
(1959) 09 AP CK 0023
In the Andhra Pradesh High Court
Case No : Appeal No. 433 of 1955

Vakati Venkatasubba Reddi	Vs	APPELLANT
Pelleti Pitchamma and Others		RESPONDENT

Date of Decision : 01-09-1959

Acts Referred:

Citation : AIR 1960 AP 263 : (1960) ALT 383 : (1960) 1 AnWR 203

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

Bench : Division Bench

Advocate : D. Narasaraju, General, for the Appellant; T.S. Narasinga Rao and E. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—The plaintiff who claimed to be entitled to a 1/3rd share in the plaint B and C schedule properties did not succeed in establishing that he is a member of a composite family consisting of two Vakati families and one Pelleti family. Hence the appeal by the plaintiff.

2. The relationship between the parties needs mention to explain their array in the suit. The 1st defendant is Pelleti Pitchamma, Her brothers were Vakati Venkatasubba Reddi and Subbaraghava Reddi. Their father was Venkata Kumundara Reddi. The plaintiff is the son of Subbaraghava Reddi who died in 1941. Venkatasubba Reddi predeceased Subbaraghava Reddi leaving his wife Subbalakshamma. Pitchamma (1st defendant) married Pelleti Muniswami Reddi, the son of Pelleti Venkata Narayana Reddi and Mahalakshamma, who died in 1930. Pitchamma had a son Munirami Reddi who died in 1939. Her daughter Muniamma is married to one Rami Reddi. Pitchamma's aunt Vengamma i.e., Pelleti Venkata Narayana Reddi's sister, was married to one Vakati Appa Reddi. These had a son Ramaswami Reddi and his wife is the 2nd defendant. The genealogical table of the three families is set out hereunder for purposes of amplification.

I II III Family of plaintiff Family of Ist defendant Family of 2nd defendant Vakati kumundara Reddi Pelleti Gopala Reddi Vakati Appa Reddi married Ammakamma Pelleti Gopala Reddi (= Vengamma sister of | | (Pelleti Venkata Narayana Reddi.) | | | Pelleti Venkata Narayan Vakati Ramaswami Reddi | Reddi (= Mahalakshamma (cousin of Mumundara Reddi | sister of Kuminda Reddi.) = married Ramamma | | 2nd defendant.) | Pelleti Muniswami Reddi Had a son Viraswami Reddi | (died in 1930) (married who died about 20 years back. | _____|_____ | | | Munireddi Muniamma | (died in Sep. 1939.) (married Rami Reddi.) _____ | _____ | | | Pitchamma Venkatasubba Reddi Subbaraghava Reddi (Janakamma) (Ist deft.) = wife Subbalakshamma (alive). (died) April 1941.

3. The case for the plaintiff is that Kumundara Reddi, the grand-father of the plaintiff, married Ammakamma the daughter of one Rami Reddi of Arthamala. Rami Reddi had no male issue. Mumundara Reddi mixed up his properties with that of Rami Reddi and was living with his father-in-law. Mumundara Reddi predeceased Rami Reddi and after Rami Reddi's death, Ammakamma enjoyed the entire properties and on her death, Venkatasubba Reddi and Subbaraghava Reddi succeeded to the properties of their father and maternal grant-father. The 1st defendant, Pitchamma who had been married to Kumundara Reddi's sister's son joined this Pelleti family with some properties.

Pelleti Muniswami Reddi, the husband of the 1st defendant, was managing the affairs of the "composite family" and therefore the patta stood in his name and on his death, that patta was transferred to Pitchamma. According to the plaintiff, it was his uncle Venkatasubba Reddi and thereafter his father that managed the properties after the death of Pelleti Muniswami Reddi. It is also alleged that since Pitchamma's sister-in-law i.e., her husband's father's sister Venagamma, was married to Vekati Appa Reddi, they also lived with the plaintiff's (Pelleti family). Thus it is averred that the three families blended their properties together more than sixty years ago and constituted themselves into a "composite family" as per the custom and usage prevailing among the cultivating Reddi families.

