Supreme Court of India
Maturi Pullaiah And Anr. vs Maturi Narasimham And Ors. on 1 March, 1966
Equivalent citations: AIR 1966 SC 1836
Author: K S Rao
Bench: K S Rao, V Ramaswami
JUDGMENT K. Subba Rao, J.

1. This appeal mainly raises the question of the factum and validity of a family arrangement alleged to have been effected between the members of a joint Hindu family. The following genealogy will be useful to appreciate the contentions of the parties:

MATURI PEDA VENKAIAH (d. 1928)
_____|_____
| | | Venkatramaiah (d. 16-1-52) Narasimha (R-I) Saramma _____ | | | Rama Rao (D-2) Serveswara Venkateswara Rao (D 3) Rao (D-4) _____ | | by 1st wife by 2nd wife Nagamma Venkatanarasamma (D-5) ____|_____ | | | | Satvavati Pullaiah | (d. 9-8-36) |
_____|_____
| | | | | Venkateswara Pullaiah Nagaratnam Swarajalakshmi Venkamma Rao d 12-12-33 (P ltf.) Peda Venkaiah, Venkateswara Rao, Pulliah the son of Venkatramaiah by his first wife, and Venkatramaiah died in 1928, 1933, 1936 and 1952 respectively. Peda Venkiah had no ancestral property: all his properties were his self-acquisitions. His eldest son, Venkatramaiah, was not an intelligent man, though he was good enough to look after the cultivation of the lands. His younger son, Narasimha, was an abled man in whom the father had confidence and though, he was the younger son, he was helping his father in the management of the family affairs and indeed even during his father's lifetime many properties were purchased in his name. After the death of the father, Narasimha was in charge of the management of the money-lending business and the business at Eluru and was also looking after the Court affairs. During the course of his management large extent of properties were purchased in his name. After the death of Venkatramaiah in 1952, disputes arose between Narasimha and Venkatramaiah's son, Pullaiah, which led to the filing of O. S. No. 69 of 1952 by Pullaiah in the Court of the District Judge, Eluru, against Narasimha and his sons and others for partition of the joint family property by metes and bounds. He impleaded Narasimha and his sons as defendants 1 to 4 and his mother, as defendant 5. The other defendants were persons who had joint interest in some of the family properties.

2. The suit came up before the Subordinate Judge, Eluru, and it was renumbered as O. S. No. 86 of 1954. Defendants 1 to 4 mainly contested the suit on the ground that under the family arrangement the 1st defendant was given three shares in the joint family properties and Venkatramaiah was given two shares therein and that all the properties standing in the name of the 1st defendant were his

self-acquisitions.

3. The learned Subordinate Judge, on a consideration of the entire oral and documentary evidence, held that the properties standing in the name of the 1st defendant were also joint family properties and that Ex. B-1, dated November 4, 1939, embodied a family arrangement effected between Venkatramaiah and Narasimha whereunder the 1st defendant's branch would be entitled to 3 shares and the branch of Venkatramaiah would be entitled to 2 shares in all the joint family properties and that the said family arrangement was valid and binding on the plaintiff. In the result he gave a decree to the plaintiff for two-fifths of the joint family properties. It is not necessary to notice the other findings given by the learned Subordinate Judge, as nothing turns upon them in this appeal.

4. On appeal, a Division Bench of the Andhra Pradesh High Court confirmed the view of the learned Subordinate Judge both on the factum and the validity of the family arrangement. Hence the present appeal.

5. Mr. A.K. Sen, learned Counsel for the appellants, contended that while in the written-statement the 1st defendant pleaded a family arrangement alleged to have been entered into between him and the plaintiff's (1st appellant herein) guardian, after the death of Venkatramaiah both the Courts went wrong in holding that there was a family arrangement between Venkatramaiah and Narasimha in 1939 on the basis of Ex. B-1. He further contended that Ex. B-1 could not in law sustain the family arrangement as there were no conflicting claims between the parties which could have been resolved by a family arrangement.

