

Manickam Chetti Vs. Kamalam

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Court : Chennai

Decided On : Oct-22-1936

Reported in : AIR1937Mad335; 171Ind.Cas.178

Judge : Venkatasubba Rao and; Venkataramana Rao, JJ.

Appellant : Manickam Chetti

Respondent : Kamalam

Judgement :

Venkatasubba Rao, J.

1. The suit has been brought on the allegation that the plaintiffs deceased husband and the 1st defendant became divided and that the plaintiff is, therefore, entitled to her husband's share. It is also alleged that subsequent to the division the two brothers carried on business in partnership and the plaintiff on that footing claims an account of the partnership business. These mainly are the reliefs that the plaintiff has prayed for and the learned Subordinate Judge has found on these two points that the plaintiff's claim has been made out.

2. The facts may be briefly stated. There were three brothers: Annamalai, Arunachala, the plaintiffs husband and Manicka, the 1st defendant. They entered into a partition arrangement embodied in Ex. A, which covers 40 pages in print: That is a very elaborate document and the items allotted to each of the three

individuals have been set out in great detail. Hence lands, outstandings, jewels, and all descriptions of property have been partitioned and adjustments have been made to equalise shares. The point, however, that has given rise to some controversy is that so far as certain outstandings amounting to Rs. 80,000 odd were concerned, they were jointly allotted to Arunachala and Manicka: as regards the other assets of the family, there has been in the main a separate allotment made to each of the three individual sharers. Subsequent to the partition, Arunachala and Manicka, carried on a joint trade (to use a neutral expression; treating the outstandings jointly allotted to them as pertaining to it. It may be mentioned that the partition to which we have adverted commenced on January 13, 1926, and was completed on February 25, 1926. Nevertheless the main items having been partitioned in the early part of 1926, the parties regarded themselves thenceforward as having become severed. The joint trade carried on by Arunachala and Manicka after the partition continued till the death of the former, on February 16, 1929. The present action was commenced on April 5, 1929, i.e., within a few weeks after his death.

3. In the lower Court it was contended that the intention was merely to separate Annamalai from the family and that with a view to effect his separation, the shares of the three brothers were defined and elaborate calculations were made. This contention is opposed to the very clear and unambiguous recitals of Ex. A and does not require serious notice.

4. The argument pressed upon us here is, that although as between Arunachala and Manicka there was a separation in respect of the other assets of the family, they must be treated as having retained their joint status in regard to the outstandings jointly allotted to them. That such a result can be brought about, there can be no question: but the point to decide is, is that the effect of the document? In *Ramalinga Annavi v. Narayana Annavi* A.I.R. 1922 P.C. 201 : 68 Ind. Cas. 451 : 30 M.L.T. 255 : (1922) M.W.N. 399 : 45 M. 489 : 26 C.W.N. 929 : 43 M.L.J. 428 : 16 L.W. 639 : 214 Bom. L.R. 1209 : 20 A.L.J. 839 : 37 C.L.J. 15 : 49 I.A. 168 (P.C.) their Lordships of the Judicial Committee, after referring to *Appovier v. Rama Subba Aiyar* 11 M.I.A. 75 : 8 W.R. P.C. 1 : 1 Suther P.C.J. 657 : 2 Sar. P.C.J. 218 : 20 E.R. 30 point out that the character of undivided property

may. be taken away from some part of the estate whilst as regards the rest, the members may retain their joint status (see the case as reported in Ramalinga Annavi v. Narayana Annavi A.I.R. 1922 P.C. 201 : 68 Ind. Cas. 451 : 30 M.L.T. 255 : (1922) M.W.N. 399 : 45 M. 489 : 26 C.W.N. 929 : 43 M.L.J. 428 : 16 L.W. 639 : 214 Bom. L.R. 1209 : 20 A.L.J. 839 : 37 C.L.J. 15 : 49 I.A. 168 (P.C.)). The question is, therefore, essentially one of construction of Ex. A. Does it lend any support to the contention that the outstandings allotted to Arunachala and Manicka jointly, were intended to retain the character of undivided property? As already stated, in other respects the division was complete and thorough. In regard to the houses, lands, jewellery and other movables, there was a separate allotment to each of the three individual sharers. Some outstandings were allotted separately to Annamalai. Then as regards the outstandings jointly allotted to Arunachala and Manicka, there is a clear recital that they were to be divided in equal shares between them. This recital, is very important and shows that the contention put forward cannot prevail. It will be convenient to set out there the result of a certain arrangement made between the parties. So far as the items exclusive of the outstandings were concerned, those allotted to the share of Annamalai were of the value of about Rs. 44,000; similarly, the total value of those allotted separately to the other two brothers was about Rs. 26,000, the difference between the two figures being about Rs. 18,000. To equalise the shares, Annamalai was directed to pay Rs. 10,920 odd to Arunachala and Rs. 7,200 odd to Manicka, these two sums aggregating to the Rs. 18,000 odd mentioned above. Pausing here for a moment, what does this arrangement show? The sums to be paid were unequal and were determined' with reference to the other allotments made. This, far from showing that Arunachala and Manicka intended to, remain joint, shows quite the opposite. Then, follows the recital already adverted to which clinches the matter. Referring to the Rs. 80,000 odd outstandings, the document goes on to say (as mentioned above) that they shall be collected and divided between the two brothers. In the face of this, it is difficult to follow the contention, that the outstandings jointly allotted, were to remain in joint enjoyment and retain the character of undivided property. Moreover, the unambiguous declaration at the end of the document, that the three brothers divided the entire estate including the outstandings, is inconsistent with the theory put forward. It is unnecessary to pursue the matter

further, as the learned Sub-ordinate Judge has dealt with the question very fully and with his conclusion we are in entire agreement.