It is also pointed out that Subbalakshamma, the widow of the, plaintiff's uncle Venkatasubba Reddy, was receiving maintenance from the plaintiff's lather Subbaraghava Reddi who was managing the composite family. It is stated that white matters stood thus, the 1st defendant executed Ex. B. 1 a release deed on 27-7-1950 in favour of her daughter Mmiiamma and that Rami Reddi, the husband of the 3rd defendant, thereafter denied the rights of the plaintiff and also falsely filed a criminal complaint against the plaintiff,

Pitchannna, the 1st defendant, denied the right of the plaintiff and of the 2nd defendant in the suit properties (except items 49 to 60 of the plaint B schedule which according to her belonged to the plaintiff), and claimed them as having belonged to her husband and her father-in-law and that she succeeded to the same on their death. She stated that her brothers Venkatasubba Reddi and

Subbaraghava Reddi had been assisting her until her only daughter Muniamma, was married and thereafter her son-in-law Rami Reddi has been assisting her in the management of the properties. She disputed the custom and usage regarding the constitution of composite families and also the fact that the plaintiff and the defendants constituted such a family.

4. The question both in the suit and in the appeal has been whether the plaintiff as representing one branch of the "composite family is entitled to a 1/3rd share. The learned Subordinate Judge has found that the predecessors of the parties to the suit had been living together in Arthamala and that the plaintiff's family left for Thikkavaram subsequent to the misunderstandings which arose resulting in the criminal complaint filed by the son-in-law of the 1st defendant and that by itself would not give the plaintiff a right to a share in the properties. The Court held that there is no evidence that the family of the plaintiff or the 2nd defendant have brought in any property at all as it found that items 40 to 60 of the plaint B schedule were separate and subsequent purchases by the plaintiffs family.

It is pointed out that the fact the potta always stood in the name of the Pelleti family which is that of the 1st defendant and not in the names of the members of the two Vakati families is conclusive of non-merger of the properties as alleged by the plaintiff, but that the 1st defendant is the; owner and is in exclusive possession and enjoyment of the properties. The learned Subordinate Judge also found that in these circumstances, there was no contract to merge the properties; and the mere fact that the plaintiff and 2nd defendant are the surviving members of the respective families, does not entitle them to a partition of the suit properties on the supposed ground that they held them jointly.

5. The learned Advocate-General appearing for the appellant placed reliance on a few features disclosed by the evidence and also on the finding of the learned Subordinate Judge that the three families lived together in the same house and had a common mess. In regard to this the evidence of P.Ws. 1 to 10 and 14 supports the case of the plaintiff. Ex. A. 22 is an entry in the Ration Card Register of Arthamala village which mentions that 9 adults and one child were living and their names are also found in Ex. A. 32 which is a list prepared by P. W. 2 who is a Kamam of Putheri to which village Arthamala was attached. These persons have been shown as the residents of the house of Vakati Rami Reddi who is the son-in-law of the 1st defendant. The procurement registers also make a similar mention of the persons in that family.

Vakati Rami Reddy examined as D. W, 4 wanted to explain this by saying that the number of persons included the farm-servants. But this explanation did not find acceptance with the lower court. There is also the evidence furnished by Exs. A. 58 to A. 67 which are suits filed by Subbaraghava Reddy who describes himself as residing at Arthamala. As against this, the defendants produced Exs. B. 9 and B. 10 which are the voters' lists for Arthamala and Thikkavaram villages respectively for the purpose of showing that the family of the plaintiff have been residing at Thikkavaram. But as has been pointed out by the learned Subordinate

Judge, the plaintiff's family left Arthamala subsequent to the misunderstandings resulting in the films; of a criminal complaint and therefore these lists do not, in our view, disprove the contentions of the plaintiff in regard to this particular; nor has the respondent seriously disputed this finding of the trial court.

