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Narasimhaiah Vs. Chikkathimmaiah

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Court : Karnataka

Decided On : Feb-06-1953

Reported in : AIR1954Kant115; AIR1954Mys115; (1955)33MysLJ42

Judge : Vasudevamurthy, J.

Acts : Hindu Law; Code of Civil Procedure (CPC), 1908 - Sections 11

Appeal No. : Second Appeal No. 473 of 1949-50

Appellant : Narasimhaiah

Respondent : Chikkathimmaiah

Advocate for Def. : K.P. Muddappa, Adv.

Advocate for Pet/Ap. : Y. Siddappa, Adv. for ;V. Krishnamurthy, Adv.

Judgement :

1. The facts of this case are not in dispute. The defendant is the son of one Dodda Thimmian who was a member of Hindu Joint family with him and who is now dead. During his lifetime, he had sold to the plaintiff a small piece of land measuring about an acre described in the A schedule to the plaint (which will be referred to hereafter as the suit land) and had put him in possession. After his death the defendant and another younger brother of his, who is also now dead, tried to disturb the plaintiff's possession and he therefore brought a suit in O.S. No. 3 of

42-43 on the file of the Munsif, Tumkur, against them for a permanent injunction. It was held in that suit that the plaintiff was entitled to retain possession of the suit land and that Dodda Thimmiah's sons might get their shares divided arid separated by a suit of their own for partition if the alienation by their father was found not binding on them. Accordingly they filed a suit O.S. No. 208/44-45 against the plaintiff for partition and possession of their 2/3rds share. At that time, an appeal by the sons of Dodda Thimmiah against the decision in O.S. No. 3/42-43 was pending before the Subordinate Judge. The present plaintiff had pleaded in that suit that the alienation in his favour was fully binding on the sons of Dodda Thimmiah and that their suit must be dismissed. But later on, after the disposal of that regular appeal and a second appeal therefrom, he made an application in O.S. No. 203/44-45 for permission to amend his written statement and to ask that there should be a general partition of the family properties which belonged to Dodda Thimmiah and his sons, that the suit land may be allotted to the share of the deceased Dodda Thimmiah and that he the plaintiff may be con-finned in its possession. That application was not allowed on the ground that the suit O.S. No. 208 of 44-45 was filed for partition of only the suit land and not for a general partition, a suit which the sons of Dodda Thimmiah were then en-titled to bring. A decree was ultimately passed in that suit declaring that Dodda Thimmiah's sons were entitled to 2/3rds share of the property and for its partition. The plaintiff has therefore brought the present suit for a general partition of all the family properties of the plaintiff and Dodda Thimmiah. He had described in the B schedule all those other family properties and has prayed that he might be confirmed in his possession of the suit land after allotting it to the share of his vendor or that he may be granted an area equal in extent and value in all the family properties. The Munsiff granted a decree in his favour and allotted the suit land to the plaintiff. His decision was reversed on appeal by the Subordinate Judge of Tumkur and the plaintiff has come up in second appeal.

2. The learned Subordinate Judge was of the view that the plaintiff's present suit was barred by 'res judicata'. For the appellant, it is contended that he was not bound, in O.S. No. 208/44-45, to have asked for a general partition, that he could not do so as an appeal was pending against the decision in O. S. No. 3/42-43 where he was claiming that the sale in his favour was binding on the entire suit

land including the shares of Dodda Thimmiah's sons therein that that suit was by the present defendant and his brother for a limited relief, viz., for a partial partition, and that it was not incumbent on the plaintiff to seek ior a general partition in that suit alone. Mr. Krishnamurthi, the learned Counsel for the Appellant, has relied on a case reported in -- 'Kandaswami Udayan v. Velayudha Udayan' AIR 1926 Mad 774 (A) where, dissenting from -- 'Sowrimuthu v. Pachia Pillai' AIR 1926 Mad 241 (B), it has been held that in a suit instituted by a coparcener of a joint Hindu family to set aside the sale of an ancestral immoveable property by his father or manager on the ground that the sale was not for family necessity and to recover possession of the property from the purchaser, the latter is not entitled to insist on the plaintiff submitting to a partition either of the item sold or of the entire family property. Though it is open to a Court where all the facts and all the persons interested are before it and where the suit is practically one for general partition, to allow a purchaser to retain the property sold to him it was neither expedient nor reasonable that the purchaser should be able to insist that such a suit should be converted into one for general partition as it would involve the presence of other parties and an enquiry into debts and liabilities of the family. It was also held in that case that a decree obtained by a member of a joint Hindu family against an alienee for his share of the property on the ground that the alienation is not binding on him does not bar a subsequent suit by the alienee for a general partition and asking therein for allotment of the alienated property to the share of the alienating coparcener. Their Lordships further pointed out that the proper course in such cases, where one of the coparceners has brought a suit for partial partition, is for the alienee to bring a separate suit of his own for general partition so that the suit for partition may be tried along with the suit for setting aside the alienation. If the alienation was found not binding on the impeaching coparcener's share but only on the alienor's share, the Court would be in a position to consider in the suit for general partition whether the property alienated should be allotted to the alienor's share or not. This Madras case does not appear to have been cited before the learned Subordinate Judge and he has proceeded merely on general principles as to what the plaintiff might or ought to have made the ground of defence or attack in the former suit.

