

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 7141 OF 2008

DODDAMUNIYAPPA(DEAD) THROUGH LRS.Appellant(s)

VERSUS

MUNISWAMY & ORS.

....Respondent(s)

J U D G M E N T

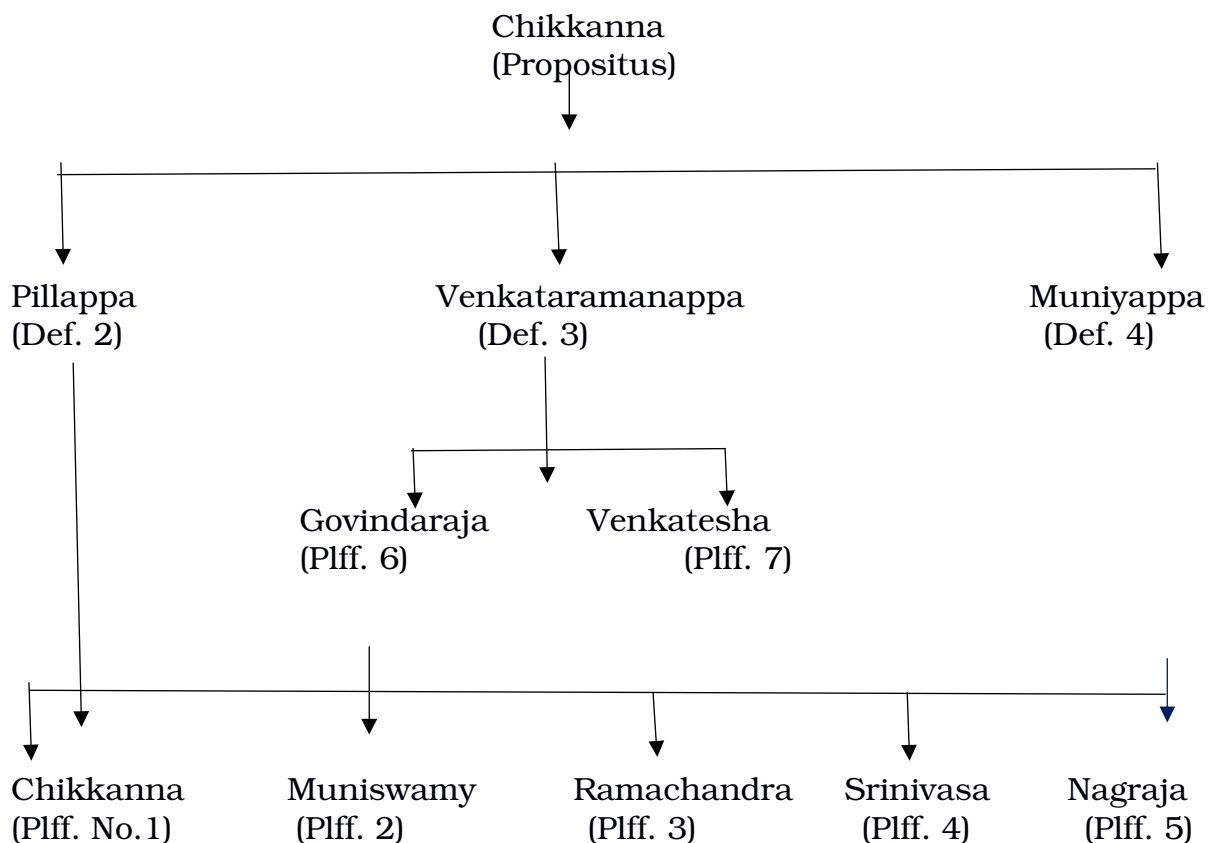
Rastogi, J.

1. The present appeal arises out of the suit filed at the instance of respondent nos. 1 to 6 and respondent no. 10 for declaration that the compromise dated 25th March, 1976 entered into between the appellant(defendant no. 1) on one hand and respondent nos. 7, 8 and 9(original defendant nos. 2, 3 & 4) in Execution Appeal No. 2 of 1974 did not bind the rights of the plaintiffs and for permanent injunction which was acceded to by the High Court in Regular First Appeal No. 611 of 1999 vide judgment and decree dated 31st March, 2005.

2. The facts in brief culled out and relevant for the present purpose which manifest from the record that Shri Chikkanna

(since deceased) was the propositus of the joint family. He had three sons, namely, Pillappa, Venkataramanappa and Muniyappa (respondent nos. 7, 8 and 9). Respondent nos. 1 to 4 and respondent no. 10 are the sons of Pillappa (defendant no. 2) and respondent nos. 5 and 6 are the sons of Shri Venkataramanappa (defendant no. 3).

