PRIVY COUNCIL.*

JOGI REDDI (DEFENDANT No. 3), APPELLANT,

v.

CHINNABBI REDDI (PLAINTIFF) AND OTHERS, RESPONDENTS.

1928, November 15.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Hindu Law (Partition)—Property of person outside joint family —Alleged agreement to treat property as joint—Purchases out of combined properties—Onus of proof.

Three brothers formed a joint Hindu family. A sister married a Christian who was in better circumstances than they were. He died in 1887 leaving a son (the appellant) then four years old. The appellant with his mother then went to live with his uncles, and from that time the uncles treated the property which the appellant inherited from his father, and the produce of it, in the same way as their own family property. In 1906 an outstanding half share in the ancestral property of the appellant's father was bought in the name of the appellant out of the produce of the combined properties, which was also applied from time to time to the purchase of other properties, movable and immovable. In 1917 one of the three brothers sued for partition claiming a fourth share of the whole combined property. The suit was decreed on the ground that there was an implied agreement between the parties to share all the properties equally.

Held, that the plaintiff was not entitled to share either in the property which the appellant inherited, or in that bought in his name. As to the former property the onus was upon the plaintiff to prove that he was entitled to share in it, and he had not discharged that onus. Any presumption arising by reason of the source of the money with which the latter property was bought was rebutted by the circumstances.

* *Present*:—LORD PHILLIMORE, LORD ATKIN, SIR LANCELOT SANDERSON.

JOGI REDDI v. CHINNABBI REDDI.

APPEAL (No. 108 of 1926) from a judgment of the High Court (PHILLIPS and MADHAVAN NAIR, JJ.) (April 17, 1924) affirming a decree of the Subordinate Judge of Cuddapah, which affirmed a decree of the District Munsif.

The suit giving rise to the appeal was brought in 1917 by the first respondent against his undivided brothers and his sister's son, the appellant. The plaintiff claimed a declaration that he and each of the defendants were entitled to a fourth share of properties which, in addition to properties of the joint family, included property which the appellant when a minor had inherited, and properties (one of which had been bought in the name of the appellant) bought out of the produce of the combined properties; he claimed a partition on that basis.

The facts appear from the judgment of the Judicial Committee.

The Courts in India found in effect that there was an implied agreement that the whole property should be treated as the common property of all the four parties, and upon that basis decreed the suit.

Dunne, K.C., and *Narasimham* for the appellant.—The onus was upon the plaintiff to prove that the appellant's property had ceased to be his exclusively. There cannot be implied from the circumstances an agreement to treat the whole property as if the four parties formed a joint Hindu family. The terms of section 49 of the Indian Registration Act did not make the karar inadmissible for the collateral purpose of negativing any such agreement. But in any case no agreement by the appellant to give up his exclusive right to his ancestral property can be inferred from the facts. As to the property bought in his name, the true inference is that it was intended to represent the produce derived from his property.

DeGruther, *K.C.*, and *Subba Rao* for the first respondent.—The karar was inadmissible for any purpose in the suit. There is nothing to prevent persons, even if Christians, from agreeing that they shall mutually have the same rights as if they formed a joint family: *Francis Ghosal* v. *Gabri Ghosal*(1). From the circumstances such an agreement is to be inferred. The appellant came of age in 1901, and had since continued to live with his uncles as though a member of the joint family; he never demanded any account. The Courts in India have concurrently found that the facts showed an agreement to treat the whole property as the common property of the parties. The Board should regard those findings as conclusive. If there was no such agreement, the rights of the parties are governed by section 253 of the Indian Contract Act.

Narasimham replied.

The JUDGMENT of their Lordships was delivered by

LORD ATKIN.

LORD ATKIN.—This is an appeal from a judgment of the High Court of Madras affirming a judgment of the temporary Subordinate Judge of Cuddapah who affirmed a judgment of the District Munsif of Proddatur. The suit is brought by the plaintiff, a member of a joint undivided Hindu family, for partition. The defendants, so far as is relevant to the present issues, are his two brothers and the appellant Jogi Reddi. The question at issue is whether certain properties are, as the plaintiff affirms, joint family properties, or, as the appellant affirms, the separate property of the appellant.

