Krishna Vs. Subbanna

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Court : Chennai

Decided On : Jul-24-1884

Reported in : (1883)ILR7Mad564

Judge : Kernan and ;Hutchins, JJ.

Appellant : Krishna

Respondent : Subbanna

Judgement :

1. This is an appeal from the decree of K. R. Krishna Menon, the Subordinate Judge of South Canara, in original suit No. 1 of 1882, dated 23rd August 1882.

2. The plaintiff, Subbanna, an infant aged 15 years, sued, by his mother as guardian, Krishna Sastri and Ramanna, for a partition of family property and for an account of the family property including an account of the past income of the property.

3. The plaintiff and first defendant are the sons of Annaya Sastri and are half-brothers, the sons of different wives of Annaya. The second defendant is the son of the first defendant. Annaya Sastri died in 1869, 30th September, and thereupon the first defendant entered into possession of the joint property of the family, consisting principally of land. For about the space of one year after 1869 the plaintiff lived and was maintained in the family house by the first defendant. In the year 1871 the plaintiff's mother and guardian asked the first defendant to divide

the property with the plaintiff and give him his share. The first defendant refused to deliver up such share, unless the mother of plaintiff gave up possession of jewels, which, he alleged, belonged to the family. The plaintiff and his mother, as the subordinate Judge finds on the third issue in the case, were turned out of the family house by the defendant. This occurred in 1871, and from that time until the filing of this suit, the first defendant did not contribute anything whatever to the maintenance, education or expenses of the plaintiff.

4. The first defendant in his written statement admitted that plaintiff was entitled to one-half of the family property, but denied that he was liable to pay mesne profits as, he stated, he spent them for family necessities. He also disputed the amount of the mesne profits, as well as of the debts due by and to the deceased, and the movable property.

5. On the hearing of issues on the 29th June 1882 two lists, A and B, of family property were presented by the first defendant, and by order of the Judge then made, and subsequently by the decree of the 22nd of August 1882, the property in list A was declared to belong to the plaintiff and the first defendant was ordered to deliver the same up to the plaintiff.

6. There is now no appeal on this matter. In the list A, the right of the plaintiff to perform service in the temple in his turn is recognized, but it is conditioned that the defendant shall have the first turn and the plaintiff the second, and that such alternation shall begin in March 1882.

7. Issues were framed as follows:

(1.) Whether demand of plaintiff's share was made in 1875?

(2.) Whether first defendant is liable to pay mesne profits to the plaintiff, and if so, whether the payment should begin from demand, or from the date at which plaintiff left the family house?

(3.) Whether plaintiff was turned out of the family house?

(4.) Whether plaintiff is in possession of family jewels valued at Rs. 5,628?

8. The Judge in his judgment found that demand had been made in 1875. This finding is not now important. He also found that, as plaintiff was turned out of the house and defendant refused to deliver plaintiff a share before Angirasa (1872-73), and as plaintiff is an infant, the first defendant is bound to pay mesne profits to the plaintiff from Angirasa to the date of delivery of the property in list A; and he found that the defendant is bound to pay the plaintiff Rs. 5,629-3-11 on account of past produce. The Subordinate Judge found that the plaintiff and his mother and guardian are not, nor is either of them, in possession of any jewels of the family as specified in the fourth issue. He also found that plaintiff's mother and guardian, being only a party to the suit as guardian of the plaintiff and not in her own capacity, is not liable in this suit, and that, even if she is in possession of such jewels, the first defendant is not entitled to set off such possession in answer to plaintiff's claim.

9. By his decree, made the 23rd of August 1882, the Subordinate Judge ordered the first defendant to surrender to the plaintiff the property in list A and to quit immediately the puja service and reading puranas in the temples and to allow the plaintiff to perform those services in them during the respective periods mentioned in the plaint; and that the first defendant should pay to the plaintiff, the sum of Rs. 5,629-3-11 and interest thereon from the date of the plaint till payment at the rate of 6 per cent. per annum and also proportionate costs on the amount decreed; that defendant should pay his own costs; and the plaintiff's right to perform the pujas in Gopal Krishna and Muchur Durga Parameswari temples was thereby declared.

10. The first defendant appealed on various grounds, but before us only the following were argued, viz.:

2nd ground.--The first defendant is not under any legal obligation to account.

3rd ground.--The plaintiff could only claim a share from the defendant in such property as might be existing at the time of the suit.

5th ground.--The correct statement of the accounts discloses no balance in favour of plaintiff.

