

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.C.C.A.No.21 of 1983

%23-08-2013

#K.Krishna Kumar and another

Appellant.

Versus

\$ K.Radhakrishnaiah and others. Respondents.

< **GIST:**

> **HEAD NOTE:**

!Counsel for the appellants :Sri M.V.Suresh

^ Counsel for the respondents 8 to 11 : Sri V.Hari Haram

? Cases referred

[1] AIR 1991 SC 2234

² AIR 1953 SC 65

³ (1969) 2 SCC 201

⁴ (2007) 14 SCC 318

⁵ AIR 1992 SC 248

⁶ (1895) 2 Ch. 273

⁷ AIR 1962 SC 903

⁸ AIR 1919 PC 79

⁹ AIR 1976 SC 807

¹⁰ AIR 1960 SC 335

¹¹ AIR 1954 SC 379

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.C.C.A.No.21 of 1983

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JUDGMENT :

This appeal is filed against the judgment and decree
dt.08.02.1982 in OS.No.222 of 1973 on the file of VI Addl.
Judge, City Civil Court, Hyderabad.

2. The appellants are plaintiffs in the suit. The said suit was filed by plaintiffs for partition of plaint 'A' to 'D' Schedule properties and other properties belonging to the alleged joint family headed by 1st defendant, their grandfather, into twelve equal shares and to deliver separate possession of 1/12th share each to them; to direct 1st defendant to render accounts; and for costs.

3. Pending appeal, 3rd defendant died and respondent Nos.8 to 11 were impleaded as his legal representatives. The 1st defendant also died pending appeal and defendant Nos.2-6, who were already on record, were recorded as his legal representatives. The 5th respondent also died pending appeal and respondent Nos.1, 3, 4 and 7, who were already on record, were recorded as her legal representatives.

4. Heard Sri M.V. Suresh – Counsel for appellants and Sri V. Hariharan – counsel for respondent Nos.8 to 11.

5. The parties belong to the Vaisya trading family governed by the Madras School of Hindu Mitkshara Law and are natives of Hindupur in Anantapur District in Andhra Pradesh.

6. The relationship between parties to the appeal is as under :

One K.V.Gundaiah had a son by name K. Nagaiah. Smt.Seshamma is the wife of K. Nagaiah. Gopalakrishnaiah, Krishnamma, Balakrishnayya and Radhakrishnaiah (1st defendant) are the children of said K.

Nagaiah. The 1st defendant initially married one Annapurnamma. They had a son by name Narayana Rao (2nd defendant). Subsequently Annapurnamma died. Thereafter 1st defendant married Subbalakshmma (6th defendant). He did not have children through her. He also married one Lakshmi Bai (5th defendant) later. Nagendra Rao (3rd defendant) and Seshagiri Rao (4th defendant) are their sons and Poornima is their daughter. Krishna Kumar (1st plaintiff), Sridhar (2nd plaintiff), Padmaja, Parimala and Paranjyothi are the 2 sons and 3 daughters of 2nd defendant. Nagaiah died in 1909 and subsequently Gopala Krishnaiah, Krishnayya and Balakrishnayya also died.

7. The 2nd defendant along with his father 1st defendant and brother 3rd defendant was a partner in a firm M/s.K. Radhakrishnaiah and Sons.

8. On 04.01.1965 O.S.No.1 of 1965 was filed by 2nd defendant on the file of 1st Addl. Chief Judge, City Civil Court, Secunderabad against defendant Nos.1 and 3 for recovery of a sum of Rs.4,90,000/- with subsequent interest towards compensation in lieu of his share including goodwill, value of lease-hold interest, value of movables and estimated balance of profits for the years 01.10.1963 to 30.09.1964 in the firm M/s.K. Radhakrishnaiah and Sons. He contended that 1st defendant gave an assurance to him that the capitalised value and also his share of goodwill would be paid at the time of his

retirement from the firm M/s.K. Radhakrishnaiah and Sons from 01.10.1964 and that 2nd defendant had six annas share, 1st defendant had seven annas share and 3rd defendant had three annas share.