5. Mr. S. Sreenivasa Ayyangar for the appellant contends that Ex. A is ambiguous and should be construed in the light of the acts of Arunachala and Manicka, both contemporaneous and subsequent. But in our opinion, the instrument is plain, and unequivocal and it is well settled that where there is no ambiguity, extrinsic evidence cannot be received. We may in this connection refer to Babu alias Govinddoss Krishnadoss v. Gokuldoss Govardhandoss 55 M.L.J. 132 : 112 Ind. Cas. 181 : 1 L.T. 40 Mad. 193 : A.I.R. 1928 Mad. 1054 : 28 L.W. 824 where the question has been fully considered, (see also Govinddoss v. Official Assignee of Madras where this case has been approved).

6. We have just mentioned that the learned Subordinate Judge has found that subsequent to the partition the two brothers transacted the business in co-partnership. But the 1st defendant contends that it was in their character as members of a Hindu co-parcenary that they carried on the dealings. The outstandings having been jointly allotted to them, they were brought into the common business. The rents from the immovable properties to whomsoever they had been allotted, were indifferently credited in the common accounts, that is to say, the credits were not made individually in the name of Arunachala or Manicka; it was the tenants that were credited with the amounts paid. From these, we are asked to infer that the partition evidenced by Ex. A was not given effect to so far as these two brothers were concerned. But there is other evidence which shows, that each brother was treated as having his own individual dealings. Arunachala purchased a property and the sale deed was taken in his name; the amounts paid as the sale price were debited against him separately. As regards the household expenses, the matter stands thus. Arunachala was at Kumbakonam and the expenses incurred there were carried to a separate page; similarly the expenses incurred by Manicka at Aduthurai where he was living, were separately entered. Within a few days of the death of Arunachala, Manicka had to file some suits for the recovery of certain amounts due to the joint business and in the plaints Exs. R and S) he averred most distinctly that he and his deceased brother were partners and the amounts became due to the partnership. The crediting of the rents in the

account books without indicating to which of the two brothers they belonged, does not possess much significance. No one could tell what adjustments might have been made, had the partition accounts been settled, but the partnership was of a short duration as it came to an end by Arunachala's death. The learned Judge has rightly held that from this and similar conduct no adverse inference can be drawn. There is a heavy burden which Maqicka had to discharge, as his attempt was to show that the partition so complete in its details was not intended to be acted upon. In such a case what is the rule of evidence to be applied? Supposing the facts proved are consistent either with a state of division or non-division, no Court ought to lightly infer from equivocal facts that the parties intended to revoke, as it were, the partition which had been solemnly entered into; in other words the intention to divide being manifest even if the subsequent conduct is susceptible of two interpretations, no Court ought to hesitate to prefer that, which accords with that intention. The alternative theory put forward that the divided brothers should be regarded as having become reunited is equally untenable. Re-union being of 'very rare occurrence,' requires, when alleged, strict proof. *Palani Ammal v. Muthu Vmkatachala Monigar* and from what has been said it will be apparent, that there is not a shred of evidence in support of the alleged reunion.

7. It has been suggested that Ex.-A requires registration as the immovable properties have been divided by metes and bounds. That would depend upon the nature and effect of Ex. A, i.e. was it intended to be, the operative deed by which the partition was brought about or to serve merely as a record of an already completed partition? It is unnecessary to go into this matter, for, in any event, the document, as has been conceded can be received in evidence to prove that there was a division in status and the question is of no importance, as the appellant, as his learned Counsel has stated, has no desire to impugn the mode of division adopted at the partition that has been entered into.

8. Then we pass on to the pledge business, regarding which there has been a good deal of argument. The first question that arises is, was it a joint family concern before the partition. There is no doubt that the business had been carried on with the aid of joint family funds, and that circumstance would *prima facie* make it a joint family concern. When co-pareenery funds are employed, there may be

one of two intentions, either that the concern belongs to an individual member, his share being debited with the sums employed or whit, is more natural that the concern was carried on for the joint benefit. However, as stated above, in the absence of evidence to the contrary, the business will be presumed to belong, to the entire co-parcenary; but here the facts furnish positive evidence which shows that the pledge dealings were not treated as a joint family business. The brothers divided at the partition not the business itself but the sums left outstanding in it. It is difficult to say that there was one business or two businesses, but that is immaterial; the point to note is, that there was a distinct recognition at the partition by the bro there that the business in question was not a co-parcenary concern and that it was on that footing they excluded it from the division. If this is borne in mind, the evidence adduced in the case presents no difficulty. There are two sums at page 222 of the printed book; Rs. 5,100 odd standing against the name of Arunachala and Rs. 2,300 odd against the name of Manicka. These are significant entries and coupled with the admission of Manick at p. 49, they lead to the inference that the pledge business at Kumbakonam belongs to Arunachala and that at Aduthurai to Manicka. This matter has been fully gone into by the Subordinate Judge and no reason has been shown why we should dissent from his conclusion. So far as the oral evidence of the 1st defendant is concerned, no Court will be disposed to treat it as worthy of belief, as his conduct has been utterly dishonest as shown by the learned Judge in paras. 35 and 40 of his judgment.

9. Lastly remains the question of mesne profits. It was argued that the prayer in the plaint was confined to the profits of certain properties alone and that the judgment awarded much more than what was prayed for. But this contention was shown to have proceeded upon a misapprehension and was later given up.

10. We understand that the injunction granted by Clause 4 of the decree has since been dissolved and that the 1st defendant has received his share of the amount from the Union Bank. We are asked to record this fact and to say that the plaintiff shall likewise be at liberty to draw her own share, and we do so accordingly.

11. In the result, the appeal is dismissed with costs.