6. The first contention turns upon the pleadings and the issues framed thereon. In paragraphs 4,5,6 and 7 of the written-statement, the 1st, defendant stated how his father before his death gave directions that when the family properties were divided between him and Venkatramaiah such additional property as might be fixed by their mother should be given to him, how after his father's death Venkatramaiah requested him to manage the family properties as he was doing before and promised that he would give him such extra property, how in 1927, when he fell ill, he insisted upon a ?? and for giving him his extra ?? Venkatramaiah again requested him as to disrupt the family but to continue ?? management as before on the promise that when the partition was effected his branch would take only 2 shares and the 1st defendant's branch would take 3 shares of the joint family properties, how there-after he continued to manage the properties as he was doing before and improved them, how in 1931 Venkatramaiah asked him to be joint at least for 6 more years and to have the aforesaid shares in the properties when they entered into a partition thereafter and how in 1939 the said arrangement to divide the properties in the said shares was embodied in a document. After the said recitals, in paragraph 9, he proceeded to state:

It is also on the basis of this agreement, which is also a family arrangement that the 1st defendant continued to work as before and improved the family property. But for this family arrangement, he would have got the family properties divided long ago and would have claimed the property acquired by him in his own name as his self-acquisition. It is because of this family arrangement and agreement that the 1st defendant continued to be joint and work hard and agreed that the property acquired by him might be divided at the partition.

In addition to the said family arrangement, he pleaded another family arrangement after the death of Venkatramaiah between himself and the plaintiff represented by his mother as guardian. That arrangement is stated in Para. 13 of the written-statement. After stating all the necessary facts that led to that arrangement, in paragraph 14 he averred:

The said agreement is binding on the plaintiff and his mother. It is a family arrangement and a bona fide settlement of disputes, entered into in the best interests of the minor plaintiff and his mother. The plaintiff's mother as guardian of the plaintiff and with the advice of the family wellwishers entered into it. Such an arrangement and settlement avoids prolonged and expensive litigation. That settlement and arrangement is binding on the plaintiffs and his mother.

In the plaint the plaintiff completely ignored the said arrangement. On the pleadings the following two issues, among others, were framed:

Issue 3. Whether the agreement and the family arrangement with the father of the plaintiff set up by the 1st defendant is true, valid and binding on the plaintiff.

Issue 4. Whether the family arrangement set up by the 1st defendant with the mother of the plaintiff after his father's death is true, valid and binding on plaintiff.

On issue 3, the learned Subordinate Judge held that the family arrangement entered into between Venkartramaiah and Narasimha was true and valid, and on issue 4, i.e., in regard to the family arrangement alleged to have been entered into after the death of Venkatramaiah, he held against defendants 1 to 4. On appeal, the High Court accepted the finding of the learned Subordinate judge on issue 3, i.e., the factum and validity of the family arrangement entered into between Venkatramaiah and Narasimha. No argument was raised in the High Court by the 1st defendant to support the family arrangement under issue 4.

7 It is, therefore, not correct to say that the Courts found a family arrangement different from that pleaded by the 1st defendant. Out of the two alternative family arrangements pleaded, they accepted the first, i.e., that entered into between Ventatramaiah and Narasimha under Ex. B-1.

8. The next question is whether Ex. B-1 is valid as a family arrangement. Before we advert to the circumstances under which the arrangement embodied in Ex. B-1 came to be brought about, we shall briefly notice the law of the family arrangements.

9. A brief summary of the nature of family arrangements and the conditions for their validity is found in Halsbury's Laws of England, 3rd Edn., Vol. 17 at pp. 215-216:

A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term 'family arrangement' is applied.

The principles the Courts should bear in mind in appreciating the scope of such family arrangement are stated thus:

Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

This passage indicates that even in England Courts are averse to disturb family arrangements but would try to sustain them on broadest considerations of the family peace and security. This concept of a "family arrangement" has been accepted by Indian Courts but has been adapted to suit the family set up of this country which is different in many respects from that obtaining in England. As in England so in India, Courts have made every attempt to sustain a family arrangement rather then to avoid it, having regard to the broadest considerations of family peace and security.

10. With this background let us look at some of the decisions cited at the Bar.

11. In Ram Nirunjun Singh v. Prayag Singh (1881) ILR 8 Cal 138 at p. 142 an agreement entered into between two brothers to partition the family property in certain shares was sought to be questioned on the ground that one of the parties had taken undue advantage of the youth and inexperience of the other. In that context, Mitter, J., quoted with approval a passage from Kerr on Fraud. The learned Judge observed.

But that the Courts go still further in favour of upholding compromises by which family disputes are settled, appears from the following passage in the same treatise (Kerr on Fraud), p. 364:

The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend'.

It will be seen from the said passage that a family arrangement resolves family disputes, and that even disputes based upon ignorance of parties as to their rights may afford a sufficient ground to sustain it.

12. In Basantakumar Basu v. Ramshankar Ray a Division Bench of the Calcutta High Court, after considering the relevant decisions, observed:

On reading these decisions with care, it seems to us that, if there is one principle that follows from all of them unmistakably, it is this that the arrangement must be one concluded with the object of setting bona fide a dispute arising out of conflicting claims to property, which was either existing at the time or was likely to arise in future. Bona fides is the essence of its validity, and from this it follows that there must be either a dispute or at least an apprehension of a dispute, a situation or context, which is avoided by a policy of giving and taking; or else, all transfers or surrenders will pass under the cloak of a family arrangement.

