



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3934 OF 2006

P. ANJANAPPA (D) BY LRs

...APPELLANT (S)

VERSUS

A.P. NANJUNDAPPA & ORS.

...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH,J.

- 1) The present civil appeal arises from the final judgment and decree dated 30 August 2005 passed by the High Court of Karnataka at Bengaluru in Regular First Appeal No. 750 of 1994 (hereinafter, “impugned judgment”), whereby the High Court dismissed the appeal and affirmed the judgment and preliminary decree dated 19 August 1994 rendered by the Principal Civil Judge, Bangalore Rural District, in Original Suit No. 146 of 1987 decreeing a suit for partition and separate possession of the suit schedule properties. The appellants before this Court are the legal heirs of late P. Anjanappa, who was arrayed as defendant no. 5 before the

Trial Court, and for ease of reference the parties shall hereinafter be described by their status before the Trial Court, with the appellants being referred to as defendant no. 5.

2) The facts giving rise to the present case are set out hereafter.

2.1. The parties trace their lineage to one Pillappa, who is stated to be the common ancestor. His widow Muniyamma was arrayed as defendant no. 1 before the Trial Court. The plaintiffs pleaded that Pillappa had four sons, namely plaintiff no. 1 A. P. Nanjundappa, plaintiff no. 2 Venkataswamappa, defendant no. 3 Sreeramappa, and defendant no. 5 P. Anjanappa, and five daughters, namely plaintiff no. 3 Narayanamma, plaintiff no. 4 Sonnamma, plaintiff no. 5 Anjanamma, and defendant no. 4 Lakshamma, besides one daughter who had predeceased and whose branch was represented in the suit as defendant no. 2. Defendant no. 6 Muniswamappa is the husband of plaintiff no. 3 and is not a member of the joint family. Defendant no. 7 is a lessee in respect of certain items of the suit properties. The other defendants are members of the wider family as reflected in the array of parties.

2.2. The suit schedule properties comprised of three parts. Schedule "A" described immovable properties said to have originally belonged to Pillappa and thereafter to have continued as joint family properties in the hands of the coparcenary comprising the parties to the suit. Schedule "B" described immovable properties purchased under a

registered sale deed dated 25 April 1974 in the joint names of defendant no. 5 and defendant no. 6. Schedule “C” described movables, including, inter alia, an item representing amounts realised by way of rent from the Schedule “B” properties.

- 2.3. The plaintiffs’ case, in brief, was that Schedule “A” properties were joint family properties liable to partition and that Schedule “B” properties, though standing in the joint names of defendant no. 5 and defendant no. 6, had been acquired from and blended with the income of the joint family and were therefore also subject to partition. It was further asserted that defendant no. 7 had been inducted as yearly lessee in respect of items comprised in Schedule “B” and that defendant no. 5 had collected the lease amounts, which were liable to be brought to account as part of Schedule “C”. The plaint also adverted to certain agricultural operations, including a casuarina plantation, and claimed accounting of the proceeds.
- 2.4. Defendant no. 5 contested the suit. His principal defences, as pleaded were: that plaintiff no. 2 had during the lifetime of Pillappa executed a registered release deed; that defendant no. 3 had, in the year 1967, executed a registered release deed relinquishing his rights in the joint family properties; and that after the death of Pillappa in the year 1969 there had been, on 11 February 1972, a partition between plaintiff no. 1 and defendant no. 5 in the presence of panchayatdars, recorded in a *palupatti* (*‘Palupatti’* means partition deed or a family settlement

agreement) pursuant to which they had been in separate possession and enjoyment and separate entries had been made in the revenue records. Defendant no. 5 further pleaded that Schedule "B" properties were his self-acquisitions, that defendant no. 6 was only a name lender, and that the plaintiffs' sisters had been given in marriage with customary expenses and were not entitled to shares in the immovable properties.

- 2.5. Defendant no. 6, though not a member of the joint family, was a joint purchaser of Schedule "B" and was impleaded on that footing. Defendant no. 7, being the lessee in respect of Schedule "B", was impleaded to answer the claim for rendition of accounts of rent. The remaining defendants were added as necessary parties to an action for partition.
- 2.6. On 2 July 1987, plaintiff no. 1 and plaintiff no. 2 instituted Original Suit No. 146 of 1987 before the Court of the City Civil Judge, Bangalore Rural District, seeking partition and separate possession of their alleged shares in the suit schedules, together with consequential accounts including mesne profits.
- 2.7. Upon service of summons, defendant no. 5 entered appearance and contested the suit. Defendant no. 6, though he did not at first file a written statement, lodged a counter claim asserting half share in Schedule "B" properties as a joint purchaser and sought a corresponding share in the amounts described as item no. 17 in Schedule "C". Defendant no. 7 filed a written

statement admitting its status as lessee in respect of Schedule “B” and stating that rents had been paid to defendant no. 5 until disputes arose between defendant no. 5 and defendant no. 6, whereafter the lessee expressed willingness to deposit rents in court. Defendants nos. 1 to 4 did not contest the matter and remained absent.