9. Defendant Nos.1 and 3 contended in the said suit that the retirement of 2nd defendant from the said Firm was voluntary; that no such compromise was made as alleged in the plaint and that they offered to pay his share of three years net profits of the Firm which 2nd defendant had rejected; that he is not entitled to any capitalised value or goodwill; and that they are prepared to pay reasonable share in the lease-hold interest, movables and balance of profits, if any.

10. While the above suit was pending, 2nd defendant's wife Smt. Rojabai and her minor children (including plaintiffs in the present suit OS.No.222 of 1973 (out of which this appeal arises) represented by her as a guardian) filed OS.No.28 of 1967 on the file of the 1st Addl. Chief Judge, City Civil Court, Hyderabad, at Secunderabad against defendant Nos.1, 3, one C.R. Prabhakar Rao and the Firm M/s.K. Radhakrishnaiah and Sons for a declaration that Smt. Rojabai automatically became a partner and that her minor children are deemed to have been admitted to the business of the partnership on the retirement of 2nd defendant from the said Firm; that they are all entitled to 6/16th share held by 2nd defendant, being his heirs and legal representatives consequent on his retirement from 01.10.1964 in the Firm; for re-constitution of the said Firm to that effect; and for accounts from 01.10.1964 and other reliefs. She contended

inter alia that they are legal representatives of 2nd defendant and that 1st defendant, as Head of the Joint Hindu Family and also as Manager, carried on various business, etc.; that as per Clause 10 of the Partnership Deed dt.28.11.1957 relating to the said Firm, they are entitled to step in as legal representatives of 2nd defendant upon his retirement from 01.10.1964. They also contended that C.R. Prabhakar Rao was only a benamidar for defendant Nos.1 and 3 and the said partnership was not valid and binding on plaintiffs therein.

11. Defendant Nos.1 and 3 filed a written statement denying all allegations in the plaint and contended that there was no Joint Family as alleged in the plaint and that the properties acquired by 1st defendant are all his self-acquired properties and 2nd defendant was living separately for several years. They also contended that various businesses carried out by 1st defendant are his individual businesses, all assets are his self-acquired assets and that they never belonged to the Joint family. They therefore prayed that the suit be dismissed.

12. Rojabai and her minor children filed IA.No.763 of 1967 in the said court to try OS.No.28 of 1967 along with OS.No.1 of 1965. The said application was ordered on 02.11.1967 by the Court of the 1st Addl. Chief Judge, City Civil Court, Secunderabad. This order was also confirmed in CRP.No.1667 of 1967 on 27.12.1968 by the High Court.

13. During the pendency of OS.No.28 of 1967, the above Firm was dissolved by defendant Nos.1, 3 and C.R. Prabhakar Rao with effect from 01.10.1967 by issuing a notice of

dissolution stating that the guarantorship of the said Firm was terminated by M/s.Binny Mills with effect from 30.09.1967 in view of the litigation between the parties and the consequent detriment to the interests of the said mills. After the termination of the guarantorship of the said Firm by M/s. Binny Mills, the said guarantorship was allegedly offered to 1st defendant in his individual capacity by the said Mills and he had accepted it, subject to the terms and conditions stipulated by the said Mills.

14. The plaintiffs in OS.No.28 of 1967 filed IA.No.36 of 1968 under Order VI Rule 17 CPC for amendment of the plaint contending that the said Firm cannot be dissolved by Notice since it is not a Firm at Will and that the plaintiffs are entitled to profits in the guarantorship business obtained in the name of 1st defendant from 01.10.1967. This application was dismissed on 28.02.1968. The plaintiffs in OS.No.28 of 1967 challenged the same in CRP.No.850 of 1968 in the High Court, the same was allowed on 27.12.1968 and the amendment was duly carried out.

