M. Venkataramana Hebbar (D) By L.Rs vs M. Rajagopal Hebbar & Ors on 5 April, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (civil)  7061 of 2000

PETITIONER:
M. Venkataramana Hebbar (D) By L.Rs

RESPONDENT:
M. Rajagopal Hebbar & Ors

DATE OF JUDGMENT: 05/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G M E N T S.B. Sinha, J.

Defendant No. 1 in the suit is the appellant herein. The parties hereto were admittedly co-owners of the suit property. The relationship between the parties shall appear from the following genealogical table:-

M. Ramakrishna Hebbar = Smt. Sundari Amma (D-9) M. Venkatram- M. Rajgopala M. Mohana M. Anantha And Hebbar Hebbar Hebbar Hebbar (D-1) (P-1) (D-5) (D-6) | | _____ | | | _____ | | Srirama Srikrishna Srivittala | | (P-2) (P-3) (P-4) | | | | | | _____ | Prasanna Prashantha | (D-7) (D-8) | | | _____ M. Gopal M. Harisha M. Janardhana Krishna Hebbar Hebbar (D-3) (D-2) A suit for partition was filed by the plaintiffs claiming one-fourth share in the suit property. It is not in dispute that on or about 30.3.1973, a purported family settlement was arrived at by the parties. One of the defendants, however, was not a signatory thereto. In the said purported family settlement, it was stated:-

"We each of us are entitled to < share in the family property. As that property is a small areca garden and as there are no sites near by to construct a separate houses, that property cannot be divided. Hence as owelty No. 1 of us is liable to pay to No. 2 and 4 of us Rs. 15,000/- each. That amount is to be paid in 15 yearly instalments of

Rs. 1000/- each. On payment of last instalment 2 and 4 of us release their rights in favour of No. 1 of us at his costs. We No. 1, 2 and 4 of us have agreed for this. The Ist instalment is to begin with the end of March 1973 and end with the period of 15 years at the end of March 1987.

The marriage of Nos. 2 and 4 of us is to be performed by No. 1 of us in the family House. If the instalments cannot be paid due to the marriage in that year = the amount is to be paid in that year and the balance is to be paid in the subsequent year. Accordingly if the entire amount is not paid as stipulated the same is to be paid by the end of March 1990 by number 1 of us and get a release deed executed from No. 2 and 4 of us at the costs of No. 1 of us.

No. 2 and 4 of us have to construct separate houses by the end of May 1976 and reside there.

As there are no sufficient movable and gold jewels in the family house No. 2 and 4 have no separate share in it. No. 1 of us is liable to pay the family dues if any and bear the expenses of the viniyogas of Gods and devils.

Towards the maintenance of our mother each of us is liable to pay 2 muras of rice and Rs. 25/- every year and obtain receipts and her obsequies is to be performed by No. 1, 2, 3 and 4 of us in equal shares. No. 2 and 4 are not liable for the family debts. The share of No. 3 of us is retained by No. 1 of us he is liable to deliver the same when he demands, we Nos. 1, 2 and 4 of us agreed for the terms in the presence of the grahastas with our full consent and executed this agreement we are liable to abide by all the conditions of this agreement. If any of us incurs loss etc. by non performing as per the agreement, the person who had not performed his part is liable to pay the loss etc. and that person is entitled to recover the amounts. Accordingly we have entered into this agreement."

Allegedly, the said family settlement had not been acted upon in so far as the appellant herein did not pay a sum of Rs. 15,000/- to the respondents herein. In their complaint, the appellant stated:-

"VI. The plaintiffs further submit that the alleged agreement dt. 30.03.1973 has never come into force and it has never been acted upon. The 1st plaintiff has never been paid any amount under the said agreement, the averments made in the notice dated 05.05.1988 and the reply dated 12.05.1988 in this regard are palpably false, defendants 1 to 4 cannot take shelter under the said agreement and deny the plaintiffs their lawful share in the plaint properties. Further, the said document is also not valid since the 6th and the 9th defendants are not parties to it."

The averments made in the plaint to that effect had not been denied or disputed. Appellant, however, raised a contention that by reason thereof as the parties have arrived at a family settlement and a part of it have been acted upon; the plaintiffs/respondents were estopped from filing the suit.

