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Court : Chennai

Decided On : Aug-04-1937

Reported in : AIR1938Mad102

Appellant : Ananthachari and ors.

Respondent : Krishnaswami

Judgement :

Leach, C.J.

1. The appellants are sons of one Gopala Bhattachariar who died in the year 1931. Gopala who was the son of one Manavala Iyengar was born after his father's death which took place in 1888. Three years before he died Manavala adopted Srinivasa Bhattachariar, defendant 1 in the suit out of which this appeal arises. Srinivasa died during the pendency of the suit and he is now represented by the respondent. Srinivasa and Gopala remained joint until 1923 when a partition of the family estate was effected. At this time Gopala had one son, appellant 1, then a boy of five years of age. By the deed of partition which was dated 30th March 1923, the family estate was divided equally between Srinivasa and Gopala, notwithstanding that Srinivasa being an adopted son was only entitled in law to a one-fifth share. No question with regard to the validity of the transaction was raised during Gopala's lifetime, but in the month after his death the suit was launched by the widow as the next friend of the appellants who were then all minors. Appellant 1 has since come of age. The appellants contend that they are

entitled to recover from the estate of Srinivasa the difference between the share he received and the one-fifth share allowed by law. The suit was tried by Lakshmana Rao J. who decided that in the circumstances of the case, Gopala was justified in giving a moiety of the estate to Srinivasa on partition. At the time of Manavala's death the estate consisted of about 80 acres of land. He was financially involved and it was necessary to sell a portion of the land to relieve pressure by a creditor. In a good year the income from the lands did not amount to more than Rs. 1,300 and the only other source of income which the family had was a half share in the chinna murai of the Sri Parthasarathy Temple, Madras. The income from this half share of the chinna murai did not amount to more than Rs. 40 per mensem and in all probability to much less; but whatever the exact figure was, it is clear that the joint income was not sufficient to provide for the maintenance of the family, the upkeep of the family properties and the discharge of the family debts.

2. On 3rd March 1903, the owners of the paria murai gave Srinivasa a power of attorney authorizing him to supervise the selections in the temple to which they were entitled with power to appoint others to assist him in his work. For these services he was to be paid Rs. 10 per mensem. Srinivasa himself took an active part in collecting monetary offerings from worshippers and it is common ground that he was entitled to retain a percentage of the amounts actually collected by him. His earnings in this respect are said to have amounted to about Rs. 40 per mensem, in addition to the Rs. 10 mentioned in the power of attorney.

3. But it is a legitimate inference from the proved facts in this case that his personal income was not limited to this Rs. 50 per mensem and he must have received much more by way of gifts from wealthy people interested the temple. Srinivasa held this power of attorney for 20 years and it is very significant that 12 months after he obtained it, borrowings on behalf of the family ceased. The significance does not stop there. During the period for which Srinivasa held this power of attorney, the family debts were all paid off, improvements were made to the ancestral house, a second house was built and three small plots of land were purchased. This could only have been done out of moneys which Srinivasa acquired as the result of the position which he held as the agent of the owners of

the peria murai, and this is in effect acknowledged in the deed of partition itself. It cannot be gainsaid that the family income alone was insufficient to do all this and Gopala who was a minor up to 1906 had no separate income of his own, apart from what he earned as a gumastha under Srinivasa, which could not have amounted to much. The position, therefore, was that Gopala had to thank Srinivasa for removing the oppression of debt and reviving the prosperity of the family. In these circumstances it is not surprising, when it was decided to put an end to the joint family status and partition the family estate, that Gopala agreed to Srinivasa having a half share instead of one fifth. The recitals in the deed of partition show that Gopala realized how much he owed to Srinivasa. These recitals read as follows:

Whereas both of us were living hitherto in one joint family, and whereas, in view of certain inconveniences it is now deemed fit to effect a partition and live separately, and whereas the moveable and immovable properties belonging to us in common and mentioned hereunder belonging to us both as our ancestral property and self-acquired property, which are in our possession and enjoyment are most of them acquired and improved to a great extent by Srinivasa Iyengar alone, the adopted son amongst us, under the patronage of great men..

