

(1941) 02 MAD CK 0048
In the Madras High Court

The Official Receiver

APPELLANT

Vs

Tadi Veerreddi and Another

RESPONDENT

Date of Decision : 17-02-1941

Acts Referred:

Citation : (1941) 54 LW 302 : (1941) 2 MLJ 951

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal is preferred against an order granting a temporary injunction against the Official Receiver acting in the insolvency of defendants 1 and 2, restraining him from selling the interest of the minor plaintiffs in the family property in discharge of the debts incurred by their father, the first defendant.

2. The history of this litigation is an illustration of the deplorable results flowing from dilatory procedure. The first defendant is the father of the second defendant" and also of the 2 minor plaintiffs. On the eve of the insolvency of the first and second defendants in 1931, the second defendant filed a suit for partition and after the adjudication of the first and second defendants in November, 1931, the minor sons were transposed as plaintiffs and continued the suit with their mother as guardian. Some three years later the mother was replaced by an uncle. The Official Receiver asked that the creditors, some ninety in number, should be impleaded so that any decree might be binding upon them all so far as the minor's share was concerned, as well as to the extent of the shares of the insolvents. The business of impleading these creditors spread over a period no less than of eight years, at the end of which the suit ended by the return of the plaint for want of jurisdiction. Why, if the Court had no jurisdiction, it had not: discovered the fact eight years earlier, is a matter on which I have no information. There was an appeal against this decision which was dismissed in 1940. After this appeal was dismissed, yet another next friend of the minor plaintiffs filed a fresh suit, O.S. No. 58 of 1940, without reference to the previous

suit, praying for a partition and in this suit a petition was filed for an injunction restraining the Official Receiver from selling the family properties. The lower Court has restrained him from selling the plaintiffs' share in the family properties pending the decision of the suit.

3. It would appear that the observations of the learned Subordinate Judge about the delay of the Official Receiver in taking action for the sale of the properties are based on a misunderstanding, as for the major portion of the period the Official Receiver was bound by the injunction in another litigation. The learned Subordinate Judge comments adversely upon the character of this litigation and the way in which it has been conducted and regrets that he is obliged by the decision of the Full Bench in *Balusami Aiyar, In Re: A.N.B. Baluswamy Iyer and A.N.B. Narasimha Iyer*, , (though the corresponding reference in an unauthorised report is given) to hold that the filing of the suit by the minors creates a division in status and that thereafter the Official Receiver has no power to exercise the father's authority to sell his son's share in joint property. It is a curious thing that though the decision of the Full Bench quoted arose clearly from a case in which the plaintiffs were minors, the learned Judges do not refer to the question whether the filing of a suit on behalf of a minor co-parcener for partition effects automatically a division in status; as it certainly does in the case of a major coparcener. There is an earlier Full Bench decision in *Soundararajan v. Arunachalam Chetti* (1915) 29 M.L.J. 793 : ILR Mad. 159 (F.B.) which merely purports to decide that a co-parcener becomes separated by the mere fact of suing for partition, with reference to which decision it has also been remarked in later rulings that this was a case of a minor plaintiff, though the fact is not adverted to in the judgment. Now, these two Full Bench decisions by implication, though not by express words, would appear to dectle that the filing of a suit, by a minor co-parcener, just like the filing of a suit by a, major co-parcener, must be regarded as an unambiguous declaration of an intention to divide, creating a division in status. There is, however, a long and well-established line of authority, showing that this is not the case. In *Chelimi Chetti v. Subbamma* (1917) 34 M.L.J. 213 : ILR Mad. 442 a Bench held that the filing of a suit by a minor for partition will not effect a severance of status because it is for the Court to determine whether a partition is or is not beneficial to the minor and there is no positive right of the minor's next friend to claim a partition on his behalf regardless of the finding of the Court on the question of benefit. This Bench refers to the Full Bench decision in *Soundararajan v. Arunachalam Chetti* (1915) 29 M.L.J. 793 : ILR Mad. 159 (F.B.) and expresses the opinion that the fact of minority must have been overlooked in that case. The decision in *Chelimi Chetti v. Subbamma* (1917) 34 M.L.J. 213 : ILR Mad. 442 has been considered in a number of subsequent cases and its authority has been shaken on the question of the effect of the death of a minor plaintiff pending a suit for partition. There has also been some development of authoritative opinion on the question of the effect of the filing of a suit for partition by a minor when a decree for partition or a finding that the partition is necessary follows. In *Krishnaswami Thevan v.*

