
(1976) 01 MAD CK 0005

In the Madras High Court

Case No : Appeal No's. 498 of 1969 and 536 of 1970

V. Nataraja Iyer and Others

APPELLANT

Vs

Arunachalam and Others

RESPONDENT

Date of Decision : 28-01-1976

Acts Referred:

Citation : AIR 1977 Mad 67 : (1976) 89 LW 574

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Judgement

1. These two appeals arise out of a suit for partition and separate possession, attacking the alienations made by the father of the plaintiffs. The five

plaintiffs are the sons of Guruswami Iyer, the first defendant in the suit. Vembu Iyer, the 2nd defendant, and Ayyasami Iyer the 3rd defendant, are

the elder brothers of the 1st defendant and they are some of the alienees of the properties belonging to the family of the first defendant. It is

common case that there had been an oral partition amongst the three brothers, namely, the defendants 1 to 3 in 1943. It is also not in dispute that

the first defendant and his five sons (the plaintiffs) constituted a Hindu joint family. It owned certain agricultural lands in Mayuram taluk Thanjavur

Dist., to be specific in two villages, namely. Melanallur and Arumozhi Dewan village It also owned two house properties and some lands in

Thriuvannamalai. The properties situate in Thiruvannamali are described as Items 1 to 6 in the A schedule to the plaint while the lands in Mayuram

taluk, are described in the B schedule as Items 1 to 37 thereof.

2. The first defendant started alienating the properties from 1945 onwards, The first of the alienations was under Ex. B-1 dated 20-3-1945, Under

this document, the first defendant sold Items 25 to 27 of the plaint B schedule to the second defendant for a sum of Rs. 1,700. Later there had

been several alienations by the first defendant and all the alienees as well as the subsequent alienees have been made parties to the suit.

3. The plaintiffs claimed a 5/6th share in all the suit properties and according to them none of the alienations was binding on them. Some of the alienees contested the suit and some did not.

4. The Court below held that all the suit properties are joint family properties and that all the alienations are fully supported by consideration; but

the Court further held that certain alienations were not for binding purposes and that therefore the plaintiffs are entitled to their 5/6th share in the

properties covered by those alienations. In respect of certain other alienations, the Court accepted the case of the alienees that the alienations were

for binding purposes and dismissed the suit regarding the same. The suit had been filed in form a pauperism and the Court below has directed the

plaintiffs to pay half the court-fee due on the plaint, the other half to be paid by the alienees who did not succeed in proving the binding nature of

the alienations.

5. A. S. No. 498 of 1969 is filed by defendants 25 to 28 who are the legal representatives of the second defendant (he having died during the

pendency of the suit) challenging the decision of the Court below that the alienation under Ex. B-1 conveying Items 25 to 27 of plaint B schedule is

not binding on the plaintiffs. A. S. 536 of 1970 is filed by the plaintiffs against the dismissal of the suit in respect of four alienations, namely, the one

under Ex. B-20, dated 5-1-1954 conveying Item No. 1 of plaint A schedule to the 10th defendant, that under Ex. B-23 dated 10-7-1953.

conveying Item No. 2 of plaint A schedule to the 9th defendant, that under Ex. B-24, dated 21-1-1947 conveying Items 1 to 24 of plaint B

schedule to the 4th defendant and the last under Ex. B-16, dated 26-6-1957, conveying Items 29 and 30 of plaint B schedule to the 12th

defendant.

6. One of the point raised by the plaintiffs who are the appellants in A. S. 536 of 1970 is that the Court below has wrongly directed the plaintiffs to

value the claim u/s 40 of the Madras Court-fees and Suits Valuation Act, 1955. Originally the plaintiffs valued the suit u/s 37(1) and the court-fee

payable was shown as Rs. 866-75. But the Court held that the plaintiffs were obliged to seek to set aside the several alienations and therefore

Section 40 of the Madras Court-fees and Suits Valuation Act is attracted and that court-fee should be paid on the value of the properties as

contemplated u/s 40. Thus the plaint was amended showing the value of the properties as found in the various sale deeds, but later on a check-slip

issued by the court-fee examiner, the plaint came to be further amended showing the value of the properties as on the date of suit and the court-fee

payable has swelled to Rs 4,500 odd.

7. Mr. S. Thyagaraja Iyer learned counsel for the plaintiffs-appellants, contends that the view taken by the Court below that Section 40 of the

Court-fees and Suits Valuation Act is applicable to this case is not correct. I am of the view that the contention has to be upheld. It must be

remembered that this is a case where the laminations were of joint family properties by the father-manager of the joint family. One is not concerned

in this case about alienation of minors' properties by their guardian acting on their behalf. Needless to point out that the joint family manager has

authority to deal with the entire joint family properties and, for necessity and binding purposes, he can validly alienate joint family properties. If in

such cases, a junior member of the coparcenary claims a division of the properties contending that the alienations are not binding on him, he is not

bound to ask for the setting aside of the alienations made by the joint family manager.

