D.S. Lakshmaiah & Anr vs L. Balasubramanyam & Anr on 27 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3800, 2003 AIR SCW 4347, 2003 AIR - KANT. H. C. R. 2429, (2003) 7 JT 493 (SC), 2003 (9) SRJ 363, (2003) 95 REVDEC 622, 2003 (5) SLT 116, (2004) 1 JCR 19 (SC), 2003 (10) SCC 310, 2003 (7) SCALE 1, 2003 (7) ACE 746, 2003 (3) BLJR 2405, (2003) 10 ALLINDCAS 95 (SC), (2004) 1 UC 82, (2003) 4 CURCC 34, (2003) 2 HINDULR 497, (2004) 1 LANDLR 172, (2004) 3 MAD LW 49, (2003) 4 PAT LJR 188, (2004) 1 PUN LR 658, (2004) 1 RAJ LW 31, (2003) 6 SUPREME 540, (2003) 4 RECCIVR 547, (2003) 4 ICC 586, (2003) 7 SCALE 1, (2003) 2 WLC(SC)CVL 570, (2003) 4 JLJR 208, (2003) 10 INDLD 724, (2003) 53 ALL LR 158, (2003) 3 BLJ 598, (2003) 2 CAL LJ 604, (2004) 2 CIVLJ 675

Author: B. N. Agrawal

Bench: B. N. Agrawal

CASE NO.:
Appeal (civil) 2089 of 2000

PETITIONER:
D.S. Lakshmaiah & Anr.

RESPONDENT:
Vs.

L. Balasubramanyam & Anr.

DATE OF JUDGMENT: 27/08/2003

BENCH:
Y.K. Sabharwal & B. N. Agrawal.

JUDGMENT:

J U D G M E N T Y.K. Sabharwal, J.

Appellant No.1 and respondent No.2 are husband and wife respectively. Respondent No.1 is their son. The second appellant purchased the property in question from the first appellant. The respondents in this appeal are original plaintiffs. They filed a suit for declaration of their 2/3rd

share, partition and possession thereof in respect of two properties described as Item No.1 and Item No.2. According to them, Schedule Item No.2 property came to appellant No.1 (original defendant No.1 in the suit) in partition between him and his brothers and it is an ancestral property. The Item No.1 property, according to the averments in the plaint, was acquired by plaintiffs and the first defendant out of joint Hindu family funds and the first defendant was trying to alienate the suit property for his self benefit and not for the benefit of the members of the family. When, during the pendency of the suit, it came to notice of the plaintiffs that Item No.1 property had been sold by the first appellant, on their application, appellant No.2 was impleded as defendant No.2 in the suit.

The trial court decreed the suit holding that the respondents are entitled to 2/3rd share in the properties as also possession thereof and also granting other consequential reliefs.

The first appellate court, however, allowed two separate appeals that had been filed by each of the appellant and the suit was ordered to be dismissed. It was held that the respondents have failed to prove that Item No.1 property was joint Hindu family property. The said property was held to be the self acquired property of the first appellant. It further held that respondent No.1 has failed to prove that any amount of income was available in the hands of the first appellant to purchase Item No.1 property noticing that except 15 guntas of land (Item No.2 property), there was no ancestral property with the first appellant and that the trial court was not correct in observing that it was for the first appellant to show that no nucleus of ancestral property was available with him to purchase Item No.1 property.