3. The above named propositus of the joint family Chikkanna purchased the suit schedule property from his sister Thayamma. The genealogy of the family of the respondents (plaintiffs) is as under: -



4. It could be seen from the genealogy that respondent nos. 1 to 6 and respondent no. 10 are the grandsons of propositus Chikkanna(deceased). The appeal has been preferred by appellant (defendant no. 1) who is a purchaser of the subject property involved in the suit. Respondent nos. 7 to 9(defendant nos. 2 to 4), sons of late Chikkanna had jointly sold the suit property in favour of one Muthappa under a sale deed dated 2nd December, 1950. It was stipulated in the sale deed that in the event of the sale of the suit property by the above named Muthappa, the suit property shall be reconveyance in favour of respondent nos. 7 to 9 (defendant nos. 2 to 4) at the price offered by the purchaser and on failure of the respondent nos. 7 to 9 (defendant nos. 2 to 4), the above named Muthappa would be free to sell the suit property to any other purchaser. The property was later purchased under the sale deed dated 30th September, 1954 by one Muniswamy @ Annaiyappa from whom the appellant purchased the suit property under the registered sale deed dated 29th January, 1962.

5. Respondent nos. 7 to 9(defendant nos. 2 to 4), sons of Chikkanna filed a suit on 27th June, 1964 bearing no. O.S. No. 297 of 1964 against the appellant(defendant no. 1) including other defendants seeking decree of reconveyance of the property in terms of the clause of reconveyance against the appellant and directing the defendants to execute reconveyance deed in their favour in respect of the suit property which came to be dismissed by the trial Court.

6. Being aggrieved by the judgment and decree of the trial Court, respondent nos. 7 to 9(defendant nos. 2 to 4) filed Regular Appeal No. 128 of 1967 which was allowed vide judgment and decree dated 27th August, 1969 that came to be challenged by the appellant(defendant no. 1) in a Regular Second Appeal No. 69 of 1970 which came to be dismissed and thus the decree became final.

7. The matter thereafter proceeded for execution of the decree in Execution No. 121 of 1972 and in sequel to the Order passed in the execution petition, the reconveyance deed was executed by the Court in favour of respondent nos. 7 to 9(defendant nos. 2 to

4) and possession of the suit property was handed over to respondent nos. 7 to 9(defendant nos. 2 to 4) by the Court under delivery receipt dated 7th March, 1974(Exhibit P-6).

8. The appellant (defendant no. 1) filed Execution Appeal No. 2 of 1974 before the Principal Civil Judge, Bangalore. In Execution Appeal, respondent no. 9(defendant no. 4) with the knowledge of respondent nos. 7 and 8(defendant nos. 2 and 3) entered into a compromise dated 25th March, 1976(Exhibit P-8) with the appellant. The extract of the compromise (Exhibit P-8) entered between the parties is quoted hereunder: -

“ IN THE COURT OF PRINCIPAL CIVIL JUDGE
BANGALORE DISTRICT: BANGALORE
Ex. Appeal No. 2/1974

Appellant: Doddamuniappa

-Vs-

Respondents: Pillappa and others

Under Order 23 Rule 3 of the Code of Civil Procedure read with Section 107 C.P.C., the appellant and respondents submit that they have compromised the matter as hereunder:

1. Item No. 1 of the suit schedule shall belong to the respondents and is in their possession of enjoyment.

2. Out of item No. 2 of the suit schedule on extent of land measuring thirty-five feet East to West, the measurement taken from the Eastern edge of Item no.

2 and twenty-six feet North South shall belong to the appellant as absolute owner thereof and the Respondents shall have no right whatsoever in the same. The rest of item No. 2, of plaint schedule property belongs to the respondents absolutely. Parties have taken possession of their respective portions as indicated above.

The appellant and Respondents pray that the appeal may kindly be partly allowed in terms of the above compromise. Parties bear their own costs.

sd/-
P.P. Subarao
Advocate for Appellant

sd/-
Doddamuniappa
Appellant
(in Kannada)

sd/-
M.R. Janardhanam
Advocate for Respondents

sd/-
Muniappa
Respondent
(in Kannada)

Bangalore
Dated: 25.03.1976

Execution submitted before me

sd/-
K.S. Dalvi
Pri. Civil Judge,
Bangalore District,
Bangalore.”

9. The Execution Appeal in terms of the compromise was decided and part premises in terms of the compromise was handed over to the appellant, indisputedly, respondent nos. 1 to 6 and 10 (original plaintiffs) were neither parties to the said compromise nor their consent was obtained. Having attained

majority, respondent nos. 1 to 6 and respondent no. 10 jointly filed a suit bearing O.S. No. 5575 of 1980 arraying the appellant(defendant no. 1) and respondent nos. 7 to 9(defendant nos. 2 to 4) for declaration that the said compromise decree was not binding on them and for permanent injunction contending inter alia that the said compromise had been entered into without their knowledge and consent of the respondent nos. 1 to 6 and respondent no. 10(plaintiffs), and respondent nos. 7 to 9(defendant nos. 2 to 4) having no right whatsoever to enter into compromise and the said compromise had no legal sanctity which was entered into between them without their consent and knowledge and it did not bind them and, therefore, they were entitled for their right in the suit property being a joint family property.

