
(1915) 11 MAD CK 0072
In the Madras High Court

Yeechuri Ramamurthy

APPELLANT

Vs

Yeechuri Ramamma and Others

RESPONDENT

Date of Decision : 09-11-1915

Acts Referred:

Evidence Act, 1872 — Section 106

Citation : 33 Ind. Cas. 961 : (1916) 3 LW 322

Hon'ble Judges : Srinivasa Aiyangar, J; Coutts Trotter, J

Bench : Division Bench

Judgement

Coutts Trotter, J.—My learned brother will give judgment in this case. I concur in his judgment and adopt it, and it will stand as the

judgment of the Court.

Srinivasa Aiyangar, J.

2. The plaintiff, his father Narasayya, Gurumurthi, his eldest brother, and Venkataratnam, the 4th defendant, were members of a joint Hindu family.

On the 29th of January 1904, while the plaintiff was a minor of the age of 15 or thereabouts, the father and the sons (the plaintiff being represented

by the father) divided the family properties which consisted of about 6 acres of land and some house sites. There was a deed of partition, Exhibit

XVIII in the case. In that partition 3 1/2 acres were allotted to the plaintiff while his brother Gurumurthi and Venkataratnam got a little over 1 acre

each. The father retained no portion of the ancestral property except two mango trees. A larger share was allotted to the plaintiff on the ground

that he was a minor whose upanayanam and marriage had not been performed. Besides the properties so divided it is stated in the deed that the

properties which had been acquired before and any which might be acquired

thereafter by the members of the family should belong to them individually. It appears that about 5 acres of land and some house sites were in the possession of the father, which he claimed as his self-acquisition, and about 15 acres of land in the possession of Gurumurthi, who likewise claimed them as his self-acquisition. They are described in schedules D and E to the plaint. Narasayya, the father, died in April 1905 having before his death made a Will bequeathing his properties to his wife, the plaintiff's mother who is the 5th defendant in the suit. Gurumurthi, the eldest brother, died in April 1910, and the 1st defendant is his widow and defendants Nos. 2 and 3 are his daughters. Plaintiff brought the suit to set aside the partition on the ground that it was fraudulent, his father having been induced to enter into the arrangement by the fraud and undue influence of the 1st defendant's husband Gurumurthi. He also states that the partition was unfair, inasmuch as the properties claimed to be the self-acquisitions of the father and the eldest brother were family properties in which the plaintiff was entitled to a share and that they should not have been excluded from the division. The 4th defendant, who was over 50 years of age at the time of the partition, supports the plaintiff and challenges the partition as being vitiated by fraud.

3. The mother of the 5th defendant, as I read her statement, though claiming the properties left to her under the Will of her husband (which I may mention she has given to the plaintiff himself reserving a life-estate to herself), does not traverse the allegations of the plaint as regards the character of the partition. Besides the properties described in schedules D and E, the plaintiff also claimed certain outstandings, moveables and immovables described in schedules F, G and H, as part of the family properties in the possession of the 1st defendant they having been acquired, it is said, by the 1st defendant's husband either from or with the aid of the family properties before and after the partition. The Trial Judge held that the properties in schedules D and E have not been proved to be the self acquisitions of Narasayya and Gurumurthi respectively, that the partition was therefore, unfair and was not binding on the plaintiff; he gave the plaintiff a 1/4th share in the properties in D and E schedules on the footing that though they were omitted from the division, there has been a division in status amongst the members of the family and the plaintiff was, therefore,

entitled to a 1/4th share only as a tenant-in-common. He dismissed the plaintiff's suit in respect of his claim to the properties in F, G and H

schedules on the ground that the plaintiff had not proved that they were family properties; on the same ground he also dismissed the suit in respect

of J schedule properties, they being some vessels and utensils in the possession of the 5th defendant, the mother. The plaintiff has appealed

claiming the whole or at least a half share in the properties in schedules D to J. The 1st defendant has filed a memorandum of cross-objections

disputing the findings of the Trial Judge that the partition was unfair and, therefore, not binding on the plaintiff. Inasmuch as the cross-appeal of the

