(1994) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 342 of 1985

Uddagiri Chalama Raju and Another APPELLANT

Vs

Uddagiri Subba Rao (died) and Others RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Citation : (1994) 2 ALT 522

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Nayak, J

Bench : Division Bench

Advocate : C. Poornaiah, for the Appellant; M. Krishna Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Y. Bhaskar Rao, J.—The appellants are the plaintiffs and the respondents are the defendants in the suit. For the sake of convenience, they are referred to as arrayed in the suit.

2. The facts of the case are that the plaintifs are the father and son and the defendants are also father and sons. Plaintiff No. 1 and the defendant No. 1 are brothers and sons of late Komaraju. At the time of death of Komaraju, the respondent No. 1 was ten years old and the appellant No. 1 was five years old. So, they were taken away by their maternal uncle and were brought up by him. When they grew up they came back to their village and were looking after their joint family properties. At the time of their father''s death, they have Acs. 62-00 of land and business and that they inherited and continued the family business. They have earned about Acs. 200-00. They were mostly doing business in paddy, cotton and other ordinary commodities. Differences arose between the brothers. Therefore, they referred the dispute to mediators. The mediators have divided the property. Thereafter, Ex.A-1 Khorarnama was executed on 6-12-1957. As per the Khararnama defendant No. 1 was granted Acs. 12-00 excess in addition to the half share towards the services rendered by him to the family and for developing the family properties. Later, as there was a dispute regarding the Acs.

12-00, it was made to Acs. 18-00. Thereafterwards, the present suit was filed stating that the partition was not equally made and allotment of Acs. 12-00, which was made to Acs. 18-00, is unequally made and allotment of Jesta Bhaga is obsolete under Hindu Law and therefore he has to get a share in the excess land. Therefore, the suit is filed for the half share in Acs. 18-00 of A Schedule property apart from a share in B Schedule property.

3. The defendants filed written statement stating that the partition was made by the mediators after settling the entire dispute and taking all the facts into consideration. The allotment of additional property to the share of first defendant was on the ground that he has served the family by putting more efforts than the plaintiffs and earned vast properties to the family. Therefore, it cannot be said as illegal and invalid. The said partition was acted upon and the suit was filed in 1963 after a long time. There are no merits in the suit and the same is liable to be dismissed.

4. The trial Court framed nine issues. The plaintifs have examined P.Ws. 1 to 5 and marked Ex.A-1 to A-33. Defendants examined the first defendant as D.W.I and marked Exs.B-1 to B-22. The trial Court after considering the entire evidence decreed the suit.to the extent of half share in B schedule, except item No. 1 (6) and allotment of one such share to the first plaintiff and another to the first defendant and dismissed the suit in so far as plaint A schedule properties are concerned. Against that judgment and decree the plaintiffs filed an appeal. A learned single Judge of this Court after considering the material on record confirmed the judgment of the lower Court. Against that judgment, this present Letters Patent Appeal is filed.

5. Sri C. Poornaiah, the learned Counsel for the appellants contended that there is no custom of Jesta Bhaga and allotment of any share towards Jesta Bhaga is obsolete under Hindu Law. Further, no such custom is established in this case and therefore the allotment of Acs. 18-00 of land to the first defendant is not valid and the trial Court and the learned single Judge erred in not properly considering the case.

6. Sri M. Krishna Mohan, the learned Counsel for the respondents contended that Acs. 18-00 of land was allotted to the first defendant for more effective services rendered by him in augmenting the family properties. It is not disputed that at the time of the death of the father of the parties the family was having Acs. 62-00 of land and at the time of partition, the family was owning about Acs. 200 apart from other businesses and houses. It is well settled that though additional share cannot be allotted as Jesta Bhaga, there is no bar, for allotment of additional property in lieu of the services rendered by elder brother of the Hindu joint family in the partition. Therefore, allotment of additional land to the first defendant is not illegal. He further contended that the family settlement was made in the month of December, 1957 by settling the disputes by mediators elected by the parties. Thereafter, on 6-12-1957 settlement deed was executed and the same was signed by the plaintiff as well as defendant No. 1. As per the

said family settlement the properties were divided and possession was delivered to each party. The suit was filed after six years because in a case the first defendant deposed against the first plaintiff. Therefore, the allotment of additional share towards more effective services rendered by defendant No. 1 is not illegal as the same is not allotted as Jesta Bhaga.

