

MADANAGOPAL

v.

P.K.A. RAMACHANDRA MUDALIAR (DEAD)
BY LRS. AND ORS.

APRIL 18, 1995

[K. RAMASWAMY AND B.L. HANŞARIA, JJ.]

Hindu Law : Joint family properties—Claim that the properties were not joint family properties and the brothers were carrying on independent business—Compromise arrived at—Son of one of the brothers claiming partition after a long gap—Held: Not entitled to.

The appellants' father J, and J's brothers R and S are descendants of common ancestor A. S filed a suit for partition of a share in the joint family properties, against his brother, who pleaded in their written statement that they were not members of the joint family and the properties did not belong to joint family. However, a compromise was arrived at and S received a sum of Rs. 1350 and walked out.

Subsequently the appellant's parents fell out and appellant and his sister started living with their mother. Appellant filed a suit for partition and claimed 1/4th share of the properties on the plea that they were joint family properties. His uncle R filed a suit for injunction. Trial Court decreed the suit of the appellant and dismissed the suit filed by R. On appeal by R, the Division Bench reversed the trial Court's order. Hence these appeals.

Dismissing the appeals, this Court

HELD : 1. Even before the birth of the appellant, the stand that some of the properties did not belong to the joint family was taken by appellant's father and uncle. It is too credulous to believe that the plea was raised with a view to defeat the rights of the appellant or of the other uncle of the appellant. [449-D]

2. Items 3 and 4 of the suit properties have, however, been found by the High Court to belong to the joint family. The appellant would be entitled to a share therein as given by the trial court. The injunction does not operate in that respect. [449-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2134-35 of 1979.

From the Judgment and Order dated 10.1.78 of the Madras High Court in Appeals Nos. 626/70 & 616 of 1973.

B K.K. Mani for the Appellant.

M. Raghuraman (N.P.) for the Respondents.

The following Order of the Court was delivered:

C These appeals by special leave arise from the common judgment of the Division Bench of the High Court of Madras in Appeal Nos. 626/70 and 616/73, dated January 10, 1978. The appellant is the son of Jayarama Mudaliar. Arunachala Mudaliar is the common ancestor, namely, his grandfather, Ramachandra Mudaliar, the appellant's father Jayarama and his uncle Shanmuga Mudaliar are sons of Arunachala Mudaliar. No doubt they are members of trading family. But as early as 1947, Shanmuga Mudaliar, one of the brothers filed a suit (O.S. No. 118/47) for partition of a share in the joint family properties against Ramachandra Mudaliar and Jayarama Mudaliar. Therein, Ramachandra Mudaliar and Jayarama Mudaliar - the latter being father of the appellant, filed written statement pleading that they are not members of the joint family and that the properties mentioned in that suit do not belong to joint family. However, at a compromise between them, Shanmuga Mudaliar had received a sum of Rs. 1,350 and walked out.

F In 1953 the mother of the appellant Radha Ammal and Jayarama Mudaliar fell out and the appellant and his sister started living with their mother. In 1965, the appellant filed a suit (OS 106/65) for partition of the properties and allotment of 1/4 share on the plea that the properties mentioned in the plaint are of the joint family properties and he is entitled to 1/4 share therein. His uncle Ramachandra Mudaliar filed another suit (OS No. 96/64) for injunction. The trial court decreed the suit of the appellant and dismissed the suit of Ramachandra Mudaliar. Dissatisfied therewith, Ramachandra Mudaliar, the first respondent, carried the matter in appeal to the Division Bench, who reversed the decree of the trial court, dismissed the suit of the appellant and decreed the suit of the respondent.

H Thus these appeals, by special leave.

The principal contention raised by Shri K.K. Mani, learned counsel for the appellant, is that since the trial court has found that the properties belonged to the joint family and Jayarama Mudaliar and Ramachandra Mudaliar being the members of the trading family, all the properties must be deemed to have been acquired from the joint family nucleus. As a consequence, the appellant, being the son of Jayarama Mudaliar, is entitled to 1/4 share in the joint family properties. The High Court has negated this contention on the solitary fact that as early as 1947, i.e. even before the birth of the appellant, his father had taken a stand, along with his brother Ramachandra Mudaliar, that they are not members of the joint family and each of them were doing business independently and that, therefore, it is too idle to go into the question whether the appellant is a member of the joint family.

We find that the High Court is well justified in coming to that conclusion. We can understand that if after the disputes have arisen between Radha Ammal, the mother of the appellant and Jayarama Mudaliar, the father of the appellant, such a plea was taken along with his brother, something could be said. But even before the birth of the appellant, the stand of being not a member of the joint family was taken. It is too credulous to believe that the plea was raised with a view to defeat the rights of the appellant or of Shanmuga Mudaliar. In view of this, it is not necessary to go into further question.

Items 3 and 4 of the suit properties have, however, been found favour by the High Court to belong to the joint family. The appellant would be entitled to a share therein as given by the trial court. The injunction does not operate in that respect.

The appeals are accordingly dismissed. No costs.

G.N.

Appeals dismissed.