Mallesappa Bandeppa Desai And Others vs Desai Mallappa And Others on 9 February, 1961

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Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
MALLESAPPA BANDEPPA DESAI AND OTHERS

Vs.

RESPONDENT:
DESAI MALLAPPA AND OTHERS.

DATE OF JUDGMENT:
09/02/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1961 AIR 1268 1961 SCR (3) 779
CITATOR INFO :
R 1970 SC1722 (6)
RF 1977 SC2230 (16)

ACT:
Hindu Law--Doctrine of blending--If applies to property held by female in limited right.

HEADNOTE:
The rule of blending in Hindu Law as evolved by judicial decisions can have no application to a property held by a Hindu female as a limited owner. That rule postulates a coparcener deliberately and intentionally throwing his independently acquired property into the joint family stock so as to form a part of it.

Although it is unnecessary now to investigate whether there is any other text on which that rule could be founded, it is quite clear that the text of Yagnavalkya in a different context and the commentary thereupon by Vijnyaneshwara, relied on by the Privy Council in this connection, can have no relation to the said rule.
Shiba Prasad Singh v. Rani Prayag Kumari Debi (1932) L.R. 59 I.A. 331, disapproved.
Rajanikanta Pal v. Jaga Mohan Pal (1923) L.R. 50 I.A. 173, relied on.
Consequently, where in a partition suit certain immovable properties acquired by a Hindu female from her father as a limited owner were claimed to form part of the joint family property of her husband by virtue of the said rule:
Held, that the claim must fail.
Held, further, that a Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint family property of her husband.
Before the said rule can be invoked, it must be shown that the owner wanted to extinguish his title to the property in question and impress upon it the character of joint family property.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 263 of 1956. Appeal from the judgment and decree dated January 6, 1953, of the Madras High Court in A. S. Appeal No. 7 of 1949. M. C. Setalvad, Attorney-General of India and Naunit Lal, for the appellants.

A....V. Vimanatha Sastri and B. K. B.Naidu, for respondent No. 1.

M. B. K. Pillai, for respondent No. 2.

1961. February 9. The Judgment of the Court was delivered by GAJENDRAGADKAR,J.-This appeal has been brought to this Court with a certificate granted by the Madras High Court and it arises from a suit filed by the appellants Mallesappa and Chenna Basappa against their uncle Mallappa, respondent 1 and granduncle Honnappa, respondent 2, for partition. According to the plaint, the family of the appellants and respondent 1 was an undivided Hindu family until the date of the suit, and respondent 1 was its manager. The ancestor of the family was Desai Mallappa. He had three sons, Kari Ramappa who died in 1933, Virupakshappa who died long ago and Honnappa, respondent 2. Kari Ramappa had four sons Guru- shantappa (died 1913), Bandappa (died 1931), Mallappa (respondent 1) and Veerabhadrappa (died 1927). Gurushantappa married Parvathamma; the two appellants are the sons of Bandappa, their mother being Neelamma. They were born in 1926 and 1929 respectively. Their case was that respondent 1 who has been the manager of the family for many years has been trying to deprive them of their legitimate share in the property and refused their request for partition, and so they had to file the present suit. According to them, in the

property of the family they and respondent 1 were entitled to half share each. To the plaint were attached the schedules describing the several items of property. Schedule A consisted of items 1 to 163 which included houses and lands at Jonnagiri. Schedule B described the movables while Schedule C included items 1 to 35 all of which had been acquired by the family under a document Ex. B-32. It is in respect of all these properties that the appellants claimed their half share and asked for a partition in that behalf.

