1943 SCeJ 001 (Mad.)

MADRAS HIGH COURT

Before : Justice Krishnaswami Ayyangar, J

MUKKU VENKATARAMAYYA — Appellant
Versus
MUKKU TATAYYA ALIAS VASUDEVUDU AND OTHERS — Respondent

28.07.1942

Cases Referred

1. Pan Kuer and Others Vs. Ram Narayan Chowdhury and Others, AIR 1929 Patna 353

Equivalent citation : (1943) AIR(Madras) 538 : (1943) 2 MLJ 83

JUDGMENT

Krishnaswami Ayyangar, J.—This appeal arises out of a suit instituted by the appellant for a declaration of his exclusive title to the properties set out in three schedules attached to the plaint and for possession thereof. The first respondent, his younger brother disputes the claim, and contends that they are the joint pro perties of both the brothers. Respondents 2 to 9 are said to be the adherents of the first respondent who have combined together for the purpose of keeping out the appellant from the enjoyment of the properties.

2. The real fight however is between the two brothers, the appellant and the first respondent. Their father was one China Buchayya who had married two wives. By his first wife who died some time in 1893 he had three sons Venkataramayya (the appellant), Nagayya (now deceased) and Tatayya alias Vasudevudu, the first respondent. By his second wife whom he married soon after his first wife's death he had three daughters. As usually happens in such cases, differences sprang up between China Buchayya, his second wife and children on one side and his sons by his first wife on the other. It is probable that in 1903 these differences assumed sufficiently large proportions to render it expedient to have a partition; It is common ground that there was in fact such a partition in the family in 1903 as a result of which the father with his second wife and children separated and began to live apart from his sons by the first wife. One of the main questions in dispute between the parties is whether the father alone separated himself from his sons leaving the latter to continue to remain joint or whether there was a division inter se between the sons as well, so as to bring about a complete disruption amongst all the members of the family. The second question which is equally important is whether, assuming there was such a disruption of status, there was a subsequent reunion as between the three sons of China Buchayya. The case of the plaintiff-appellant is that the partition effected in 1903 was a complete division by metes and bounds by which not only the father but each of the dividing sons was allotted and received a separate share; that thereafter the appellant carried on business for himself and acquired large properties in his own name and that the properties so acquired which are all described in the schedules to the plaint, belong exclusively to him. The first respondent on the other hand has contended here, as he did in the Court below, that he and his brothers continued to remain joint after their father divided away from them in 1903. He has also put forward an alternative case that there has been a reunion amongst the brothers after the partition. These contentions are raised in paragraphs 5 and 6 of his written statement which are as follows:

5. It is not true that there was or ever intended to be a separation of interest among the sons. The division of movable properties into four shares might have been so effected with a view to ascertain and separate the share of the father, who was anxious to live apart. It was never intended to create any division in status among the sons inter se nor was it in fact considered as such by them. After the said division, the sons as before lived together as members of a joint Hindu family, enjoying the properties got in the partition. They were thus joint in estate and interest.

6. Even after the first defendant attained

majority, they all lived together as before as members of a joint family, making joint acquisitions and improving the family properties. After the death of Nagayya in 1908 (another brother now deceased), the whole property of the family devolved by right of survivorship on plaintiff and first defendant, who continued to live together as before. If for any reasons, the Court comes to the conclusion that by the said partition a division in status was created, in law, even among the brothers inter se, they continued joint living in estate and interest as described above, must be deemed to have been due to a lawful agreement of reunion, which reconstituted them a joint family with all its incidents and attributes.

3. It has to be observed that while the plea that the sons continued to remain joint in estate and interest even after the partition is definitely put forward, the case of reunion is not based on an agreement between the parties but is left as an inference to be drawn "from their joint living in estate and interest." However that may be, there is no doubt that the issue of reunion has been definitely raised in the pleadings and the issues in the trial Court. There were in all six issues framed in the suit. But the more important ones are issues 1 and 2 which are as follows:

I. Whether the suit properties belonged exclusively to the plaintiff or whether they are the joint family properties of the plaintiff and the defendants 1 and 2?

2. Whether there was a partition in 1903 between the plaintiff, the deceased Nagayya and the defendants and what is the effect of the partition of 1903. If there was a partition was there a subsequent reunion?

4. After discussing the evidence, oral and documentary, in great detail and after examining the several contentions advanced by the parties on the various issues the learned trial Judge has recorded his findings on both the above issues in the last but three paragraph of his judgment. The language here employed by the learned Judge can only mean that in his view there was no division inter se, between the brothers and they continued to remain joint in status even after the partition, the father alone having separated himself away from them. The concluding sentence in this paragraph is

The properties are therefore joint family properties and the effect of the partition was that the father only separated himself from his sons who continued to remain joint.

