Papanna Vs. Madappa and Others

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Court : Karnataka

Decided On : Mar-12-1992

Reported in : AIR1993Kant24; 1992(2)KarLJ527

Judge : K.A. Swami and; C. Shivappa, JJ.

Acts : Hindu Law; Evidence Act, 1872 - Sections 115; Rattigan's Digest of Customary Law - Article 49; Karnataka Registration Rules, 1965 - Rule 71

Appeal No. : R.F.A. No. 120 of 1992

Appellant : Papanna

Respondent : Madappa and Others

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Judgement :
ORDER

K. A. Swami, J.

1. This appeal by the first defendant, is preferred against the judgment and decree dated 19th November, 1991 passed by the learned Second Additional Civil Judge, Mysore in O.S. No. 398/1987.

2. The first respondent-plaintiff filed the aforesaid suit for partition and separate possession of his 6/20th share in the suit schedule properties.

3. In this case, the relationship between the parties is not in dispute. It is also not in dispute that the suit schedule properties are the joint family properties. The relationship between the parties is as follows.

LINGEGOWDA (died in 1967)

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Papanna Ramanna Madappa Madamma Puttatayamma

D-1 (died on (Plaintiff) D-10 D-11

12-6-1986)

|

Ningamma (wife)

D-2

|

_____

| | | | | | |

Madappa Ninganna Ramesh Krishna Padma Yashoda Sunanda

D-3 D-4 D-5 D-6 D-7 D-8 D-9

4. Lingegowda died in 1967. He had three sons -- Papanna, Ramanna, Madappa and two daughters -- Madamma and Puttatayamma. Papanna. is defendant No. 1,

Madappa-plaintiff, Madamma-defendant No. 10 and Putta-Thayamma-defendant No. 11. Ramanna died on 12-6-1986 leaving behind him, his widow -- defendant Nos. 2, 7 children who are defendants 3 to 9.

5. The defence of the defendants was that Madappa the plaintiff went out of the family as he was taken as an ill atom son-in-law by one Kalaiah and he was married to the second daughter of Kalaiah. Under the agreement between the parents of the plaintiff and the ill atom adoptive father of the plaintiff, the plaintiff was to relinquish his right to property in his natural family and was to get certain properties in the ill atom adoptive family. Therefore, it was the defence of the defendants that the plaintiff was not entitled to any share in the suit schedule properties.

6. The trial Court on the basis of the pleadings of the parties raised as many as five issues which were as follows:--

'1. Whether the plaintiff was given inadoption as son-cum-son-in-law to deceased Kalaiah, as contended by the 1st defendant?

2. Whether the plaintiff is entitled to partition and separate possession?

3. Whether the plaintiff is entitled for mesne profits?

4. Whether the plaintiff is entitled for accounts of profits and share in the same?

5. What decree or order?

7. The plaintiff gave evidence as PWI and first defendant gave evidence as DW3 and also examined four more witnesses as DWs 1, 2, 4 and 5. Plaintiff produced four documents which were marked as Exs.P1 to P4 and defendants produced six documents which were marked as Exs.Dl to D6.

7-1. The trial Court on appreciation of the evidence answered Issue No. I in the negative and Issue Nos. 2 to 4 in the affirmative. Accordingly, it decreed the suit of the plaintiff and awarded 6/ 20th share to him.

7-2. It is contended by Sri T. N. Raghu-pathy, learned counsel for the appellant that the trial Court has ignored the very contents of Ex.D6 dated 11.6.1970 -- the deed of settlement executed by Kalaiah alias Kalegowda which proved not only the fact that the plaintiff was taken as ill atom son-in-law under an agreement; but he was also to get the property in the family of his father-in-law and to which the plaintiff was an attestor. Therefore, Ex.D6 completely proved the defence of the defendants. In addition to this, it is also contended that DW4 has spoken to theagreement between the parents of the plaintiff and Kalaiah -- the father-in-law of the plaintiff.