3) The Trial Court, upon consideration of the pleadings and evidence, decreed the suit for partition and separate possession by a preliminary decree dated 19 August 1994. The Trial Court’s decision was based on the following reasons:

3.1. In relation to Schedule “A”, the Trial Court held that the properties were joint family properties. It rejected the defence of a concluded partition as of 11 February 1972 on the basis of an unregistered *palupatti*. The Trial Court recorded that the document, being unregistered, could not be received in evidence to prove either severance in status or the quantum of shares, and that the surrounding revenue materials did not demonstrate that the alleged partition had been acted upon. The Trial Court noted that entries in the revenue records reflected possession by inheritance and management rather than by partition, that there was no subdivision or demarcation in accordance with a partition, and that the conduct relied upon by defendant no. 5, including a subsequent alienation said to discharge family debts, was inconsistent with a complete earlier severance.

- 3.2. In relation to Schedule “B”, the Trial Court found that the properties were purchased in the joint names of defendant no. 5 and defendant no. 6 under a registered sale deed dated 25 April 1974 and that the lease granted in favour of defendant no. 7 had been executed jointly by defendant no. 5 and defendant no. 6. On an appraisal of the oral and documentary evidence, including the admissions elicited from defendant no. 5, the Trial Court rejected the plea that defendant no. 6 was a mere name lender and negated the contention that the entire of Schedule “B” was the self-acquisition of defendant no. 5. The Trial Court concluded that defendant no. 6 was entitled to a half share in Schedule “B” and to a half share in the moneys represented by item no. 17 of Schedule “C”, with the remaining half of those items forming part of the family pool for partition.
- 3.3. In relation to the release deeds set up by defendant no. 5, the Trial Court held that the registered release deed attributed to plaintiff no. 2 was not shown to have been acted upon, since the proponent did not lead convincing evidence to establish separation of plaintiff no. 2 from the joint family or exclusion of his claim to partition. As regards defendant no. 3, the Trial Court noticed the release deed and treated him as having separated for the purpose of survivorship, yet held that he would participate to the extent of a share in the notional accretion arising on the death of the father. On that footing, the Trial Court

declined to exclude either plaintiff no. 2 or defendant no. 3 from the suit entirely.

- 3.4. The computation of shares was undertaken on the basis that, at the time of the death of Pillappa in the year 1969, the coparcenary consisted of the father and three sons, namely plaintiff no. 1, plaintiff no. 2, and defendant no. 5, with defendant no. 3 being treated as separated for the purpose of survivorship. A notional partition was therefore posited to the extent of $\frac{1}{4}$ in favour of Pillappa. The Trial Court then proceeded on the footing that the notional $\frac{1}{4}$ th share of Pillappa devolved in equal measure among nine sharers represented in the suit, namely plaintiff no. 1, plaintiff no. 2, defendant no. 5, the four daughters, the branch of the predeceased daughter represented by defendant no. 2, and defendant no. 3. On that basis, each of the nine received an accretion of $\frac{1}{36}$, and plaintiff no. 1, plaintiff no. 2, and defendant no. 5 each took, in addition, $\frac{1}{4}$ as their coparcenary share, yielding a total of $\frac{5}{18}$ for each of plaintiff no. 1, plaintiff no. 2, and defendant no. 5, and $\frac{1}{36}$ for each of plaintiff no. 3, plaintiff no. 4, plaintiff no. 5, defendant no. 4, defendant no. 3, and defendant no. 2. The share of defendant no. 6 was determined separately as $\frac{1}{2}$ of Schedule "B" and $\frac{1}{2}$ of item no. 17 of Schedule "C", outside the family pool, in terms of the findings recorded in relation to those items.
- 3.5. The Trial Court directed an enquiry into mesne profits and consequential accounts, including in respect of the lease moneys pertaining to Schedule "B", to be worked out in the

final decree proceedings in accordance with the shares so declared.