6. Of the features referred to by the learned Advocate-General, the one relating to the close relationship of the parties has not been seriously in question even at the trial of the suit. The 1st defendant is the aunt of the plaintiff and was married into Pelleti family; 1st defendant's father-in-law's sister Vengamma was also married to Vakati. Appa Reddi who belonged to another Vakati family and the 2nd defendant is the daughter-in-law of that Appa Reddy. But this fact is consistent with the members of these families living together as a composite family, if only an arrangement or an agreement therefore is made out or round for, but otherwise their living together to help each other without thereby constituting a composite family will follow as a necessary inference.

But what is stressed as establishing the case of the plaintiff is that the management of the family was successively done by a male member of each of these families, and that is indicative that there was a merger and not a mere mixing up of the families. The deposition of the 2nd defendant examined as P. W. 10 is of importance in connection with this question of management. She states:

"Pelleti Venkatanarayana Reddy died 2 years after my marriage. To my knowledge Venkatanarayana Reddy was managing the property, after him my husband was managing the property for 20 years. After him Munuswami Reddi was managing. He died about 30 years after my marriage. I Ammakamma, Mahalakshamma, Muniswami Reddy's mother all got Munuswami Reddi married. After Munuswami Reddy, Venkata Subbiah was managing the property. After him Subbaraghava Reddy was managing. He died 10 or 12 years ago, Pitdiamma's son-in-law Ramiah is managing the property".

It is fairly clear from this that Pelleti Venkatanarayana Reddi, the father-in-law of the 1st defendant, was managing the property and after him the 2nd defendant's husband and thereafter the brothers of the 1st defendant and later on the 1st defendant's son-in-law. P. W. 14 who is the plaintiff deposes that what all he stated in the plaint is true, that his father was managing the affairs of the composite family when some lands were purchased in Putheri and that after his father's death Vakati Rami Reddy (son-in-law of the 1st defendant) is the manager.

In para 3 of the plaint, we find the averment that Pitchammn the 1st defendant was the first born of Kumundara Reddy, that she was more than 10 years older than the deceased father of the plaintiff, that Pelleti Muniswami (husband of the 1st defendant) was managing the affairs, that the management after the death of Muniswami Reddi was done by Venkatasubba Redda, the senior paternal uncle of the plaintiff, and thereafter by his father. There is thus no mention by the plaintiff of the management by the 2nd defendant's husband and there is no evidence

whatsoever in support of a similar contention of the 2nd defendant. Pitcnamma (1st defendant) examined as D. W. 3 admitted that her mother and her aunt Ramamma got her married to Pelleti Muniswami Reddi.

She stated that her brothers had no property, and that the Vakati people never enjoyed the lands which belonged to her husband and to herself and which thereafter stood in the name of her mother-in-law and registered in her name after the death of her mother-in-law. According to her, after her mother-in-law died, her brother Venkatasubba Reddi and after the death of the latter Subbaraghava Reddi were helping her to manage the properties.

She is definite that they used to collect the yield, take money from her and pay the kist, She denied that any of her brothers stayed with her and was managing all the properties. It may, however, be stated that she has gone far in altogether denying that her brothers stayed or lived with her. But all the same it is her case that her brothers were never the managers of the family but were only assisting her. It was not suggested to her that the 2nd defendant's husband was ever the manager.

And therefore the point for determination while considering the question of management will be whether Venkatasubba Reddy and Subbaraghava Reddy were acting in their own rights as managers of the composite family or only helping their sister the 1st defendant in the management of her properties. It will be relevant here to have to point out that the plaintiff's father, while in alleged management of the properties, purchased some lands in Putheri in his own name, while all along no acts of ownership in regard to the properties in Arthamala in the name of the 1st defendant had been exercised either by the plaintiff's father or uncle. The evidence on record, therefore, in our view, supports the contention of the 1st defendant that the father and uncle of the plaintiff were only helpers of the 1st defendant, and the positive evidence in regard to the management by the 2nd defendant except her interested version disentitles the 2nd defendant's evidence to any credence.