4. The reference to the patronage of great men has been interpreted as meaning that as the result of coming into contact with wealthy worshippers Srinivasa received substantial gratuities, and no alternative interpretation has been suggested. The learned trial Judge had no reason to doubt the truth of the recitals and on the basis that Srinivasa had discharged the family debts held the partition deed to be valid. The learned advocate for the appellants challenges the correctness of this decision. He says that because Srinivasa threw into the common fund his own individual income, thereby providing moneys for the discharge of the family debts and the improvement of the estate, he had no claim in law to a greater share than one-fifth on partition. He had blended his own moneys with those of the family. There is certainly no evidence to show when the debts were paid off and there is no evidence that Srinivasa ever made a claim to be repaid any moneys spent by him for the benefit of the family, or any evidence that he had ever made any stipulation for repayment. Therefore, if the case rested

here, there would be much to be said for the argument of the learned advocate for the appellants. The defendants in their written statement supported the partition deed on the ground that Srinivasa had done much for Gopala, and that therefore Gopala was entitled to do what he did. Before us it was also supported on the ground that it was in the nature of a family arrangement, but unfortunately for this argument there is no evidence that it was entered into in order to settle a family dispute or to avoid the expense or delay of litigation, or that there was, in fact, any real necessity for giving Srinivasa a larger share. But as it is true that Srinivasa had rendered services of real value to Gopala, I think that the deed can be supported. Gopala had by a registered deed in effect conveyed his share in the family property to Srinivasa in consequence of these services and as appellant 1 has received his individual share in the family estate in full, he cannot be allowed to repudiate the transaction. The other appellants were not born at the time and standing alone have no right to challenge the transaction.

5. Here it will be convenient to examine some of the authorities which have been quoted to us in the course of the arguments. The first of these is that in *Shivajirao v. Vasantarao* (1909) 38 Bom 267. A perusal of the report in that case shows that their Lordships of the Privy Council had at an earlier stage dealt with the validity of a deed whereby a son in consideration of a monetary payment by the father relinquished his own share in the ancestral property, and that at a later stage the Bombay High Court held that this operated to prevent a son born subsequently from having any claim to share in the property. There was here however no express transfer by the son to the father and the facts differ to that extent. I will now turn to the series of connected-decisions to be found in *Ganesh Row v. Tuljaram Row* A.I.R. 1914 Mad 91 *Venkata Row v. Tuljaram Row* A.I.R. 1917 Mad 30 and *Venkata Row v. Tuljaram Row* A.I.R. 1922 P.C. 69. One Venkata Row, who died in 1871, had four sons, Ramachandra Row, Luchman Row, Rajaram Row, and Tuljaram Row. After the dissolution of the family in 1881, a large part of the family property remained in the hands of Tuljaram Row. In 1886, Atmaram, the son of Luchman, brought a suit for the purpose of ascertaining what the assets in the hands of Tuljaram Row were and for the recovery of his share. In the course of this case it was held that Tuljaram Row was liable to Rajaram Row and his branch of the family in certain sums of money. Rajaram on behalf of his branch agreed to

release Tuljaram from payment of these moneys in consideration of Tuljaram agreeing not to appeal. In other words, Rajaram gave up his own and his son's rights without any struggle. On the son attaining majority he filed a suit to enforce his rights.

6. This suit failed both in the trial Court and in this Court on appeal, but the case was carried to the Privy Council where it was held that the compromise not having received the sanction of the Court was not binding on Rajaram's son who was a minor at the time. The agreement did not purport to be a release of individual rights nor to effect any division of the joint family property; it only purported to release the debts owing to Rajaram's branch of the family in consideration of Tuljaram refraining from appealing. The case was then sent back for retrial on the other issues. On the remand this Court decided that the compromise was binding to the extent of the father's share. Another appeal followed to the Privy Council which held that the agreement entered into by Rajaram Row did not purport to be a re-lease of individual rights or shares in the fund at all, and it did not purport to effect any division of the joint family estate then existing between Rajaram Row and his son in the subject matter of the decrees. Their Lordships accordingly held that Rajaram Row's attempt to alienate, or to release, from the estate substantial portions of the joint family property failed, and that there was no efficacy given to the arrangement that was then contemplated. But the case before us goes further than this. Gopala did in fact execute in favour of Srinivasa a transfer of half the property and put him into possession of it.