4) Aggrieved by the preliminary decree dated 19 August 1994, defendant no. 5 preferred Regular First Appeal no. 750 of 1994 before the High Court of Karnataka at Bengaluru. By the impugned judgment dated 30 August 2005, the High Court dismissed the appeal and affirmed the decree of the Trial Court with the following observations:

4.1. The High Court noted the defence of defendant no. 5 that there had been a partition on 11 February 1972 reduced into a *palupatti* and that the revenue entries thereafter reflected separate possession. Upon examining the document and the surrounding materials, the High Court held that the *palupatti*, being unregistered, was inadmissible to prove either severance of the joint family status or the quantification of shares. It further found, on an appraisal of the mutation extracts, record of rights, and other revenue papers, that the entries indicated possession by inheritance and management rather than pursuant to a partition; that there was no *phodi* or subdivision (*Phodi* means process of surveying and demarcating land) corresponding to a partition; and that a subsequent alienation reciting discharge of joint family debts was inconsistent with an earlier partition. The plea of an effective partition as on 11 February 1972 was therefore rejected.

- 4.2. In relation to the release attributed to plaintiff no. 2, the High Court concurred with the Trial Court that the document had not been shown to have been acted upon, and that there was no reliable evidence of plaintiff no. 2 having separated so as to forfeit a claim in partition or in the devolution of the notional share of the father. As regards the release attributed to defendant no. 3, the High Court referred to the nature of the instrument and the applicable stamp requirements and held that the proponent had not established its efficacy to exclude defendant no. 3 entirely. The High Court supplemented the reasons recorded by the Trial Court and declined to disturb the inclusion of defendant no. 3 for purposes of computing shares.
- 4.3. On Schedule “B”, the High Court affirmed the findings that the properties were purchased jointly in the names of defendant no. 5 and defendant no. 6 and that the lease in favour of defendant no. 7 was executed by both of them. Having regard to the admissions in the evidence of defendant no. 5 and the tenor of the documents, the High Court rejected the contention that defendant no. 6 was a mere name lender and upheld his entitlement to a one half share in Schedule “B” and a one half share in the moneys represented by item no. 17 of Schedule “C”. It held that only the remaining one half of those items would enter the family pool for partition.
- 4.4. On the basis of the above conclusions, the High Court affirmed the computation adopted by the Trial Court,

namely that plaintiff no. 1, plaintiff no. 2, and defendant no. 5 would each be entitled to 5/18 in the family pool and that plaintiff no. 3, plaintiff no. 4, plaintiff no. 5, defendant no. 4, defendant no. 3, and defendant no. 2 would each be entitled to 1/36, with defendant no. 6 holding 1/2 of Schedule "B" and 1/2 of item no. 17 of Schedule "C" outside the family pool.

4.5. Consequential directions were issued for disbursal of rents earlier deposited in respect of Schedule "B" in proportion to the shares as affirmed, and certain ministerial corrections in the cause title were permitted.

5) Being aggrieved by the dismissal of the first appeal, the appellants, who are the legal heirs of defendant no. 5 before the Trial Court, have preferred the present civil appeal. Respondent nos. 1 to 5 herein are plaintiff nos. 1 to 5 before the Trial Court. Respondent no. 6 herein is defendant no. 1 before the Trial Court, respondent no. 7 is defendant no. 2, respondent no. 8 is defendant no. 3, respondent no. 9 is defendant no. 6, respondent no. 10 is defendant no. 4, and respondent no. 11 is defendant no. 7. As already stated, the parties shall hereinafter be referred to by their descriptions as they stood before the Trial Court.

6) Having considered the pleadings, the evidence on record and the rival submissions of the respective parties, the questions that fall for our determination are as follows:

- I. Whether the registered release deeds dated 09.11.1956 (Ex.D-15) and 14.09.1967 (Ex.D-16) are valid and binding, and if so, what is their legal effect on the membership and share entitlements of plaintiff no. 2 and defendant no. 3.
- II. Whether the document dated 11.02.1972 styled as the *palupatti* (Ex.D-17 with schedule Ex.D-17(a)) can be relied upon for collateral purposes to establish severance of status as well as the nature of subsequent possession and enjoyment.
- III. Consequent upon the answers to the above, what constitutes the partitionable estate and how the shares are to be worked out inter se the parties, including the treatment of Schedule “B” property and item no. 17 of “C” schedule and the extent to which the co-ownership of defendant no. 6 is to be preserved.

7) Issue I - Validity and effect of the two release deeds.

7.1. The parties are at variance on whether plaintiff no. 2 and defendant no. 3 had, prior to the death of the propositus in 1969, effectively severed themselves from the joint family and abandoned all claim to its estate (and to the father’s share upon notional partition). The plaintiffs contend that the alleged releases were either not proved, or, if proved, were ineffectual for want of being “acted upon.” The appellant (defendant no. 5) maintains that both instruments are registered releases executed for consideration, as borne out by the parties’ subsequent

conduct, and operate to exclude plaintiff no. 2 and defendant no. 3 from any share.