The judgment and decree of the first appellate court was challenged by the respondents before the High Court in a second appeal (Regular Second Appeal No.213/91). That appeal was filed by son and mother. On a memo filed by respondent No.1 who was first appellant before the High Court, his second appeal was dismissed and only the claim of his mother who prosecuted the second appeal was examined by the High Court. The High Court by the impugned judgment restored the judgment and decree of the trial court, setting aside that of the first appellate court. The High Court has held that Item No.2 property has been proved to be joint Hindu family property and the respondents have share in it. The finding in respect of Item No.2 property has not been challenged before us. Even otherwise, there is no ground to upset the said finding of fact. The only controversy that has been raised before us is in respect of Item No.1 property. The said property was purchased by the first appellant in the year 1970-71. It was sold by him in favour of the second appellant in the year 1987 after filing of the suit. The only question to be examined is whether Item No.1 property was self-acquired property of the first appellant or it was joint Hindu family property in which the respondents/plaintiffs had 2/3rd share. Answering this question in favour of the respondents, the High Court has held that the second appellant could only be entitled to purchase 1/3rd share from the first appellant who had no right to sell the remaining 2/3rd share in Item No.1 property The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self-acquired property of the first appellant. There was evidence and it has been established that Item No.2 measuring 15 guntas of land was joint Hindu family property but, admittedly, no evidence has been led that the said joint Hindu family property was yielding any income or that any nucleus was available with the aid whereof Item No.1 property could be purchased by the first appellant. Admittedly, no evidence has been led on behalf of the

respondents/plaintiffs to show income from Item No.2 property or value of the property. At the same time no evidence has also been led by the first appellant to prove that he had any separate income so as to acquire Item No.1 property. In absence of evidence either way which party would succeed and which fail, is the question. The legal position is well settled as we will presently notice.

In Appalaswami v. Suryanarayanamurti & Ors. [AIR 1947 PC 189], in a partition suit filed against their father by minor sons from the first marriage, the father claimed the properties in question were his self- acquired properties and denied that the plaintiffs had any right to seek partition. The High Court, reversing the judgment of the trial court, held that the view expressed by the trial court that only joint family property was that which the father took under partition Exhibit A was not correct and further held that whole of the property set out in Schedule to the written statement of the appellant/father, which had been acquired after partition Exhibit A was joint family property. The contention accepted by the High Court was that the share which the father took under Exhibit A formed the nucleus from which all his further acquisitions sprang. The plea of the father that was accepted by the Privy Council was that the whole of the property that came to him under Exhibit A was intact and unencumbered except a small portion sold which amount had been debited against household expenditure. The Privy Council held that the Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. In the case before the Privy Council, on facts, it was held that the burden had shifted to the father to prove self-acquisition of properties as it was established that the family possessed joint property which from its nature and relative value, may have formed the nucleus to acquire the property in question. Those properties were large in number and have been noticed in Privy Council decision. However, on further facts found, it was held that the father had discharged that burden. The properties were held to be self-acquired properties of the appellant.

In Srinivas Krishnarao Kango v. Narayan Devji Kango & Ors. [AIR 1954 SC 379], the contention that was urged on behalf of the appellant was that the burden was wrongly cast on the plaintiff of proving that the acquisition of the properties were made with the aid of joint family funds, the argument being that as the family admittedly possessed the ancestral Watan lands of the extent of 56 acres, it must be presumed that the acquisitions were made with the aid of joint family funds and, therefore, the burden lay on the defendants who claimed that they were self-acquired acquisitions to establish that they were made without the aid of joint family funds and that the evidence adduced by them fell far short of it and that the presumption in favour of the plaintiff stood unrebutted. It was noticed by this Court that on the question of the nucleus, the only properties which were proved to belong to the joint family were the Watan lands of the extent of about 56 acres bearing an annual assessment of Rs.49/-. There was no satisfactory evidence about the income which these lands were yielding at the material time. Under these circumstances, noticing with approval the aforesaid Privy Council decision, it was held that whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him to establish that there was adequate nucleus out of which the

acquisition could have made is one of fact depending on the nature and extent of the nucleus. The important thing to consider is the income which the nucleus yields. A building in the occupation of the members of a family and yielding no income could not be a nucleus out of which acquisitions could be made, even though it might be of considerable value. On the other hand, a running business in which the capital invested is comparatively small might conceivably produce substantial income which may well form the foundation of the subsequent acquisitions. In Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh [(1969) 1 SCC 386], noticing the observations of Sir John Beaumont in Appalaswami's case (supra), it was reiterated that the burden of proving that any particular property is joint family property in the first instance is upon the person who claims it to be so. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is, however, subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. We are unable to accept the contention of learned counsel for the respondents that the aforesaid later observations have been made without reasons or that the Privy Council's decision does not hold so. The observation that only after possession of adequate nucleus is shown that the onus shifts also get support from Srinivas Krishnarao Kango's case (supra) where, while considering the question of shifting of burden, it has been held that the important thing to consider is the income which the nucleus yields. In Baikuntha Nath Paramanik (dead) by His L.Rs. & Heirs v. Sashi Bhusan Pramanik (dead) by his L.Rs. & Ors. [(1973) 2 SCC 334], this Court again held that when a joint family is found to be in possession of nucleus sufficient to make the impugned acquisitions then a presumption arises that the acquisitions standing in the names of the person who were in the management of the family properties are family acquisitions.