These observations do not appear to contain the full statement of the law on the subject.

13. In Thakur Umrao Singh v. Thakur Lachman Singh (1911) 38 Ind App 104 (PC), the facts were: One Kalka Bakhsh Singh had three sons. One of the sons died before the father leaving 2 sons. In 1884, after some quarrels, Kalka Bakhsh Singh executed a document through the intervention of mediators providing how the properties were to be divided between the sons. The Judicial Committee held that it was a family arrangement arrived at by the mediation or arbitration of two gentlemen, who were old friends of the family, and interested in maintaining its honour, and that it was plainly intended to be operative immediately, and to be final and irrevocable, though it failed as it was not registered under the Registration Act. If conflicting legal claims were a necessary ingredient for a family arrangement, there were none in that case, for the property was already declared to be a joint family property and the arrangement was entered into only to have peace in the family and to maintain its honour.

14. The decision in M. Ramayya v. U. Lakshmayya AIR 1942 PC 54, was given on the following facts. One Ramachandrudu died leaving his mother, Bengaramma, and widow, Achamma. In 1859 there was an arrangement between them whereunder the properties of Ramachandrudu were divided between them. On March 17, 1866, Bengaramma conveyed the properties she got under the said arrangement to her daughter's son Subbaramayya. Subsequently disputes arose between Achamma and Subbaramayya, and, as a result, a settlement was effected between them by mediators, under which Achamma got absolute title to a one-third share of the properties given by Bengaramma to Subbaramayya and Subbaramayya took two-thirds share. After the death of Bengaramma and Achamma, the nearest reversioner to the estate of Ramachandrudu filed a suit for setting aside the alienations made by the said two widows. The arrangement of 1867 was sought to be supported on the ground that it was a bona fide settlement of family disputes in respect of Ramachandrudu's estate between his widow and Subbaramayya, which in law would bind the reversioner though he was not a party to it. That contention was negatived by the Judicial Committee on the ground that Subbaramayya had no competing title of his own in respect of the property in dispute and, therefore, there could be no basis for a valid family settlement between the parties which would bind the reversioner.

15. Relying upon this judgment it is contended that a competing title is a necessary condition for the validity of a family arrangement. But it will be noticed that the widows, who had only a woman's

interest in the property, divided the property between themselves: they could not enlarge their interest in the estate. A widow could enter into a bona fide arrangement in regard to the estate only to preserve it against a conflicting claim against the estate.

16. This Court in Sahu Madho Das v. Mukand Ram . defined the scope of a family arrangement and its ingredients. That appeal arose out of a suit filed by a reversioner for the recovery of the properties alienated from persons claiming under the widow, after the succession opened. The defendants relied upon an arrangement between the widow and her daughter's grandsons whereunder the widow gave certain properties to them absolutely. In dealing with the question whether such an arrangement would amount to a valid family arrangement, Bose, J., speaking for the Court, observed:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively.

But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, further disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claims to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

These observations show how strongly Courts lean in favour of a family arrangement that brings about harmony in the family. The decisions cited at the Bar are only illustrations of the passage quoted from Halsbury's Laws of England in its application to the peculiar circumstances of our country.

17. Briefly stated, though conflict of legal claims in present or in future if generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.

18. With this background let us look at the facts found in the present case. It is true that both the parties took extreme positions in the pleadings as well as in the evidence. It is equally true that the parties did not follow a consistent course during the proceedings, but both the Courts, on the basis of the evidence, found certain facts and circumstances under which Ex.B-1 was brought into