7. *Veeranna v. Seetanna* A.I.R. 1931 Mad 218 it was pointed out that the compromise there did not purport to alienate the father's share alone but the whole of the family interest in the property and therefore was not binding on the family. It was recognized however that when such an alienation has been effected, the Court will enforce an equity in favour of the alienee to the extent of the alienor's share, though it does not follow that the Court will enforce such a compromise before the equity has in fact arisen. In *Natesa Iyer v. Rathai Ammal* (1909) 19 M.L.J. 62. It was held that a gift by a member of a joint Hindu family made in consideration of past services voluntarily rendered to the family would not bind any of the members of the family other than the donor, without proof that they were for

family necessity or for family benefit; but it would be binding on the donor himself as one made for consideration received. In that case it was pressed upon the Court that past services voluntarily rendered would not amount to consideration to support a promise, but the Court held that it did not follow that the services were not of value when set against an alienation. The services rendered were in fact capable of valuation and the defendant had valued them and paid for them by the transfer. This is exactly the case here. It seems to me that in the circumstances of this case the Court, exercising as it does jurisdiction in equity, is entitled to say that appellant 1 shall not be allowed to tear up the transfer deed so far as it affects his father's share. For these reasons I think the decree passed by the learned trial Judge was a correct one. The appeal will accordingly be dismissed with costs.

Varadachariar J.

8. I agree and shall only add a few observations on the points of law argued before us. The conclusion of the learned trial Judge that the facts which he found proved 'would unquestionably justify the equal division' between the two brothers seems to me, with all respect, open to criticism. On behalf of the appellants it was contended, with some justification, that when under the law Srinivasa was only entitled to a fourth of Gopala's share, the facts that Srinivasa (who was the family manager) had by his labours or even with the aid of his self-acquisitions improved the family properties or paid off its debts would not entitle him to claim a larger share. The learned Government Pleader (who appeared for the respondent) sought to support the lower Court's conclusion as a finding based on the principles applied in favour of family settlements; and he relied in this connexion on the decisions in *Ramdas v. Chabildas* : (1910)12BOMLR621 and *Ramamurti v. Ramamma* A.I.R. 1917 Mad 571. The grounds on which 'family settlements' are supported are well established; but in applying to a case like the present, observations in judgments dealing with family settlements, there is an obvious distinction, which ought not to be lost sight of, between cases in which the question of validity arises only as between the parties to the transaction and those in which it is sought to bind by the transaction persons who were only represented therein by one of the parties thereto. This distinction is material when it is sought to bind Hindu reversioners or minor co-parceners in a joint family by transactions

entered into by a widow or an undivided father. In this latter class of cases, it will not be enough merely to prove that the transaction was intended to secure peace and harmony in the family or the preservation of its property and that it was not tainted by fraud or similar vitiating circumstances.

9. In *Ramkishore v. Jainarayan* (1913) 40 Cal 966 the sons of a Hindu father impeached an arrangement under which the father had allotted a share in the family property to one who claimed to be a co-parcener as the result of an adoption. The sons contended that there had been no valid adoption; but the Courts in India, without trying this question, upheld the allotment on the ground that in the absence of any allegation of fraud or collusion, the sons would be bound by their father's act as 'the arrangement was in the nature of a compromise of a claim either disputed or which might have been disputed.' The Judicial committee remanded the case for further investigation, observing that if on a partition a share is given to a stranger (which the respondent would have been but for the alleged adoption) 'the partition may be impeached as a disposition of property made without consideration unless it can be supported as a bona fide compromise of a disputed claim. 'I see no difference in principle between the allotment of a share to a person who has no legal claim and the allotment to an admitted co-parcener of a share far in excess of his legal claim. The cases relied on by the respondent's learned Counsel will on examination be found to satisfy the test indicated in the extract above quoted. In the present case the respondent's father raised a plea on the same lines in the written statement; but the respondent did not seriously attempt to establish it at the trial. I am therefore of opinion that the partition under Ex. I cannot as such be held binding on the plaintiff's branch.