8. It is no doubt true that the trial Court while appreciating the evidence on record with reference to Ex.D6 has stated that there is no reference to the ill atom adoption of the plaintiff by Kalaiah in Ex.D6. The learned trial Judge has stated thus :

'It is also very significant to note that nowhere in this document the executant, namely, Kalaiah has specifically averred that he took Madappa the plaintiff in adoption as such. If really there was an adoption as contended by the DWs 1 to 4, certainly this Deed would have reflected the same'.

9. In Ex. D6 it is stated that plaintiff was taken as an ill atom son-in-law by Kalaiah and his second daughter was given to him in marriage and there was an agreement arrived at. between the father of the plaintiff and Himself and that he should give up his right in the natural family and would get the properties of Kalaiah. Ex.D6 is a settlement-cum-will. Under this Kalaiah settled certain properties in presented in favour of his first daughter and her husband. He bequeathed the remaining properties in favour of the plaintiff and his wife. It is specifically stated in the document that signature of the plaintiff and both of his daughters were taken with a view to keep them informed about the disposition of the properties of Kalaiah in the manner stated in the document -- Ex.D6. Therefore, it is contended by Sri T. N. Raghupathy, learned counsel for theappellant that the finding of the trial Court that the plaintiff was taken as an ill atom son-in-law not proved, is not sustainable.

10. In the light of the recitals contained in Ex.D6 we find no difficulty in accepting this contention. But this will not in any way enable the first defendant to deprive the plaintiff of his share in the natural family. We may also point out a decision of the Old Mysore High Court in Chowdammah v. Soobbaraj Urs, reported in (9 Mys LJ 55) (sic). From this decision it is clear that there appears to be a custom among 'Vokkaligara Community' enabling a sonless person to lake a boy as ill atom son-in-law and to give his daughter in marriage. Even then the question for consideration is whether such a person will lose his right in the natural family. The legal position has been stated in clear terms in Hindu Law by Mulla 15th Edition at paragraph 515A thus :

'ill atom adoption:--

The custom of affiliating a son-in-law and giving him a share, which is called ill atom adoption, has been in vogue in certain communities of the old Madras Presidency (now mainly States of Madras & Andhra Pradesh). The institution is purely the result of custom and judicial recognition has been given to it. The two essential conditions of this adoption arc that the adoptee must marry the daughter of the adopter and there should be an agreement to give him a share. Both the conditions must be fulfilled.

Merely living in the house of the father-in-law and helping him in the management of property would not result in affiliation. There must be the requisite agreement. But it is not necessary that the marriage should take place before he is admitted into the family. A specific agreement is the basis of this affiliation but in case of a very old adoption the fact may be proved by clear evidence of the course of conduct of the parties and circumstances of the case.

The incidents of this custom have now been crystallised into certain rules and no extension of those incidents is permissible unless established by a special custom. The son-in-law does not become an adopted son in the strict or real sense of adoption. He Joes not lose his right of in heritance in his natural family. Neither he nor his descendants become coparceners in the family of adoption though on the death of the adopter he is entitled to the same rights and the same share as against any subsequently born natural son or a son subsequently adopted in

accordance with the ordinary law. He cannot claim a partition with the father-in-law and the incidents of a joint family, such for instance as right to take by survivorship, do not apply. In respect of the property or share that he may get he takes it as if it were his separate and self-acquired property'.

11. This is also the view expressed by the learned author, Mr. M. N. Srinivasan in his book 'Hindu Law in Bharat' 3rd Edition thus paragraph 17:

'Adoption of ill atom son-in-law :--

The practice of taking a son-in-law in so called adoption or more strictly of making son-in-law Manavaltana son is of late occurrence and confined to certain castes. This practice being a departure from ordinary Hindu Law, the person claiming under such an adoption must strictly substantiate his claim.