This claim was resisted by respondent 1 principally on the ground that in 1929 Ramappa, the father of respondent 1 and the grandfather of the appellants had effected a partition of the joint family properties between respondent 1 and his elder brother Bandappa who is the appellants' father. That is how, according to respondent 1, the appellants' claim for partition was untenable. In this way he pleaded separate title to all the properties in suit. On these pleadings the learned District Judge, who tried the suit, framed eight issues; two of these related to the question regarding the status of the family. He found that the plea of partition made by respondent 1 was not proved, and accordingly he declared that the appellants were entitled to half share in the properties of the family and passed a preliminary decree for partition. According to the learned judge, the appellants were entitled to their half share in the items of property described in Schedule A excluding items 63, 64, 65, 86 and 151 and items in paragraph 14(d) of the written statement of respondent 1 as well as items of property described in Schedules B and C. This decree was passed on November 22, 1948. The said decree was challenged by respondent 1 by his appeal before the Madras High Court. He urged that the trial court's finding as to the status of the family was erroneous, and he pleaded that in any case the appellants were not entitled to any share in the properties at Jonnagiri, items 4 to 61, as well as the properties acquired under Ex. B-32. The first argument was rejected by the High Court, but the second was upheld. In the result the decree passed by the trial court was confirmed except in regard to the said two categories of properties. It is this appellate decree which is challenged before us by the learned Attorney-General on behalf of the appellants. In order to appreciate the contentions raised before us it would be necessary to recapitulate briefly the findings concurrently recorded by the courts below in respect of the plea of partition set up by respondent 1. These findings afford a background in the light of which the pleas raised before us would have to be considered. It appears that respondent 1 relied on several documents in support of his plea that there was a partition effected by Ramappa in 1929. The trial court repelled this argument and observed that from 1937 respondent began to do mischief. The transfer of patta in 1937 on which respondent 1 relied was entirely his work and the appellants' mother Neelamma had not been consulted and had given no consent to it. In the opinion of the trial court respondent 1 through his agents whom he examined as witnesses in the suit (D. Ws. 2 and 14) managed the family lands, arranged to pay cist for them and manipulated entries in the revenue record purporting to show that Neelamma had paid the said cist as pattadar. Neelamma was an illiterate and Gosha woman and it appeared that a certain amount of coercion had been practised on her as well as deception in persuading her to execute the original of Ex. B-10 which contained the recital that the house there described had fallen to the share of Neelamma's husband at a prior partition. The trial court was satisfied that the said recital had been fraudulently made and the 'document had not been read to Neelamma at all. The demeanour of respondent 1 in the witness box was also criticised by the trial judge when he observed that he did not impress the trial judge as a truthful witness, and in his opinion he was a powerful and influential man in the village who was able to do a number of things

as he wished and so it was not surprising that he was able to get a number of witnesses to speak to separate enjoyment of a few items of land by the appellants' mother.

When the question of status of the family was reagitated before the High Court it felt no hesitation in confirming the conclusions of the trial court in regard to the general conduct of respondent 1, the documents brought into existence by him, and the unfair manner in which he had dealt with the appellants' mother. For the reasons set out by the High Court in its judgment " and also for the various reasons put forward by the learned District Judge in his exhaustive judgment " the High Court agreed with the learned judge that the alleged partition of 1929 had not been proved. Thus the dispute between the parties has to be considered on the basis that until the date of the institution of the suit the family was an undivided Hindu family with respondent I as its manager.

The first point which has been raised before us by the learned Attorney-General relates to items 4 to 61 at Jonnagiri. These properties originally belonged to Karnam Channappa. He died in 1904, and in due' course the said property devolved upon his widow Bassamma who died in 1920. Bassamma left behind her three daughters Channamma, Nagamma and Veeramma. Channamma married Ramappa, and as we have already indicated the couple had four sons including the appellants father Bandappa and the first respondent Mallappa. It is common ground that the properties at Jonnagiri had been obtained by Channamma by succession from her father and were held by her as a limited owner. The appellants' case was that after Channamma obtained these properties by ,succession she allowed the said properties to be thrown into the common stock of other properties belonging to her husband's family, and so by virtue of blending her properties acquired the character of the properties belonging to her husband's family; in other words, the appellants' claim in respect of this property is based on the principle of blending or throwing into the com- mon stock which is recognised by Hindu law. The trial court relied on some transactions adduced by the appellants and upheld the plea that Channamma's properties had become joint family properties in which the appellants had a half share. The High Court has reversed this finding, and it has held that the transactions on which the appellants relied do not prove blending as known to Hindu law. That is why the appellants' claim to these properties has been rejected by the High Court.