8. This position has been made clear in *Kandaswami Udayan and Another Vs. Annamalai Pillai and Others*, , which followed the Full Bench

decision in *C.R. Ramaswami Aiyangar*, represented by his mother and next friend *Lakshmi Ammal Vs. C.S. Rangachariar and Others*, *Subba Rao*

J., as he then was, held in *Kandaswami Udayan and Another Vs. Annamalai Pillai and Others*, , that where the plaintiffs instituted the suit for

partition of the family properties, alleging that the properties were the ancestral properties of the plaintiffs and their father and that the father

alienated the properties, which alienations were not binding on the plaintiff, they are only seeking to recover possession ignoring the alienations and

that therefore it was in substance a suit for mere possession falling u/s 7(v) of the Court-fees Act and the plaint was not leviable to court-fee u/s

7(iv-A) of the said Act as amended in Madras. Section 7(iv-A) of the earlier Act corresponds to Sec. 40 of the present Act while Sec. 7(v)

corresponds to Section 37(1) of the present Act. As I said, this decision follows the Full Bench decision in C.R. Ramaswami Aiyangar,

represented by his mother and next friend Lakshmi Ammal Vs. C.S. Rangachariar and Others, . These are clear authorities for the proposition that

where the alienations questioned are by a joint family manager, the plaintiffs who question the alienations need not pray for setting aside the

alienations and the question of paying court-fees u/s 40 of the Madras Court-fees and Suits Valuation Act does not arise. Only in a case where

property belonging to a minor becomes eo nomine a party to the document and hence he is obliged to ask for setting aside the alienation. In a case

where the joint family manager alienates the family properties, even though the minor coparceners are also mentioned as parties to the document,

that would not lead to the conclusion that when the minor coparceners question the alienation, they would be obliged to pray of setting aside the

alienation.

9. In Sankaranarayana Pillai and Another Vs. Kandasamia Pillai, , one of the question referred to the Full Bench was-

Is the position of a sale deed executed by a father of the minor, as guardian of the minor son and not as manager of the joint family and head of

the coparcenary, any way different from the position of a sale deed executed by the mother as guardian of the minor?

At page 676, column 2 Govinda Menon, J. speaking for the Full Bench observed-

The cases cited at the Bar can be classified under two heads, namely, those in which the minor's properties are being dealt with by a guardian and

the minor seeks a decision that such dealings are not binding on him and secondly, those in which the father or the manager of the joint family

purporting to deal with the family properties acts as the guardian of the minor, who is only one of the members of the joint family. It seems to us

that in the former case the minor is eo nomine a party to the transaction and he should seek to cancel the document in which case court-fee has to

be paid u/s 7(iv-A) of the Act. But where the minor was only a member of a joint family and the transaction is on behalf of the joint family, he

could always ignore the transaction as not binding on the family and seek to

recover possession.

Therefore, the Court below is not right in holding that the prayer in the plaint has to be valued u/s 40 of the Court-fees and Suits Valuation Act.

That part of the decision of the Court below is reversed and I hold that the court-fee payable on the plaint is only Rs. 966-75 as originally shown

by the plaintiffs.

10. Regarding the alienations, I will first take up the alienations of Items 25 to 27 of plaint B schedule under Exhibit B-1.

... ..

Therefore the said alienations have also to be upheld.

11. The result is, A. S. 498 of 1969 is partly allowed, in that the plaintiffs are entitled only to a half share in Items 25 to 27 of plaint B schedule and

that the appellants (defendants 25 to 28) have to pay only half of the proportionate court-fee payable in respect of those items. A. S. No. 536 of

1970 is also partly allowed. That is only in respect of the question of court-fee payable on the plaint as indicated earlier.

12. The question of court-fee has been taken as a specific ground in this appeal and part of the subject-matter of the appeal is the difference

between the real court-fee payable on the plaint and the court-fee payable as determined by the Court below. On this part of the subject-matter of

the appeal, the court-fee payable is Rs. 272-50, whereas in respect of the main part of the appeal, the court-fee payable is Rs. 666-50. As the

plaintiffs-appellants succeed regarding the question of court-fee, the sum of Rupees 272-50 is not to be recovered from the plaintiffs. Not is it

recoverable from any of the defendants, for the excess court-fee came to be determined by the Court below, not on objections raised by any of

the defendants. The court-fee of Rs. 666-50 on the appeal memo in A. S. No. 536 of 1970 shall be paid by the appellants therein. The parties are

to bear their respective costs in both the appeals.

13. Order accordingly.