Pulukaruppa Thevan (1924) 48 M.L.J. 354 : ILR Mad. 465 the Bench accepts the view that the filing of a partition suit on behalf of a minor does not automatically effect a complete severance of status, but the learned Judges point out that if the minor's suit results in a decree, the status of the minor becomes divided and the view is taken that such a severance of status will date back to the filing of the plaint. This view has been followed by two subsequent Benches, Sri Ranga Thathachariar, late a minor by next friend Komalathammal, but now declared major and next friend discharged Vs. Srinivasa Thathachariar alias Srinivasa Raghavachariar, , and N. Purushothama Rao Vs. Mallavarapu Rama Rao and Another, . The matter came up for consideration by the Full Bench which decided Thavva Rangasayi and Others Vs. Thavva Nagarathnamma, . The learned Judges hold that the decision in Chelimi Chetti v. Subbamma (1917) 34 M.L.J. 213 : ILR Mad. 442 was wrong to the extent that a partition suit by a minor would not abate by the death of the minor, but they accept the position that the filing of a suit for partition by the minor does not automatically create a final severance of status between the minor and his family. Ramesam, J., seems inclined to the view that the filing of the suit by the minor effects a sort of conditional severance of status which would become final on the Court giving a finding that a partition would be for the benefit of the minor. The other two learned Judges incline to the view that on the Court finding a partition to be for the benefit of the minor a severance of status is created with retrospective effect from the date of suit or perhaps from the date of notice of suit. The judgments in this case do not contain any reference to the Full Bench decision Balusami Aiyar, In Re: A.N.B. Baluswamy Iyer and A.N.B. Narasimha Iyer, , on which the Court below has relied. In this state of rulings it seems to me that the balance of authority so far as this High Court is concerned favours the view that when a guardian of a minor files a suit for partition, he remains a co-parcener until the Court gives a finding that the proposed partition is beneficial to the minor and when that has been done, a severance of status takes place which dates back at any rate to the date of the plaint.

4. That being the law as I understand it, it remains to consider what is the proper order to make when on behalf of the minor plaintiff an application is made to restrain the sale of the minor's share in the family properties in satisfaction of the debts of the father pending the partition suit. The minor being still a co-parcener, though liable retrospectively to cease to be a co-parcener, the position appears to be that the father's right to sell the minor's property in discharge of his debts which are not illegal or immoral still subsists until the Court finds whether a partition is or is not beneficial to the minor. But in the case of an affirmative finding any sale of the minor's share during the pendency of the suit will become void. Until that finding is given no one can say whether the sale by the father (or in the present case by his representative, the Official Receiver) will or will not confer any title in the minor's property. In such circumstances it seems to me most undesirable that a sale of the minor's share should be held before it is established that there is anything to sell and it seems to me equally

undesirable that the sale should be postponed by a long delay in coming to a finding on this fairly simple question of benefit to the minor. After all, it is not in the interests of the creditors that the minor's share should be sold for less than its true value if the suit is eventually to be dismissed. Nor is it desirable to hold a speculative sale, that which is sold being the chance of the minor's failure in the suit. The proper course therefore seems to be to postpone the sale until the Court gives the necessary finding, but to expedite the proceedings so that a finding may be given in the course of the next few months. In this case the same process of impleading ninety and odd creditors is, I understand, in contemplation and though it is to be hoped that the process will not take as long as it did on the former occasion, it will necessarily involve some time. It is however quite unnecessary that all the creditors should be on the record for the purpose of this preliminary finding. They are, so far as the debts of the father are concerned, represented by the Official Receiver who is quite competent to put forward on behalf of the creditors any evidence or any contentions which may be available against the view that this partition is for the benefit of the minors.

5. In the result therefore the order of the lower Court is confirmed, but the lower Court is directed to proceed forthwith to take evidence and record a finding on the preliminary question whether the partition is beneficial to the minors and for the purposes of recording this finding it is not necessary to await the impleading of all the creditors. If the finding is adverse to the plaintiffs, the suit will presumably be dismissed and no question of restraining the sale by the Official Receiver will arise. If the Court finds that the partition is for the benefit of the minors, then quite clearly the injunction restraining the Official Receiver from selling the minors' share will have to stand. In the view that I take, I think it fitting that each party should bear his costs in this appeal. The Official Receiver may take his costs from the estate.