15. Another suit OS.No.25 of 1967 was also filed by defendant Nos.1 and 3 against 2nd defendant for recovery of a sum of Rs.37,400/- with future interest and for partition of the premises No.31/2, S.P. Road, Secunderabad into shares of ten annas and six annas by metes and bounds and allotting ten annas share to them and six annas share to 2nd defendant. But the 2nd defendant opposed the said suit.

16. On the intervention of elders, a compromise was entered into by defendant Nos.1 to 3 on the one hand and Smt. Rojabai

representing the plaintiffs herein and other children of 2nd defendant on the other hand. Clause (vii) of the said compromise stated as follows :

“(vii) The Plaintiff in O.S.No.1 of 1965, (K. Narayana Rao) and defendants 1 and 2 in O.S.No.1 of 1965 (K. Radhakrishniah and K. Nagender Rao) ceased to be members of joint family with effect from 1952, the year in which the aforesaid Shri K. Narayana Rao separated himself and his family from the defendants 1 and 2 in O.S.No.1 of 1965. There was no ancestral nucleus or joint Hindu family property between them nor K. Radhakrishniah carried on any business as Manager of the Joint family consisting of himself and Shri K. Narayana Rao and Shri K. Nagender Rao.”

17. Apart from this, there were several other terms with which we are not presently concerned. On the basis of the said compromise, a decree dt.07.03.1969 was passed in OS.No.1 of 1965 and OS.No.28 of 1967. (Exs.B.6 and B.7)

18. On 11.06.1973 the plaintiffs filed OS.No.222 of 1973 for partition of Plaint ‘A’ to ‘D’ properties and for delivery of separate possession of 1/12th share to them; to direct 1st defendant to render accounts and to award costs.

19. In brief, they alleged in the plaint that their father, i.e., 2nd defendant was born in 1930; that out of the ancestral nucleus created by Late Nagaiah (father of 1st defendant), the 1st defendant was doing business as a cloth merchant and also money-lending business; that the 2nd defendant was born in 1930; that 1st defendant received a dowry of Rs.2,000/- at the time of his marriage with the mother of 2nd defendant, apart from jewellery belonging to 2nd defendant’s mother; that the 1st defendant was doing money-lending business and cloth

business with the help of ancestral assets and blended the same with his own earnings making the entire business and earning joint family assets; that the 'A' schedule properties were purchased out of the joint family businesses and constituted joint family property; that the dowry given to 2nd defendant at the time of his marriage in 1946 was also kept under the custody of 1st defendant and is shown in 'E' Schedule and he is entitled to a share therein; 2nd defendant was staying with 1st defendant and jointly exerted in the acquisition of all the plaint schedule properties; in 1952, in appreciation of the business talent of 2nd defendant, he was taken along with the son of Sri A.H. Khan, i.e., M.A. Khan, as partner in Madras Mills Trading Company; the 1st plaintiff was born on 19.05.1952 in the plaint 'A' schedule family house; at the suggestion of 1st defendant, 2nd defendant started staying separately for the sake of convenience but he continued to be a member of the joint family consisting of the plaintiffs and defendant Nos.1 to 4; the 2nd defendant did not have any courage or capacity to go against the wishes and commands of 1st defendant and always implicitly obeyed his demands by reposing confidence in him; even the income received by 2nd defendant from the Madras Mills Trading Company and other businesses was being handled only by 1st

defendant for the benefit of the joint family; that 2nd defendant was induced by fraudulent means to retire from the Firm M/s.K. Radhakrishnaiah and Sons on the promise of paying Rs.4 lakhs as compensation but after obtaining a letter of retirement,

the 1st defendant refused to pay compensation as promised; thereafter, 2nd defendant filed OS.No.1 of 1965 and the plaintiffs also filed OS.No.28 of 1967 referred to above; the said suits had nothing to do with the joint family properties and any observation or any clause in the compromise recorded in the said suits which are foreign to the suits do not bind the plaintiffs; any admissions made by 2nd defendant or by the plaintiff's mother in respect of the rights of the plaintiffs in the joint family properties are also not binding on the plaintiffs; there was no *de facto* or *de jure* division of properties; the properties mentioned in the plaint schedule are joint family properties in joint enjoyment and control of 1st defendant, who was the Head and *Karta* of the joint family, and they are entitled to 1/12th share therein. The plaintiffs also disputed the validity of a Will allegedly executed by 1st defendant and contended that he has no right to execute any Will in respect of joint family properties and any recitals therein cannot defeat their rights in the joint family assets. They also disputed the validity of a Gift Deed executed by 1st defendant in favour of 5th defendant for a portion of 'A' plaint schedule property.