5. Further light is thrown upon this point by the observations contained in paragraph 21 of the judgment under appeal. Here he expresses the opinion that it was no doubt the intention of the father that the appellant and the first respondent should become separated, but that, however, was not the intention of the brothers themselves. His view based upon the evidence adduced in the case appears to be that the three brothers decided to remain joint, after their father separated from them. Of course, there can be a partial partition amongst the members of a family, partial in respect of some alone of the joint owners or in respect of seme only of the joint properties. In such a case, the joint family would continue with fewer members or with diminished property. But if a general partition between all the members takes place, reunion is the only means by which the joint status can be re-established. Mere jointness in residence, food or worship or a mere trading together cannot bring about the conversion of the divided status into a joint one with all the usual incidents of jointness in estate and interest unless an intention to become reunited in the sense of the Hindu law is clearly established. The rule is, if I may say so with respect, correctly stated by the Patna High Court, in **Pan Kuer and Others Vs. Ram Narayan Chowdhury and Others, AIR 1929 Patna 353,** where the learned Judge observes that to establish it (reunion), it is necessary to show not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of forming. a joint estate with all its usual incidents.

6. There is however a material difference between such a case of reunion and the case of a partial partition where one member alone of a joint family separates himself from the other members leaving the latter to continue to remain together and enjoy the rest of the family property

as coparceners without any special agreement amongst themselves. In such a case the non-dividing coparceners cannot be said |, to have reunited after a disruption. But their jointness continues undisturbed by the separation of the dividing member. We have found it necessary to make this I statement of principle in view of the fact that the learned Judge does not appear to have appreciated the correct legal position when he says

A partition in which the father alone has separated, and the sons have continued to remain reunited from the date of partition even without an express agreement is permissible under law.

7. The sentence in the judgment which follows immediately thereafter contains the correct principle. The learned judge states:

The question as to whether the brothers united together and carried on their business after partition is therefore a question of fact. No express agreement for the purpose was necessary, and their in ention has to be inferre I from their subsequent conduct, and the way in which the plaintiff carried on the business subsequently.

8. It is true that an agreement to reunite must be established. But this can be done not only by express contract but also by necessary inference from the acts and conduct of the parties if they are sufficiently strong and cogent.

9. The first question that has to be considered is the nature of the partition arrangements effected in 1903 and 1904 between China Buchayya and his three sons Mukku Venkataramayya (appellant), Nagayya and Tatayya (first respondent). What happened at the time is set out in an agreement (Exhibit J) dated 12th March, 1904, executed by Mukku China Buchayya in favour of his three sons of whom Tatayya was at the time a minor. It states:

Out of the entire movable and immovable properties belonging to us, among our joint family, in Jilugumalli village, Polavaram division, Godavari district, excluding the amount under the deed (of partition) settled previously by Vandanapu Rukkayya and others, we shall divide the remaining property into four shares in all, i.e., three shares for you three (individuals) and one share for me; and the four of us shall execute four partition 11sts. You shall sign on my partition 11st and I shall sign On your partition 11sts. After the entire property has been partitioned, we shall go to Lakkavaram village with the 11sts and execute partition deeds on proper stamp paper. We shall not raise dispute against one another among us. Ramiah shall have the minor's property in his possession, and after the minority is over, shall deliver possession of the same to the minor according to the partition 11st. Ramiah shall maintain the minor at his own expense, without any profit or loss being (calculated) in respect of the minor's property, and the minor shall be liable to any acts of God or State with regard to the said property along with that of Ramiah. In respect of the movable and immovable properties, divided according to the aforesaid shares, we shall not dispute with one another among us four indi-viduals, and each shall enjoy his respective share of property with powers of gift, sale, etc. It has been agreed that those who are not willing to go to Lakkavaram village and execute the documents, shall pay Rs. 200 towards charity for effecting repairs to the Rama Bhajana Chavidi (worship hall) at Jilugumalli village.

10. The contents of this document, the genuineness of which has not been challenged before us, make it abundantly clear that the family properties were to be divided into four shares and each one of the members should take and enjoy the share allotted to him absolutely. The arrangement was that there should be four partition 11sts in the first instance incorporating the division of the movable and immovable properties as and when effected, finally to be followed by the execution of a formal deed of partition to be registered at Lakkavaram. There has been however no such deed brought into existence. But there can be no doubt that the partition 11sts contemplated by this agreement did come into existence. One such 11st, that relating to the share of the appellant, has been brought into Court and marked as Exhibits A to A-2. It shows that the family vessels and utensils were among the first to be divided on 1st