Before considering the appellants' case in regard to ,/these properties it is necessary to enquire whether the doctrine of blending can be invoked in such a case. Is this doctrine based on any Sanskrit Text of Hindu Law? According to the decision of the Privy Council in Shiba Prasad Singh v. Rani Prayag Kumari Debi (1).

(1) (1932) L.R. 59 I.A. 331.

this doctrine is based on the text of Yagnavalkya and the commentary of Mitakshara; the text of Yagnavalkya reads thus: " In cases where the common stock undergoes an increase, an equal division is obtained " (1). In his commentary on this text Vijnyaneshwara has observed as follows: " Among unseparated brothers, if the common stock be improved or augmented by any one of them through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer " (2). Sir Dinshah Mulla, who delivered the judgment of the Privy Council in the case of Shiba Prasad Singh (3) has observed that the words of Yagnavalkya

mean that " if a member of a joint family augments joint property, whatever may be the mode of augmentation, the property which goes to augment the joint family property becomes part of the joint family property, and he is entitled on a partition to an equal share with the other members of the family, and not to a double share, as in some other cases dealt with in the preceding verses. This is the placitum on which the whole doctrine of merger of estates by the blending of income is founded " (p. 349). It would thus be seen that according to this decision the doctrine of blending or throwing into the common stock is based on the text just quoted.

With very great respect, however, the text of Yagnavalkya and the comments made by Vijnyaneshwara on it do not appear to have any relation to the doctrine of blending as it has been judicially evolved. The context of the discussion both in the text of Yagnavalkya and in the commentary clearly shows that what is being discussed is the acquisition of property by a coparcener with the use of the family stock; in other words, taking the benefit of the family stock and making its use if a coparcener through trade, agriculture or any other means augments the initial or original family stock, the augmentation thus made is treated as forming part of the original stock and an accretion to it, and in this augmentation the acquirer is not given any extra share for his special exertions.

(1) Ch. 1, sect. 4, 30.

(2) Mitakshara, ch. 1. sect. 4, Pl. 31.

(3) (1932) L.R. 59 I.A. 331.

This position is clarified by the comments made by Sulapani. Says Sulapani: " that an equal division is here specifically ordained; for in a partnership with a common stock, the difference in the gains of each individual member is not to be taken into account at the time of partition. "

Vijnyaneshwara observes that this text is intended to be an exception to the text of Vasishtha which allows two shares to the acquirer and which is cited in the Mayukha (1). It would thus be clear that the relevant text and the commentary are not dealing with a case where the separate property of a coparcener independently acquired by him is thrown into the common stock with the deliberate intention of extinguishing its separate character and impressing upon it the character of the joint family property. The subject- matter of the discussion is addition to the common stock made by the efforts of a coparcener with the assistance of the common stock itself. Therefore, in our opinion, the said text cannot be treated as the basis for the doctrine of blending as it has been judicially evolved. It is, we think, unnecessary to investigate whether any other text can be treated as the foundation of the said doctrine since the said doctrine has been recognised in several decisions and has now become a part of Hindu law. In Rajani Kanta Pal v. Jaga Mohan Pal (2) the Privy Council held that " Where a member of a joint Hindu family blends his self-acquired property with property of the joint family, either by bringing his self-acquired property into a joint family account, or by bringing joint family property into his separate account, the

effect is that all the property so blended becomes a joint family property."

The question which falls for our decision is: Does this principle apply in regard to a property held by a Hindu female as a limited owner? In our opinion, it, is difficult to answer this question in favour of the; appellants. The rule of blending postulates that a;, coparcener who is interested in the coparcenary property and who owns separate property of his own may, (1) The Vyavahara Mayukha, Pt. 1, by Vishvanath Narayan Mandlik, 215.

