

(1918) 04 MAD CK 0005
In the Madras High Court

Venkata Reddi and Others

APPELLANT

Vs

Kuppa Reddi and Another

RESPONDENT

Date of Decision : 25-04-1918

Acts Referred:

Limitation Act, 1908 — Article 144

Citation : 47 Ind. Cas. 716 : (1918) 8 LW 400

Hon'ble Judges : Seshagiri Aiyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Seshagiri Aiyar, J.—One Kuppa Reddi had four sons. The eldest was Ramasami Reddi the father of defendants Nos. 1 to 3. He died in

1914. The last was one Muthu Reddi, who died fifteen years ago, and the plaintiffs are his sons. There were two other sons. In July 1906 there

was a partition among the brothers evidenced by Exhibit IT. The family properties were divided into two schedules. Schedule B, was allotted to

the second and to third brothers and schedule A was given to the first and the sons of the fourth brother. | These latter were represented by their

mother as guardian. The document also says that " as No. 1 out of us has been managing the affairs as the head of the family, one share in addition

is included.

2. The present suit is for a half share in the properties which were taken by the first and the fourth brothers. The defendants' case is that the

plaintiffs are entitled only to a third share, and that the plaintiff can have no right to the eldest brother's extra share. The Subordinate Judge came to

the conclusion that the A schedule properties, which fell to the first and fourth branches, should be shared equally by the two branches. He found

that, since the partition, the two branches lived in commensality, kept no accounts and enjoyed the properties as if they were members of an undivided family. This conclusion on facts is not seriously disputed in appeal.

3. The real question argued before us was whether Exhibit U effected a division in status between the first and the fourth branches of the family, and whether since 1906 their properties were enjoyed by the two branches as tenants-in-common or as coparceners. There can be no question of re-union because, on the date of the partition, the plaintiffs were minors. That is now settled by the decision of the Judicial Committee in *Ram Pershad Singh v. Lakhpati Koer* 7 C.W.N. 162.

4. There are some outstanding facts which incline me to hold that the first and the fourth branches of the family became divided inter se. In the first place, if the object was to send away the second and the third branches, there was no necessity for the members of the fourth branch being represented by their mother as guardian. Under the Hindu Law although the mother may be the natural guardian as long as the family remains undivided, she has no right of representation in respect of the family property.

5. Another circumstance is that an extra share was in terms given to the eldest member who was the manager of the family. This, in my opinion, points to the fact that the properties were divided into five shares, that each brother took a share and an extra share was given to the eldest member. The fact that Exhibit U does not say that the properties were "divided into five shares, does not, in my opinion, negative this view. The shares of the four brother? under the Hindu Law are well ascertained and the document speaks of an extra share. It can only mean that an additional fifth share was given to the managing member. This view of mine is strengthened by the oral evidence given in the case. Three of plaintiffs' own witnesses speak to the properties having been divided into five Shares and one extra share having been given to the managing member. P. Ws. Nos. 3, 10 and 32 give definite evidence on this question. D.W. No. 1 says that the property was divided into five shares. D.W. No. 6 who is a paternal uncle of plaintiffs and of defendants says that there was a division into five shares and an extra share was given to the managing member. D.W. No. 7 also gives similar evidence. It may be said that D.W. No. 12 is an interested witness. Apart from his evidence, the

evidence I have referred to, is so clear and consistent and fits in so well with the probabilities of the case that I am not prepared to reject this

evidence as contended for by Mr. . Ramachandra Aiyar. I have, therefore, come to the conclusion that in the partition of 190S, the shares of the

brothers were ascertained and that an extra share was given to the senior brother. In that view there can be no doubt that the A schedule

properties were held by the two branches as tenants-in-common. The decision of the Judicial Committee in *Balkishen Das v. Ram Narain Sahu* 30

I.A. 139 : 8 Sar. P.C.J. 489 and *Bam Pershad Singh v. Lakhpati Koer* 30 I.A. 1 are practically on all fours with the present case.