- 7.2. Having perused the original records, including the registered instruments, deposition of the parties, and the contemporaneous revenue extracts placed before us, we are satisfied that both Ex.D-15 and Ex.D-16 are duly proved and carry legal effect.
- 7.3. As regards Ex.D-15 (09.11.1956), it is a registered deed by which plaintiff no. 2 unequivocally released his right and interest in the joint family and in the estate of his father in consideration of a cash payment. It recites, in clear terms, a complete severance of all claims save the bond of blood. The deed was produced and exhibited without objection; there was no cross-examination of defendant no. 5 on its execution or contents; and plaintiff no. 2 did not present himself for cross-examination to dislodge the document. In these circumstances, the statutory presumption that attaches to a registered instrument operates, and, in the case of Ex.D-15 which was more than thirty years old when tendered, the presumption under Section 90 of the Indian Evidence Act, 1872/Section 89 of the *Bharatiya Sakshya Adhiniyam*, 2023 is also attracted. The burden to rebut the deed's genuineness and effect lay squarely on those who impeached it. No credible rebuttal was led. This principle has been reiterated by this Court in ***Prem Singh v. Birbal***¹ in the following terms:

¹ (2006) 5 SCC 353.

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

- 7.4. The Trial Court declined to give effect to Ex.D-15 on two grounds: first, that the deed was not mentioned in the later *palupatti*; and second, that it was not shown to have been “acted upon.” In our considered opinion, both reasons are misconceived. A release by a coparcener for consideration operates immediately to divest his subsisting coparcenary interest; it does not depend for its efficacy on any further act of implementation. Silence in a later, separate memorandum does not undo a concluded, registered relinquishment inter partes, particularly when the deed is produced from proper custody and stands unchallenged in cross-examination.
- 7.5. We accordingly hold Ex.D-15 to be valid and binding and to have the effect of removing plaintiff no. 2 from the coparcenary from 1956 onwards. To the extent Ex.D-15 adverts to the father’s separate or future entitlement, we treat the covenant, consideration and long-standing conduct as creating an equitable estoppel against plaintiff no. 2 setting up a contrary claim now. The estoppel effect

of similar release deeds was observed by this Court in ***Elumalai v. M. Kamala***² as follows:

“16. This Court went on to approve the view taken by the High Court of Allahabad in Latafat Husain v. Hidayat Husain [Latafat Husain v. Hidayat Husain, 1936 SCC OnLine All 315 : AIR 1936 All 573] . The Court found as follows : (Gulam Abbas case [Gulam Abbas v. Haji Kayyum Ali, (1973) 1 SCC 1] , SCC pp. 4-5, paras 5 & 7)

“5. ... With due respect, we are unable to concur with the view [Abdul Kafoor v. Abdul Razack, 1958 SCC OnLine Mad 129] of the Madras High Court that a renunciation of an expectancy, as a purported but legally ineffective transfer, is struck by Section 23 of the Indian Contract Act. As it would be void as a transfer at all there was no need to rely on Section 23, Contract Act. If there was no “transfer” of property at all, which was the correct position, but a simple contract, which could only operate in future, it was certainly not intended to bring about an immediate transfer which was all that the rule of Muslim law invalidated. The real question was whether, quite apart from any transfer or contract, the declarations in the deeds of purported relinquishment and receipt of valuable consideration could not be parts of a course of conduct over a number of years which, taken as a whole, created a bar against a successful assertion of a right to property when that right actually came into being. An equitable estoppel operates, if its elements are established, as a rule of evidence preventing the assertion of rights which may otherwise exist.

² (2023) 13 SCC 27.

7. Sir Roland Wilson, in his “Anglo Mohamadan Law” (p. 260, para 208) states the position thus:

‘For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law, nemo est heres viventis.....a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See Abdul Wahid [Abdul Wahid Khan v. Nuran Bibi, 1885 SCC OnLine PC 4 : (1884-85) 12 IA 91 : ILR (1885) 11 Cal 597] which was followed in Hasan Ali [Hasan Ali v. Nazo, 1889 SCC OnLine All 29 : ILR (1889) 11 All 456] . The converse is also true : a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance.’

This is a correct statement, so far as it goes, of the law, because a bare renunciation of expectation to inherit cannot bind the expectant heir's conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppel remains untouched by this statement.”