(2)(1923) L.R. 50 I.A. 173.

by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate ; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine therefore inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and coparcenary property as well as the existence of the separate property of a coparcener. How this doctrine can be applied to the case of a Hindu female who has acquired immovable property from her father as a limited owner it is difficult to understand. Such a Hindu female is not a coparcener and as such has no interest in coparcenary property. She holds the property as a limited owner, and on her death the property has to devolve on the next reversioner. Under Hindu law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras, or a Hindu widow succeeding to her husband's estate, to efface herself and accelerate the reversion by surrender; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owners' title to the property held, by her. This aspect of the matter has apparently not been argued before the courts below and has not been considered by them. Thus, if the doctrine of blending cannot be invoked in regard to the property held by Channamma, the appellants' claim in respect of the said property can and must be rejected on this preliminary ground alone. However, we will briefly indicate the nature of the evidence on which the plea of blending was sought to be supported. It appears that in 1921 a deed of maintenance was executed in favour of Gurushantappa's widow Parvathamma by the three surviving brothers of Gurushantappa. This deed was attested by their father Kari Ramappa. It is clear that this deed includes some of the lands which Channamma had acquired by succession to her father (Ex. A-10). Subsequently, on July 5, 1923, some additional

properties belonging to Channamma were charged to the said maintenance (Ex. A-11). It also appears that pattas in respect of the same lands belonging to Channamma were obtained in the names of the members of the family; and consequently, the said pattas were shown in the relevant revenue papers. Broadly stated, that is the nature of the evidence on which the plea of blending rests. It is obvious that even if the doctrine of blending were applicable it would be impossible to hold that the transactions on which it is sought to be supported can lead to the inference that Channamma did any act from which her deliberate intention to give up her title over the properties in favour of the members of her husband's family can be inferred. It is not difficult to imagine Channamma's position in the family. If her husband and her sons dealt with her property as they thought fit to do Channamma may not know about it, and even if she knew about it, may not think it necessary to object because she would not be averse to giving some income from her property to her sons or to her widowed daughter-in-law. As we have already pointed out, the conduct of the owner on which the plea of merger can be invoked must be clear and unequivocal, and the evidence about it must be of such a strong character as to justify an inference that the owner wanted to extinguish his title over the property and impress upon it the character of the joint family property. Besides, as we will later point out, Channamma executed a deed of surrender in 1938 and the said document is wholly inconsistent with the plea that she intended to give up her title to the property in favour of her husband's joint family. However, this discussion is purely academic since we have already held that the principle of blending cannot be invoked in respect of the limited estate held by Channamma. Therefore, we must hold that the High Court was right in rejecting the appellants' claim in respect of the properties in Jonnagiri.

That takes us to the properties in Schedule C in respect of which the trial court had decreed the appellants' claim and the High Court has rejected it. This property has been obtained by respondent 1 as a result of the decree passed in O. S. No. 5 of 1940. The property originally belonged to Virupakshappa, and in O. S. No. 5 of 1940 respondents 2 and 1 claimed a declaration against the two widows of Virupakshappa, their daughter and certain alienees. The declaration claimed was that the wills of Virupakshappa therein specified were invalid and inoperative and that the respondents had reversionery right to Virupakshappa's estate after the lifetime of his widows and daughter. A further declaration was also claimed that alienations and gifts specified in the plaint were invalid beyond the lifetime of the widows and the daughter of Virupakshapna. This suit ended in a compromise decree, and it is common ground that the properties in Schedule C came to the share of respondent 1 by this compromise decree. The question which has been argued before us in respect of these properties is whether or not the appellants are entitled to a share in these properties. The appellants contend that respondent 1 had joined respondent 2 in the said suit as representing their undivided family and the properties acquired by him under the compromise decree passed in the said suit has been allotted to him as representing the whole of the family. On the other hand, respondent 1 contends that he joined respondent 2 in his individual character and the decree must inure for his individual benefit.

