Privy Council Appeals Nos. 55 & 56 *of* 1933

Alluri Venkatapathi Raju and another - - - - *Appellants*

v.

Dantuluri Venkatanarasimha Raju and others - - - *Respondents*

Alluri Venkata Varaha Suryanarayana Lakshmi Narasimha Raju and another - - - - - - - - *Appellants*

v.

Dantuluri Venkatanarasimha Raju and others - - - *Respondents*

Dantuluri Venkatanarasimha Raju and another - - - *Appellants*

v.

Dantuluri Chendrayya and others - - - - - *Respondents*

(*Consolidated Appeals*)

[FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH JULY, 1936

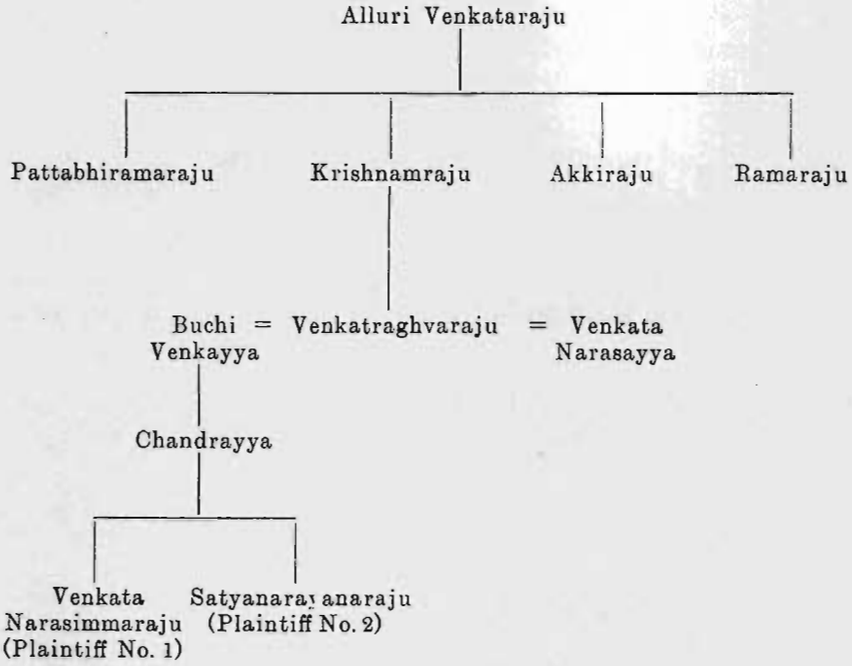
Present at the Hearing:

LORD ROCHE.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

These are two consolidated appeals from a decree of the High Court of Judicature at Madras, by which that Court set aside a decree of the Subordinate Judge of Masulipatam dismissing the plaintiffs' suit, and granted a declaration that the plaintiffs would be entitled to succeed, on the death of their mother, to a portion of the estate claimed by them. The principal question, on which elaborate arguments have been advanced by the learned counsel for the parties, is whether the plaintiffs' maternal grandfather was, or was not, joint in estate with the ancestors of the contesting defendants.

The relationship of the persons concerned is indicated in the following pedigree :—



The common ancestor of the parties, Alluri Venkataraju, and his four sons constituted a joint Hindu family governed by the Mitakshara school of the Hindu law. They originally resided in Gudimellanka in the Godaveri District of the Madras Presidency, but in or about 1839 the eldest son, Pattabhiramaraju, severed his connection with the family and went away to another village to earn his livelihood. After his departure Venkataraju and his remaining three sons continued to live together, and it seems that they were still living at Gudimellanka, when the father died in 1842. Thereafter, the three sons left their ancestral village and moved first to Jangemsavaram, and finally took up their abode at Chintalapalli where they made their home. While they were living at that place they started business on a large scale, and acquired valuable properties with the profits of the business.

On the 14th July, 1882, Krishnamraju and his son Venkatraghvaraju were drowned in the Godaveri River; and the Courts below have concurred in holding that it was the father who died first, and that his son succumbed shortly afterwards on that very day. Venkatraghvaraju left him surviving a widow Narasayya and a daughter Chandrayya by his pre-deceased wife Buchi Venkayya.