In Surendra Kumar v. Phoolchand (dead) through LRs & Anr. [(1996) 2 SCC 491], this Court held that where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family funds.

We may now refer to three decisions whereupon reliance has been placed by learned counsel for the respondents. In Mallesappa Bandeppa Desai & Anr. V. Desai Mallappa alias Mallesappa & Anr. [AIR 1961 SC 1268], this Court held that where a manager claims that any immovable property has been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund. The onus of proof in such a case has to be placed on the manager and not on his coparceners. It is difficult to comprehend how this decision lends any support to the contention of the respondents that in absence of leading any evidence, the claim of appellant No.1 of the property being self-acquired has to fail. In the cited decision, the manager was found to be in possession and in charge of joint family funds and, therefore, it was for him to prove that despite it he purchased the property from his separate funds. In the present case,

admittedly, no evidence has been led by the respondents that the first appellant was in possession of any such joint family funds or as to value or income, if any, of Item No.2 property. In Achuthan Nair v. Chinnammu Amma & Ors. [AIR 1966 SC 411], it was noticed that there were number of properties owned by joint family which were received at the time of separation under a decree passed in a partition suit. The claim of the defendants in the written statement was that the property in question had been purchased from the private funds of defendant No.1 and her son defendant No.4. In this decision too, it was reiterated that when it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. After noticing this settled propositions, it was observed that if a property is acquired in the name of a karanvan, there is a strong presumption that it is a tarwad (joint Hindu family) property and the presumption must hold good unless and until it is rebutted by acceptable evidence. This Court did not hold that if a property is acquired in the name of karta, the law as to presumption or shifting of onus would be different. The question of presumption would depend upon the facts established in each case. In the present case, no evidence of nucleus having been led, onus remained on the respondents and, therefore, there could be no question of presumption about the property being joint family property. The last decision relied upon is Malappa Girimallappa Betgeri & Ors. v. R. Yellappagouda Patil & Ors. [AIR 1959 SC 906]. It cites with approval the earlier decision in the case of Srinivas Krishnarao Kango (supra). On facts, it was noticed that the courts below had held that the property provided a sufficient nucleus of joint family property out of which the properties in question might have been acquired and the sufficiency of nucleus is again a question of fact. In view of those circumstances, there was presumption of the properties being properties of joint family and the said presumption had not been displaced.

In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item No.2 property and no other nucleus was claimed, the burden remained on the respondents to establish that Item No.1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item No.1 to be joint family property would fail as rightly held by the first appellate court.

The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

Another contention urged for the respondents was that assuming Item No.1 property to be self-acquired property of appellant No.1, he blended the said property with the joint family property and, therefore, it has become the joint family property. Assuming the respondents can be permitted

to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self- acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation {see Lakkireddi Chinna Venkata Reddy v. Lakkireddi Lakshamama [1964 (2) SCR 172] and K.V. Narayanan v. K.V. Ranganadhan & Ors. [(1977) 1 SCC 244]}.

In the present case, respondents have not led any evidence on the aforesaid aspects and, therefore, it cannot be held that the first appellant blended Item No.1 property into the joint family account. In view of aforesaid discussion, Item No.1 property cannot be held to be joint family property. The impugned judgment of the High Court is, therefore, set aside and the appeal allowed and the judgment and decree of the first appellate court is restored. In the circumstances of the case, parties are left to bear their own costs.