

Radhakrishna Murthy Vs. Subbaiah and ors.

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Court : Andhra Pradesh

Decided On : Jul-24-1975

Reported in : AIR1976AP293

Judge : A. Sambasiva Rao, A.C.J. and ;Jeevan Reddy, J.

Acts : Hindu Law

Appeal No. : Letter Patent Appeal No. 145 of 1973

Appellant : Radhakrishna Murthy

Respondent : Subbaiah and ors.

Advocate for Def. : M. Adinarayana Raju, Adv.

Advocate for Pet/Ap. : T.H.B. Chalapati, Adv. for ;A. Hanumantha Rao, Adv.

Judgement :

A. Sambasiva Rao, Ag. C.J.

1. Our learned brother, Madhava Reddy, J., has granted leave, while dismissing Second Appeal 71 of 1972, affirming the concurrent decision of the courts below. That is why the L.P.A. has been preferred. The question posed is whether the reunion of the family is valid in law.

2. It is necessary to note the material facts of the case before we enter upon the discussion on the question raised. On behalf of two sons, who are members of a Hindu undivided family O.S. 233 of 1954 was filed in the District Munsif's Court, Repalle against their father, for partition, when they were still minors. A preliminary decree was passed on 20th of December, 1954 directing partition as prayed for. For reasons best known to themselves, their next friend and guardian, subsequently for some time even after both of them had become majors, no proceedings were taken for passing a final decree. It was one decade after the preliminary decree, that is, in 1964 that I.A. No. 1489 of 1964 was filed by both the plaintiffs for passing a final decree. The father-respondent kept quiet for reasons which we can easily visualise. Resistance to the passing of the final decree came from respondents 2 and 3. Respondent 2 happens to be the owner of some land which had been given to lease to the father subsequent to the preliminary decree. Respondent 3 is a creditor. Their case was that there was reunion between the father and two sons, and consequently, no final decree could be passed on the basis of the preliminary decree made on 20th December, 1954. The very factum of the reunion was in dispute before the courts below. On a thorough examination of the evidence on record, the courts found that there was in fact a reunion. This finding was affirmed by our learned brother as well. But then the validity of the reunion was also challenged. Sri T.H.B. Chalapati appearing for Sri A. Hanumantha Rao, learned counsel for the appellant (only, the first plaintiff has chosen to file the L.P.A.) contended that he cannot challenge the unanimous view of the courts below and of our learned brother holding that there was in fact a reunion. He limits his challenge only to its validity.

3. His contention in this behalf is that the preliminary partition was effected through a decree passed by a court and that could be set at naught only by another order of the Court. We, however, see no justification or valid basis for this argument. What is required to constitute a reunion amongst the separated members of a Hindu family is an agreement amongst the members who are competent to enter into an agreement to reunite. The agreement to reunite may manifest itself through writing or may be inferred from the circumstances of the case. We may here usefully refer to the relevant passage in Mulla's Hindu Law, 14th Edition, paragraph 344 :

'To constitute a reunion, there must be an intention of the parties to reunite in estate and interest. In *Bhagwan Dayal v. Reoti Devi* : [1962]3SCR440 the Supreme Court pointed out that it is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status. Such an agreement may be express or may be implied from the conduct of the parties. The conduct must be of an incontrovertible character and the burden lies heavily on a party who asserts reunion..... Since a minor is not competent to contract, it follows, that an agreement to reunite cannot be made by, or on behalf of, a minor.' We have already noted the fact that the two plaintiffs, though minors at the time of the institution of the suit and the passing of the preliminary decree for partition, had attained majority some time after that decree. Therefore, there was competency with their father to reunite. There cannot, therefore, be any objection for the reunion on this score. Division of status might have been affected by an agreement or through a preliminary decree passed by a Court. If the parties, being competent to do so, enter into an agreement to reunite in estate and interest, then, certainly, it would be the legal consequence that a reunion is effected through that agreement. Even if it is through a decree of court that a division in status has been effected, it does not stand in the way of the members to reunite in estate and interest through agreement. That there was an agreement has been the unanimous finding of all the courts. Therefore, there is no basis whatever for the contention advanced by Sri Chalapati.

4. Admitting that there is no direct case on the point, the learned counsel relies on some observations in *Lachmi Narain v. Balmakund*, AIR 1924 PC 198. He invites our attention to the following observations of the Privy Council.

'After a decree has once been made in a suit, the suit cannot be dismissed unless the decree is reversed on appeal. The parties have, on the making of the decree, acquired right or incurred liabilities which are fixed, unless or until the decree is varied or set aside.'

Even a reading of this passage makes it clear that this has no application to the case of a reunion. Though division in status has been brought about by a

preliminary decree, if the decree-holder does not want to execute the decree or to nullify it, he is fully competent to do so. He cannot be compelled to abide by the decree which has been passed in his favour and to enforce it. By an agreement with the judgment-debtor, he could settle his rights in any matter the parties like. So, this case does not help the contention of the appellant.

5. As we have already indicated, the contention is wholly unfounded either on legal principle or any precedent. The L.P.A. is accordingly dismissed with costs of the second respondent. The first and third respondents will bear their own costs.

6. Appeal dismissed.

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