20. The 1st defendant filed a written statement denying the plaint allegations and contended that 2nd defendant got separated from the family in 1952 along with his wife and children including the plaintiffs; there was no joint family business in existence by the time the 1st defendant reached the age of discretion as his father died when he was only 1 to 3

years of age; there was no joint family nucleus or property obtained by him from his father and he was maintaining his mother out of his own personal earnings; that he took up service at the age of sixteen years to earn his sustenance and to support his mother and wife; that there was no property to be divided between 1st defendant and his brothers; the allegation that 1st defendant got any cash for investment is not correct; and that there was no joint family property at all or cash belonging to the family at any time. He further denied doing any money-lending business, or blending of his income with the joint family income at any point of time. He contended that he started living life on his own and was working as a working partner in several Firms, that he earned monies therefrom and the same had always been as separate property; that 2nd defendant was never deputed to look after joint family interests; merely because he allowed 2nd defendant to stay with him in his house, it would not amount in law as treating the property as joint family property or as an act of blending, when there is no joint family property existing. He also denied receipt of any amounts allegedly given as dowry at the time of his marriage with the mother of 2nd defendant or at the time of marriage of 2nd defendant with the plaintiff's mother. He contended that 2nd defendant left the house as he was not having good habits and denied that the 2nd defendant was always under his influence and control or acted at his command and suggestion. Although he admitted that 2nd defendant was a partner in the Firm M/s.K. Radhakrishnaiah and Sons, he stated that the share of each of

the partners was his own individual and separate property. He further contended that the admission made in the compromise in OS.No.1 of 1965 and OS.No.28 of 1967 (that 2nd defendant separated himself from the family of defendant Nos.1 and 3, that there was no ancestral nucleus or Joint Hindu Family property between them and 1st defendant had not carried down any business as Manager of Joint Family consisting of himself and defendant Nos.2 and 3) was binding on the plaintiffs; that the admission of the parties in the said compromise renders the present suit devoid of merits and as one which is not maintainable in law or on facts; and that the compromise Memo recited that the parties in the above suits have no future claims whatsoever against anyone in the respective businesses or assets as all outstanding claims were settled by the compromise, and therefore, prayed that the suit be dismissed.

21. The 2nd defendant remained *ex parte*.

22. Defendant Nos.8, 9 and 10 supported the 1st defendant and contended that there was no joint family nucleus and plaintiffs did not have any right to file the suit for partition. They also pleaded that the compromise decree in OS.No.28 of 1967 is a total bar to the present suit. They also contended that the said compromise was entered into after obtaining permission from the Court on behalf of the minor plaintiff Nos.1 and 2 with the certificate of the Advocate that the compromise was beneficial to the minors also and prayed for dismissal of the suit.

23. Defendant Nos.3 to 5 filed a written statement stating that

the allegations did not disclose any cause of action against them; that the suit claim is false and the plaintiffs are not entitled to any reliefs. They also adopted the written statement filed by 1st defendant.

