Gummanna Shetty & Ors vs Nagaveniamma on 4 May, 1967

Equivalent citations: 1967 AIR 1595, 1967 SCR (3) 932, AIR 1967 SUPREME COURT 1595

Author: R.S. Bachawat

Bench: R.S. Bachawat, J.M. Shelat, Vishishtha Bhargava

PETITIONER:
GUMMANNA SHETTY & ORS.

Vs.

RESPONDENT:
NAGAVENIAMMA

DATE OF JUDGMENT:
04/05/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 1595 1967 SCR (3) 932
CITATOR INFO :
R 1972 SC2219 (4,12)

ACT:
Madras Aliyasanthana Act (9 of 1949), s. 3(6)-Scope of.

HEADNOTE:
By a registered deed dated September 4, 1900, a group of 19 persons forming a joint family with community of property governed by the Aliyasanthana law of inheritance, formed themselves into two branches not according to natural Kavaruts but into artificial branches and divided the family properties. In 1953, the members of one of these two artificial branches instituted a suit against the sole surviving member of the other branch who was a nissan thathi kavaru for partition of all the properties comprised in the deed of 1900, allegation that the deed only effected a division for convenience of enjoyment and not an outright

partition.
On the question whether under s. 36(6) of the Madras Aliyasanthana Act, 1949, the deed of 1900 should be deemed to have effected a partition of the properties,
HELD : The deed on its true construction, did not effect an out-right partition nor could it be deemed to be a deed of partition under s. 36(6) ,of the Act, because, the kutumba was split into two artificial groups and not according to the kavarus. [937C-D]
One of the four conditions necessary as a pre-requisite for the application of the section is that the distribution of properties is among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity. That is, the sub-section applies to a family settlement under which the kutumba is split up according to kavarus as defined in s. 3(b) of the Act, and the kutumba properties distributed among such kavarus. [936F-G; 937B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 910 of 1964.

Appeal from the judgment and order dated February 28, 1961 ,of the Mysore High Court in Regular Appeal No. (M) 70 of 1956.

V. K. Krishna Menon, M. Veerappa, Sreedharan Nambiar, D. P. Singh and H. K. Puri, for the appellants. S. T. Desai, R. Thiagarajan and R. Ganapathy Iyer, for the respondent.

The Judgment of the Court was delivered by Bachawat, J. By a registered deed dated September 4, 1900, a group of 19 persons forming a joint family-with community of property governed by the Aliyasanthana Law of inheritance, formed themselves into two branches and divided 'the family pro-

9 3 3 perties. The second branch consisted of the descendants of Sarasamma and Brahmi and some descendants of Nemakka-in all I 0 persons. The first branch consisted of Nemakka and the rest of her descendants and her sister Sivadevi-in all 9 persons, In 1953, Damamma was the sole surviving member of the second branch. She was a nissanthathi kavaru, 70 years old having no descendants. In 1953, the members of the first branch instituted a suit against Damamma for partition of all the properties comprised in the deed dated September 4, 1900, alleging that the deed effected a division for convenience of enjoyment and maintenance only and was not an absolute or out-right partition The defence of Darnamma was that the deed effected an outright partition. The trial court accepted the plaintiff's contention and passed a preliminary decree for partition. Darnamma filed an appeal in the Mysore High Court. During the pendency of the appeal she died and one Nagaveniamma claiming under her will was substituted in her place as her legal representative. The High Court held that the deed dated September 4, 1900, effected an out-right partition. On this finding, the High Court allowed the appeal, set aside the decree passed by the trial court and dismised the suit. From this decree the present appeal has been filed under a certificate granted by the High Court.

