Rajagopal Pillai And Anr. vs Pakkiam Ammal And Ors. on 6 March, 1975

Equivalent citations: AIR1975SC895, (1976)1SCC299, 1975(7)UJ303(SC), AIR 1975 SUPREME COURT 895, 1976 (1) SCC 299, 1975 UJ (SC) 303, 1975 2 SCWR 422

Author: A.C. Gupta

Bench: A.C. Gupta, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

A.C. Gupta, J.

1. This appeal by certificate of fitness granted by the Madras High Court is directed against a judgment and Decree of that Court affirming a preliminary decree for partition made by the trial court. By the said decree l/6th share of the first plaintiff in the disputed property was declared, The five defendants were the appellant in the High Court; the fifth defendant, Annavi Pillani, died while that appeal was pending. The appeal in this Court is at the instance of only two of the defendants, Rajagopal and Somasundaram, the first and the fourth defendant respectively.

2. The material facts leading to the suit for partition are these. Annavi Pillai and his five sons Rajagopal, Akkilandam, Arumugam, Balasu-bramaniam and Somasundaram constituted a Mitakshara joint family. Admittedly, the joint family had no property of its own until 1946, though Annavi Pillai owned certain self-acquired property. On June 5, 1943 Annavi Pillai executed a Will leaving his property to four of his sons excluding the first son Rajagopal who was let out because Annavi "was not pleaded with his conduct" Some time in the latter part of the year 1943 or early 1941 Annavi's third son Arumugam married the first plaintiff, Pakkiam Ammal, who is the first respondent in this appeal. On October 11, 1944 Arumugam executed a document described as a deed of release in favour of his father. This document is as follows:

> Deed of release executed on 10th November, 1944 in favour of v. Annavi Pillai son of Veeramalai Pillai, Vellala caste, Saivite Miras, aged about 75 years and residing at Cusba Manaparai, Kulitalai Taluq, Tiruchirapalli district by Arumugham-third son of the aforesaid person, of the said caste and religion, aged about 26 years and at present residing at Madura is as follows :
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> As a result of lack of amity between you and me in family, I have been residing separately at Madura for the last about one year. All the immovable and movable

> properties, money lending transactions, trade and cash that are at present with you are all yourself acquired properties. I have no kind of legal right in them. Even so, I have been asking you to give me something out of them for my sustenance and you have been refusing to give. Ultimately on the recommendation of my mother that I might be given some-thing, and on your acceptance of the same, I have on this date received from you Rs. 500/- (Rupees five hundred) in cash, in the presence of the Sub-Registrar, in full and final settlement of any rights that I may claim in all the properties aforesaid even after your life time. I have hereby released all the rights that I may claim over all the aforesaid properties. I have no right whatsoever in your immovable properties, cash, whatsoever in your immovable properties, cash, money-lending transactions and business dealing.

3. To this effect have I executed this release with my whole hearted consent.

4. This appeal turns on the true meaning and scope of this document.

5. On February 14, 1945 a daughter was born to Arumugam. She is second plaintiff and the second respondent in this appeal. On October 21, 1946 Annavi Pillai executed a deed cancelling the Will that he made on June 5, 1943, disinheriting his eldest son Rajagopal. In this deed the reason given for cancellation of the will was that the misunderstanding with Rajagopal had been removed which made execution of another Will necessary for division of the entire property among all the sons. The material part of this deed of cancellation reads as follows:

> Deed of cancellation of Will executed on the 21st day of October, 1946, by Annavi Pillai son of Veeramalai Pillai, Cultivator and merchant, aged 75 years and residing at cusba Manaparai, Sevalur Village, Kultialai Taluk, Tiruchirapalli District is as follows :
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> As my eldest son Rajagopalan was giving me trouble, I out of mis understanding eliminated my eldest son and bequeathed my properties to my other four sons in the will executed by me on the 5th day of June, 1943. Now the said Rajagopalan had removed our family misunderstanding and had been living with me as one family amicably. Subsequently, as the entire properties had to be partitioned to all of them according to their shares, by means of another will, I hereby cancel through this deed the Will executed by me on the 5th day of June 1943....
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> In 1954 Arumugam, husband of the first plaintiff died. On November 17, 1959 Annavi Pillai executed a deed of release in favour of bis four surviving suns by which he abandoned his rights in his self acquired property which, it was stated, he bad thrown into the common stock and was being treated as jointly family property "for the past 13 years." The material part of this document is quoted below.
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> Now myself and you four persons have been living as members of undivided family for the past 13 years. I have already of my free will and voluntarily, abandoned and

> relinquished my rights in respect of myself acquired properties already acquired by me and all of us have been already acquired by me and all of us have been till today, enjoying these properties as family properties treating those properties as family properties in which all of us have rights. Excepting myself and yourselves DO one else has any right, share or interest or claim in our family properties.
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> On December 3, 1959 the four sons executed a deed of partition in respect of the said joint family property. On March 21, 1960 Pakkiam Ammal, widow of Arumugam, and her minor daughter whom she represented as next friend, instituted the suit out of which this appeal arises praying for partition and separate possession of Pakkiam Ammal's 1/6th share in the joint property impleading Rajagopal, Akhilandam, Balasubramanium, Somusundaram and Annavi Pillai as defendants Nos. 1, 2, 3, 4 and 5 respectively.