24. The 7th defendant adopted the written statement filed by other defendants.

25. The Court below framed the following issues :

- "1. Whether the plaintiffs and defendants 1 to 4 are members of a Hindu Joint family?*
- 2. Whether the 1st defendant acquired ancestral property in the general partition between him and his brothers?*
- 3. Whether the A schedule property was acquired with joint family funds or with joint exertions and is liable for partitions?*
- 4. Whether the D.1 as Kartha and manager of joint family acquired properties with joint family funds and with the joint exertions and the plaint schedule properties are joint family assets liable for partition?*
- 5. Whether the sale of part of A schedule properties to the D5 is true and valid and binding on the plaintiffs?*
- 6. What are the assets available for partition?*
- 7. Whether the D1 is liable to account?*
- 8. Whether the insurance premia paid by D1 and shares acquired by him are liable for partition?*
- 9. Whether clause No.7 in the compromise decree in O.S.1/65 and 28/67 is not valid and binding on the plaintiff and whether the plaintiffs are entitled to ignore the same?*
- 10. To what relief?"*

26. Before the Trial Court, the plaintiffs examined PWs.1 to 6

and marked Exs.A.1 to A.10. The defendants were examined DWs.1 to 3 and marked Exs.B.1 to B.8. By judgment and decree dt.08.02.1982 the suit was dismissed with costs.

27. The Court below held that the compromise decree in O.S.No.28/1967 (Ex.B.7) binds the plaintiffs and in view of the admission therein that there was no joint family nucleus, and that all future claims are settled, the suit is liable to be dismissed. It also held that 1st defendant never intended to treat his self-acquired income as joint family property and was purchasing property in his own name and was dealing with it all by himself.

28. The Trial Court, after considering the evidence of PW's.1 to 6, held that their evidence did not establish that there was ancestral nucleus; that the oral evidence clearly shows that 1st defendant did not inherit property from the ancestors but by dint of hard work and good luck he earned huge properties and they were all his self-acquired properties. It relied on the statement given by 2nd defendant under Ex.B.10 before the Income Tax Department that he did not have any right in his father's properties or capital. The Trial Court further held that 2nd defendant was always showing his income separately and although he was taking his sons as partners, the income of each partner was being assessed as a separate income of the said partner. It held that merely because they were residing together for the sake of convenience it cannot be held that there was a joint family property and the plaint schedule property is joint family of which 2nd defendant was a member.

29. Challenging the said judgment and decree of the Trial Court, this appeal has been filed by the plaintiffs.

30. Heard Sri M.V. Suresh – Counsel for appellants and Sri V. Hariharan – Counsel for respondent Nos.8 to 11. Admittedly, defendant Nos.1, 3 and 5 died pending appeal. Defendant Nos.2 and 4 are the Legal Representatives of 1st defendant. Respondent Nos.8 to 11 are the Legal Representatives of 3rd defendant. Respondent Nos.1, 3, 4 and 7 are the Legal Representatives of 5th respondent. None appeared for these respondents.

31. The counsel for appellants contended that the judgment of the Court below is contrary to law and weight of evidence; that the Court below did not appreciate the oral and documentary evidence adduced by plaintiffs in the right perspective and its findings cannot be sustained; that the plaintiffs succeeded in establishing that there was an ancestral nucleus obtained by 1st defendant with which he acquired the plaint schedule properties and therefore, it should have decreed the suit for partition; recitals in Ex.B.8 show that the sale of the property by 1st defendant was as a Manager of the joint family consisting of himself and sons; the Court below erred in relying upon the admissions contained in the compromise decrees-Exs.B.6 and B.7; the admissions allegedly made by their mother as guardian in the said compromise did not bind them and therefore, the appeal should be allowed.

32. The counsel for respondent Nos.8 and 11 contended that

the judgment of the Trial Court did not suffer from any infirmity in law or on facts; that the Court below rightly dismissed the suit on the basis of Exs.B.6 and B.7; the Court below rightly held that the plaintiffs did not establish that there was an ancestral nucleus from which the plaint schedule properties could have been acquired; in view of the admission in Exs.B.6 and B.7 that 2nd defendant ceased to be a member of the joint family with effect from 1952, the recital in Ex.B.8 that he was a member of the joint family cannot be accepted; in view of the categorical statement of DW.3 that the said recital is incorrect , the Court below rightly declined to place reliance on it.