3. I think, with great respect to the learned Judges who have decided -- 'AIR 1926 Mad 774 (A)', it lays down the correct principles which might be followed in such cases. As has been rightly pointed out by them, if a member of a joint Hindu family is allowed to bring a suit for partition against an alienee objecting to the alienation of a particular item and thereby his right to bring a suit for partition against the other members of the family is not affected and the principle of 'res judicata' would not avail against the alienating coparcener, it is difficult to hold that a suit by an alienee, who stands only in the shoes of the alienating coparcener for partition, would be so barred. I think also that to thereby force a coparcener convert a suit for partial partition which he is entitled to bring under such circumstances into a suit for general partition is neither reasonable nor required by law. Moreover, it would be going counter to decisions of this Court and in the other High Courts in which it has been held that a coparcener or his alienee in such a case cannot be compelled to sue for general partition, see Mayne's Hindu Law, 11th Edn., para. 383, pp. 489-490. The learned Subordinate Judge thought it unnecessary to consider any other aspect of the case in the light of his conclusion that the plaintiff's suit was barred by 'res judicata' though he also thought that no question of allotting a share to the alienor arose in this suit as the alienor was dead.

4. It has been contended for the appellant that the death of the alienor ought to make no difference in this matter, and that the effect of the sale by the deceased coparcener, either of an item of property or his share therein, is to vest a right In the alienee to ask, either in a suit for his own or in the suit brought by other coparceners for the same reliefs which his alienor would have been entitled to ask as he has stepped into the shoes of the latter. I think the law in this matter has been fairly clearly laid down in Mysore. So far back as in 1904 it has been held by this Court in -- '9 Mys C.C.R. 43 (C)' that a purchaser of an Undivided member's share in a family property need not always bring a suit for general partition as he was neither interested nor quite in a favourable position to discover all the items of family property. The proposition of law that an alienee from one of the coparceners gets only an equity against other members of the coparcenary to work out his rights by a suit for general partition and his remedy is in all cases to institute such a suit was not accepted. In this case reference has been made with approval to the judgment of Sri Bhashyam Iyengar J. in -- 'Aiyyagari Venkatramayya v.

Ramayya', 25 Mad 690 (PB) (D) and the learned Judge have agreed with the principles enunciated therein to hold that at such a partition though the purchaser can only obtain the rights of his transferor, and has got no right to strictly claim a share in a particular item, still as a matter of equity the Court should, unless there are insuperable objections to do so, adjust the different shares so as to give him what has been actually conveyed to him as being the share of the particular coparcener. In -- '22 Mys C.C.B. 293 (E)' in a suit by a coparcener to set aside an alienation of a specific item of family property it was found that the alienation was not binding on the plaintiff's share. The Subordinate Judge passed a decree for delivery to him of a half share in the property alienated to him. The plaintiff appealed on the ground that the Court ought to have ejected the alienee from the whole of the land and left him to obtain his rights by a suit for partition. Sir Leslie Miller C. J. and Chandrasekhara Aiyar J. while confirming the judgment of the Subordinate Judge held that in working out rights as between an alienee and members of the family who are not bound by the sale to him, the Court should endeavour to adjust the rights of the contending parties with the least possible inconvenience and without injustice to any of them.