The taking of a son-in-law in ill atom especially when the father-in-law has no son may be done without the execution of any document or performance of any ceremony, but it cannot be inferred that every son-in-law who becomes an inmate of his father-in-law's house thereby acquires the status of an ill atom son-in-law.

To constitute a person an ill atom a specific agreement is necessary, as an ill atom adoption does not of itself confer on the adopted son all the rights and the status of a natural son. What his rights should be in regard to the properties of his father-in-law is a matter of agreement and has to be set up and proved in each case. Nor does it in the absence of an agreement to that effect, deprive the adopter of his right to alienate his property at his will.

An ill atom son-in-law does not lose his rights in the natural family by reason of his adoption, unless he relinquishes them specifically. Thus where an ill atom son-in-law had not relinquished his right in the natural family it was held that he and his sons had not lost their. rights in it. Even the tie of relationship with his natural family is not severed as in the case of an adoption under Hindu law, and the members of his natural family would have the same rights in the properly acquired by him as they would otherwise have had'.

12. We may also point out that the institution of ill atom son-in-law in home, in some parts of the country in south is equivalent to the customary adoption in Punjab which came up for consideration before the Supreme Court in Kehar Singh v. Dewan Singh, : [1966]3SCR393 . The relevant portion of the judgment is as follows (at p. 1557 of AIR):--

'A customary adoption in the Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only, see Mela Singh v. Gurdas, ILR 3 Lah 362: AIR 1922 Lahore 433 (FB). There is no tie of kinship between the appointed heir and collaterals of the adoptive father. The appointed heir does not acquire the right to succeed collaterally in the adoptive father's family. The status of the appointed heir is thus materially different from that of a son adopted under the Hindu law.

The general custom negativing the right of the appointed heir to succeed collaterally in the family of his adoptive father is stated in Art. 49 of Rattigan's Digest of Customary Law, 13th Edn. p. 572 thus--

'49. Nor, on the other hand, does the heir acquire a right to succeed to the collateral relatives of the person who appoints him, where no formal adoption has taken place, inasmuch as the relationship established between him and the appointer is a purely personal one'.

The rule in Article 49 does not apply to a formal adoption by the customary method.The customary formal adoption completely severs the connection of the adopted son with his natural family and transplants him from his natural family to the adoptive family. Such an adoption confers on the adopted son the right of collateral succession in the adoptive father's family and takes away the right of collateral succession in the natural family. The formal adoption may be made in accordance with custom and by observing the customary forms, and it is not necessary to comply with the rules of Hindu law in the matter of ritual or otherwise. See Abdur Rehman v. Raghubir Singh, (1949) 51 Pun LR 119, Warynman v. Kanshi Ram, ILR 8 Lah 17: AIR 1922 Lahore 105'.

13. It may also be pointed out that the agreement as to giving the property by the father-in-law to the ill atom son-in-law must be either contemporaneous, or it must take place immediately after the marriage. In the instant case, the marriage took place in the year 1945. The properties were not settled on the ill atom son-in-law immediately thereafter and not even during the life time of the father-in-law inasmuch as he could get certain properties only on the death of Kalaiah and his wife as per Ex.D6 which came into effect after his death. Therefore, it is also not possible to hold that this was in conformity with the custom of ill atom son-in-law which is based on two things namely; the person marrying the daughter and secondly the settlement of the properties. In this case, no doubt the plaintiff married the daughter of Kalaiah, but his property came to be settled only under a will through Ex.D6. Therefore, how far it was in conformity with the custom of the ill atom son-in-law becomes doubtful.

14. In the instant case, there is no documents executed by the plaintiff relinquishing his right in his natural family. There is no evidence to show that since the year 1945 the plaintiff was excluded from the enjoyment of the joint family properties and he had ceased to be a member of the joint family. In fact as the legal position stands and as it is pointed out by us the ill atom son-in-law does not cease to belong to the natural family. On the contrary, he does not become a member of thefamily of the father-in-law. Therefore, the contention of the learned counsel for the first defendant that by reason of the fact that the plaintiff was taken as ill atom son-in-law by Kalaiah who settled certain properties on him, therefore he ceased to have any right in the joint family property cannot be accepted.