33. I have noted the contentions of both parties.

34. There is no dispute that there was a compromise recorded on 07.03.1969 in OS.No.1 of 1965 and in OS.No.28 of 1967 (Exs.B.6 and B.7) and the plaintiffs were parties in OS.No.28 of 1967. Although they were minors, they were represented by their mother who was 1st plaintiff in OS.No.28 of 1967. Clause – 7 of the said compromise extracted above clearly stated that 2nd defendant ceased to be member of the joint family of the 1st defendant with effect from 1952; that he separated himself and his family from defendant Nos.1 and 3 and there was no ancestral nucleus of the joint Hindu family property between them nor did the 1st defendant carry on any business as Manager of the joint family consisting of himself and defendant Nos.2 and 3. Clause – 9 of the said compromise specifically stated that the parties have no further claims whatsoever against each other in their respective

businesses or assets as all outstanding claims have been settled by the said compromise. Under the said compromise, the right, title and interest in premises bearing No.31/2, situated at S.P. Road, Secunderabad, was settled in favour of 2nd defendant in consideration of 2nd defendant and his wife along with plaintiffs, giving up their claims in OS.No.28 of 1967.

35. The question before this Court is what the effect of such a compromise.

36. In **Byram Pestonji Gariwala v. Union Bank of India and others**^[1], it was held that a judgment by consent is intended to stop litigation by the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight and that a compromise decree creates an estoppel by judgment. The Supreme Court quoted with approval the passage in **Spencer – Bower & Turner** in Res judicata, Second Edition, Pg.37, as follows :

“Any judgment or order which in other respects answers to the description of a res judicata is nonetheless so because it was made in pursuance of the consent and agreement of the parties ... Accordingly, judgments, orders, and awards by consent have always been held no less efficacious as estoppels than other judgments, orders, or decisions, though doubts have been occasionally expressed whether, strictly, the foundation of the estoppel in such cases is not representation by conduct, rather than res judicata.”

It also relied upon the decision in **Mohanlal Goenka v. Benoy Kishna Mukherjee and others**^[2].

37. It is settled law that a consent decree is merely an agreement between the parties with the seal of the Court

superadded to it [see **Baldevdas Shivilal and another v. Filmistan Distributors (India) P. Ltd. and others**^[3]; and **Parayya Allayya Hittalamani v. Sri Parayya Gurulingayya Poojari**^[4]].

38. The question to be considered is on what grounds a compromise decree can be challenged. Be it noted that the compromise decree in O.S.28/1967 was not specifically impugned in the suit and no relief is sought in the suit that it is contrary to law or not binding on plaintiffs.

39. In **Union Carbide Corporation v. Union of India**^[5], the Supreme Court held that a consent order is dependent on the legal validity of the agreement, on which it rests and that such an order is amenable to be set aside on any ground which would justify a setting aside of the agreement itself. It followed the judgment in **Huddersfield Banking Company Ltd. v. Henry Lister and Son Ltd.**^[6]. In the said judgment, Vaughan Williams, J, stated :

“... it seems to me that the clear result of the authorities is that, notwithstanding the consent order has been drawn up and completed, and acted upon to the extent that the property has been sold and the money has been paid into the hands of the receiver, I may now set aside the order and arrangement upon any ground which would justify me in setting aside an agreement entered into between the parties.

The real truth of the matter is that the order is a mere creature of the agreement, and to say that the Court can set aside the agreement — and it was not disputed that this could be done if a common mistake were proved —but that it cannot set aside an order which was the creature of that agreement, seems to me to be giving the branch an existence which is independent of the tree.”

(emphasis added)

This was affirmed in appeal by Lindley L.J. in the following words: (Ch D p. 280)

“the appellants, contend that there is no jurisdiction to set aside the consent order upon such materials as we have to deal with; and they go so far as to say that a consent order can only be set aside on the ground of fraud. I dissent from that proposition entirely. A consent order, I agree, is an order; and so long as it stands it must be treated as such, and so long as it stands I think it is as good an estoppel as any other order. I have not the slightest doubt on that; nor have I the slightest doubt that a consent order can be impeached, not only on the ground of fraud, but upon any grounds which invalidate the agreement it expresses in a more formal way than usual.”