1st defendant goes to the root of the case we have" heard it first, and the question for determination is whether the plaintiff is entitled to set aside

the partition on the ground that it was unfair or prejudicial to his interests. At the outset, the question of the burden of proof in this case has to be

decided; for if the burden was on the plaintiff to show that the partition arrangement was unfair or fraudulent, the plaintiff has wholly failed to

establish the same. Both on principle and on authority I think the burden in these cases is on the plaintiff. This is not a case of a guardian entering

into a transaction with his ward; nor even the case of a stranger entering into a transaction with the guardian "of a minor in respect of the minor"s

property. Every adult member in a joint Hindu family is entitled to demand partition and can insist on having his share separated and given him and

the minor members cannot resist the demand; all that their guardian can do is to protect their interests in the partition; so long then as the minors are

represented by their natural guardian, the partition is as binding on them as on the adult members, unless any negligence or fraud on the part of the

guardian is proved. It is true that a guardian of a minor could not insist on a partition on behalf of a minor unless, of course, it were proved that that

partition or separation was for the benefit of the minor; but that is not this case. Partition amongst the members of the family is a family arrangement

and is generally resorted to in order to keep peace in the family or preserve the family properties; and the principles application to family

settlements are applicable to partitions among the members of a family. There must, of course, be equal knowledge on the part of the members and

there must not be any overreaching or fraud. Even material mistakes do not matter, provided that all members have the same knowledge. As

observed by Lord Eldon in *Gordon v. Gordon* 3 Swans. 400 : 36 E.R. 910 : 19 R.R.230, ""where family agreements have been fairly entered into,

without concealment or imposition upon either side, with no suppression of what is true, or suggestion of what is false, then, although the parties

may have greatly misunderstood their situation, and mistaken their rights, a Court of Equity will not disturb the quiet, which is the consequence of

that agreement."" It is for those who seek to set aside a family arrangement to establish the grounds on which they impeach it, [See *Satya Kumar*

Banerjee v. Satya Kirpal Banerjee 3 Incl. Cas. 247 : 10 C.L.J. 503 . In *Nallappa Reddi v. Balammal* 2 M.H.C.R. 182 where also a minor on

attaining majority sued to set aside a partition in which he was represented by his mother as guardian, the learned Judges observed as follows: ""In

this case the plaintiff and his brothers appear to have been represented in good, faith by their mother and natural guardian, and there is nothing to

indicate fraud, or that any undue advantage was taken of the plaintiff's minority, or of the sex of the mother."" It appears that the plaintiff's branch in

that case obtained only 1 mootta as its share while 4 moottas were allotted to the other branch, and it was contended that the division was unequal

on the face of it. Dealing with this contention the learned Judges say, ""there is no evidence of the relative value of these 5 moottas"" and in

concluding this portion of the judgment, say ""that no such gross irregularity has been shown as will justify us in setting aside the division."" It is

obvious that in the view of the learned Judges the burden of proof was on the plaintiff. In *Balkishen Das v. Ram Narain Sahu* 30 I.A. 139 : 30 C.P

738 : 7 C.W.N. 578 : 5 Bom. L.R. 461 the Judicial Committee seem to take the same view. They say: ""If the partition was unfair or prejudicial to

the minor's interests, he might on attaining majority by proper proceedings set it aside so far as regards himself."" See also *Parbati v. Naunihal*

Singh 3 Ind. Cas. 195 : 31 A.P 412 6 A.L.J. 597 : 5 M.L.T. 427 : 13 C.W.N. 983 : 10 C.L.J. 121 : 11 Bom. L.R. 878 : 36 I.A. 71 : 19 M L.J.

517 In *Ghanvirapa v. Danava* 19 B.P 593 Bailey, C.J., seems to take the same view (see page 603) though *Fulton, J.*, is of the contrary opinion

(see page 604); but the authorities which he cites for that position do not seem to support him, and the passage cited from *Mayne* which is to be

found in page 662 of the 8th Edition shows that that learned author was also of the opinion that the burden was on the plaintiff.

4. In some cases the very nature of the transaction or the method of division may show that it was unfair or prejudicial to the interests of the minor,

and in such cases the burden which was on the plaintiff in the first instance may be shifted at once. The burden may be shifted also in cases where

the facts are specially in the knowledge of a particular party (see Section 106 of the Evidence Act.)

5. Assuming, however, that the burden was on those who set up the partition, as a plea in bar of the plaintiff's claim, to prove that the partition was

fair, I have come to the conclusion that the 1st defendant in this case has discharged that burden.

