-seded or set aside by the decision of the appellate court. In this view we are unable to accept the contention of the learned counsel for the appellant that the gesture of the quantum minor (1st plaintiff) to continue the appeal ipso facto operates to annul the finding of the trial court so as to entitle the 1st plaintiff perforce to a decree for partition from the date of the plaint.

It is now well-settled that the right of a guardian to effect a division in status of a joint families filing a suit on behalf of the minor takes effect (sic) when the court finds that the guardian (sic) minor has in instituting the suit for partition (sic) in the interests of the minor (See Kakumanu Peda Subbayya and Another Vs. Kakumanu Akkamma and Another, (sic) when the trial court concluded that the suit (sic) in the interests of the minor plaintiffs and appellate court is inclined to affirm the conclusion (sic) the insistence of the 1st plaintiff to have a decree partition on the mere ground that he elected continue the appeal could be of no avail, as at (sic) time when he elected he based the cause of (sic) on his definite unequivocal declaration to divided whereas in the suit under appeal, the matter rested upon the question of benefit to the minors. (21) In the result, the appeal fails and dismissed with costs to be recovered from the (sic) plaintiffs" guardian.