7. In view of the rival contentions, the important question of law that is to be considered in this appeal is whether the allotment of additional property to an elder brother of the Hindu joint family in partition in lieu of more effective service rendered by him to the joint family for earning the joint family properties de hors Jesta Bhaga is valid or not.

8. Before deciding the above point, it is relevant to refer about Jesta Bhaga or Jestini. Practice of giving to elder brother and Manager of joint family an extra share in excess of others as Jesta Bhagam on partition was in vogue for long time since the time of sages. Thereafter, giving of property as Jesta Bhagam has became obsolete and unenforceable as the Courts have derecognised it as it results in unequal partition. Thus, allotment of property towards Jesta Bhaga became obsolete. It is to be noticed that additional share of property was allotted to elder brother for the sole reason that he was elder brother and manager of the family and there was no other reason. That is why this practice''-was discontinued and in partition all the brothers were given equal shares.

9. Now it is relevant to find out whether the additional share allotted to the first defendant is purely as Jesta Bhaga or as a consideration for his more effective service rendered to the joint family.

10. Plaintiff No. 1 and defendant No. 1 are own brothers and they lived upto 1957 as members of the joint family. It is also not disputed that their father died when both of them were aged about 10 years and 5 years. Defendant No. 1 is elder and the plaintiff No. 1 is younger. After they attained majority, they continued the business of their father. The evidence of P.W.I on record shows that at the time of death of their father the family is having about Acs. 62-00 but at the time of family settlement they were having Acs. 200-00 of landed property and other businesses. Thus, the landed property is increased by three-fold. In the year 1957, they wanted to settle the family properties. So, the matter was referred to the mediators. The mediators settled the dispute in the month of December, 1957 and Khararnama Ex.A-1 was executed in 1957. As per Khararnama all the properties were directed to be divided equally between both the brothers and Acs. 12-00 of wet land was directed to be given to the first defendant towards his additional share, as he had rendered more effective services to the family. This deed was signed & plaintiff No. 1, defendant No.l and mediators. Thereafterwards, some disputes arose. As per Ex.A-1, option was given to defendant No. 1 to choose Acs. 12-00 of land wherever he selects. When he has chosen some property, the plaintiff objected to it. Thereafter, again the mediator decided to allot Acs. 18-00 of land at other place and the same was also allotted to defendant No. 1. It is relevant to refer to para 7 of Ex.A-1:

The other para recites as follows:

11. The above recitals of Ex. A-l show that the first defendant has put-in more efforts for earning the properties of the joint family than the plaintiff and as there is custom in the family in the earlier partitions and he being the kartha of the family the first defendant should be given 12 acres of wet land at the place desired by him out of the entire joint family lands in addition to his share. The balance of joint family properties should be divided into two equal shares as decided by the elders. Both of them have whole heartedly agreed and after understanding the contents therein the Khararriama has been written accordingly. Thus, by reading the clauses of Khararnama, it is evident that additional land was allotted as a consideration for the more effective services rendered by defendant No. 1 for which the plaintiff No. 1 also agreed to the decision of the mediators and all the parties and mediators signed Ex.A-1. Therefore, by reading the Khararnama it is clear that additional land was allotted to defendant No. 1 as a consideration for more effectively rendering service for earning properties of the joint family and as there is custom in the family. Further, Ex.A-1 was voluntarily signed by plaintiff No. 1 and defendant No. 1.

12. The contents of Ex.A-1 coupled with the evidence of P.Ws. 1 to 5, clearly establish that 18 acres of land was allotted to the defendant No. 1 in addition to his share as he rendered more effective service and as there was a custom in the family. Therefore, it cannot be said that allotment of said land is purely as Jesta Bhaga (elder''s share).

13. Now, it is to be seen whether the allotment of additional share to an elder . brother in a partition of joint Hindu family properties for other considerations de hors Jesta Bhaga is valid or not. It is relevant to refer to the case law.