10. The trial Court dismissed the suit vide judgment dated 19th June, 1999 holding that the plaintiff failed to establish that it was the joint family property in the hands of respondent nos. 7 to 9(defendant nos. 2 to 4) and held that they were the joint owners of the suit property.

11. The judgment and decree of the trial Court dated 19th June, 1999 came to be challenged by respondent nos. 1 to 6 in Regular First Appeal No. 611 of 1999 before the High Court. The High Court vide judgment and decree dated 31st March, 2005 allowed the appeal, decreed the suit and held that the subject property was joint family property in the hands of respondent nos. 7 to 9(defendant nos. 2 to 4) and the compromise would not bind the plaintiffs(sons of defendant nos. 2 and 3) which is a subject matter of appeal at the instance of the appellant(defendant no. 1) in the original proceedings.

12. Learned counsel for the appellant, Mr. P.R. Ramasesh, submits that when three sons of Chikkanna jointly sold the property to Muthappa for a sum of Rs. 1000/- it did not hold the character of joint family property in the hands of the sons of propositus Chikkanna and it could not have been treated as joint family property and the plaintiffs (grand children of propositus Chikkanna) were not even born in the year 1950 when the sale was executed.

13. Learned counsel further submits that when a part of the subject property was agreed to be returned back under the terms of the compromise by the original plaintiff (sons of late Chikkanna) in the earlier proceedings, it has not acquired the character of coparcenary property or joint family property under the Hindu Law and mere on compromise, the property cannot get any better character than the ordinary property in the hands of co-sharers.

14. According to the learned counsel, the compromise on which the High Court later proceeded in treating to be a joint family inherited property, the finding is factually incorrect and manifestly erroneous and deserves to be interfered by this Court.

15. Learned counsel further submits that the trial Court, after appraisal of the evidence on record, came to the conclusion that the plaintiffs had failed to establish the subject property to be the joint family property and the terms of compromise was binding on the original plaintiffs, is the correct conclusion in law. At the time of compromise, respondent nos. 7 to 9(defendant nos. 2 to 4) came into possession of the property and, therefore, the nature

of the property had not become coparcenary property. In the circumstances, the finding which has been recorded by the High Court that the subsequent compromise does not bind the plaintiffs is based on a misconception of the principle of law as applicable to Joint Hindu Family.

16. Per contra, Mr. S.N. Bhat, learned counsel for the respondents, while supporting the finding recorded by the High Court submits that the factual matrix of the matter is not in dispute. The subject property was initially sold on 2nd December, 1950 containing the clause of reconveyance requiring the purchaser to reconvey the property in the event of sale and the clause of reconveyance enured to the benefit of the family. After the suit being finally decreed and possession was restored on 7th March, 1974, pursuant thereto, the property reassumed its original character of joint family property in the hands of respondent nos. 7 to 9(defendants nos. 2 to 4).

17. Learned counsel further submits that the property inherited from the father by his sons becomes joint family property in the hands of the sons as held by this Court in **Smt. Dipo Vs.**

Wassan Singh and Others 1983(3) SCC 376. There remain no controversy on the issue that if the subject property stands reassumed in its original character of joint family property on restoration of possession in pursuance to the decree of the Court dated 7th March, 1974, no compromise could have been arrived at between the parties at the stage of execution appeal without the consent of respondent nos. 1 to 6(plaintiffs) and such a compromise would not bind the rights of the respondent nos. 1 to 6 herein and this has been rightly held by the High Court under the impugned judgment.

18. Learned counsel further submits that mere filing of an execution appeal in which the compromise was executed between the parties on 25th March, 1976, would not take away the efficacy of the reconveyance decree passed and the execution of decree stood effected pursuant to which the possession was restored of the subject property on 7th March, 1974 (Exhibit P-8). The High Court has rightly held that in terms of the clause of reconveyance, the decree and the sale deed executed thereafter in execution decree was fully effected and the plaintiffs (respondent nos. 1 to 6) had a right, title and interest in the subject property

which was defeated by the compromise to which respondent nos. 1 to 6 (plaintiffs) were not the parties. Thus, the said compromise cannot bind their share of interest and submits that in the given circumstances, the present appeal is without substance and deserves to be dismissed.