6. The next question is whether the joint living, the failure to keep accounts and the fact that marriage expenses were incurred indiscriminately

without reference to the shares belonging to the two branches and the fact that acquisitions were made jointly, would constitute what was originally

separate property into the co-parcenary property

7. Mr. Ramachandra Aiyar suggested that it was open to the first branch to throw its extra share into the hotchpot. A transaction of this nature can

only be regarded as a gift of a half of the extra share to the fourth branch. Such a transaction must be in writing and registered. It can bear no

analogy to renunciations by a member of a joint family in favour of others. Mr. Krishnasami, Aiyar quoted the decision in *Thyalambal v. Krishna*

Pattar 32 Ind. Cas. 965, where a learned Judge of this Court suggested that, even when members are undivided, in order that the self-acquisitions

of any one of them may become joint family property, there must be a document which the law would recognise as a proper conveyance. It is not

necessary in this case to go that length. In my opinion, the giving up of the extra share by the senior branch can only be by a duly executed

registered document and, as that has not been done, I must hold that that share has not become the common property of the two branches of the

family.

8. Of course the plaintiffs are entitled to an account of the income due to their share from Ramasami Reddi, the managing member and his sons.

Whether Article 44 or Article 144 of the Indian Limitation Act applies to the case, it is not necessary to decide at this stage.

9. The question as to whether more than three years have elapsed since the 1st

plaintiff attained majority, has not been put in issue. If the suit was brought within three years of his attaining majority, the question as to whether Article 44 applies, need not be considered.

10. There can be no question that the act of the mother in consenting to give an extra share to the managing member, is not binding on the plaintiffs.

The old idea of Jeshtabagam has now become obsolete and consequently the consent of the mother to Ramasami Reddi taking an extra share

could not prejudicially affect the plaintiffs. If there is no bar of limitation, the plaintiffs will be entitled to a fourth of the extra share given- to the first

branch.

11. On the question of accountability, Mr. Krishnasami Aiyar suggested that Article 62 of the Limitation Act applied. Here again it is not necessary

to express an opinion until the question of the age of the first plaintiff is settled.

12. The further question as to whether the first plaintiff can be regarded as competent to give a discharge in respect of the rights of his brother who

is still a minor, will also have to be dealt with only if the first plaintiff is found to have been more than 21 years of age on the date of the suit.

13. The decree of the Subordinate Judge must be reversed in so far as it gives to the plaintiffs an equal share .with the defendants in A schedule

properties. In lieu of that, there will be a declaration that the plaintiffs are entitled to one-third of the properties and to a fourth in the extra share

provided that claim is not barred by limitation. There must be a further declaration that the plaintiffs are entitled to an account of the income from

the defendants provided that also is not barred by limitation.

14. As regards the memorandum of objections Mr. T.R. Ramachandra Aiyar confined his argument to five items disallowed by the Subordinate

Judge. As regards item 68 we think the conclusion of the Subordinate Judge cannot be supported. P.W. No. 19 gives definite evidence that the

money which he borrowed, was from Ramaswami Reddi and that, at the request of the 3rd defendant, he executed a promissory note for the

amount of the consideration to Narayanasami Reddi, the brother-in-law--of the defendant. The third defendant in the witness-box in a non-

committing way says that he did not collect but he does not say that the debt did not exist. We think that the plaintiffs are entitled to their share in

item 68.

15. As regards items 23, 65 and 74 we see no reason to differ from the Subordinate Judge. The original document has not been produced and

there--is not sufficient evidence to connect the items with moneys belonging to the family. As regards item 35, the evidence of P.W. No. 25 is very

definite and clear. The third defendant in his deposition says that he collected item 35. There is no reason for not giving the plaintiffs decree for the

balance of Rs. 410 in respect of this item. We must modify the decree of the Subordinate Judge in this behalf.

16. As regards items 50 and 69 Mr. Ramachandra Aiyar finally admitted that they are not included in the valuation of his memorandum of

objections. We must, therefore, confirm the judgment of the Subordinate Judge as regards these items. As a result, in addition to the "declaration

already indicated, the decree of the Subordinate Judge must be modified by giving the plaintiffs their share in items 68 and 35.

17. The costs of all the parties here and in the Court below will be provided for in the final decree.

Abdur Rahim, J.

18. I agree.