6. Although the allegations of fraud and undue influence were made in the plaint (in fact the whole case for the plaintiff was based on fraud and

undue influence), there is no evidence whatsoever in proof of those allegations. But inasmuch as the plaint stated that the properties in schedules D

to H were joint family properties, in which the plaintiff was not allotted a share, we have treated the case as one in which the plaintiff seeks to set

aside the partition on the ground of its being unfair. In dealing with the evidence it is necessary to remember that the exact question now for

determination is, not whether the 1st defendant has proved that the properties in the E schedule (she is interested only in them) have been proved

to have been acquired by her husband without detriment to or without the aid of family funds, but whether the adult members of the family bona

fide allowed these properties to the 1st defendant's husband as his self-acquisitions. One important circumstance in favour of the 1st defendant is

the fact that the father was himself a party to the partition and Represented his minor son, the plaintiff, in that transaction, No motive whatsoever

has been suggested for the other to give up the rights of his infant son in favour of the 1st defendant's husband. The father gained nothing, for if all

the plaint properties were family properties the father for his share would be entitled to more than what he retained as his self-acquisitions. All that

the learned Pleader for the appellant could suggest was that the father may have been under a bond fide misapprehension as to the legal right of his

eldest son in his acquisitions. Even if it were so I do not think the plaintiff would be entitled to set aside the arrangement however. See *Gordon v.*

Gordon 3 Swans. 400 : 36 E.R. 910 : 19 R.R.230 and of. In *re Roberts*, *Roberts v. Roberts* (1905) 1 Ch. 704 : 74 L.J. Ch. 483 : 93 L T 2.

There is, however, no basis for the suggestion and I see no reason to doubt the truth of the Statement by the father that the properties in the

possession of Gurunmurthi were his self-acquisitions. The plaintiff if he had chosen could have called the 4th defendant, the only adult member now

alive who was a party to the partition and who according to the Judge forced the partition on the family, to, explain the statements in the partition-

deed.

7. It is equally a matter for observation that the plaintiff has not called his own mother, who is and has been living with him and who must have

known of the circumstances which led to the partition and the disruption of the family.

8. The partition arrangement has further been acted upon by the members of the family up to the date of the institution of the present suit. The 5th

defendant, the mother, who look under the Will of her husband has, as I have already observed, (Exhibit W) settled the property on the plaintiff

himself. Though the settlement was in form a sale for Rs. 1,000, there seems to be no reason to doubt the genuineness of the transaction, i.e., that

the mother did bona fide intend to transfer the property to the plaintiff, her youngest son. Here again the plaintiff, who was then living with his

mother, has not chosen to give evidence as to whether he was aware of this transaction; and the mother too has not been called to give evidence as

to the circumstances in which she executed the document. It is said that the plaintiff was a minor at the time but if he was over 15 in January 1904,

the date of the partition-deed, he certainly was of age when Exhibit U was executed. I cannot help thinking that the plaintiff had full knowledge of

the gift in his favour which he must, have accepted; though on the death of the 1st defendant's husband, which took place long after this

transaction, he has chosen to repudiate that also, to set up a claim to all the properties as joint family properties.

9. The positive evidence let in on behalf of the 1st defendant, though by itself it may not establish that all the items of properties described in the

schedule E were her husband's self-acquisitions, is, in my opinion, taken with the other circumstances already referred to, quite sufficient to

establish the bona fides of the partition and that the members of the family were perfectly right in allowing the properties then claimed as self-

acquisitions to the respective members.

10. It appears that by a division amongst Narasayya and his brothers which took place before 1869, about six acres of land fell to the share of

Narasayya. In 1870 Narasayya borrowed a sum of Rs. 400 by mortgaging the ancestral lands (Exhibit VI) and although he was in possession of

those land's the debt increased to Rs. 769-6-9 by the year 1876, and the creditor was vested with possession of all the family lands except an

acre (Exhibit V, dated 29th February 1876). Narasayya had a large family to support and he seems to have supported them from the income

derived by officiating as a purchit and by cultivating the lands of third persons taken on lease. It is clear that the family property, namely, the one

acre of land was hardly enough to maintain the family, much less to make any acquisitions whatsoever. The family lands were in the possession of

the mortgagee till about 1892, when they were redeemed by the payment of Rs. 590 (see Exhibits 46 and 48), but were leased out by Narasayya

himself immediately after Exhibits III and IV. The first of the acquisitions made by Gurumurthi was under Exhibit A on the 11th of March 1891 for a

sum of Rs. 500. The lands so purchased were already in his possession as lessee. In that amount was included a sum of Rs. 150 due to Gurumurthi

himself from the vendor under Exhibit XIV, dated 25th April 1890. The balance of the purchase-money had to be paid to the creditors of the

vendor. Gurumurthi borrowed Rs. 200 on the 6th of May 1891 under Exhibit 36, for paying some of the creditors whom he had undertaken to

pay (see Exhibits 35 and 37. The sum which he borrowed under Exhibit XXXVI was repaid by borrowing under Exhibit II on the 16th of