5. The above two cases have been referred to and followed in -- 'Ramiah v. Siddalingappa', 21 Mys LJ 206 (F). In that case, the plaintiffs had purchased from one of the members of the Joint Hindu family two small plots out of a large piece of land owned by the family which was possessed of other extensive immoveable properties. They filed a suit for possession of those specific lands against the alienor and other members of the family. It was contended for the latter that the suit, not having brought for a general partition by including all the properties which the family possessed, was not maintainable. It was held by this Court that no hard and fast rule can be laid down as applicable to such a case, the question to be decided being how the rights of the contending parties could be settled with the least possible inconvenience and without injustice to any of them. In the case before them, taking into account the nature and area of the plots sold, and that all the persons interested in the properties were already before them their Lordships held there was no need to drive the plaintiffs to a separate suit for general partition; and the plaintiffs were granted a decree for possession of the specific pieces of land which they had purchased, it was found that their vendor owned a

fairly large plot in that same survey number as the lands involved in the suit say, and that even if the plaintiffs were awarded the very plots to which they were found entitled, the defendants would still have more than their own shares in the same number and neither the nature nor the value of the property stood in the way of such an equitable arrangement.

6. Mr. Muddappa, learned Counsel for the Respondent, has urged that Dodda Thimmiah's death should make a difference in the application of this principle. He argues that the share of Dodda Thimmiah has devolved by survivorship on the other members of the family and that there is no longer any person in existence to whom the share of Dodda Thimmiah, even if it could be said to have existed as such, can now be allotted. It must be observed that the case in -- '25 Mad 690 (FB) (D)' arose out of a suit by a purchaser of an undivided half in two plots of land from a member of an undivided family consisting of himself and his two nephews. The suit was instituted after the death of the alienor against the nephews for a general partition of all the family properties and for the allotment to the alienor's share a half share in the two plots conveyed by him. The nephews raised an objection that as the alienor had died the plaintiff's right based on equity was at an end. It was held by Bhashyam Iyengar J. that the vendee's claim is no doubt an equitable right in the sense that he must be a transferee for value. In cases where the transfer relates to a specific portion of the family property he has no legal right, any more than his transferor himself, to insist on that specific portion being allotted to the share of the vendor. Being a purchaser for value he was in equity entitled to have such portion, or so much thereof as was practicable, so allotted, if that could be done without prejudice to the other sharers. Such suit may at the option of the other members of the family assume the character of a family partition suit and a decree may be passed for partition among all the members of the entire family property. He also considered (following -- 'Suraj Bunsi Koer v. Sheo Persad', 6 Ind App 88 (PC) (G)) that there was nothing to support the contention that the interest conveyed by an undivided member will lapse to the family after the death of the alienor unless the purchaser instituted a suit before the alienor's death. The effect of an alienation of an interest of a coparcener in a Mitakshara joint Hindu family and the rights of the alienee and the coparceners and how the equities are to be worked out in such cases has been discussed fully in -- 'Paramanapakam Pillai v.

Sivaraman' : AIR1952 Mad419 (PB) (H).

7. I think it unnecessary to further discuss the matter as in Mysore the law has been laid dow' clearly for all practical purposes in -- '9 Mys C.C.R. 43 (C)', -- '22 Mys C.C.R. 293 (E)' and -- '21 Mys LJ 205 (F)'. In the last case also, the alienor one Jadiappa was dead when the suit was brought for partition and possession by his alienee and his death did not stand in the way of this Court granting a decree in favour of the plaintiffs and allotting to them the particular survey numbers which he had sold them as an equitable method by adopting which 'no special harm' could be caused to the defendants. In Mayne's Treatise on Hindu Law and Usage (1950) 11th Edn., it has been observed in para. 324 at page 495 that both in Madras and Bombay it is settled that an actual alienation for the value in enforceable to the same extent by a suit after the death of the alienor as it would have been by a suit during his life, reliance being placed on -- '25 Mad 690 (PB) (D)', -- 'Gurulingappa v. Nandappa', 21 Bom 797 at p, 805 (I) and other cases. See also Mulla's Hindu Law, 1946 Edn., page 311.

8. There is therefore no force in the objection, for the respondent that, the death of Dodda Thimmiah has made any difference in the application of this equitable principle or stands in the way of allotting the suit land to the plaintiff in lieu, of the share attributable to Dodda Thimmiah at the time of the sale. It has not been shown that the learned Munsiff was wrong in doing so for any other reason such as its extent value or nature as compared with the other family lands.

9. In the result I allow this appeal, set aside the judgment and decree of the learned Subordinate Judge and restore those of the learned Munsiff with costs throughout.

10. Appeal allowed.

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