After the deaths of Krishnamraju and his son, Akkiraju and Ramaraju continued to carry on the business, and while they did not recognise the right of Venkatraghvaraju's widow to inherit her husband's share in the estate belonging to the family, they provided ample maintenance, not only for her and her step-daughter Chandrayya, but also for the widow and daughters of Krishnamraju.

In 1894 Akkiraju died, and was succeeded by Ramaraju as the manager of the family estate. After the death of

Ramaraju, which took place in 1903, there were dissensions between the descendants of the two brothers, which culminated, in 1908, in a suit for a partition of the joint estate. To that suit, which was brought by Subbaraju, a grandson of Akkiraju, not only were the other male descendants of Akkiraju and Ramaraju impleaded as defendants, but also Venkatraghvaraju's daughter Chandrayya and her two minor sons, who are the plaintiffs in the present case. No written statement was filed on behalf of the minors by their mother, who was appointed their guardian *ad litem*; but in the pleas raised by her on her own behalf she claimed the estate on the ground of inheritance from her father who, she said, was separate from his collaterals. This plea gave rise to an issue about the jointness or otherwise of Venkatraghvaraju with Akkiraju and Ramaraju, but no evidence was adduced by the parties on that issue, and the judgment of the trial Court, which decreed partition of the estate, states that the issue "was given up by the parties." The decree for partition granted by the Court of first instance was affirmed on appeal by the High Court.

The joint property was duly partitioned in accordance with the decree, and it was not until the 3rd of April, 1918, that the suit, which has led to these appeals, was commenced by Chandrayya's sons against the members of the Alluri family, who were in possession of the estate. They alleged that in or about 1839 there was a separation among the four sons of Venkataraju, and that the property, which is the subject-matter of the suit, was acquired by Krishnamaraju and his son Venkatraghvaraju, and devolved, at the death of the latter, upon his daughter as his heir under the Hindu law. They urged that the judgment pronounced in the suit of 1908 was not binding upon them, and asked for a declaration of their right to succeed, after the death of their mother, to the property specified in the schedules attached to the plaint, which, they said, had belonged to their maternal grandfather. Their claim was resisted by the descendants of Akkiraju and Ramaraju on various grounds, including the plea that Krishnamaraju with his son was joint with his brothers, and that on the deaths of the father and the son in 1882 the estate passed to Akkiraju and Ramaraju by survivorship. This plea was upheld by the trial Judge, but his judgment has been reversed by the High Court.

Now, the first question, which their Lordships have to consider, is whether there was a separation of the joint family in the lifetime of Venkataraju. There can be no doubt that the father of a joint family has the power to divide the family at any time during his life without the consent of his sons, and, if he makes a division, it has the effect of separating, not only the father from the sons, but also the sons *inter se*. No evidence has, however, been produced to prove such a division by Venkataraju, and the only circumstance, to which reference has been made in the arguments, is the migration in 1839 of the eldest son Pattabhiramaraju from his ancestral village to another village called

Pothumatla, where he settled permanently. The family was, at that time, in straitened circumstances, and had no property except a small dwelling house. Not only did Pattabhiramaraju relinquish his interest in that house, but, as found by the Courts in India, he severed his connection with the joint family; and after his departure he and his descendants had nothing to do with the other sons of Venkataraju.

What is the effect of this renunciation upon the status of the other members of the family? It is argued that, when one member of a joint family separates from the other members, his separation operates as a separation of all the members of the family from one another. In many cases it may be necessary, in order to ascertain the share of the outgoing member, to fix the shares which the other coparceners are or would be entitled to, and in this sense, subject to the question whether these others have agreed to remain united or to reunite, the separation of one is said to be a virtual separation of all, *Balabux Ladhuram* v. *Rukmabai*, 30 I.A. 130. It is a settled rule that when the members of a family hold the family estate in defined shares, they can not be held to be joint in estate. But no definement of shares need take place, when the separating member does not receive any share in the estate but renounces his interest therein. His renunciation merely extinguishes his interest in the estate, but does not affect the status of the remaining members *quo-ad* the family property, and they continue to be coparceners as before. The only effect of renunciation is to reduce the number of the persons, to whom shares would be allotted, if, and when, a division of the estate takes place.