February 1892. This document is important as Gurumurthi mortgaged the lands acquired by him under Exhibit A as security for the loan; he states

that these properties were his self-acquisitions. It is important to note that Gurumurthi had just attained majority and the father Narasayya was

about 35 years of age. The fact of Gurumurthi the borrowing moneys on his own persona* responsibility and acquiring property in his own name

seems to me to afford very good evidence, of the properties acquired being the self-acquisitions of Gurumurthi. It is in evidence, and the learned

Subordinate Judge also finds, that Gurumurthi and Narasayya were each of them taking lands of others on lease and making a profit by cultivating

them themselves. The learned Judge assumed that such cultivation was on behalf of the family. I do not find any evidence of that. There is no presumption that the earnings of one member of a family belonged to the family, in the absence of any evidence that they were thrown into the common stock or that earnings were jointly made by the* members of the family. Gurumurthi was borrowing from third parties year by year from 1893 to 1902 making himself personally liable, Exhibit 54 series and 42. During this period, it is remarkable that the father himself was dealing with the family lands: Exhibits HI, IV, XL, etc., while Gurumurthi was dealing with the lands purchased by him as his own: Exhibits XI, XLV, LII and IX. Lands taken on lease by the father in one year were in the subsequent year taken on lease by Gurumurthi: Exhibits G and VIII; and no explanation is given as to why there should be this change if all leases were taken on behalf of the family. Again when money was borrowed JOT a family purpose, the document was executed by the father alone, (see Exhibit R), though apparently the money was received by both Narsayya and Gurumurthi (Exhibit Q). The evidence above set out prima facie at least shows that item of the E schedule and probably the other properties as well were the self-acquisitions of Gurumurthi. It is in evidence that item i yielded enough income to make it possible for Gurumurthi to purchase the other lands described in schedule E, even apart from the profit which Gurumurthi presumably made by cultivating lands taken on lease from others. It is unnecessary to deal in detail with the properties described in D schedule. The plaintiff's 4th witness, who was the Munsif of the village where the parties lived, and an attestor of Exhibit XVIII, states in his cross-examination that Narasayya, the father, had self acquired lands though he did not know the extent thereof. I think it clear, looking into the circumstances of the family, that the properties acquired by the father must have been acquired from his earnings. Whether he treated them as joint family properties is a different question; but there is no evidence that he did so treat them.

11. The Trial Judge, if I understand him aright, seems to have come to the conclusion that the properties acquired by Gurumurthi were acquired from his earnings from cultivation or moneys borrowed; but that they should be treated as family properties, because Gurumurthi was the manager

or joint manager of the family and in taking leases and borrowing moneys he must be assumed to have been acting on behalf of the family. There is, however, no reliable evidence of this. I have already shown that when the defendant's husband began to make acquisitions he had just attained majority and his father was about 35. That Gurumurthi was assisting his father may be true. But from that to conclude that he was a manager or a part manager seems to me to be wholly unwarranted. There is in fact no single transaction dealing with the admitted joint property in which Gurumurthi even joined, and there is no single transaction dealing with the property acquired by Gurumurthi in which the father joined. There are, however, two documents to which reference was made. They are Exhibits T and H. Exhibit T is an agreement for sale of a house site in favour of Gurumurthi and H is a sale-deed of the same site to Narasayya a month later. From this we are asked to infer that whether the properties were acquired by the father or the son, whether they were in the name of the one or the other, they were all treated as joint family property. In the face of the evidence already referred to, the above transaction is wholly insufficient to warrant any such conclusion. Exhibit H, the sale-deed, does not refer to the previous agreement T and the site purchased under H, is one of the properties claimed by the father as his self-acquisition. It is true that the sum of Rs. 8 paid by the son was credited to the father, but that is inconclusive. I must finally notice an observation of the Trial Judge that the partition was a secret one. There was no doubt atleast in the minds of the persons who were most competent to judge as to what the family properties were. The father insisted on and obtained an extra share for his youngest child to provide for his upanyanam and marriage. The deed of partition is largely attested by the residents of the village and I do not see where the secrecy comes in. It is remarkable that the same learned Judge who held that the properties in schedules D and E were family properties arrived at the conclusion that the properties described in schedules I to H and J were not proved to be family properties. I have, therefore, come to the conclusion that the partition of 1904 has been proved to be a fair one and that the plaintiff has no reason to complain of either inequality in the division or that any properties belonging to the family had been omitted from the division.

12. I think the plaintiff's suit fails and must be dismissed with costs throughout. The appeal -will, therefore, be dismissed but without costs.