existence. Having found those facts, they ascertained the real character of the instrument. Now the facts found are these: The properties were not ancestral properties but were acquired by Peda Venkaiah and, therefore, were his self-acquisitions, Narasimha was an able man, were as Venkatramaiah was just an ordinary unsophisticated agriculturist. Narasimha was helping his father during the latter's lifetime. The father, therefore, told the brothers that a larger share should be given to Narasimha, the extent of the share to be settled by their mother. After the death of the father, though Venkatramaiah was the de jure manager, the entire management of the estate was entrusted to Narasimha on a promise that his father's word would be respected. After the father's death, Narasimha was not only managing the properties, but also was in management of the moneylending business and the business at Eluru. A large protion of the family properties stood in the name of Narasimha. In 1931 Narasimha wanted to separate himself from the family and asked Venkatramaiah to specify the properties that could be given to him; but Venkatramaiah requested Narasimha to continue to live as before and represented that he would be given three-fifths share in the properties at the time of partition. Subsequently, when Narasimha again insisted upon getting away from the joint family, Venkatramaiah presumably because Narasimha was indispensable for the proper management of the large family properties and the business and also because a large extent of the properties stood in the name of Narasimha, with the advice of Mr. Chakradhara Rao, a leading lawyer of Eluru, entered into an arrangement with the 1st defendant which was embodied in Ex. B-1, which we have already extracted at the beginning. Ex. B-1 records the directions given by the father, the request made by Venkatramaiah to Narasimha asking him to continue the management, the intention of Narasimha to separate himself from the joint family in 1931, the request made by Venkatramaiah to Narasimha to continue to manage the family properties for at least 6 more years and his promise to Narasimha to give him at the end of 6 years three-fifths share in the properties. It then proceeded to state that out of the family properties which belonged to them at that time and which might be acquired thereafter. Venkatramaiah should take 2 shares and Narasimha should take 3 shares. Mr. Chakradhara Rao speaks to this document and the representations made to him by the two brothers on the basis of which the recitals were made in the document.

19. It is, therefore, clear that Narasimha contributed to the prosperity of the family. Their father, who acquired the properties before his death, gave a direction that Narasimha should be given a larger share in the property. Narasimha, though a junior member of the family, on the promise given by the elder brother managed the properties sincerely and improved them. He was demanding partition and was asking his brother to give him a larger extent of property as directed by their father. There was also a possibility of Narasimha claiming the properties standing in his name as his own. The elder brother, Venkatramaiah, in the interests of harmony among the members of the family and for its benefit accepted the directions given by their father and on the advice of the mother agreed to give Narasimha three shares in the properties and to take 2 shares for himself therein. All the ingredients of a family arrangement as found in decided cases are satisfied in the present case. We, therefore, hold, agreeing with the lower Courts, that this was a family arrangement binding on the members of the family.

20. The next question turns upon the validity of Ex.B-1. Both the Courts held that Ex.B-1 did not require registration. Learned Counsel for the appellant contended that though in law Narasimha

was entitled only to 1/2 share, the document enlarged his share to 2/5 and, therefore, it clearly affected immovable property and hence it created a larger interest in the immovable property in favour of Narasimha within the meaning of Section 17(1)(b) of the Registration Act.

21. The operative part of Ex. B-1 reads thus:

Therefore out of our family property, i.e., property which belongs to us at present and the property which we may acquire in future, the 1st party of us and his representatives shall take two shares while the 2nd party of us and his representatives shall take three shares. We both parties, having agreed that whenever any one of us or any one of our representatives desires at any time that the family properties should be partitioned according to the above mentioned shares and that till such time our family shall continue to be joint subject to the terms stipulated herein entered into this agreement.

It is common case that this document did not bring about a division by metes and bounds between the parties. It did not also affect the interests of the parties in immovable properties in praesenti. What in effect it said was that that the parties would continue to be members of the joint Hindu family and that Narasimha would manage the family properties as before, and that when they effected a partition in future Venkatramaiah would get 2 shares and Narasimha would get 3 shares in the properties theu in existence or acquired thereafter. There was neither a division in status nor a division by metes and bounds in 1939. Its terms relating to shares would come into effect only in the future if and when division took place. If so understood, the document did not create any interest in immovable properties in praesenti in favour of the parties mentioned therein. If so, it follows that the document was not hit by Section 17 of the Indian Registration Act.

22. The principle underlying Section 17 of the Registration Act is well settled. The decisions cited at the Bar are only application of the said principle to the facts of each case. The decision of the Judicial Committee in (1911) 38 Ind App 104(PC), relates to an instrument of 1884 which was intended to effect partition immediately and, therefore, it was held that it was void as regards immovable property. The decision in Rajangam Ayyar v. Rajangam Ayyar 50 Ind App 134 : AIR 1922 PC 266, turned upon the terms of Ex. AY whereunder two brothers severed themselves in status and agreed to have a document executed for effectuating the partition. Dealing with the document, the Judicial Committee held that the document did not by itself create, assign, limit or extinguish any right or interest in immovable property but only created a right to obtain another document. The decision in Hari Sankar Paul v. Kedar Nath Saha , was relied upon by analogy. There an agreement in writing which contained all the essentials of the transaction of a mortgage was held to be a document hit by Section 17(1)(b) of the Registration Act. It was held to be a document containing the bargain made between the parties and constituting a transfer of the property by way of mortgage and, therefore, it required registration. Further citation is unnecessary.

23. For the foregoing reasons, we hold that the document, Ex. B-1, does not require registration.

24. In this view, no other question arises for consideration. The appeal fails and is dismissed with costs.