The joint family properties were formerly managed by its yajaman, one Manjappa. Upon his death, the parties to the deed dated September 4, 1900, apprehended disputes. The object of the deed was to prevent such disputes, and consequential wastage of property and to preserve the dignity of the family. The family properties were divided into two parts, and a portion was allotted to each branch. The deed provided that the properties allotted to the first branch would be enjoyed by its members and would be mutated in Nemakka's name, and Siddappa, a member of this branch, would manage the properties, pay the tirve and cesses, and conduct the maintenance of its members. The properties allotted to the second branch would be enjoyed by its members and would be mutated in the name of Nagu, a member of that branch, and Chandayia, another member of the branch, would manage the properties, pay the tirve and cesses, and conduct the maintenance of its members. Parts of items 2 and 5 of the properties were allotted to the two branches, but the entire tirve, and cesses for the two items would be paid by the first branch, and the arrears of the tirve, if any, would form a charge on the properties allotted to the first branch. The deed provided that "as regards the properties enjoyed as mentioned above by the members of the first branch, the members of the said branch and the descen- dants that shall be born to them in future should enjoy the same and as regards the properties enjoyed by the members of the second branch, the members of the said branch and the descendants that shall be born to them in future should enjoy the same 9 34 and in this manner, they should enjoy the properties separately. Further, after the lifetime of the member of the respective branches who obtains the kudathale of the properties allotted to the respective branches, the kudathale should be got entered successively in the name of the senior-most male or female member of the respective branches." The common debt of the family was apportioned between the two branches, and each branch would discharge its share of the debt and interest thereon as quickly as possible. If the manager of any branch allowed the interest to fall in arrears, the members of the branch would appoint another manager in his place. Each branch would have the power to execute documents creating a security over the properties allotted to it for payment of its share of the common debt. No member of the family would have the right to incur other debts. The deed provided that : "If any debt is borrowed, the very person who borrows the debt should discharge it with his personal liability; and further, the movable and immovable properties of this family or the members of the family should not become liable for such debt." Another clause provided that : "These immovable pro- perties or any portion thereof and the right of maintenance of any individual should not be alienated in any manner by way of mortgage,. sale, gift, inulageni, artha mulageni and vaide geni. Contrary to this term, if alienation is made, such alienation should not be valid." The deed also provided : "If there are no descendants at all completely in the first branch, the members belonging to the second branch shall be entitled to the entire movable and immovable properties of the said first branch; and if there are no descendants at all completely in the second branch, the mem- bers of the first branch shall be entitled to the entire movable and immovable properties of the said second branch." The sole question arising in this appeal is whether the deed dated September 4, 1900, effected a disruption of the _joint family or whether it made a division for convenience of enjoyment and maintenance only. In 1900, when this deed was executed, one or more members of a joint family governed by the Aliyasanthana law of inheritance had no right to claim a partition of the joint family properties, but by a family arrangement entered into with the consent of all its members, the properties could be divided and separately enjoyed. In such families, an arrangement for separate possession and enjoyment without actual disruption of the family was common. An arrangement for separate enjoyment did not effect a disruption of the

family, unless it completely extinguished the community of interest in the family properties. The character of the deed dated September 4, 1900. must be judged in this background. The respondent relies on several features of the deed as indicative of an out-right partition. The properties were divided into two shares. Each branch was to enjoy its share in perpetuity from generation to generation without any interference from the other branch. There would be separate mutations and separate pattas in respect of the properties allotted to each branch. The assessments were to be paid separately. Each branch would have I separate manager. The share of the common debt allotted to each branch and the interest thereon would be paid separately. All these features coupled with other circumstances may indicate a complete disruption of the family. See Sulaiman v. Biyathumma(1). But there are other features of the deed which indicate that it did not effect an out-right partition. The object of the deed was to prevent disputes and wastage of properties and to preserve the dignity of the family. In terms, the deed did not declare that there was a complete disruption of the family. In case of a partition, a Kutumba governed by the Aliyasanthana law is usually split up according to natural kavarus but under this deed, the Kutumba was split up into two artificial branches. The members of the two branches were restrained from incurring debts binding on the family properties and from alienating the properties or any portion thereof and granting any leases except in the ordinary course of management. These restrictions were obviously placed for the purpose of preserving the family properties intact for the benefit of both branches. The High Court said that as the deed effected an out-right partition, the conditions restraining alienations were void under Sec. 10 of the Transfer of Property Act. But the point in issue is whether the deed effected in out-right partition. The restrictions on alienation rather indicate that the parties did not intend to effect an. out-right partition, and they wanted a division for convenience of enjoyment on be. footing that neither branch had the right to alienate. If the family arrangement took effect as a division for convenience of' enjoyment only, and not as an out-right partition, the restrictions on alienations were not hit by Sec. 10 of the Transfer of Property On the nissanthathi, its properties would pass to the members of the other branch. This clause indicates that on one branch becoming extinct', the properties allotted to it would pass by survivorship of the other branch. Had there been an out-right partition, the sole surviving kavaru would be entitled to dispose- of her separate property by a will under the provisions of the Malabar Wills Act '898. The absence of such a right indicates that the deed did not effect a complete disruption of the joint family. On a consideration of the deed as a whole in all its parts, we are constrained hold that the deed on its true construction did not effect an ,tit-right partition of the joint family. We may add that in a compromise dated August 10, 1909 in O.S. No. 10 of 1909 to '(1) 32 M.L.J. 137 P.C. 9 Sup. C I/67 1 6 which the members of the second branch were parties, Damamma .solemnly admitted and declared that the deed was not a partition deed, but was a family arrangement for the convenient enjoyment of the properties by the members of the family so that 'the proper-ties may be increased and not wasted.