6. The trial court decreed the suit and on appeal by the defendants the judgment and Decree of the trial Court were affirmed by the High Court. The High Court found that in 1946 Annavi Pillai's self-acquired property became impressed with the character of joint family property on the basis of the statement made by Annavi Pillai in the deed of release executed on November 17, 1959 that for the past 13 years he and his four sons were living as members of a Joint family and that he had relinquished his rights in his self acquired property which since then was being treated as joint family property. It was held that the legal consequence of this change in the character of the property would follow regardless of Annavi's intention, as appearing from this deed of release, to keep the property confined to himself and bis four sons. It was pointed out that the deed of release (Ext. B 3) executed by Arumugam on November 10, 1974 could not have the effect of bringing about a severance of joint status. The High Court explained that in 1944 the joint family of Annavi Pillai and his five sons had no property of its own and Arumugam by stating in this document (Ext. B 3) that he abandoned his rights over bis father's self acquired property did not cause a division in status. It appears from the judgment that the High Court was conscious of the position in law that renunciation by a coparcener of bis interest in the joint family property separates him from the other members, but it was held that as there was no joint family property at the time, execution of the deed of release by Arumugam could not have the effect of bringing about a division in status. The High Court found that as Arumugam continued to be a member of the joint family in 1946 he was entitled to a shire in the joint family property which on his death in 1954 devolved on his wife. On these findings the High Court affirmed the judgment and decree of the trial court and dismissed the appeal preferred by the defendants.

7. Mr. Natesan. learned Counsel for the appellants contended that the clear effect of the deed of release executed by Arumugam was severance of the joint status. This document (Ext B 3) which we have set out above shows that "as a result of lack of amity" between Arumugam and his father, the former on receiving Rs. 500/- in cash relinquished all claims on his father's self acquired property, though he admitted having "no kind of legal right" therein. According to the learned Counsel, what Arumugam had given up by this deed of release was not his chance of succession to his father's self acquired property but an existing right. It was submitted that under the Mitakshara law which governs the parties the interest of a son in the self acquired proper y of his father is not a spei

succession is, but a real right vested in the son by birth though it is subject to the father's unqualified right to deal with and dispose of the property in any manner he likes. It is however not necessary for the purpose of this appeal to examine the nature of the interest that a son has in the self-acquired property of his father under the Mitakshara law; what is necessary is to ascertain the nature of the right that Arumugam relinquished in the instant case. It is clear from Arumugam's deed of release that what he abandoned was his right, if any, in his father's property so long his father was alive, and also any claim that he might make on such property after his father's death But in 1944 when Arumugam executed this deed of release in favour of Annavi Pillai, neither of them anticipated that two years later, in 1946, Annavi's self-acquired property would be converted into joint family property. In 1944 Arumugam could not possibly give up a right which was not in contemplation of either himself or his father. As the High Court pointed out "it is a well settled rule of interpretation of deeds of release that however wide and general the covenant of release may be, its operation must be restricted to the rights which are in the contemplation or in controversy between the parties and would not cover or comprehend rights which are never in the minds of the parties at that time." As an authority for this proposition of law, the High Court referred to the decision of this Court in Chinnathasi v. Kulasekara (1952) SCR 241. Where this Court observed "it is well settled that general words of release do not mean release of rights other than those then put up and have to be limited to the circumstances which were in the contemplation of the parties when it was executed."

8. The next question is whether Arumugam was a member of the joint family in 1946; if he was, then, as the High Court pointed out, the legal consequence of the self acquired property being converted into joint family property would follow regardless of Annavi Pillai's intentions. It was not contended that even if Arumugam could not be said to have given up his right in the joint family property by the deed of release, yet the execution of the deed by itself effected a division instatus. The deed of release contains a statement that "as a result of lack of amity" between Arumugam and his father, the former had been residing separately for some time; that however does not establish that Arumugam had gone out of the joint family Just as Rajagopal did not cease to be a member of the joint family when displeased with his conduct Annavi Pillai thought of disinheriting him by executing the Will on June 5, 1943. Subsequently, when the misunderstanding with Rajagopal was removed, Annavi cancelled the Will by executing another deed on October 21, 1946. In this deed of cancellation (Ext. A11) there is a statement, to which we have referred above, suggesting that Annavi contemplated dividing the property among all his sons. This indicates that Arumugam was still considered as a member of the family It has also been found that Arumugam came back to live with the other members of the family till 1954 when he died. It cannot therefore be said that Arumugam had ceased to be a member of the joint family in 1944 and it must be held that he had a share in the joint family property to which his widow became entitled on his death.

9. We do not find any merit in this appeal which we accordingly dismiss with costs to respondents Nos. 1 and 2.