Chinnabbi Reddi, the plaintiff, Munir Reddi, and Chinnabali Reddi were brothers forming a joint Hindu family. They owned some 17 acres of land of poor quality and were poor folk. They had a sister, Sanjamma,

(1) (1906) I.L.R., 31 Bom., 25.

JOGI REDDI v. CHINNABBI REDDI. — LORD ATKIN.

who married Chinnaya, a Christian. The appellant, Jogi Reddi, is the only son of the marriage. Chinnaya was in better circumstances than his wife's family. He owned 24 acres of land apparently of good quality: part of it being represented by an undivided half interest in land of which the other half interest was owned by his brother. After his marriage, Chinnaya came to live in his wife's village. He died in 1887, when Jogi Reddi, the appellant, was about 4 years old, leaving the appellant the heir to his property. After his death, the mother and child went to live with the child's uncles. From that time onwards, the uncles treated the minor's property in the same way as their own family property; they cultivated it and treated the produce as joint property. With their resources so reinforced, they rose to comparative affluence. In 1901, Jogi Reddi attained his majority. The position remained unchanged; the family fortunes increased: individual members adventured in road repairs, indigo, nut-crushing, the proceeds going to a common fund. In 1906 the outstanding half interest in Chinnaya's ancestral property was bought for Rs. 760 from his brother's son. It was, as the appellant affirms, bought for him out of his share of the proceeds of his land. It was certainly taken in his name. The purchase price was paid for out of the common fund: there appears to have been no other fund out of which it could be paid. In 1916, Chinnabbi Reddi became dissatisfied with the administration of the family affairs and claimed partition. In July, 1916, an agreement was come to between the parties and reduced into writing, whereby a partition was arranged. In that division, the lands claimed by Jogi Reddi as his own were excluded from division, and a grant of further lands was also made to him exclusively. The agreement was, unfortunately, not registered, and is, therefore, under the terms of

the Registration Act, not available as evidence of the transaction. It has properly been rejected by all the Courts. The argument has been addressed to the Board that it is admissible as collateral evidence of the conduct of the parties. In the view their Lordships take of the case, they have found it unnecessary to express an opinion upon this point, and for the purposes of their decision have ignored the document.

What then are the rights of the plaintiff in respect of the property which Jogi Reddi as a minor inherited from his father? The subsequent acquisition of the undivided half can be dealt with separately.

In the first place, it is to be observed that the onus is upon the plaintiff to establish that the property is partible and that he has an interest. In the second place, it is agreed that the property in question is not, and never was, in the full sense, family property. It was originally the separate property of the Christian brother-in-law and afterwards of the Christian nephew of the plaintiff. Neither of them ever was or could become a member of a joint Hindu family. The rights of the Hindu family over the property must depend on some cession by the owner. Formal grant there was none, and the case turns, as the Courts below held, upon the contractual relations of the parties, to be inferred from all the circumstances. The peculiar circumstances have naturally caused some difficulty in formulating the plaintiff's case. The plaintiff in his plaint claims the property as part of the family property, undistinguishable from the original family ancestral property. The learned District Munsif points out that it may not be quite legal and correct to describe the suit as a suit for partition of family properties. "In one sense," he says, "it is such a suit and in another sense it partakes of the character of a suit for dissolution

JOGI REDDI v. CHINNABBI REDDI. — LORD AIKIN.

of partnership." He proceeds to point out that Jogi Reddi could not have acquired the ordinary joint interest in the joint family property carrying with it the right of survivorship. He concludes, therefore, that he and the members of the joint family constituted a sort of partnership though not as joint owners, but as tenants in common. But obviously, this situation conflicts with the position of the brothers as members of the Hindu family. The learned Munsif solves the difficulty by concluding that "while Jogi Reddi was a tenant in common with the family as a separate entity, his rights being regulated by express or implied contract so far as the brothers were concerned, they were certainly joint tenants." The learned Subordinate Judge seems, however, to have treated the property as having become in the full sense family property. A convert, he says, "though not bound by the Hindu law may by his course of conduct show by what law he intends to be governed regarding his rights and interests and his powers over property. In the present case I have no doubt that the third defendant (the appellant) lived with his maternal uncles as a member of a Hindu family." The learned Judges of the High Court, rejecting the suggestion of partnership, think that the combination of the family cannot be said to have gone beyond the mere stage of co-ownership; but they accept the finding of the lower Courts which they state to be that all the properties were treated as the common property of the whole family, which necessarily implied an agreement between the members that they were all to share the properties alike. This seems to ignore the difficulties pointed out by the learned Munsif as to the difference between the family relations as to the original family properties and the properties which descended from Chinnaya.

