

Sir Venkataswetha Chalapathy Ranga Rao Bahadur and K.C.i.E. Maharaja of Bobbili and ors. Vs. W.S. Venkataramanjulu Naidu and ors.

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Court : Chennai

Decided On : Jul-21-1914

Reported in : (1914)27MLJ409

Appellant : Sir Venkataswetha Chalapathy Ranga Rao Bahadur and K.C.i.E. Maharaja of Bobbili and ors.

Respondent : W.S. Venkataramanjulu Naidu and ors.

Judgement :

1. This is an appeal by an auction purchaser of an undivided share belonging to a coparcener against the decree of the District Judge of Chingle put disallowing his claim for mesne profits in the suit filed by him for partition and delivery of the share purchased.

2. The appellant rests his case on two grounds. The first is that the members of the family of the coparcener whose share he purchased were divided in status and that consequently he is entitled to mesne profits and secondly that in any event he is entitled as a tenant-in-common with the other coparceners to mesne profits in respect of the share which he purchased.

3. As regards the first contention there is no oral evidence on record. The appellant relies on Exhibits A and B showing that the person whose share he purchased was divided in status from the other members of his family. Exhibit A is an affidavit filed by one of the members in a previous suit. The inference required to be drawn from Exhibit A is that the parties were divided in status but reading the affidavit as a whole it seems to us that the dispute was about the management of the properties. It does not appear that there was any decision in the suit in which Exhibit A was filed that the members were divided in status and we do not see how the allegation of one member in a previous suit could be taken to be conclusive in the matter. Ex. B does not help the appellant as it specifically recites that the incumbents 'are undivided members and that they are entitled to the shrotriem village' and we are therefore of opinion that it has not been shown that the appellant's predecessor in title was divided in status from the other coparceners.

4. The real question is whether a purchaser of an undivided share is entitled to mesne profits as against the coparceners from the date of his purchase up to the date of the plaint. So far as we are aware there is no authority of any High Court in which the matter has been discussed and decided, nor has it ever been the practice to allow mesne profits in such cases. Such authorities as there are, seem to be the other way. In *Narayan Bin Babaji v. Nathaji Durgaji* I.L.R. (1908) B 201, it was assumed that in a suit by a purchaser from an undivided coparcener for recovery of the share of his

vendor mesne profits should not be granted and their Lordships reversed the decision of the District Judge awarding mesne profits in the suit.

5. The ground on which the appellant claims mesne profits is that the transfer to him effects a severance of the coparcenary as regards that share and makes him a tenant in common of the share which his vendor had at the date of the alienation and that the right to mesne profits is a necessary incident to the right of property in which a person is interested as tenant in common. Reference has been made to Ayyagari Venkata Ramayya v. Ayyagari Ramayya I.L.R. (1902) M. 690, Chinnu Pillai v. Kalimuthu Chetti and Subba Rao I.L.R. (1910) M. 47 v. Ananthanarayana Ayyar : (1912)23MLJ64 .

6. There are no doubt dicta in these cases that where a coparcener makes an alienation of the whole or portions of his share ' the estate that is transferred to and vested in the alienee is not an equitable interest as understood in English law but a legal estate which has to be reduced to possession by the alienee standing in the shoes of the transferor and effecting a partition on the footing on which the family and the property both stood at the time of the transfer'. This view has been dissented from in Nanjaya Mudali v. Shanmuga Mudali (1913) 26 M.L.J. 576, where Justices Sankaran Nair and Bakewell held that an alienation of an undivided share by a member of a joint family does not put an end to the joint tenancy and that the alienee does not become a tenant in common with the other co-parceners but he is only entitled in equity to enforce his rights in a suit for partition.

7. We are inclined to the view taken in Nanjaya Mudali v. Shanmuga Mudali (1913) 26 M.L.J. 576. The right of the alienee to enforce partition does not rest on any text of the Hindu Law but on the equitable doctrine that a purchaser for value should be allowed to stand in his vendor's shoes and work out his rights by a partition and it seems to us that the doctrine need not be extended beyond what is absolutely necessary to enable the vendee to work out his rights. In the suit for partition which may be filed by the alienee it may be that the property conveyed to him falls to some other co-parcener and it is difficult to see how this fact could be reconciled with the theory that by purchase he becomes entitled to a vested interest in the share of his coparcener in the property alienated as from the date of the alienation.

8. There are also clear authorities that 'the mere fact that a co-parcener makes an alienation does not put an end to the status of the coparcenary as between himself and the other members of his family and if this be so it would be unfair that the other members of the family should be required to bear the expenses of the alienating coparcener and the members of his family and also to set apart a portion of the income of the properties for meeting the claim of the alienee.

9. It is argued that the purchaser who paid consideration would be kept out of the fruits of his purchase should mesne profits be not given to him but the remedy is obviously in the purchaser's hands as it is open to him to file a suit for partition immediately after the purchase.

10. Viewing the case from the mere standpoint of hardship we think that the balance is in favour of the members of the joint family. The observations of the learned Judges who took part in Ayyagiri Venkataramayya v. Ayyagiri Ramayya I.L.R. (1902) M. 690, Chinnu Pillai v. Kalimuthu Chetti I.L.R. (1910) M 47 and Subba Rao v. Ananthanarayana Ayyar : (1912)23MLJ64 as regards the alienee being a tenant in

common and not merely entitled to an equity are obiter dicta and we are of opinion that the broad proposition enunciated in those cases is not supported by any text in Hindu Law and we are not prepared to follow it. It is difficult to reconcile it with the decision of the Privy Council in *Suraj Bansi Koer v. Sivaprasad* I.L.R. (1879) C. 148 *Hardi Natayan v. Ruder Prakash* I.L.R. (1883) C 626 and *Ramkishan v. Jayanarayan* I.L.R. (1913) C 966. The Privy Council has decided that the alienee in possession is liable to be ejected at the instance of the co-parceners who are not bound by the alienation. We are of opinion that the mere fact of a person purchasing a share of a coparcener in joint family properties would not entitle him to mesne profits as against such other members of the family and that the purchaser would be in a higher position than his alienor who under Hindu Law would not under ordinary circumstances be entitled to demand an account of the past profits.

11. The appeal fails and is dismissed with costs.

12. The memorandum of objections has not been argued and has been dismissed with costs.

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