Counsel for the respondent contended that the deed should be deemed to have effected a partition of the joint family pro- perties under section 36(6) of the Madras Aliyasantana Act, 1949. This contention was repelled by the trial court and was not pressed in the High Court. Section 36(6) reads :

> "A registered family settlement (by whatever name called) or an award, to which all the major members of a kutumba are parties and under which the whole of the

> kutumba properties have been or were intended to be distributed, or purport to have been distributed, among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity, shall be deemed to be a partition of the kutumba properties notwithstanding any terms to the contrary in such settlement or award."

As was pointed out by Ramaswami J. in Kaveri v. Ganga Ratna(1), the following four conditions are the necessary prerequisites for the application of Sec. 36(6) :

> (1) there is a registered family settlement or award;
>
> (2) all the major members of the kutumba are par-
>
> ties to it;
>
> (3) the whole of the kutumba properties have been or were intended or purport to have been distributed under it; and (4) the distribution is among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity.

The onus is upon the respondent to prove that the deed dated, September 4, 1900, satisfies all these four conditions. The plea that the deed satisfies the conditions of S. 36(6), was not taken in the written statement, nor was any issue raised on the point. The materials on the record do not show that the. deed satisfies all the conditions of S. 36(6). The trial court found that though Damamma, a member of the kutumba, was a major on September 4, 1900, she did not execute the deed. The deed described her as a minor under the guardianship of Padmaraja. From the (1) [1956] I.M.L.J. 98, IC6.

93 7 materials on the record it is not possible to say definitely that the whole of the kutumba properties was distributed under the deed. Moreover, S. 36(6) can apply only if the distribution was "among all the kavarus of the kutumba". S. 3(b) defines kavaru. Used in relation to a female, it means the group of persons consisting of that female, her children and all her descendants in the female line, and used in relation to a male, it means the kavaru of the mother of that male. Having regard to the scheme of S. 36, we think that S. 36(6) applies to a family settlement under which the kutumba is split up according to kavarus as defined in S. 3

(b) and the kutumba properties are distributed among such kavarus. Section 36(6) cannot apply to the deed dated September 4, 1900, under which the kutumba was split up into two artificial groups, one consisting of the descendants of Sarasamma and Brahmi and some descendants of Nemakka, and the other consisting of Nemakka, the rest of her descendants and Sivadevi, and the properties were divided between these two artificial groups.

It follows that the deed dated September 4, 1900, on its true construction, did not effect an out-right partition nor can it be deemed to be a deed of partition under S. 36(6) of the Madras Aliyasantana Act, 1949.

In -the result, the appeal is allowed without costs, the judgment and decree passed by the High Court is sell aside, and the decree of the trial court is restored.

V.T.S. Appeal allowed.