8th ground.--Even if defendant was liable to account, he could not be made liable for mesne profits prior to the alleged demand in 1875, which defendant however denied.

1st additional ground--filed 17th July 1883.--The mesne profits allowed by the Subordinate Judge are excessive.

2nd additional ground.--Plaintiff's claim for mesne profits for more than three years previous to the suit was barred by limitation.

11. The plaintiff objected to the decree on several grounds, but the only objections urged before us were as follows:

2nd ground.--Because in calculating mesne profits, allowance ought to be made for interest on mesne profits each year.

3rd ground.--Because mesne profits ought to have been allowed from the date of the plaint until the date of delivery.

12. The 2nd and 3rd grounds of appeal form really only one ground, viz., that the first defendant is not bound to account for the past income of the undivided family property.

13. He referred to Lakshman Ddda Naik v. Ramachandra Dada Naik L.R. 1 Bom. 561. On app. L.R. 5 Bom. 48), where it is stated that members of an undivided Hindu family, when making a partition, are entitled as a rule (and it was said there was nothing in the case to make it an exception to the rule) not to an account of past transactions, but to a division of the property actually existing at the date of the partition. That was the case of a partition between adult members of an undivided family (two brothers) one of whom, the plaintiff, had, in consequence of quarrels, lived apart from his father deceased) and his brother, the defendant. The observations of the Court were scarcely more than extra-judicial, as the transactions referred to were a payment of Rs. 45,000 made by plaintiff's father to him, as the Court found, in compensation for an injury (charge of robbery) inflicted on him by his father, and not as a part or share in the family property. That was a case in its facts entirely different from this, in which it is found that the plaintiff, an

infant, was driven out of the family house by the defendant, who contributed nothing whatever to the maintenance of the plaintiff, [568] but on the contrary retained and applied for his own purposes all the undivided family income. In Konnerav v. Gurrav L.R. 5 Bom. 589 in the judgment of the Court, it is said--' They (the defendants) contend that in a suit for partition between members of an undivided Hindu family, who are in possession of different portions of the property, the plaintiff is not entitled to mesne profits. The ordinary rule, no doubt, is that the members of an undivided Hindu family when making a partition, are entitled not to an account of past transactions, but to a division of the family property existing at the date of the division. Where one member has been entirely excluded from the enjoyment of the property, there might be good grounds for ordering an account.' In that case the Court held the plaintiff was not entirely excluded and refused to give an account. Moreover, there the plaintiff had carried on a separate business, and was adult during the time for which he sought the account, and the Court, in refusing the account, said that plaintiff might have obtained a partition many years ago, and if he refrained from doing so, it was. his own fault.

14. It is not necessary in this case that we should express any opinion as to what the general rule may be which relieves the manager of any undivided Hindu family from accounting for past transactions or past income at the instance of an adult member, whether living in commensality with the manager or not. The principle of such rule as regards adult members living in commensality with the manager (excluding the consideration of fraud or misappropriation by the manager) is, as stated by Phear, J.--' The manager is merely the chairman of a committee, of which the family are the members. They manage the property together, and the ' karta ' or manager is but the mouth-piece of the body chosen and capable of being removed by them. Therefore, unless something is shown to the contrary, every adult member of an undivided joint family, living in commensality with the karta, must be taken, as between himself and the karta, to be a participator in, and authorizer of, all that is from time to time done in the management of the joint property to this extent, namely, that he cannot without further cause call the karta to account for it.' Abhaychdndra Roy Chowdhry v. Pyari Mohan Guho 5 B.L.R. 354.

15. If an adult member is not excluded but chooses to live apart from the manager, then, as he did not choose to enforce partition, it may be very reasonable that, apart from the consideration of fraud or misappropriation by the manager, the principle above stated should be applied to him.

16. But that principle cannot apply to the case of an infant member, who has been excluded by the manager from the family house and from enjoyment of the property. The infant is, by reason of infancy, incompetent to authorize the act of the manager, or, at all events, cannot be legally bound by any authorization in fact given during his infancy. Moreover, the infant being excluded, cannot be assumed in point of law or fact to have known of any act of the manager. No doubt a suit for partition might be brought on his behalf, when he was excluded, or prior thereto when his right accrued. His guardian or next friend may neglect to do so, but the infant is not to suffer for such negligence. Nor can the manager, who abuses his position of manager by excluding the infant from the enjoyment of the family house and property, relieve himself from the account which the plainest justice requires that he should give at the instance, without the period of limitation, of the excluded infant. The distinction drawn by Phear, J., in the case above mentioned, between the liability of the manager to account in the case of an infant and in the case of an adult, appears to be sound. In the former case he considered the manager to be a trustee and to be bound, when his trust came to an end, that is at the end of the minority, to account for the manner in which he had discharged it.