14. In Veerabhadrappa v. Lingappa AIR 1963 Mys. 5 a Division Bench of the Mysore High Court has held that an additional share given at the time of partition to a managing member of an erstwhile Hindu joint family is technically described as Jyesthabhagam in the language of Hindu Law. As a matter of law, Jyeshthabhagam, as understood in ancient Hindu Law, has become obsolete and unenforceable. If an eldest member or managing member therefore comes. to Court and asks for an additional allotment to him in the course of partition, the Courts will not enforce that claim. The facts of the case are that the plaintiff and first fifteen defendants are members of a Hindu family governed by Mitakshara Law and a partition was effected under a registered deed dated 20-6-1938. The first defendant Lingappa was given 10 acres of wet land in excess of his one fifth share as he looked after the family properties with great/efforts and earned some more properties. Therefore, they have given him as Mufath 10 acres of wet land more than their share. This allotment of additional share was described as Jyeshtabhagam. Considering the said question a Division Bench of the Mysore High Court held as follows:

"Such additional share given to a managing member is technically described as

Jyeshtabhagam in the language of Hindu Law. As a matter of law, it is conceded, and there is no doubt, that Jyeshtabhagam as understood in ancient Hindu Law has become obsolete and unenforceable. If an eldest member or managing member therefore comes to Court and ask for an additional allotment to him in the course of partition, the Courts will not enforce that claim. The question, however, is whether, although the claim, to Jyeshtabhagam is not enforceable in a Court of law, members of the family are precluded from allotting some additional property to one of the sharers by common consent. On behalf of the contesting respondents, Mr. Krishnamurthy has sought to support the additional allotment in two ways: It may be treated either as remuneration for special or extra-ordinary services admittedly rendered by the manager to the family or as a family arrangement to which the father of the palintiffs was a party as their representative which, therefore, is binding on the children in the absence of fraud or collusion. Mr. Lakshminarahappa for the plaintiffs contends that the manager being bound by law to manage, conserve and improve the properties of the family, he cannot possibly claim or ask for remuneration for such services. A duty, which a person is legally or morally bound to discharge, cannot possibly, according to him, be described as consideration. If, therefore, services are irrelevant and cannot form consideration for the allotment, the allotment according to him, must be dealt with as disposition of family property without any consideration and therefore void ab initio."

15. The Division Bench considering the said contentions held after considering the judgments in Subba Rao v. Subba Rao AIR 1936 Mad. 689 and Ramkishore v. Jainarayan. ILR 40 Cal. 966 and Ananthachari and Others Vs. Krishnaswami, that:

"Although the allotment of any property as Jyeshtabhagam has become obsolete and a Court would not enforce it, if the members of a joint family agree in the course of a partition to give some extra property to an eldest member or even to one of them bona fide, such an arrangement cannot be considered to be illegal on the ground that a certain property was allotted as Jyeshtabhagam or was given in excess of his legitimate share."

16. The learned Counsel for the appellant relied on a decision in Harekrishna Sahu and Another Vs. Bhagirathi Sahu and Others, wherein it was held that mere'' ''esthansa'' as such dehors any other.. consideration, has no sanction of law, but inequality of shares should not be equated with ''jesthansa'' to afford a ground to impeach a partition deed otherwise valid. There may be various reasons why any member is given a bigger slice.

17. The facts of the case are: One Naran Sahu had three sons, namely, Jagabandhu, Madhaba and Sadhu. The plaintiff Chandrasekhar is the son of Madhab. The contesting defendant No. 1 Bhagirathi is the son of Jagabandhu. The thrid son Sadhu died issueless while joint with his brothers. The plaintiff''s father Madhaba died after Sadhu. Jagabandhu, the father of defendant No. 1 therefore being the eldest member of the family was the Karta and after him defendant No. 1 become the Karta. Other defendants 2 to 4 are the sons of

defendantNo. 1. There is ancestral property of Acs. 21-00 and the defendant No. 1 acquired the rest of property. In 1959 defendant No. 1 a registered deed was executed. Later the plaintiff alleged that defendant No. 1 created fraudulently a partition deed without giving proper share to him. Therefore, the plaintiff filed the suit. Defendant No. 1 ''s case is that the partition deed has been executed with the consent of the plaintiff and that lots 19 to 23 of the ''Kha'' schedule were not joint family properties and that certain properties had been excluded from the partition deed since they were acquired after the said partition. The suit was dismissed. In appeal it was contended that the unequal distribution of the landed properties between the plaintiff and the defendant is an indication of fraud and laid great stress on the alleged Jesthansa given to defendant No. 1. While considering this point, the learned Judge held:

"Thus Jesthansa given to an elder brother in partition though does not find favour from judicial pronouncements, yet it cannot be laid down as a general principle for striking down any deed of partition if there is any inequality of share, for any reason. There may be various reasons why any member is given a bigger slice. It may be due to incapacity of the member to earn; it may be by agreement between the parties for some consideration, such as better earning capacity of others, in recognition of his unique services or contribution to the joint family property and the like. Mere ''Jesthansa'' as such de hors of any other consideration, has no sanction of law; but inequality of shares should not be equated with "Jesthansa" to afford a ground to impeach a partition deed otherwise valid."