7. It will be apt also to have to refer to the payment of kist by Venkatasubba Reddy and Subbaraghava Reddi for the lands comprising in patta No. 1 which are of the extent of Ac. 30-60 cents in Arthamala village. But Exs. A. 1 to A. 14 show that the kist had been paid on behalf of the 1st defendant or her husband Muniswami Reddi. Moreover the entries evidenced by Exs. A. 24, A. 25 and A. 26 in the Dasthu Chitta of Putheri village for Faslis 1343 and 1344 make mention of the payment of kist by Subbaraghava Reddy as "Gujarathi" for Munirami Reddy, son of the 1st defendant. During that period, the Odambadika mentions that patta No. 1 in Putheri village is in the name of the Pelleti Muniswami Reddi. Ex. B. 4 which is a receipt given in 1902 by the Japti Arniu to Venkatanarayana Reddy makes it clear that the patta for "the lands in Arthamala village stood in the name of Pelleti Venkatanarayana Reddy. Ex. B. 6 is the patta of Fasji 1335 in the name of the mother-in-law of the 1st defendant after the death of her-father-in-law.

Thereafter the patta was transferred to Muniswanvi Reddi and then to his widow the 1st defendant. Coupled with this is the fact that in the entry Ex. A. 43 in the Dasthu. Chitta of Arthamala village, the 1st defendant has been shown as the guardian of her son who was No. 1 Pattadar. These reasons, in our view, make us agree with the trial court that the members of the plaintiff's family were never the managers of the properties comprised in Patta No. 1 of Arthamala village which was separately registered in the names of persons belonging to the 1st defendant's family only. As already mentioned, the purchases made by the plaintiff's father of lands in patta No. 121 of the extent of Ac. 2-37 cents in Putheri village are kept distinctly for the benefit of the plaintiff's family. The plaintiff himself says that he has been paying kist for these lands, which are items 49 to 60 of the plaint B schedule. Ex. B. 12 which is the relevant entry in the Vodamhadika Register of Putheri village bears this out. The conclusion of the trial Court therefore, that there is nothing on record to show that the properties in patta No. 1 of Arthamala village had ever been in the name of the family of the plaintiff or that of the 2nd defendant at any time in our view, is irresistible. It cannot also be said that there has been a merger of the properties of the 1st defendant and of the plaintiff at any time.

8. Then Ex. B. 6 is also relied upon by the appellant for the purpose of showing that the deletion of S. No. 62/5 in Patta No. 1 standing in the name of the 1st defendant by the time of Fasli 1362 is due to the fact that that piece of land has been given away as a gift to a Purohit at the time of the obsequies of Subbaraghaya Reddy. What is sought to be made out from this is, that inasmuch as a piece of land admittedly mentioned in fasli 1355 as comprised in Patta No. 1 (vide Ex. B. 6) had gone out of the family as spoken to by the plaintiff, this act must be taken as proving the ownership of all parties to the suit in the plaint properties and the nature of their possession and interest in the suit properties. But as has been rightly pointed out by the learned Subordinate judge, no gift deed in favour of the Purohit Subramanyayya has been produced. Further, even according to the plaintiff, that piece of land is now owned by one Golla Subbadu having been sold by the Purohit.

But there is no evidence to show that the transfer to Golla Subbadu was effected in the manner spoken to by the plaintiff. It is pointed out by the trial court that donee Subramanyayya, and the transferee Golla Subbadu, have not also been examined though alive. Therefore, the mere fact that this piece of land was included in patta No. 1 at one time and is now shown to be with Golla Subbadu does not render the story put forward by the plaintiff as true, as there is paucity of recorded evidence in respect of the alleged transfers. Thus this circumstance not having been established, Ex. B-6, cannot, in our view, help to advance the case of the plaintiff in establishing the existence of a composite family.