The Courts below have, therefore, rightly held that the departure of the eldest son did not effect a change in the status of Venkataraju and his other sons; and that they continued to be members of the joint family.

It appears that it was after the death of the father that his three sons began to acquire property out of the profits of the business carried on by them. The eldest of them, Krishnamraju, obtained from Government the monopoly of selling liquor in a taluk of the Godaveri District, and his youngest brother got a similar contract for selling another liquor. The third brother, Akkiraju, was engaged in the work of a farmer of Crown lands. They were successful in their ventures, and it is stated that the various properties acquired by them amounted in value to about Rs.1,50,000 in 1882, when Krishnamaraju and his son were drowned in the river.

The learned Judges of the High Court have agreed with the trial Judge that Venkatraghvaraju died after his father, and the question arises whether, at the time of his death, he was a member of a Hindu coparcenary with Akkiraju and Ramaraju, or whether he was separate from them in estate. On this point the High Court, dissenting from the Subordinate Judge, holds that, though the estate was not

partitioned by metes and bounds, there was a severance of the joint status, with the result that they held the estate, not as joint tenants, but as tenants in common. The learned counsel for the parties have invited their Lordships' attention to various cases which define the nature of a Hindu coparcenary and the relations of its members *inter se*, and enunciate the principles which should be followed in determining the question of the severance of the joint status. The leading case on the subject is that of *Appovier* v. *Rama Subba Aiyan*, 11 Moo. I.A. 75, where Lord Westbury expounds the law in these terms:—

> "According to the true notion of an undivided family in Hindu law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or receiver of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family."

After stating that the property ceases to be joint property, if it is held in defined shares, and that an actual partition of the property is not necessary for making the family a divided family, he makes the following observations:—

> "It is necessary to bear in mind the two-fold application of the word 'division.' There may be a division of right, and there may be a division of property."

Now, it is not suggested that in the present case the brothers ever effected a partition of their estate by metes and bounds. The question is whether there was a division of rights in the estate. Their Lordships are, however, unable to find any document which caused a severance of the joint status in this case. The trial Judge has examined various letters written by the members of the family and their employees engaged in the abkari and other business carried on by the brothers, and they show that all the three brothers were jointly interested in various concerns, and it appears that it was out of the profits thus made by them that they acquired immoveable properties.

It cannot be disputed that after the death of Venkatraghvaraju in 1882, Akkiraju and Ramaraju treated all the properties as the estate of the joint family and claimed to be proprietors thereof by survivorship. This would undoubtedly be an interference with the widow's right, if her husband had died as a divided member of the family. It is clear that, though she had influential paternal relatives to support her cause, they, not only did not put forward her right to succeed to her husband's estate, but recognised that she was entitled only to maintenance, and accepted the arrangement by which she was granted the income of a plot of land in lieu of her maintenance. It is significant that neither the daughter Chandrayya, even after attaining majority, nor her sons, took any active steps to repel the attack on their rights of inheritance until 1918, when the sons brought the present action.

The learned Judges of the High Court think that the brothers held the estate as tenants in common and could not, therefore, be joint in status. They observe that " if there is nothing like exhibits CC series in the case, the proper inference to draw is that the family is a Hindu joint family, and the question is what is the proper legal inference to be made, keeping the exhibits CC series in consideration, from the other facts appearing in the case."

In view of the importance attached to the documents included in exhibits CC series, it is necessary to examine them with some care.