10. The respondent is however entitled to succeed on another ground. Gopala had only one son at the date of the partition and his own share would then have been $\frac{2}{5}$ th of the whole estate. If on any grounds recognized by law, Srinivasa could be held to have become entitled at least to that share, the respondent can insist on maintaining the division under Ex. I, because Srinivasa has not thereby obtained more than his own $\frac{1}{5}$ th plus the $\frac{2}{5}$ th share of Gopala. On this footing, plaintiffs 2 and 3 who were not in existence on the date of Ex. I cannot claim any right to disturb the arrangement under Ex. I: *Shivajirao v. Vasantarao* (1909) 38 Bom 267.

It has been held in some decisions of this Court, *Peddayya v. Ramalingam* (1888) 11 Mad 406 and *Thangavellu Pillai v. Doraisami Pillai* A.I.R. 1916 Mad 113 that it is open to one coparcener to relinquish his share to another co-parcener individually and that no pecuniary consideration is necessary to validate such relinquishment. It is however difficult to read into Ex. I an intention on the part of Gopala to relinquish or transfer his share as such. The decision of the Judicial Committee in *Venkata Row v. Tuljaram Row* A.I.R. 1922 P.C. 69 is an authority against reading any such intention into the document: *Veeranna v. Seetanna* A.I.R. 1931 Mad 218. But, as recognized in *Veeranna v. Seetanna* A.I.R. 1931 Mad 218 there is another class of cases in which, though the father's transaction is not valid in law and did not distinguish his own share from that of his son, the law will split the transaction and on grounds of equity hold the father's transferee entitled to stand in his transferor's shoes and claim the share which he could have got if a partition between the transferor and his son had taken place at the date of the transfer. That this principle of equity may be invoked even in connexion with transactions in the nature of a partition was recognized by the Judicial Committee in *Ramkishore v. Jainarayan* (1913) 40 Cal 966 already referred to. On page 981 their Lordships observe that as between Kedarnath and Jainarain,

it may well be that the latter may be entitled to insist that he stands in the shoes of the former as to the share which would come to Kedarnath on a partition; and that the Court, if that position were established, would itself, at Jainarain's instance decree a partition as between the plaintiffs on the one hand and Kedarnath on the other.

11. As pointed out in *Veeranna v. Seetanna* A.I.R. 1931 Mad 218, this principle of equity can be invoked only when there is a completed transfer by the father and the transfer is not gratuitous. In *Venkata Row v. Tuljaram Row* A.I.R. 1922 P.C. 69 the Courts in India had applied this principle but the Judicial Committee reversed that decision because in their Lordships' opinion the facts of the case did not warrant its application. In the present case, Mr. Rajah Iyer (the learned Counsel for the appellants) sought to exclude that principle on the ground that the transfer of the excess share under Ex. I was gratuitous. He contended that as Srinivasa must be deemed to have 'blended' his self-acquisitions with the joint family property, the

whole property that was divided under Ex. I had become joint property and there was accordingly no independent consideration moving from Srinivasa. This question of 'blending' was not distinctly raised by the plaintiffs at any stage of the case and the limitations governing such a plea are indicated in the recent judgment of the Privy Council in *Nut Behari Das v. Nani Lal Das*. Even on the evidence as it stands, there is nothing to support the theory of 'blending' so far as the house in the village is concerned. Further, assuming for the sake of argument that Srinivasa could not have enforced at law a claim to retain any portion of the properties as his self-acquisition, that will not by itself exclude the equities arising on a transfer for value. That in entering into the arrangement embodied in Ex. I, Gopala acted and rightly acted on the footing that he had greatly benefited at the expense of Srinivasa, is clearly established by the evidence. This, in my opinion, is sufficient to entitle Srinivasa to the benefit of the equitable principle above referred to: *Natesa Iyer v. Rathai Ammal* (1909) 19 M.L.J. 62. As the transfer had been completed by Ex. I, and the rights of the parties have to be determined as on the date of Ex. I, the death of Gopala before the institution of this suit or the death of Srinivasa pending the suit can make no difference.