15. It is next contended that the plaintiff had lost his right in his natural family as it is specifically stated in Ex.D6 that the plaintiff has to lose his right in the joint family. We may point out that in fact this contention is opposed to law regarding the very rights and obligations of the ill atom son-in-law as stated by Mulla, referred to above. He does not lose his right in the natural family unless by his own act he relinquishes by executing the deed in accordance with law. Therefore, even though we do not agree with the finding of the learned trial Judge that the first defendant has failed to prove that the plaintiff was taken as ill atom son-in-law by Kalaiah; but it is not possible to reverse the decree of the trial Court because by

reason of that the plaintiff does not lose his right in his natural family as he has not relinquished his right in his natural family.

16. It is next contended that the plaintiff being an attestor to Ex.D6, in which it has been recited that he would lose his right in his natural family, is estopped from claiming any share in his natural family. It is not possible to accept this contention in the light of the legal position pointed out above. As long as the plaintiff did not lose his right in the natural family and did not relinquish his right under an appropriate deed executed by him, there was no relinquishment of his right in his natural family. A mere recital in Ex.D6 which was not in favour of the joint family of the plaintiff it is not possible to hold that Ex.D6 operated against him and he was estopped from claiming a share in his natural family. There was no representation to that effect made by the plaintiff to the member of his joint family. Therefore, it is not possible to apply the equitable rule of estoppel to deprive the plaintiff of his share to which he is legally entitled to. In a case like this, the application of equitable rule of estoppel would result inviolating the law inasmuch as it results in taking away the right of the plaintiff to claim his share in the property of his joint family which he has not relinquished or given up in accordance with law at any time. Therefore, it is not possible to accept the contention of Sri T. N. Raghupathy, learned counsel for the appellant that the plaintiff is estopped from claiming his share in the joint family property.

17. It is also contended by Sri T. N. Raghupathy, learned counsel for the appellant that the plaintiff must be deemed to have executed Ex.D6 because he has signed the document not only as an attesting witness but as a consenting witness to the transaction. Therefore, in the light of the provisions contained in clause (d) of Rule 71(i) of the Karnataka Registration Rules, 1965, the plaintiff must be deemed to be an executant of the document. Clause (d) of Rule 71(i) of the Karnataka Registration Rules, 1965 provides thus :

'71. Persons executing documents.--

(i) the expression 'A person executing a document' shall be held to include,--

(a) to (c) ----

(d) any person who signs a document as an executant in token of his assent to the transaction and not merely as a witness even though he may not be described as an executant in the body of the document.'

Even assuming for the sake of argument that the plaintiff becomes an executant of the document -- Ex.D6, he cannot be prevented from claiming the share in his parental family, because Ex.D6 does not relate to the property of the parental family of the plaintiff. It relates to the arrangement or settlement made by the father-in-law of the plaintiff in respect of his properties. In this document he has referred to the fact that the plaintiff was taken as an ill atom son-in-law and in consideration of that a portion of his property was settled on him and his wife. It is also further stated that there was an understanding that he will not have any right in his parental family. Therefore, it is contended that in the light of the recitals contained in Ex.D6, the plaintiff isestopped from claiming any share in his natural family. It is also contended that the recitals to the aforesaid effect in Ex.D6 leads to an inference that there was such an agreement between the parties that in case the plaintiff was taken as ill atom son-in-law, he would not have any right in his parental family.

We have already pointed out the legal position as stated by Mulla. As long as there is no relinquishment made by the plaintiff, he cannot be deprived of his right merely because he was taken as an ill atom son-in-law by Kalaiah -- the father-in-law of the plaintiff. Hence, the contention cannot be accepted.

18. For the reasons stated above, we do not see any ground to admit this appeal. It is accordingly dismissed.

19. Appeal dismissed.