Thus, there is distinction between the allotment of property to the elder member of the family as Jesta Bhaga and the allotment of extra property to a member of the family for the meritorious and more effective serivces rendered to the family in augmenting the properties. In the case of allotment of property, as Jesta Bhaga is obsolete under Hindu Law as observed by the Supreme Court confirming the view of the Madras High Court, allotment under second category is not invalid unless it is challenged on the ground of fraud and other grounds. In the present case, there is no such allegation of fraud. As discussed above, we have already found that allotment of additional share cannot be said as Jesta Bhaga but it is for more effective service rendered by defendant No. 1 to the family. Therefore, the allotment of Acs. 18-00 of land to first defendant cannot be said to be invalid on the ground that the allotment of Jesta Bhaga became obsolete and unenforceable.

18. The principle laid down in the above judgments makes it clear that the allotment of additional share to elder brother may be for various reasons, it may be in recognition of his unique services or contribution to the Joint Family property, it may be incapacity of the Member to earn or it may be by agreement between the parties for some consideration. Mere allotment of additional share towards Jesta Bhaga de hors any other consideration has no sanction of law. Every inquality of share cannot be equated with Jesta Bhaga or Jesthana. There

is distinction between Jesta Bhaga and allotment of additional share for other considerations as mentioned supra. Though Jesta Bhaga became obsolete and unenforceable in the partitions of Hindu Joint Family, the allotment of additional share for other considerations de hors Jesta Bhaga, is valid and cannot be impeached except on the ground of fraud and any other such grounds.

19. Sri C. Poornaiah, the learned Counsel for the appellants relied on a judgment of the Madras High Court reported in M.Y.A.A. Nachiappa Chettiar Vs. M.Y.A.A. Muthu Karuppan Chettiar and Others, . The Division Bench consisting of Wadsworth and Rajamannar, JJ. considered in this decision the question - whether the allotment of extra share in favour of the eldest son, what is known as Jestha Bhagam, is enforceable under law. The facts of the case are - the plaintiff in that case who was the appellant and defendant No. 1 who was the respondent No. 1 are the sons of one M.Y.A. Annamalai Chettiar. The plaintiff is the son by the second wife and defendant by the, first wife. Defendants 2 to 4 are the sons of defendant No. 1. Defendant No. 5 is the mother of the plaintiff and defendant No. 6 is his sister. Annamalai Chettiar died on 18th September, 1926. Defendant No. lisa minor at the time of the death of Annamali Chettiar, who executed a will Ex.D-1 on 21-8-1926 and the executors handed over estate to him in 1931. Under the will Annamalai Chettiar provided his eldest son, defendant No. 1 should get immovable property worth Rs. 35,000/- as Jestha Bagam from out of his properties after his life time. The plaintiff raised a dispute about the validity of Jestha Bhagam. Considering the said case, Justice Rajamannar speaking for the Bench held that allotment of an extra share in favour of the eldest son, what is known as Jestha Bhagam, has become obsolete and unenforceable. In this case, the allotment of additional property as consideration for more effective services by elder son did not arise and was not considered. So, the same is not applicable to the facts of this case.

20. The learned Counsel for the appellants further relied on a decision in D. Gobalousamy Vs. Union Territory of Pondicherry and Others, . In that case, respondents 1 and 3 Hemkumar and Dinmani and Appellant No. 1 Siromani are the sons of late Dharam Singh Agharia. Appellant No. 2 Mst. Subhagwati is the second wife of Dharam Singh; and the mother of respondents 1 and 3 died before Dharam Singh married appellant No. 2. Thereafter, Dharam Singh was murdered. His son Hemkumar was figured as an accused and he was acquitted later. It was alleged that Mst. Subhagwati was compelled by Hemkumar under threat of violence to execute Ex.D-4 deed, under which Siromani who was a monor was given less than the share to which he was entitled to and Mst. Subhagwati was not given her due share of joint family properties. After Siromani became major a suit was filed and it was contended therein that allotment of additional share as Jestabhagam is now obsolete and unenforceable and equality of division is principle of Hindu Law and exceptions to this rule have almost disappeared. Considering the said contention, Ramaswamy, J. Speaking for the Bench has approved the decision of the Madras High Court in Nachiappa Chettiar v. Muthu Karuppan Chettiar (6 supra) and held as follows:

"We pass on to consider the next question arising in this appeal, namely, whether Hemkumar was entitled to a greater share of joint family properties for the reason that he was the eldest brother on the principle of "Justhansi". But the doctrine of "Jesthansi" or "Jestha Bhagam" is now obsolete and unenforceable. The principle of Hindu Law is equality of division and the exceptions to that rule have almost, if not altogether, disappeared. One of the exceptions was in favour of the eldest son, who was originally entitled to 0a special share on partition, either a tenth or a twentieth in excess of the others or some special chattel, or an extra portion of the flocks. But unequal partition of ancestral or joint property was from early times condemned. The Smritichandrika, the Vyavahara Mayukha and the Viramitrodaya declare that unequal partition is forbidden in the Kali age.-------

As between brothers or other relations, absolute equality is now the invariable rule in all the States, unless perhaps, Where some special family custom to the contrary is made out".

21. The above judgment of the Supreme Court laid down that the allotment of additional share to eldest son as Jesta Bhaga has become obsolete and no more valid. In the case before the Supreme Court, allotment of greater share to Hemkumar was merely on the ground that he was elder brother and there was no other consideration. As the doctrine of Jesthansi or Jestabhagam has became obsolete and unenforceable the supreme Court held that allotment of such share is not valid and that as between brothers or other relations, absolute equality is now the invariable rule in all the States, unless some special family custom to the contrary is made out. There is no doubt about the principle laid down by the Supreme Court. In the present case, the recitals of Ex. A-l show that additional land was allotted in lieu of Defendant No. 1 rendering more effective service for earning joint family properties and there was a custom prevalent in their family for such allotment. Therefore, the allotment is in accordance with the judgment of the Supreme Court.

22. It is secondly contended by the learned Counsel for the appellants that the allotment of additional property to first defendant will arise only in case defendant No. 1 has accounted for and paid the share of the plaintiff within one month from the date of execution of Ex.A-l. As defendant No. 1 has not accounted for and paid such amount the allotment of additional share to defendant No. 1 becomes void. In this regard, we have gone through the Khararnama Ex. A-l. There is no such clause in Ex.A-1 Khararnama. But, P.W.5 one of the mediators deposed that under the agreement, defendant No. 1 was bound to account for within one month and pay the share of the plaintiff. But the evidence is quite contrary to the recitals in Ex.A-1. Therefore, it cannot be given much weight. We are unable to agree with this contention also.

23. As contended by the learned Counsel Sri M. Krishna Mohan, the dispute between the brothers arose in the year 1957 and the same was referred to the mediators and the mediators settled the dispute in the month of December and

Khararnama Ex.A-1 was executed on 6-12-1957. Immediately on 12-12-1957 the plaintiff himself executed registered gift deed Ex.B-1 in favour of his wife bequeathing some of the Immovable properties which were allotted in the earlier family settlement Ex.A-1. Thereafter, again on 14-12-1957 he executed the registered partition deed Ex.B-2. He also filed a declaration Ex.B-4 under the A.P. Land (Ceiling on Agricultural Holdings) Act, 1976 on 28-11-1962. Execution of this document shows the conduct of the plaintiff that he accepted the family settlement and acted upon it and dealt with the properties allotted to him as if his own properties. After a lapse of six years the present suit is filed in 1963. In between no notice was issued to defendant No.l stating that the account was not settled nor questioning the allotment of an extent of Acs. 18-00. All these factors show that the family settlement was agreed to by both the plaintiff and the first defendant and acted upon by both of them. Further, Ex.B-18 letter written by P.W.5 to one Gogula Subbaraju, the mediator who died, mentioning the area sold and the amount realised and the amount given to plaintiff, clearly shows that the account was settled between the parties. Thus, we see no force in this contention of the learned Counsel for *the appellants.

24. We see no ground in the Letters Patent Appeal and the same is dismissed accordingly. No costs.