It is clear that at the time when the said suit was filed respondent 2 was a presumptive reversioner and not respondent 1 ; but it appears that respondent 2 wanted the help of respondent 1 to fight the litigation, and both of them joined in bringing the said suit. It is common ground that respondent 2 asked Neelamma whether she would like to join the litigation. Respondent 2 has stated in his

evidence that Neelamma was not willing to join the said litigation and respondent 1 has supported this version. The High Court thought that the evidence of Neelamma was also consistent with the story set up by respondent 1. That is one of the main reasons why the High Court held that the decree passed in the said suit did not enure for the benefit of the family. In assuming that Neelamma supported the version of respondent 1 the High Court has obviously misread her evidence. This is what Neelamma has stated in her evidence: " Defendants 1 and 2 came to me at the time of filing their suit and said that the expenses are likely to be heavy and that minors' properties would not be wasted. 1 said 1 had no objection and gave my consent." The High Court has read her evidence to mean that she was not prepared to waste the properties of her minor sons and so she refused to join the adventure, and in doing so it thought that the statement of respondent 2 was that the minors' properties should not be wasted, whereas according to the witness the said statement was that the minors' properties "would" not be wasted. It would be noticed that it makes substantial difference whether the words used were " would not " or "

should not."

We have no doubt that on the evidence as it stands the inference is wholly unjustified that Neelamma refused to join respondents 1 and 2. Besides, as we have already pointed out, the evidence of respondents 1 and 2 have been disbelieved by both the courts, and in fact the conduct of respondent 1 whereby he wanted to defeat the claims of his nephews has been very strongly criticized by both the courts. Therefore, we feel no hesitation in holding that the trial court was right in coming to the conclusion that respondents 1 and 2 consulted Neelamma and with her consent the suit was filed and was intended to be fought by the two respondents not for themselves individually but with the knowledge that respondent 1 represented the undivided family of which he was the manager. If that be so, then it must follow that the decree which was passed in favour of respondent 1 was not for his personal benefit but for the benefit of the whole family.

In this connection it is necessary to bear in mind that respondent 1 has not shown by any reliable evidence that the expenses for the said litigation were borne by him out of his pocket. It is true that both the courts have found that respondent 1 purchased certain properties for Rs. 600/- in 1925 (Ex. B-4). We do not know what the income of the said properties was; obviously it could not be of any significant order; but, in our opinion, there is no doubt 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 must in such a case be placed on the manager and not on his coparceners. But,, apart from the question of onus, the evidence given by respondent 1 in this case has been disbelieved, and in the absence of any satisfactory material to show that respondent 1 had any means of his own it would be idle to contend that the expenses incurred for the litigation in question were not borne by the joint family income. Therefore, apart from the fact that Neelamma was consulted and agreed to join the adventure on behalf of her sons, it is clear that the expenses for the litigation were borne by the whole family from its own joint funds. This fact also shows that the property acquired by respondent 1 under the compromise decree was acquired by him as representing the family of which be was the manager. The result is that the view taken by the High Court in respect of the properties in Schedule

C must be reversed and that of the trial court restored.

That leaves a minor point about three items of property, Serial Nos. 63, 64 and 65, in Schedule A. These items of property form part of Jonnagiri property, and we have already held that the appellants cannot make any claim to the whole of this property. It appears that though the trial judge passed a decree in favour of the appellants in respect of Serial Nos. 4 to 61 in Schedule A, he did not recognise the appellants' share in the three serial numbers in question because he held that they were not part of the joint family property but belonged exclusively to respondent

1. It also appears that these properties originally belonged to the joint family of the parties but they were sold by Kari Ramappa and his two brothers to Channappa as long ago as 1898. That is how they formed part of Channappa's estate. Both the courts have found that the sale deed in question was a real and genuine transaction, and they have rejected the appellants' case to the contrary. Respondent 1 claims these items under a deed of surrender executed in his favour by Channamma (Ex. B. 3) on December 5, 1938. This document is accepted as genuine by both the courts and it is not disputed that the surrender effected by it is valid under Hindu law. Indeed this document is wholly inconsistent with the appellants' case that Channamma wanted to convert her separate properties into properties of the joint family of her husband. Therefore, there is no substance in the appellants' argument that they should be given a share in these three items of property.

The result is the appeal is partly allowed and the decree passed by the High Court is modified by giving the appellants their half share in the properties described in Schedule C. The rest of the decree passed by the High Court is confirmed. In the circumstances of this case the parties should bear their own costs.' Appeal allowed in part.