(emphasis supplied)

17. The property i.e. ‘A’ schedule, was not the ancestral property of Shri Chandran. Shri Chandran would have acquired rights over the same only if his father had died intestate. He was, thus, only an heir apparent. Transfer by an heir apparent being mere spes successionis ineffective to convey any right. By the mere execution of release deed, in other words, in the facts of this case, no transfer took place. This is for the

simple reason that the transferor, namely, the father of the appellants did not have any right at all which he could transfer or relinquish. However, if his conduct was such that he could be estopped then the execution of the release deed would imperil his right and therefore cast an irremovable shadow on the claim of the appellants as well unless we find merit in other submissions of Shri Siddharth Iyer, learned counsel for the appellants.”

7.6. Turning to Ex.D-16 (14.09.1967), it is a registered deed by which defendant no. 3 relinquished all his rights, title and interest in favour of the father and the then coparceners, and contemporaneously received seven items of property. Execution was admitted in the pleadings; defendant no. 3 entered the box and accepted the deed; and the instrument was exhibited. The courts below treated Ex.D-16 with unwarranted scepticism. The Trial Court discounted it, broadly on “not acted upon” and recital-based reasoning. The High Court, while accepting that the deed partook the character of an instrument of partition for stamp purposes, declined to give effect to it on the footing that proper valuation and stamp duty were not demonstrated and that, in any case, it had not been acted upon. That approach is unsustainable for multiple reasons.

7.7. Firstly, the deed is registered and was admitted in evidence; no timely, specific objection on stamp duty was pressed to a logical conclusion at the stage of marking, and the instrument having been received in evidence, its admissibility on that score cannot be re-agitated at the

appellate stage. Secondly, even if one were to regard Ex.D-16 through the lens of a family arrangement, the law leans strongly in favour of upholding such settlements among close relations where consideration has passed and possession has followed. Here, there is both consideration and unequivocal admission of execution. Thirdly, the “acted upon” objection is misplaced on the facts and in principle. The record shows consistent, post-1967 conduct aligning with the break-away of defendant no. 3: he did not assert coparcenary incidents thereafter; the subsequent family arrangement of 11.02.1972 proceeded between plaintiff no. 1 and defendant no. 5; and the revenue course and dealings which we shall discuss while considering the *palupatti* are plainly inconsistent with defendant no. 3 continuing as a coparcener. Where execution is admitted, consideration is shown, and later conduct corroborates severance, courts ought not to defeat a registered relinquishment by demanding proof of superadded formalities.

- 7.8. We therefore disapprove the principal reasons furnished by the Trial Court and the High Court. The Trial Court erred in treating “non-mention” in a later document and an asserted want of “acting upon” as fatal to Ex.D-15 and Ex.D-16 despite the admissions and presumptions that attached to them. The High Court compounded the error by invoking stamp characterisation to withhold effect from Ex.D-16 after admitting it in evidence and after acknowledging its tenor, and by failing to appreciate that

the deeds carried their own operative force and were reinforced by subsequent conduct.

- 7.9. On the cumulative appraisal of record, we hold that Ex.D-15 severed plaintiff no. 2 from the coparcenary with effect from 09.11.1956 and bars any claim by him to the joint family estate. Moreover, we also hold that Ex.D-16 severed defendant no. 3 from the coparcenary with effect from 14.09.1967 and bars any claim by him to the joint family estate. In consequence, as on the death of the propositus in 1969, the subsisting coparcenary comprised only plaintiff no. 1 and defendant no. 5. This legal position will govern the computation of the partitionable estate and the working of shares that we take up under Issue III.

8) Issue II - Whether the “*palupatti*” proves disruption of the joint family and the parties’ subsequent separate possession and enjoyment (collateral use).

- 8.1. The plaintiffs deny that there was any partition or disruption of the joint family and contend that the writing described as the *palupatti* is an unregistered partition deed that cannot be looked at for any purpose. Defendant no. 5 asserts that Ex.D-17 records a family arrangement which contains an unequivocal declaration of severance of status between plaintiff no. 1 and defendant no. 5 after the earlier releases by plaintiff no. 2 and defendant no. 3, that the arrangement was acted upon in fact, and that even if it is unregistered it is admissible for the limited collateral purposes of proving disruption of joint status and

explaining the nature of subsequent possession and enjoyment.