9. The next contention relates to the payment of maintenance by Subbaraghava Reddi, the father of the plaintiff, to Subbalakshamma, the widow of Vekati Venkatasubba Reddi. Admittedly this provision was meted out as long as the

plaintiffs father was alive. The evidence of P. W. 2 that he saw Subbalakshamma only once coming to Arthamala to receive maintenance cannot be considered as of much assistance. The trial Court has pointed out that P. W. 4 and P. W. 10 differ in what was being paid to Subbalakshamma and that the non-examination of Subbalakshamma goes against the plaintiff. Even as remarked by the lower court, we do not see any force in this contention as maintenance would have, been paid by the plaintiffs father to a widow of his brother, since he was legally liable therefor, and not because the composite family could be said to have agreed to do so.

10. The last point urged on behalf of the plaintiff is that though the evidence of D. Ws. 2 and 3 has been held by the trial Court to be insufficient to establish that the parties to the suit constituted a composite family, the evidence of P. Ws. 4 to 8 could be relied upon by the appellant as making out the concession made by the 1st defendant in regard to the rights of others when a dispute in regard to this right arose at the time of the marriage of the 1st defendant's daughter. P. W. 4 makes a mention of his being approached by the 1st defendant when Suhbaraghava Reddy, the father of the plaintiff, demanded a partition which was before the marriage of the 1st defendant's daughter. According to this witness, the 1st defendant on that occasion asked his intercession for obtaining a 1/3rd share for her in the family property, but that he advised the 1st defendant not to have a division until the marriage of the 3rd defendant.

He, however, would have it that nothing further happened, P. W. 5 deposed that about 17 or 18 years ago, the 1st defendant wanted partition and she sent for elders and therefore he also happened to go there, though he was not specifically asked to mediate. He stated that the elders advised the 1st defendant to wait till the marriage of children and that there was no partition even afterwards because they (the Parties) lived amicably. According to P. W. 6, there were misunderstandings between the plaintiff and Rami Reddy (son-in-law) regarding partition and that the plaintiff wanted to have a partition effected though there was no dispute over shares. But he admits that he did not know what their disputes were. P. W. 7 mentions that about 10 or 16 years ago, the 1st defendant wanted to have her share and asked the 2nd defendant and Subbaraghava Reddi for it but they did not give it.

The 1st defendant was appealing to ciders and they advised her to wait till her children got married. He goes to the extent of saying that the 1st defendant, who was thus put to difficulties, came away to Putheri and was having a betel nut and vadai shop there, but later on, on the advice, of certain relatives the 1st defendant went back to her house. P. W. 8 has a different story. This witness stated that 7 or 8 years ago, the 1st defendant came away to Putheri due to misunderstandings, that she told him that she was not being treated properly and wanted partition but that the partition could not be had as there was a minor. Significantly however this witness would have it that the 1st defendant said that three of them viz., D. 1, D. 2 and her brother should have each one

share. However, the partition seems to have been put off as it was not the proper time to effect it.

It surpasses one's own understanding why the 1st defendant should assume such importance as to accede to the shares of others or to concede their rights when she herself felt disappointed after being turned out of the family. The versions of the witnesses in regard to this are so vague and varied that we think that no Court can really place any reliance on this testimony. Later on when there was a quarrel between the 1st defendant's son-in-law and the plaintiff in regard to the suit properties, it is said the 1st defendant admitted that her brothers were managing the property and also said that out of the four families the plaintiff is the only male issue and heir to the family. Ex. A. 15 which is the case diary in the connected criminal case is relied upon for this purpose. But this, in our view, would not by itself create any rights to property for the plaintiff or the 2nd defendant, and being a statement by a woman perhaps ignorant of her rights would have no legal significance. Therefore this attempt of the plaintiff to prove his case relying upon the admissions of the 1st defendant cannot therefore be said to have succeeded.