Learned trial Judge having regard to the rival contentions raised by the parties, inter-alia framed the following issue:-

> "3. Whether defendants 1 to 3 prove that plaintiff-1 and defendant-6 were paid money in respect of their share as per agreement dated 30.3.1973?"

The first part of the said issue, namely whether the appellant herein had paid the said sum of Rs. 5,000/- in favour of plaintiff No. 1, was answered in the negative. Despite the said finding, in view of the said purported family settlement dated 30.3.1973, the learned Trial Judge decreed the suit. On an appeal having been preferred by the said decree by the respondent herein, the High Court by reason of the impugned judgment reversed the same inter-alia holding:-

> (i) The said deed of family settlement dated 30.3.1973 not being registered, was inadmissible in law. (2) The family settlement could not have been acted upon as all the parties are not signatories thereto.

It was opined:-

> "11. The view of the court below that there was a partition and the plaintiff is governed by the same and severance of status cannot be accepted at all. Even if there be severance of status, there is no partition in the eye of law. Therefore, a preliminary decree has to be passed declaring that the plaintiff is entitled to one fourth share.
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> 12. It is open to the plaintiff to move to (sic) final decree for division and separate possession. It is open to the 1st Defendant-Respondent to put forward all his claim regarding his spending moneys on the family in the minutes of the enquiry to be conducted by the enquiry authority who shall consider all his objections."

Mr. S.N. Bhat, learned counsel appearing on behalf of the appellant in support of the appeal submitted that the High Court committed a manifest error in arriving at the aforementioned finding inasmuch as a deed of family settlement is not required to be compulsorily registered under Section 17 of the Registration Act.

Learned counsel contended that the said deed of family settlement has wrongly been held to be ineffective only because all parties did not sign thereto.

The learned counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

The execution of the said document is not, in question. It is furthermore not in dispute that all the co-shareholders are not parties thereto. Any co-owner can cause a severance in the status of joint family by expressing his unequivocal intention to separate. Such intention can be expressed even by filing a suit for partition. But, despite such separation in the joint status, parties may continue to possess the lands jointly unless a partition of the joint family property takes place by metes and

bounds.

For the purpose of this case, we will proceed on the assumption that the said deed of family settlement was not required to be compulsorily registered, in terms of Section 17 of the Registration Act as by reason thereof, the relinquishment of the property was to take effect in future. But there cannot be any doubt whatsoever that before the Court rejects a claim of partition of joint family property, at the instance of all the co-owners, it must be established that there had been a partition by metes and bounds. By reason of the family settlement, a complete partition of the joint family property by metes and bounds purported to have taken place. One of the co-sharer, however, did not join in the said purported family settlement.

The contract between the parties, moreover was a contingent contract. It was to have its effect only on payment of the said sum of Rs. 15,000/- by the plaintiff and other respondents by the defendant Nos. 1 to 3. It has been noticed hereinbefore by us that as of fact, it was found that no such payment had been made. Even there had been no denial of the assertions made by the appellant in their written statement in that behalf. The said averments would, therefore, be deemed to be admitted. Order VIII Rule 3 and Order VIII Rule 5 of the Civil Procedure Code read thus:-

> "3. Denial to be specific. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.
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> 5. Specific denial. [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against person under disability.
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> Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.
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> [(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.
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> (3) In exercising its discretion under the proviso to sub-

rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]"

Thus, if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved.

Even otherwise, the Court had framed an issue and arrived at a positive finding that the appellant herein did not pay the said sum of Rs. 15,000/- in favour of the plaintiff Nos. 1 to 3. The High Court has also affirmed the said finding.

The High Court, therefore, cannot be said to have committed any error whatsoever in arriving at the finding that by reason of the said purported deed of family settlement, the co-owners had not partitioned the joint family property by meets and bounds. The plaintiffs/respondents were thus, yet to relinquish their rights in the joint family properties by receiving the said amount of Rs. 15,000/-. Deed of family settlement had not been given its full effect to.

We agree with the High Court that even on that count, the plaintiff's suit should have been decreed. We, therefore, do not find any merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, the parties shall bear their own costs.