Madras High Court
Chelimi Chetty And Ors. vs Subbanna on 29 August, 1917
Equivalent citations: 42 Ind Cas 860
Bench: A Rahim, Oldfield
JUDGMENT

1. This matter arises in connection with a suit instituted on behalf of a minor member of a joint Hindu family for partition. The minor plaintiff died after the institution of the suit but before the written statement was filed. The respondent before us, who is the mother of the plaintiff, applied to the First Court to be brought on record and for permission to continue the suit as legal representative of the deceased plaintiff. That Court held that no cause of action survived and refused the application of the respondent. On appeal, however, the District Judge set aside the order of the First Court, holding that the respondent was entitled to continue the suit as legal representative of the plaintiff. The contention before us on behalf of the defendants in the suit is that when the minor died, whatever rights he had in the family property survived-to the other members of the family as there was no partition. A rather interesting question was discussed before us as to whether an appeal lay to the District Judge from the order of the Court of the First Instance, but the learned Vakil for the respondent did not mean to persist in the objection as to whether the proper remedy for the defendants in this Court was by way of second appeal or by way of moving us in revision. We need not, therefore, decide any such question.

2. On the merits the question that requires our decision is whether by the filing of the plaint severance was effected of the joint status of the family. This is an important point, but there is no authority expressly dealing with it.

3. It is now settled law, especially after the recent Privy Council decision in Girja Bai v. Sadashiv. Dhundiraj 37 Ind. Cas 321: 43 C. 1031: 20 C. W. N. 1085: 14 A. L. J. 822: 20 M. L. T. 78: 12 N. L. R. 113: (1916) 2 M. W. N. 65: 18 Bom h. R. 62: 4 L. W. 114: 24 C. L. J. 207: 31 M. L. J. 455: 43 I. A. 151 (P.C). and the Full Bench decision of this Court in sundararajam. v. Arun chelam, Chetty 33 Ind. Cas. 858: 30 M. 136 & 159: 29 M. L. J. 703, & 816: 2 L. W. 1247 A 1266: 18 M. h. T. 552 & 568 (1916) 1 M. W. N. 31, that it is open to a member of a joint Hindu family to effect a division of his status by a clear and unequivocal expression of his intention without the necessity of any concurrence on the part of the other co-parceners. The last case laid down that the filing of the plaint is such an unambiguous manifestation of intention within the meaning of the ruling of the Privy Council. It is curious, as has been pointed to us by the learned Vakil for the respondent, that in the Full Bench case the plaintiff who instituted the suit was a minor. Apparently, however, no question such as this was raised before the Full Bench for decision. There can be no doubt that what the Privy Council decided and what the Courts have followed is that it depends upon the discretion of a member of a joint Hindu family whether he is to continue the joint status or whether there should be a separation. That prima facie implies that the member who exercises such discretion must be of an age capable of exercising discretion in law. That will not be the case with a minor at least if he is of an age when discretion cannot be imputed to him. In the case of a suit instituted on behalf of a minor member of a Hindu family for partition, it has been laid down that it depends upon the discretion of the Court whether to make a decree for partition or not, that is to say, the Court has to

consider in such cases whether a decree for partition would be for the benefit of the minor. If it is satisfied that it is not for the benefit of the minor to give a decree for partition, the Court will dismiss the suit. This is laid down by the Privy Council in Bachoo Hurkisondas v. Mankorebai 31 B. 373: 11 C. W. N. 769: 6 C. L. J. 1: 9 Bom. L. R. 646: 17 M. b. J. 343: 2 M. L. T. 295: 34 I. A. 107., approving the decision of the Bombay High Court on this point. This has also been the law in this Presidency as stated in Kamakshi Ammal v. Chidambara Reddi 3 M. H. C. R. 94. and that position has not been contested before us. If it is left to the discretion of the Court to say in a suit instituted on behalf of a minor whether there should be a division of the family or not, it seems to us prima facie to follow that the matter does not depend on the choice or option of any person who chooses to act on behalf of a minor member of a Hindu family. Any person is at liberty to institute a suit on behalf of a minor as the next friend, and it was forcibly urged upon us by Mr. A. Krishnaswami Aiyar that it would lead to great hardship and inconvenience if it were left to the discretion of any person who chooses to file a suit on behalf of a minor to decide whether the family of which the minor is a member shall continue joint or become separate. The institution of a suit, so far as it expresses the intention of a member of the family to divide, depends on principle on the same basis as any other expression of intention of a competent member of the family. If we are to hold that the filing of a plaint on behalf of a minor ipso facto constitutes a severance of the family status, then logically one would be driven to hold also that a notice given by such a person on behalf of the minor to the other members of the family of the intention to divide would also effect a severance of the joint status. This seems to us to be a position which we would not like to uphold without authority, and no authority has been cited to us in support of it. It was strongly argued by the learned Pleader for the respondent that as the plaint states facts and circumstances which, if proved, would be good justification for the Court decreeing partition, therefore, at this stage we must proceed on the basis that there was a good cause of action and there was thus a severance of status effected by the institution of the suit. This clearly does not amount to anything more than this, that it is open to a person who chooses to act on behalf of a minor member of a Hindu family to exercise the discretion on his behalf to effect a severance. What causes the severance of a joint Hindu family is not the existence of certain facts which would justify any member to ask for partition, but it is the exercise of the option which the law lodges in a member of a joint family to say whether he shall continue to remain joint or whether he shall ask for a division, in the case of an adult, he has not got to give any reasons why he asks for partition but he has simply to say that he wants partition, and the Court is bound to give him a decision. In the case of a minor the law gives the Court the power to say whether there should be a division or not, and we think that it will lead to considerable complications and difficulties if we are to say that other persons also have got the discretion to create a division in the family purporting to act on behalf of a minor. It is urged that there might be oases in which it would be desirable that partition should be effected in the best interests of the minor and as soon as possible. In such cases those who are interested on behalf of the minor are entitled to institute a suit, but having regard to the decisions in Bachoo Harkison-das v. Mankorebai 31 B. 373: 11 C. W. N. 769: 6 C. L. J. 1: 9 Bom. L. R. 646: 17 M. b. J. 343: 2 M. L. T. 295: 34 I. A. 107. and Kamakshi Ammal v. Chidambara Reddi 3 M. H. C. R. 94., it must be left to the Court to decide whether there should be a partition or not.

4. We treat this civil revision petition as a second appeal and set aside the order of the District Judge with costs here and in the Court below. The respondent's petition will stand, dismissed. This decree will not be drawn up until the learned Pleader for the appellants pays Court-fee within a week.