

Ramakrishna Ayyar - - - - - *Appellant*

v.

Parameswara Ayyar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1935.

Present at the Hearing :

LORD THANKERTON.

LORD ALNESS.

SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

This appeal arises out of an action brought by the plaintiff Parameswara Ayyar for partition of the property belonging to a Hindu coparcenary consisting of himself and his father and brothers. The main defence to the claim was that the plaintiff had parted with his share in the estate by a deed executed by him on the 31st August, 1916, and ceased to have any interest in the property sought to be partitioned. This plea has been over-ruled by the Courts in India, with the result that the plaintiff has been granted a preliminary decree for partition of the joint estate.

On this appeal preferred by one of the brothers of the plaintiff (the father having died during the pendency of the suit in the trial Court), it is again urged that the deed referred to above operates as a bar to the action. The circumstances, which led to the execution of the document, may be briefly stated. The plaintiff, who was an improvident young man of loose character, had embarked upon a career of extravagance and reckless borrowing. Both his father and father-in-law were, therefore, anxious to prevent his creditors from seizing his share in the estate in satisfaction of the debts due to them. They accordingly induced him to assign his share

in favour of his father-in-law for a nominal consideration of Rs. 1,000. But the High Court in concurrence with the trial Judge have decided that the transfer was intended, not to deprive him of his property, but to save it from his creditors, and that it did not extinguish his interest in the estate. The concurrent findings of the Courts below, proceeding, as they do, upon an appreciation of the evidence adduced by the parties, cannot be disturbed; and it is clear that the plaintiff, having successfully removed the obstacle in his way, must be held to be a coparcener in the joint property.

In order to determine the property which was available for partition, the Courts had to adjudicate upon certain alienations of the coparcenary property, which were made by the plaintiff's father after the 31st August, 1916. There are only two transactions which now require consideration. One of them is a gift made by the father in October, 1916. Now, the deed evidencing the gift contains an express clause to the effect that in the event of the donee dying without leaving any male issue, the gifted property would revert to the donor. It is beyond dispute that the donee has died and left no male issue. The clause in question, therefore, comes into operation; and without impeaching the deed of gift the plaintiff is entitled to claim the property as part of the estate which should be partitioned.

The other transfer was made by the father on the 12th November, 1916, by an instrument which purported to sell to his sister for a sum of Rs. 7,000 the property specified therein. There is, however, no evidence that she ever paid the money which was the ostensible consideration for the transfer. Indeed, as stated by the High Court, she does not lay any claim to the property, and has, in fact, re-conveyed it to the appellant who represents the joint family. The learned Judges of the High Court were, therefore, justified in treating it as part of the joint estate.

No reasonable objection can be taken to the finding that the plaintiff is entitled to a share in the outstandings, if any, realised by the defendants on behalf of the family.

Their Lordships are of the opinion that there is no substance in any of the grounds raised by the appellant, and they will, therefore, humbly advise His Majesty that the appeal be dismissed and the judgment and the decree of the High Court be affirmed.

In the Privy Council.

RAMAKRISHNA AYYAR

2.

PARAMESWARA AYYAR AND OTHERS.

DELIVERED BY SIR SHADI LAL.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1935.