October, 1903. Subsequently on several dates up till 16th December, 1904, the rest of the family movable properties appear to have been divided. The value of the Articles and outstandings which fell to the share of the appellant was Rs. 3,896-6-1. The 11st contains the signatures of the father China Buehayya and of his three sons, the youngest Tatayya minor being represented by his elder brother and guardian Mukku Venkataramayya, the appellant. Reference may also be made to another document Ex. VII referred to in Ex. J as the partition paper. Ex. VII is dated 9th October, 1903 and purports to be an agreement executed by China Buehayya and his three sons embodying the arrangement arrived at for the division of the house and sites in the Jilugumalli village. Provision was also made for having the marriages of the unmarried members being performed and for the conduct of the annual ceremonies of Mukku Guramma and for the payment of a sum of Rs. 100 to one of the daughters of China Buehayya. It was arranged that the father should be given the eastern portion of the family house including the godown and pandal. But he was to pay out of his separate moneys a sum of Rs. 400 to the sons. The western portion was allotted to the three sons along with the courtyard on the western side. The courtyard on the northern side of the house was to be taken by the father and the sons in four shares. This document also records the agreement of the parties that the movables were to be divided in four shares between the four members. In this document again the indications are clear that the division contemplated was not one between the father on the one side and the sons on the other but was intended to be a complete division between all the members inter se. The fact that the residential portions allotted to the three brothers were not separately marked out is a circumstance of little consequence in view of the actual statements contained in the document. The arrangement recorded in Ex. VII purported to have been made according to the suggestions of certain mediators, namely, Vendanapu Rukkayya, Tadikimalla Chandrayya, Gudimetla Ramayya and others. A registration copy of a will left by China Buehayya dated 5th March, 1906, has been exhibited in the Court below as Exhibit B. In this will Buehayya states that from the 1st October, 1903, he and his sons had been messing separately and residing separately and also referred to the division of the entire movable and immovable properties of the family into four shares, his three sons taking three shares and himself taking one share. It is also stated that each of his sons was enjoying his respective share separately though Tatayya being a minor his share was in the possession and management of the two elder sons. We have no doubt that the statements contained in the will represent what happened but we prefer not to base our judgment on them as it is doubtful whether they are legal evidence. Ex. K is a letter dated 2nd September, 1908, written by three of the mediators named in Ex. VII. It is addressed to the appellant and refers to the undertaking contained in Ex. J by which the appellant undertook to be in possession of Tatayya's share and hand it over to him after minority. The letter then goes on to state that the father China Buehayya had complained that in spite of Tatayya having attained majority his share had not been delivered to him and a receipt obtained for the delivery. The evidence of the appellant is that on the receipt of the letter he handed over to his brother Tatayya the share belonging to him and obtained receipts which he says he sent to the father. The learned Judge in the Court below has refused to accept this evidence and we see no reason to differ from him. The omission to deliver his share is a circumstance of importance in considering the question whether the brothers lived together as members of a joint family even after the partition. These documents contain definite evidence that the partition intended and specifically agreed to be carried out by the parties was one between all the four members of the family?

11. Further light is thrown upon the nature of the partition by the information contained in the family account book.

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12. [His Lordship discussed the evidence and concluded as follows:]

13. We are of opinion that the documentary evidence clearly establishes the division inter se between the brothers, and that it was not merely

one between the father on the one hand and the sons, on the other, We have been taken through the relevant portions of the oral evidence on this point, but it is enough to say that it is not of such a character as to merit reliance being placed on it.

14. The next and the only other question that requires to be considered is whether there has been a reunion between the brothers after the partition of 1903-04.

* * * *

15. [His Lordship reviewed the evidence and Concluded as follows:]

16. The circumstances and documents referred to above are sufficient to show that the learned Judge's finding is right and cannot seriously be disputed. We consider that no purpose is to be served by a detailed consideration of the other documentary and oral evidence in the case all of which have received careful attention at the hands of the learned Judge. We have no hesitation in concurring with his finding that after the partition of 1903 the appellant and the first respondent lived and traded together, acquire and enjoyed the properties in suit on the fecting that they were members of a joint family with the intention of having a division at some time in the future. Though the learned Judge has not stated his finding in these words, we consider that this in effect is his finding. This conclusion is, in our opinion, irresistible on a review of the entire evidence.

17. The question then is, whether this finding is sufficient to support a case of reunion. We are conscious that the burden of proof is heavily on the respondent and also that proof of mere jointness in residence, food and worship dees not necessarily make out reunion. What is to be established is that not only did the parties who had divided lived and traded together, but that they did so with the intention of thereby altering their divided status into a joint status with all the usual incidents of jointness in estate and interest. In our opinion the way in which the brothers dealt with each other leaves no room for doubt that it was their deliberate intention to reunite so as to reproduce the joint status which had existed before the partiticn of 1903. The immediate object of the partiticn was to enable the father to live separately from his sons by the first wife, as misunderstandings had arisen between them. As between the sons themselves there never was any reason for a separation inter se and there can be no doubt that the moment they separated away from their father they desired to live and lived together in joint status. It is true that at that time the first respondent was a minor. But this can make little difference if after he attained majority he accepted the position in which the appellant and Nagayya had already begun to live together. In our view it is not necessary that there should be a formal and express agreement to reunite. Such an agreement can be established by clear evidence of conduct incapable of explanation on any other footing. Such, in our view, is the position here established. That being so, the claim of the appellant to the exclusive ownership of the properties in suit must be negatived. The appeal fails and must therefore be dismissed with costs.