11. Thus in this case when the plaintiff succeeded in proving merely that the parties are related --be it closely--and the families lived together for sometime in the same house helping each other and had a common mess, but the properties belonging to each branch were kept distinct and dealt with separately and exclusively, the question whether there has been a "composite family" giving rise to rights of partition of the properties held in severally needs to be considered. At the out-set in ascertaining the legal position of the parties placed in similar circumstances as these in the instant case, we may steer clear of the law propounded concerning the "composite family" coming into existence by a proved custom and the arrangement resulting from the affiliation of an illatom son-in-law to a member of a Hindu joint family; nor the learned Advocate-General has adopted this analogy to substantiate the case of the appellant.

"Custom" undoubtedly accounts for the origin and growth of the composite families both in the case where there is an affiliation by illatom arrangement and for a corporate effort by two or more families to junction with joint rights over common property. The obligations arising out of an arrangement to provide for the son-in-law who helps in the management of the family properties give rise to an agreement the benefits of which accrue also, to the posterity of the illatom son-in-law. Therefore, the incident of affiliation by Illatom having occurred in any given case at some time in the family history draws to it the consequences.

But the creation of a "composite family" said to have been brought about by living together of the representatives of different families by pooling their labour and property with a view to facilitate convenient and efficient management of that property needs from its very nature to be established by unmistakable and unimpeachable evidence of such merger of the units constituting the composite family, that the blending together should not only be complete but impossible of

yielding any scope for assertion of individuality for the use of the composing units either in the matter of owning property or acts in relation thereto or concerning them. Though it might be that the practice of different families living together to gain and having been benefited by the corporate existence may have divided the pooled resources according to the understanding between the parties or in equal shares. Courts have been anxious not to recognise such composite families with legal rights unless it is possible to infer a tenable and enforceable arrangement which may be either express or implied,

Reported cases dealing with this type of composite families are not very many. In *Allareddi Subbamma v. Nallapareddi Audilakshamma* 22 MLJ 260, the Allareddi family and the Nallapa-reddi family jointly lived and worked for some generations throwing their gains and labour into the joint stock. These families were of Pantakapu caste. Evidence was called at the trial that when two families jointly lived and worked for some generations throwing their gains and labour into the joint stock, it may fairly be presumed that they intended to live in joint tenancy and to share that family property equally when a separation was needed. There are also other cases in which rich persons marrying women brought into their family the brothers of their wives if they happened to be poor and entrusting them with the management of their household and cultivation; and thus when after they lived for a few generations jointly with inter-marriages in the two families they separated dividing their property in equal shares. Nevertheless the learned Judges were of the opinion:

"Isolated cases are of little value unless it be proved that these two families have been united together on equal terms. There is nothing to show that any member of the Allareddi family has ever managed any of the lands which stand in the name of the Nallapareddi family."

The learned Judges went on to say,

"The arrangement, if regarded as a union, was therefore unequal."

In their view, the mere fact that the widows were living together and also applied jointly for a certificate of heirship to Subba Reddi, would not establish the legal claim to any joint tenancy. The learned Judges who decided this case held that the custom must be traced to an agreement between the parties and then only it could be held to be legal. Therefore, the mere prevalence of a custom without the necessary convincing evidence or circumstances forcing an inference as to the legal arrangement between the parties would not help any plaintiff to succeed in a suit for a share of the family properties when he merely alleged the existence of a composite family.

The importance of an express or implied contract as the origin of every composite family as giving rise to obligations based upon a contract, has, we think, not been over-stressed by a Division Bench of the Madras High Court consisting of Subbarao and Panchapakesa Ayyar JJ. in appeal No. 575 of 1948, (1950) Mad WN (SN) XXVIII. They considered that the partnership resulting

therefrom is created only by a contract. They pointed out that the obligations so arising under such a contract are strengthened by intermarriages both at the inception as well as in succeeding generations and that unlike a partnership based on contract between strangers, a composite family is also blended together by stronger ties of relationship. The place of proof in regard to the territorial custom governing the rights of such families is immaterial as the rights of parties inter se -would depend upon the terms and conditions on which the two families agreed to join hands.