19. We have heard learned counsel for the parties and with their assistance perused the material available on record.

20. The undisputed facts which have come on record are that the subject property was originally purchased by propositus of the family, namely, Chikkanna. After the death of Chikkanna, property devolved into his three sons (respondent nos. 7 to 9-defendant nos. 2 to 4) who jointly sold the property on 2nd December, 1950 and the sale deed contained the clause of reconveyance requiring the purchase to reconvey the property in the event of sale. After the appellant (defendant no. 1) purchased the subject property on 29th January, 1962, civil suit was instituted for reconveyance by the sons of propositus Chikkanna in the first instance which was dismissed by the trial Court. On an appeal being preferred by respondent nos. 7 to 9(defendants

nos. 2 to 4), the First Appellate Court allowed the appeal vide judgment and decree dated 27th August, 1969. The second appeal being R.S.A. No. 69 of 1970 preferred by the present appellant (defendant no. 1) before the High Court came to be dismissed, thus, the decree became final. Respondent nos. 7 to 9(defendants nos. 2 to 4) put the decree to execution and a deed of reconveyance was executed and possession of the subject property was restored to respondent nos. 7 to 9(defendants nos. 2 to 4) on 7th March, 1974 and on execution of a decree, it assumed the character of a joint family property in the hands of respondent nos. 7 to 9(defendants nos. 2 to 4).

21. It is at the stage of Execution Appeal No. 2 of 1974 preferred at the instance of the appellant (defendant no. 1), the compromise was executed between the parties on 25th March, 1976 and part of the possession of the subject property was restored to the appellant(defendant no. 1).

22. After the restoration of possession of the subject property on 7th March, 1974, the title of the property reassumed its original character of joint family property in the hands of respondent nos.

7 to 9 (defendants nos. 2 to 4) and has created the right of inheritance of respondent nos. 1 to 6 in the joint family property and indisputedly, they were neither consulted nor made parties to the said compromise.

23. It is well settled and held by this Court in **Smt. Dipo Vs. Wassan Singh and Others** (supra) that the property inherited from the father by his sons becomes joint family property in the hands of the sons. The relevant portion is as under:-

2. “.....Property inherited from paternal ancestors is, of course, “ancestral property” as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations. In *Mulla's Principles of Hindu Law* (15th Edn.), it is stated at p. 289:

“. . . if A inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it is ancestral property *as regards his male issue*. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. . . .

* * *

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons, but as regards

other relations he holds it, and is entitled to hold it, as his absolute property.”

Again at p. 291, it is stated:

“The share which a coparcener obtains on partition of ancestral property is ancestral property *as regards his male issue*. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. *As regards other relations*, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.”

24. Indisputedly, respondent nos. 1 to 6 (original plaintiffs) were not parties to the compromise dated 25th March, 1976 and the subject property at that time was joint family property and the compromise entered into between the parties would not bind the rights of respondent nos. 1 to 6 (grandsons of propositus Chikkanna).

25. It is an admitted fact on record that the property was purchased by Chikkanna from his sister Thayamma and respondent nos. 7 to 9 (defendants nos. 2 to 4) have inherited the property after death of propositus Chikkanna. Respondent nos. 1 to 6 are children of respondent nos. 7 and 8 (defendants nos. 2

and 3), it would be an ancestral property in their hands and indisputedly respondent nos. 1 to 6 are neither parties to the proceedings nor consented when the compromise decree was executed in Execution Appeal No. 2 of 1974 (Exhibit P-8) dated 7th March, 1974 and admittedly the same would not be binding upon their share over the property.

26. It goes without saying that the compromise would bind the share of respondent nos. 7 to 9 (defendants nos. 2 to 4) as they are party to the compromise which was entered into Execution Appeal No. 2 of 1974 and has been rightly recorded by the High Court under its impugned judgment. We find no error in a finding of fact which calls for any further interference of this Court.

27. We find substance on the submission of learned counsel for the respondents that after the decree of the suit was put in execution a deed reconveyancing the subject property to respondent nos. 7 to 9 (defendants nos. 2 to 4) was executed and were put in possession on 7th March, 1974, mere filing of an Execution Appeal would not take away the efficacy of the

reconveyance decree already passed and the execution stands effected and the right, title and interest in the subject property could not be defeated by the compromise to which respondent nos. 1 to 6 (plaintiffs) were not parties and as such, the said compromise would not bind the share of respondent nos. 1 to 6.

28. The submission of learned counsel for the appellant(s) that respondent nos. 1 to 6 failed to establish the existence of the property in the hands of any member in the joint family property or give rise to any presumption that the property is coparcenary property is misplaced for the reason that the factual matrix of which a detailed reference has been made indicates that the property in the hands of respondent nos. 7 to 9 (defendants nos. 2 to 4) of a joint family and confers on the property the character of coparcenary property in the hands of respondent nos. 1 to 6.

29. Consequently, in our considered view, the appeal is without substance and accordingly dismissed. No costs.

30. Pending applications, if any, also stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
JULY 01, 2019