- 8.2. An unregistered partition deed, including the palupatti in the present case, may be relied upon for the limited collateral purposes of proving severance of the joint family status and title, explaining the nature of possession, recording the arrangement made thereunder, and evidencing the parties' subsequent conduct as was observed by this Court in various judgements such as **Sita Ram Bhama v. Ramvatar Bhama**³, **Yellapu Uma Maheswari v. Buddha Jagadheeswararao**⁴ and **K.G. Shivalingappa v. G.S. Eswarappa**⁵. The same has been clearly expounded by this Court in **Thulasidhara v. Narayanappa**⁶ in the following paras:

“9.4. It is required to be noted that the deed dated 23-4-1971, under which the suit property had gone/devolved in favour of Krishnappa, was reduced in writing before the panchayat and panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Ext. D-4, on considering the entire evidence on record and even the deposition of the plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tallies with the document dated 23-4-1971 (Ext. D-4). Execution of the document/partition deed/Palupatta dated 23-4-1971 has been established and proved by examining

³ (2018) 15 SCC 130 at Para 13.

⁴ (2015) 16 SCC 787 at Para 16.

⁵ (2004) 12 SCC 189 at Para 14.

⁶ (2019) 6 SCC 409.

different witnesses. The High Court has refused to look into the said document and/or consider document dated 23-4-1971 (Ext. D-4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in S. Shanmugam Pillai v. K. Shanmugam Pillai [S. Shanmugam Pillai v. K. Shanmugam Pillai, (1973) 2 SCC 312] in which it was observed as under: (S. Shanmugam Pillai case [S. Shanmugam Pillai v. K. Shanmugam Pillai, (1973) 2 SCC 312], SCC pp. 319 & 321, paras 13 & 22)

“13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

22. As observed by this Court in T.V.R. Subbu Chetty's Family Charities case [T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar, AIR 1961 SC 797], that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.”

9.5. As held by this Court in Subraya M.N. [Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705 : (2016) 4 SCC

(Civ) 163] even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971.”

8.3. We have perused the original Ex.D-17 and its schedule Ex.D-17(a) as they stand on the trial record. Plaintiff no. 1 admitted his signature, which was marked in evidence as Ex.D-6. The signatures of defendant no. 5 and the mother were also marked. The writing bears the attestation of panchayatdars and was written by the village accountant. At the stage of production, the Trial Court permitted Ex.D-17 and Ex.D-17(a) to be marked for collateral purpose. The surrounding materials from 1972 onwards are consistent with that position. There are mutation and revenue entries that refer to the post-1972 arrangement and to the earlier releases. Revenue records, including RTCs and index

extracts, stand separately in the names of plaintiff no. 1 and defendant no. 5 for the very survey numbers that Ex.D-17(a) allots to them. Separate residence and separate cooking from 1972 were admitted. Plaintiff no. 1 independently mortgaged lands that fell to his share. Plaintiff no. 1 independently acquired and alienated property after 1972. In 2014, plaintiff no. 1 executed a relinquishment in favour of the municipal authority and independently monetised the transaction through transfer of development rights. The lands allotted under Ex.D-17(a) lie in different villages and no survey number is common between plaintiff no. 1 and defendant no. 5. This bears upon the objection based on the absence of partition by metes and bounds.

- 8.4. The governing principles in such cases are well settled. Under Hindu law, severance of joint status can be brought about by an unequivocal declaration reduced to writing or otherwise, and a writing evidencing such disruption is admissible to prove the fact of disruption, the arrangement, and the character of subsequent possession. The same was laid down by a 3 Judge Bench of this Court in *Kalyani v. Narayanan*⁷ in the following paras:

“18. One thing is crystal clear that Ex. P-1 is not a deed of partition in the sense it does not purport to divide the property amongst various coparceners by metes and bounds. However, in Hindu law qua joint family and joint family property the word “partition” is understood

⁷ 1980 Supp SCC 298.

in a special sense. If severance of joint status is brought about by a deed, a writing or an unequivocal declaration of intention to bring about such disruption, qua the joint family, it constitutes partition (see Raghavamma v. Chenchamma [AIR 1964 SC 136 : (1964) 2 SCR 933 : (1964) 1 SCA 593]). To constitute a partition all that is necessary is a definite and unequivocal indication of intention by a member of a joint family to separate himself from the family. What form such intimation, indication or representation of such interest should take would depend upon the circumstances of each case. A further requirement is that this unequivocal indication of intention to separate must be to the knowledge of the persons affected by such declaration. A review of the decisions shows that this intention to separate may be manifested in diverse ways. It may be by notice or by filing a suit. Undoubtedly, indication or intimation must be to members of the joint family likely to be affected by such a declaration.”