Their Lordships would further observe that all the Courts below seem to have thrown the onus upon the appellant of proving that the properties he claimed were his own, instead of placing it as it should be upon the plaintiff. It therefore appears to their Lordships that there is no question of fact so found that can be binding upon an Appellate Court on a second appeal; and that it is necessary for them to consider what is the true position. They have come to the conclusion that the plaintiff has failed to make out that he is entitled to a share in the property, which the appellant inherited from his father. Admittedly, if the plaintiff acquired any interest in such property he did so by reason of some implied contract. For the first twelve or thirteen years of the association of uncles and nephew from which the contract is sought to be implied, the nephew was not of disposing capacity, and their Lordships see no reason for assuming that after he reached his majority, all other circumstances remaining the same, the necessary inference is that he made a gift to his uncles. The difficulties so clearly pointed out by the learned Munsif, of the difference between the tenure of the family ancestral property with the right of survivorship and the interest in Jogi Reddi's property with no right of survivorship, make the alleged gift the less likely. Their Lordships are not prepared to accept the view adopted apparently by the learned Munsif alone, in the Courts below, of a tenancy in common between the uncles as a family on the one side and the nephew on the other. The facts that the property was jointly cultivated and the proceeds of the produce pooled appear to be entirely consistent with the land itself remaining as it certainly did during the minority of Jogi Reddi his separate property. In the circumstances the purchase of the second half interest in the name of Jogi

JOGI REDDI v. CHINNABBI REDDI. LORD ATKIN.

Reddi appears to bear out the notion of the original half interest being his; though if the property had otherwise been proved already to have become family property, no particular importance would be attached to a purchase in this form. This is not the case of an original member of a Hindu family becoming a convert, but electing to retain his interest in the family property on the old footing. Here a definite cession to a Hindu family of property which originally did not belong to the family by a non-member of the family who was a Christian has to be proved. And in their Lordships' opinion the plaintiff has not discharged the onus of proof.

This disposes of the plaintiff's claim to share in the property which descended to Jogi Reddi from his father. As has been intimated above, their Lordships are of opinion that the undivided half share purchased from Jogi Reddi's cousin and taken into his own name is not shown to be property of the joint family. The learned District Munsif took the view that as the source from which the consideration proceeded was joint income, the purchase must also be imprinted with that character. The argument undoubtedly deserves consideration, but the circumstance mentioned is not conclusive; and the facts that during Jogi Reddi's minority the rest of the family had undoubtedly received proportionately greater advantage from the minor's separate property, and the evidence that they desired to recognize this by acquiring the second half for Jogi Reddi himself appear to displace any such presumption as is relied on by the learned Munsif.

As to the balance of the immovable property and as to the movables, it is admitted that as the karar is unenforceable, the plaintiff is entitled to a fourth share. This is consistent with the view, which their Lordships conceive to be correct, that the produce of the properties

and services of the members of the family and Jogi Reddi was treated by all the parties as joint. Their Lordships were not asked to adjust any distribution that has already been decreed in this respect. Their Lordships are of opinion that the original decree should be varied on the footing that the properties included in list 1 of the third defendant's written statement filed on August 29, 1917, should be excluded from the properties in which the plaintiff is entitled to one-fourth share; and that the plaintiff is entitled, excluding Jogi Reddi, to one-third of the ancestral property of the three brothers; and that the suit should be remitted to the High Court to give effect to their Lordships' judgment; and they will humbly advise His Majesty accordingly. The appellant should receive his costs from the plaintiff here and in the Courts below.

Solicitor for appellant: *H. S. L. Polak.*

Solicitors for respondent No. 1: *Douglas Grant and Dold.*

A.M.T.