In Great North-West Central Railway Co. v. Charlebois, the Privy Council stated the proposition thus: (AC p. 124)

“It is quite clear that a company cannot do what is beyond its legal powers by simply going into court and consenting to a decree which orders that the thing shall be done Such a judgment cannot be of more validity than the invalid contract on which it was founded.”

40. An agreement can be challenged on the ground that it is vitiated by coercion as defined in Section 15 of the Contract Act, 1872 or undue influence as defined in Section 16 of the said Act or fraud as defined in Section 17 of the said Act or misrepresentation as defined in Section 18 of the said Act or mistake, subject to the provisions of Section 20, 21 and 22 of the said Act. It can also be challenged on the ground that one of the parties to it has not attained the age of majority and is not competent to contract or he is of unsound mind. It can also be challenged on the ground that it is contrary to public policy, immoral, forbidden by law, would defeat the provisions of any law, involves or implies injury to the person or property of another as provided in Section 23 of the said Act.

41. But there is no such plea raised by the plaintiffs in the plaint. Although the plaintiffs are minors at the time the suit O.S.28/1967 was compromised, they were represented by their mother as their guardian and she had independent legal advice. In the compromise decree passed by the court on 7.3.1969 in O.S.28/1967 it is recorded that the compromise was recorded after grant of permission from the Court to the mother of plaintiffs /guardian to compromise the suit on their behalf.

42. It is feebly contended by the counsel for the appellants/plaintiffs that the subject matter of the suit OS.No.28 of 1967 did not relate to the joint family property at all and the said suit was concerned only with the rights of the plaintiffs in the Firm M/s. K. Radhakrishnaiah and Sons. This issue whether a compromise can include matters not relating to the suit in question and its effect has been considered in **Munshi Ram v. Banwari Lal**^[7]. The Supreme Court held that where a compromise included matters extraneous to the suit, it was not altogether unlawful and the decree was still executable with respect to the matters that related to the suit. It quoted with approval the decision of the Privy Council in **Hemanta Kumari Debi v. Midnapur Zamindari Co.**^[8]. In the said case, the Privy Council observed :

"A perfectly proper and effectual method of carrying out the terms of this (Rule 3, Order 23) would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement. This in

fact is what the decree did in the present case. It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent its being received in evidence of its contents."

43. In view of the above decisions, there was absolutely no bar for the compromise decree in OS.No.28 of 1967 to mention about the fact that the 2nd defendant separated himself and his family from the 1st defendant w.e.f. 1952; that there was no ancestral nucleus of joint Hindu family property between the family of 2nd defendant and defendant Nos.1 and 3, even if it was extraneous to the subject matter of the said suit. In fact, this was the position prior to the CPC (Amendment) Act, 1976. After the said amendment, the portion in the compromise which did not relate to the subject matter of the suit, can be included in the decree and is also made executable. This is explained in **Byram Pestonji Gariwala** (1 *supra*).

44. In the present case, although the compromise decree was passed on 07.03.1969 in OS.No.28 of 1967, it continues to be lawful and the law does not prevent it from being received in evidence of its contents. Therefore, in view of the decision in **Byram Pestonji Gariwala** (1 *supra*), the compromise decree Ex.B.7 in OS.No.28 of 1967 creates an estoppel by judgment against the plaintiffs and operates as *res judicata* precluding the plaintiffs from raising in subsequent litigation, any plea contrary to the said decree.

45. In my opinion, the said compromise decree is also liable to be construed as a family arrangement in order to maintain family peace, and prevent the parties from long drawn litigation

or perpetual strife creating hatred and bad blood between the various members of the family of the 1st defendant. It was intended to resolve the family disputes once for all. Courts have leaned in favour of upholding family arrangements instead of disturbing the same on technical or trivial grounds so that there is harmony in the family. (see **Kale and others v. Dy. Director of Consolidation and Ors.**^[9]) Therefore I hold that the compromise in O.S.28/1967 binds the plaintiffs.