- 8.5. Moreover, a family arrangement recorded in writing, when relied upon only to explain how the parties thereafter held and enjoyed the properties, does not require registration for that limited collateral use. The same was observed by this Court in **Amteshwar Anand v. Virender Mohan Singh**⁸ as follows:

“28. The validity of the assignment was however questioned by the appellants on the ground that the first two agreements were not registered. The submission is untenable. Section 17(1) of the Registration Act, 1908 insofar as it is relevant, requires under clause (b) thereof, registration of “non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether

⁸ (2006) 1 SCC 148.

vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property". Sub-section (2) of Section 17 creates exceptions to the mandatory requirements of Sections 17(1)(b) and (c). One of the exceptions made in Section 17(2) of the Registration Act, 1908, is clause (i). This exception pertains to "any composition deed". In other words, all composition deeds are exempt from the requirement to be registered under that Act [See Govind Ram v. Madan Gopal, 72 IA 76 : AIR 1945 PC 74, 76] . The composition deed in this case was a transaction between the members of the same family for the mutual benefit of such members. It is not the appellants' case that the agreements required registration under any other Act. Apart from this, there is the principle that courts lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received benefits under the arrangement [See Kale v. Dy. Director of Consolidation, (1976) 3 SCC 119 : AIR 1976 SC 807] . Both the courts below had concurrently found that the parties had enjoyed material benefits under the agreements. We have ourselves also rescrutinised the evidence on record on this aspect and have found nothing to persuade us to take a contrary view. Furthermore, in this case the agreements had merged in the decree of the Court which is also excepted under sub-section (2)(vi) of Section 17 of the Registration Act, 1908 ["17. (2)(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;"] ."

8.6. In our considered opinion, the reality of disruption is tested by a cumulative assessment of conduct that includes separate possession, separate cultivation, separate residence, independent dealings with the lands allotted, and revenue records that consistently reflect such separation. Where the allotted lands are situated in

different villages with distinct survey numbers, an insistence on further partition as a precondition to infer disruption misdirects the inquiry, because the determinative question is whether the joint status stood severed and the subsequent enjoyment was separate.

8.7. Tested on these principles, Ex.D-17 qualifies for collateral use. It records the post-release arrangement between the only surviving coparceners at the material time, namely plaintiff no. 1 and defendant no. 5. It bears admitted signatures and the attestation of village elders. It was marked by the Trial Court for collateral purposes. The long and consistent course of conduct that followed confirms the reality of disruption on 11.02.1972. The parties lived separately and cooked separately. They cultivated distinct survey numbers in different villages. Plaintiff no. 1 dealt with his lands as owner, including mortgages and later transactions. The municipal relinquishment and the transfer of development rights in 2014 were undertaken by plaintiff no. 1 alone. This cumulative matrix corroborates that the family ceased to be joint from 11.02.1972 and that each branch thereafter held and enjoyed separately what Ex.D-17(a) allotted.

8.8. The approach of the Trial Court and the High Court does not withstand scrutiny. The Trial Court declined to act on Ex.D-17 on the footing that it was unregistered and not acted upon and it read the mutation entry as if it were based on inheritance or consent rather than on the *palupatti*. That approach is erroneous. The writing was

expressly marked for collateral purposes and registration was not a bar on that plane. The insistence on division by metes and bounds ignored the undisputed position that the allotted lands are in different villages with no overlap of survey numbers and it overlooked the longstanding separate possession reflected in the revenue records. The Trial Court further misread the mortgage record by assuming the participation of defendant no. 5 where the document and the bank notices show plaintiff no. 1 alone acting as owner. The High Court affirmed the Trial Court's observation without independently framing and deciding the points that arose and without engaging with the cumulative materials. It therefore did not correct the Trial Court's misdirection on the collateral use of Ex.D-17 and on the legal effect of the established course of conduct.

8.9. We therefore hold that Ex.D-17, read with Ex.D-17(a), is admissible and reliable for the collateral purposes of proving that, on and from 11.02.1972, there was severance of joint status between plaintiff no. 1 and defendant no. 5 and that each thereafter held and enjoyed separately the properties allotted under Ex.D-17(a). We clarify that Ex.D-17 is not treated as a conveyance that creates or extinguishes rights by itself. Our conclusion rests on the severance of status and on the character of subsequent possession and enjoyment as borne out by the writing and the long course of conduct.

8.10. Therefore, two consequences follow and will be worked out while fixing shares. Properties acquired after 11.02.1972

do not form accretions to a subsisting coparcenary and fall to the acquirer's separate estate, subject to any proven joint purchase. Daughters, who were not coparceners at the material time, do not obtain a coparcenary share by virtue of a disruption that took place before 2004. The computations will be made under Issue III and the half share of defendant no. 6 in the jointly purchased items will be safeguarded.

9) Issue III - Consequential determination of the partitionable pool, fractional shares, and directions.