17. We think that the Subordinate Judge rightly held that the first defendant was bound to account to the plaintiff for mesne profits.

18. The plaintiff did not ask for mesne profits prior to exclusion, and the Judge has only given such profits from 1872-3, before which time plaintiff was excluded. Before that time also, the share of the plaintiff had been demanded on behalf of the infant, and first defendant admitted he refused in 1871-2, when the arbitration for partition was being held, to give plaintiff's share, as the plaintiff's mother did not give up movable property, jewels claimed by the first defendant. This refusal being prior to 1875, the demand in the latter year becomes immaterial. But, in any event, time has not run against the infant plaintiff, who is entitled 'to an account of mesne

profits, if asked for, since the death of his father.

19. There is no foundation in law for the 8th original, and 2nd additional grounds of objection, viz., that mesne profits should only be allowed for three years before the suit or from the demand in 1875, as the plaintiff was an infant at the death of the father of plaintiff and first defendant.

20. The 5th original and 1st additional grounds of objection may be taken together, and are that, upon a correct account of past income being taken, there is no balance in favor of the plaintiff and that the mesne profits allowed are excessive.

21. We have gone through the account and we think that the objections by the first defendant are well-grounded in the following matters:

(1.) Repairs.--We think that there were necessarily repairs to be made to the family property, and that Rs. 500 should be credited to the first defendant on this account.

(2.) Rs. 640 are charged by the first defendant for watering the cocoanut gardens. The defendant is debited with the produce of these gardens and he should have credit for the expenses necessary to procure that produce. We accordingly allow credit to the defendant for this sum, Rs. 640.

(3.) The assessment on the property is a payment which must have been necessarily paid, and as the defendant has proved that he paid Rs. 2,228 during the period of the account, this sum should be credited to him.

(4.) Costs.--The defendant has proved that he had to incur legal expenses in defence and in sustainment of the rights of the plaintiff, as well as of himself, in respect of the property; and with reference to the accounts filed by him we think that a sum of Rs. 900 is a reasonable sum to be allowed under this head for the period of nine years.

22. The aggregate of these four items is Rs. 4,268.

23. As to the objection of the plaintiff (respondent), we do not think that we should award interest on the mesne profits of each year. Ground No. 2. Interest is already

given on the mesne profits awarded from the date of the plaint.

24. As to profits from the date of the plaint, the account filed goes up to Vikrama only. For subsequent years until actual delivery, the first defendant must account in execution.

25. The account will therefore stand thus:

Rs. A. P.Rent to the date of the plaint--Rs. 10,978-12-2; plaintiff's half. 5,489 7 7Plaintiff's half samyam allowance ... ... 351 0 0Plaintiff's half of debts recovered, less half of debts paid by firstdefendant ... ... 129 14 0----------5,970 5 7Deduct half interest on debt of Rs. 2,200 to be paidby defendant ... ... 594 0 0Expenses of ceremony Malaya, plaintiff's half ... 66 12 10---------- 660 12 10----------5,309 8 9Items now ordered to be credited to first defendant for repairs, watering, assessment, and litigation--Rs. 4,268 : plaintiff's half 2,134 0 0----------3,175 8 9

26. It is admitted that the decree is erroneous so far as it directed the first defendant to quit immediately the service of the temple. We must alter it by setting aside that direction and declaring that the plaintiff's alternation of turns for service shall commence from the beginning of Chittrabhanu (1882-83) and that the defendant is entitled to the first turn. If he has been ousted before his turn of service so calculated had expired, a proportionate extension of his next term must be allowed him by way of compensation. The question--whether Bhagirathi Ammal got possession of family jewels and retained them, and whether the defendant and plaintiff are entitled thereto are not decided in this suit, as she is party hereto only as guardian of the infant plaintiff.

27. We modify the decree of the Subordinate Judge of the 23rd of August 1882, by striking thereout the direction that the first defendant do quit immediately the puja services in the Shervena Ganapathi temple and that of reading puranas in the Trisleshwara temple, and declare that the turn of the plaintiff to perform such services should begin as from March 1883, and we further modify the said decree by striking thereout the sum of Rs. 5,269-3-11 and by substituting therefor the sum of Rs. 3,175-8-9.

28. We allow proportionate costs of this appeal.