A Division Bench of this High Court consisting of Subba Rao, Chief Justice and Ranganadham Chetty I. in *K. Subbayya v. M. Sitaramamma*, 1958 2 AnWR 59: (AIR 1939 AP 86) had occasion to deal with the effects of the absence of an express agreement in regard to the formation of a composite family. It is therein stated at page 63 (of Andh WR): (at p. 89 of AIR)

"In the absence of an. express agreement, the formation of a composite family cannot ordinarily be inferred from the mere circumstance of two different families living together and cultivating jointly, unless the conduct and mutual relations of the component units are wholly incompatible with the preservation of their individuality. A longer duration, say, the passing of a few generations of common living may, in itself, raise a presumption of merger sometimes." They observed also at page 64 (of Andh WR) (at p. 89 of AIR):

"Again, a continuous course of dealing with the properties of the quondam units for the common Benefit of the family, or acquisitions jointly in the names of all the members of a common head and the launching of joint ventures, of the shouldering of common risks and the utilisation of the resources of the units indiscriminately for the purpose of the whole family would be some of the indicia of a merger."

But in deciding the case before them, the Division Bench was clearly of the Opinion that it is the dealing with the corpus that gave a clue to the real intention of the parties, and jointness of cultivation and common enjoyment of the income is attributable to the act of a joint living of the two families which can signify nothing more.

12. The above discussion of the authorities and the examination of the principles governing the legal basis and accrual of rights of the members forming a composite family when two or more families join together for making a corporate effort reveal that (1) there should be one pooling of their labour and property for convenient and efficient management of their joint property; (2) the state of facts should be such that it is possible to infer an arrangement and trace it to a legal origin so that the members of the family become entitled to share the property; (3) the arrangement so made out, whether express or implied, should be capable of establishing a union of the families where each and every member, as of light, could deal with his property in his own right and act for the other member; (4) that the terms on which the families got united must be

ascertainable or at least being culled out as flowing from the conduct of the parties; (5) indications like the management of the properties standing in the name of one family by another belonging to the other family who has joined as a member of the composite family should be such as to form an index of the intention of the parties to constitute, the composite family; and (6) a long duration of common living so as to give rise to a presumption of merger as also a continuous course of dealings with the properties of the quondam units for the common benefit of the family, or acquisitions jointly in the names of all the members of a common head and the launching of joint ventures.

A further indication may also be provided when the risks are shouldered in common and the resources of the units are utilised for the purpose of the whole family. But it is clear that mere stronger ties of relationship create no legal rights and would be no evidence of "merger" for at best, it would prove only that the families are closely knit and blended together by greater affinity. Even the prevalence of a territorial custom to that effect does not, in any manner, dispense with the proving of the terms on which the co-ownership of the properties is in the parties composing the particular composite family. It also becomes clear that a mere admission, oral or documentary, made by a person in ignorance of his or her legal rights would not give rise to a legal claim, and therefore the founding of such rights of the members of a composite family cannot be made to rely upon the principle that one cannot blow hot and cold and be entitled to reprobate what has been admitted (vide 22 Mad LJ 260).

Further, any claim to a right based upon such an admission by a party will not give rise to rights so as to negative the claims inhering in the predecessors and successors of the person who makes such admissions. It therefore follows that in determining the question of the respective rights of the component parts of the composite family, the admissions of particular individuals are one of impermanence and inconsequential. It is also hardly necessary to have to reiterate that any amount of acceptable evidence in regard to a custom which brings closely related families to live together and have a common mess will not, without more which could establish inferentially or actually, the merger of interests so as to give rise to contractual obligations arising out of the pooling of the resources viz., labour and property, is of no avail to a plaintiff who seeks partition of the property on the basis of the existence of a "composite family".

13. The above discussion of the evidence and the points raised for the appellant show that beyond the close relationship of the families and their living together and having a common mess, the other indicia are absent in the instant case. It therefore follows that the plaintiff is not entitled to succeed and this appeal must fail.

14. In the result, the appeal is dismissed with costs.