9.1. Having upheld Ex.D-15 and Ex.D-16 as valid releases and having accepted Ex.D-17, read with Ex.D-17(a), for the collateral purposes of severance and subsequent separate enjoyment, the partitionable estate must be identified and the precise shares determined. The family hotchpot for partition shall comprise Schedule A together with items 1 to 16 of Schedule C. Schedule B and item 17 of Schedule C shall stand outside the family pool. Between defendant no. 5 and defendant no. 6, Schedule B and item 17 of Schedule C shall be held in equal parts, and nothing in this judgment shall dilute the half share of defendant no. 6 therein.

9.2. The fractional computation over the partitionable pool follows the notional partition under the unamended Section 6 of the Hindu Succession Act, 1956 as on the

death of Pilappa in 1969. On that date, the coparcenary then subsisting for Schedule A consisted of Pilappa, plaintiff no. 1, and defendant no. 5, since plaintiff no. 2 and defendant no. 3 had earlier executed Ex.D-15 and Ex.D-16 and thereby stood outside the coparcenary. A notional partition at that point would allot $\frac{1}{3}$ to Pilappa, $\frac{1}{3}$ to plaintiff no. 1, and $\frac{1}{3}$ to defendant no. 5. Pilappa's $\frac{1}{3}$ would then devolve by succession among his seven children who were alive at the time, namely plaintiff no. 1, defendant no. 5, and the five daughters, with plaintiff no. 2 and defendant no. 3 taking nothing by virtue of their binding releases which expressly extended to the ancestral and the self-acquired properties of Pilappa. Each of the seven children would therefore take $\frac{1}{7}$ out of Pilappa's $\frac{1}{3}$, thereby getting $\frac{1}{21}$ each, so that plaintiff no. 1 and defendant no. 5 augment their respective $\frac{1}{3}$ with a further $\frac{1}{21}$.

- 9.3. On the findings recorded above, the partitionable pool consists of Schedule A and items 1 to 16 of Schedule C. Over this pool, plaintiff no. 1 shall take $\frac{8}{21}$, defendant no. 5 shall take $\frac{8}{21}$, and each of the five daughters' branches shall take $\frac{1}{21}$, with the predeceased daughter's $\frac{1}{21}$ to be worked out in favour of defendant no. 2 as representing her estate. Plaintiff no. 2 and defendant no. 3 take no share by reason of Ex.D-15 and Ex.D-16. Schedule B and item 17 of Schedule C do not

enter the hotchpot. They stand in equal moieties of defendant no. 5 and defendant no. 6.

10) Accordingly, the appeal is allowed.

11) The judgment and decree dated 30.08.2005 in RFA No. 750 of 1994 and the preliminary decree dated 19.08.1994 in O.S. No. 146 of 1987 are set aside. A fresh preliminary decree is substituted in the following terms:

- I. Ex.D-15 and Ex.D-16 are declared valid and binding releases. Ex.D-17 read with Ex.D-17(a) is held admissible for the collateral purposes of establishing severance of joint status with effect from 11.02.1972 and explaining the nature of subsequent separate possession and enjoyment.
- II. The partitionable pool shall consist of Schedule A and items 1 to 16 of Schedule C. Shares over this pool are fixed as follows: plaintiff no. 1 at 8/21, defendant no. 5 at 8/21, and each of the five daughters' branches at 1/21, with the predeceased daughter's 1/21 to be given effect in favour of defendant no. 2 as representing her estate. Plaintiff no. 2 and defendant no. 3 take none.
- III. Schedule B and item 17 of Schedule C are excluded from the hotchpot. Defendant no. 5 and defendant no. 6 shall hold these in equal halves.
- IV. Any deposits, lease receipts, or other accretions referable to Schedule B or item 17 of Schedule C and presently in court or traceable through the lessee shall be apportioned equally between defendant no. 5 and

defendant no. 6, subject to just allowances, in the final decree proceedings. Mesne profits, if any, pertaining to Schedule A and items 1 to 16 of Schedule C shall be determined in accordance with law in the final decree proceedings.

- 12) The Trial Court shall draw the final decree by metes and bounds in conformity with this judgment. It shall demarcate the shares over Schedule A and items 1 to 16 of Schedule C and shall separately give effect to the equal moieties of defendant no. 5 and defendant no. 6 in Schedule B and item 17 of Schedule C. Any pendente lite alienations touching Schedule B or item 17 of Schedule C shall abide these declarations and be considered, if required, in the final decree proceedings without disturbing the equal halves.
- 13) There shall be no order as to costs.
- 14) All pending interlocutory applications stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

.....J.
[N.V. ANJARIA]

NEW DELHI
NOVEMBER 06, 2025