Supreme Court of India
Chikkam Koreswara Rao vs Chikkam Subbarao And Ors. on 25 February, 1970
Equivalent citations: AIR 1971 SC 1542, (1970) 1 SCC 558
Author: K Hegde
Bench: A G Shah, K.S.Hegde
JUDGMENT K.S. Hegde, J.

1. The only question that arises for decision in this appeal by certificate is whether the properties covered by Exh. B-6 were the properties of the joint Hindu family of the parties to the suit and consequently available for partition.

2. The suit is for partition in a family governed by Mitakshara law. The appellant and respondents Nos. 1 and 2 are brothers. Their father was one Reddinaidu. The father and the three sons constituted a joint Hindu family. The father died in about the year 1937. The appellant was the eldest son. The suit from which this appeal arises was brought by the 1st respondent claiming a 1/3rd share in the properties detailed in the plaint-schedule. Some of the properties included In the plaint-schedule are admittedly joint family properties. About them there is no dispute. But the appellant claimed that the properties covered by Exhs. B-2 to B-7 are his separate properties and as such his brothers cannot claim any share therein. The trial Court accepted his contention and granted a decree for partition only in respect of properties other than those covered by those documents. The High Court affirmed the decree of the trial Court in respect of properties covered by Exhs. B-2 to B-5 and B-7 but as regards the properties covered by Exh. B-6 relying on certain alleged admission by the appellant, it held that they were joint family properties. At this stage it would be appropriate to quote the observations of the High Court relating to the properties covered by Exh. B-6.

Now remains only the question of Exh. B-6 dated 16th August, 1934. Exh. B-6 covers an area of Ac. 5-08 cents. As already noticed, the sale deed is in the name of the 1st defendant. According to the sale deed, the vendee is directed to discharge the debt due to China Rayappagaru, son of Nimmakayala Subbarao due under the pronote of 5th June, 1929 Exh. B-35. The endorsement Exh. B-36 on Ex. B-35 would show that a sum of Rs. 3,652-12-8 had been paid to Nimmakayala China Rajappa and the 1st defendant was given a voucher. The sale consideration of Ex. B-6 dated 16th August, 1934 was thus paid by the 1st defendant. If the matter ended here, there could have been no difficulty in holding that property covered by Ex. B-6 is the self acquisition of 1st defendant. But the 1st defendant himself in his deposition at p. 75 of the printed book says thus:

Under Ex. B-6 consideration was paid by my father. I do not know how he got it.

This admission of the defendant that the money was paid by the father is fatal to his case, specially when he says that he does not know how his father got the money. He does not say that this money was in any way connected with his dowry amount.

3. It is clear from the judgment of the High Court that but for the aforementioned statement of the appellant, the High Court would not have disturbed the finding of the trial Court as regards the

properties covered by Exh. B-6. Before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive. There should be no doubt or ambiguity about the alleged admission. There is no difference in the nature of the acquisitions made under Exhs. B-2 to B-5 and B-7 and that made under Exh. B-6. They were all made during the lifetime of Reddinaidu.

4. The case of the appellant Is that when he was married in 1919, he got a dowry of Rs. 2,500. That money was left with his father who invested the same and utilised the proceeds for making acquisitions on his behalf. Therefore the fact that the consideration for B-6 was paid by the father of the appellant is not a circumstance that militates against the appellant's claim. The appellant also may not know where and how his father invested the money in question. Hence, in evaluating the statement made by the appellant we have to bear these facts in mind.

5. We shall now proceed to consider the true effect of the statement made by the appellant. In his chief-examination he specifically stated:

The lands purchased in my name under Exh. B-3 to seven are my own property. Since then I have been paying taxes on them under Exhs. B-59 and 60 receipt books. The lease deeds for those lands are Exs. B-61 to 66 besides Exhs. B-14, 15, 17 to 20.

6. From this statement, it is clear that he had put forward a positive case that the lands in, question are his separate properties. In the course of his cross-examination it was elicited from him:

Under Ex. B-6 the consideration was paid by my father. I do not know how he got it.

7. This admission must be read along with the evidence given by him in his chief-examination. Soon after he made that statement, he also stated:

From the time I took the sale deed Exh. B-6, I was paying taxes. I filed those tax receipts in a separate book for my personal properties. My father was paying taxes on family lands, separate from my lands.

8. If we read these statements along with his other evidence and in a harmonious manner, it is clear that what the appellant admitted was that the acquisition in question, was made by his father on his behalf and the consideration for the same was paid by his father from out of the appellant's private funds that were in the hands of his father. Hence we are unable to agree with the High Court that the appellant had admitted that the properties covered by Ex B-6 were the acquisitions of his father.

9. There is no basis whatsoever for distinguishing the acquisitions under Exs. B-2 to B-5 and B-7 and B-6. They all stand on the same footing. The respondents have not challenged the finding of the trial Court and the High Court as regards the acquisitions under Exs. B-2 to B-5 and B-7.

10. For the reasons mentioned above this appeal is allowed, the judgment of the High Court to the extent appealed against is set aside and that of the trial Court restored, but in the circumstances of

the case we make no order as to costs in this Court.