It appears that Krishnamraju had obtained a licence for selling arrack liquor in 1876 in the Taluk of Narsapur, and that his brother Ramaraju held a similar licence for selling toddy in the same taluk. Now, rule 5 of the rules governing the " exclusive privilege of vending toddy " prescribes that " the holder of the licence shall not hold or have any interest in the exclusive privilege of manufacturing and selling arrack in the part of the district to which his licence relates "; vide, exhibit CC. A similar prohibition applied to the holder of a licence for selling arrack. The brothers, however, were licensees for selling toddy and arrack in the same area, and their joint interests in both the licences offended against the rule. This violation of the rule did not escape notice. A complaint was made against them to the Collector of the district who directed the Tehsildar of Narsapur to make an enquiry whether the brothers were interested in both the contracts. It was during the course of this enquiry that Krishnamaraju stated that he and Ramaraju were divided, and that he himself had only the arrack business and had nothing to do with the toddy contract for which Ramaraju alone was responsible, exhibit CC (2). An exactly similar statement was made by Ramaraju, exhibit CC (3).

Now, this statement of Krishnamraju, which runs counter to a subsequent statement made by him in 1882 that the brothers were co-sharers in the estate, has been held by the trial Judge to be false; but the learned Judges of the High Court did not think that the two statements were irreconcilable. They explain that what the brothers intended to say in 1876 was that " they had been divided in status " before 1876, and were, therefore, tenants in common in that year; and that the statement of Krishnamraju in 1882 also meant that the brothers were interested in all the properties as tenants in common, and not as joint tenants. This explanation might remove the objection of inconsistency between the two statements, but it would not satisfy the rule that the holder of a licence for selling one liquor " shall not have any interest " in the licence for selling another liquor in the same locality. The brothers, even if they were tenants in common in respect of the liquor contracts, would still be *interested* in the profits and losses resulting from

each of those contracts. And this was exactly what was prohibited by the rule.

Their Lordships regret that they are unable to accept the interpretation placed by the High Court upon the statements, and they agree with the trial Judge that the statements made by the two brothers in 1876 were false. It sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue.

The vital factor in a case of this kind is the nature of the interest which the members of the family have in the estate. As stated, if there has been a division of their right to, or severance of their interest in, the estate, they must be held to be separate in status, though there has been no physical division of the property, and though there may be no separation in food or dwelling; *Amritrao* v. *Mukundrao*, 15 Nagpur Law Reports, 165, P.C. If, on the other hand, there has been no such division of right or severance of interest, they continue to be joint in estate, and mere cesser of commensality would not make them separate in estate, as a member may become separate in food or residence for his convenience. A division of right or a severance of the joint status may result, not only from an agreement between the parties, but from any act or transaction which has the effect of defining their shares in the estate, though it may not partition the estate. If a document clearly shows a division of right, its legal construction and effect can not be controlled or altered by evidence of the subsequent conduct of the parties, *Balkishen Das* v. *Ram Narain Sahu*, 30 I.A. 139.

Having regard to these principles, which are established by the cases cited in the course of the arguments at the Bar, their Lordships concur in the conclusion reached by the trial judge that Venkatraghvaraju was joint in estate with Akkiraju and Ramaraju when he died in 1882, and that his interest in the estate passed by survivorship to the other coparceners, and could not descend to his heirs under the Hindu law. The evidence is strongly in favour of this conclusion, and, apart from Exhibits CC, which have been already discussed, the High Court is in agreement with the trial judge as to its effect.

In view of the plaintiffs' failure on the merits, their Lordships find it unnecessary to determine the plea that the rule of *res judicata* operates as a bar to the present claim. This plea raises a difficult question, upon which their Lordships do not desire to express any opinion.

The result is that the decree of the trial Judge dismissing the suit should be restored. Their Lordships will, therefore, humbly advise His Majesty that the defendants' appeal should be allowed, and that preferred by the plaintiffs should be dismissed. The plaintiffs must pay the costs incurred by the defendants here as well as in the High Court.

(9823—3A) Wt.8136—2 200 8/36 P. St. G.335

In the Privy Council.

ALLURI VENKATAPATHI RAJU AND ANOTHER

v.

DANTULURI VENKATANARASIMHA RAJU AND OTHERS

ALLURI VENKATA VARAHA SURYANARAYANA LAKSHMI NARASIMHA RAJU AND ANOTHER

v.

DANTULURI VENKATANARASIMHA RAJU AND OTHERS

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