46. Even otherwise, it is settled law that there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property and the burden lies upon the person who asserts that a particular property is joint family property to establish that fact. Only if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property (**Mst. Rukhmabai v. Lala Laxminarayan and ors.**^[10] and **Srinivas Krishnarao Kango v. Narayandevji Kango**^[11]). The appellants/plaintiffs merely refer to a recital in Ex.A.8 dt.17.09.1941, a sale deed executed by the 1st defendant in favour of one Mohd. Sharfuddin (wherein there is a recital that the 1st defendant was acting for himself and as Manager of the Joint Hindu family consisting of himself and his sons while selling the property which was subject matter of the said deed). As rightly observed by the

Trial Court, the 1st defendant had categorically stated that the said recital in Ex.A.8 is incorrect and the property sold under the said deed i.e., plot No.12, situated in Nallagutta, Secunderabad, was purchased under Ex.A.1 sale deed by him and he had purchased it with his own funds. He categorically stated that he never blended it with any joint family property as there was no such property at all. In any event, once it is held that the admission in Ex.B.7 compromise decree that there was no joint family nucleus and they have no future claims whatsoever against the 1st defendant, is binding on the plaintiffs, they cannot rely on such a recital made in Ex.A.8 in 1941. This is because since 1952, the 2nd defendant had separated himself from the family of 1st defendant. In fact, in Ex.B.10, the 2nd defendant also admitted before the Income Tax Officers that he did not have any right in his father's properties or capital.

47. As rightly observed by the Trial Court the evidence of PW's.1 to 6 is not of much assistance to the plaintiffs to establish their claim that the plaint schedule property is joint family property. PW.1, the brother-in-law of the 1st defendant, stated that he has no personal knowledge of the *Abkari* business done by the grandfather of 1st defendant or about the dowry or jewellery given at the time of the marriage of his sister to 1st defendant or how many businesses 1st defendant was doing. He admitted that he did not know anything about the business of the 1st defendant. He also stated that he was not present at the time of fixation of the terms of marriage of 2nd

defendant or what dowry was given to 2nd defendant. PW.2 also admitted that he cannot say in detail about 1st defendant's *chillara* business or money-lending business. He stated that he did not know personally about 1st defendant's business at Secunderabad or at Bangalore. PW.3 is the mother-in-law of the 2nd defendant. She did not prove that any dowry was given by her or her husband to the 2nd defendant at the time he married her daughter. She did not know what happened to the jewellery of her daughter. She admitted that the house at Jeera and Nallagutta are the self-acquired properties of 1st defendant. She admitted that 2nd defendant had helped her in certain family litigations from 1956 and he is looking after her even at the time she gave evidence apart from helping her in litigations up to the Supreme Court of India. The Trial Court rightly held that she has an obligation to help 2nd defendant and has therefore deposed in support of the plaintiffs. The evidence of PW's.4 to 6 also is vague and was rightly disbelieved by the Trial Court. In my opinion, the Trial Court on appreciation of the evidence on record rightly held that the 1st defendant did not inherit any property from his ancestors and by dint of hard work earned huge properties which were his self-acquired properties. It also rightly held that he never intended to treat his self-acquired property as joint family property and was showing his income as separate income in his Income Tax Returns. The counsel for the appellants/plaintiffs has not been able to point out any error in the appreciation of the evidence by the Trial Court.

48. For the above reasons, I hold that there is no merit in the appeal. Accordingly, the appeal is dismissed with costs.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-08-2013

Ndr/*

LR COPY TO BE MARKED : **YES**

B/o.

Ndr /*

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.C.A.No.21 of 1983

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Ndr/*

Date : 23-08-2013

[\[1\]](#) AIR 1991 SC 2234

[\[2\]](#) AIR 1953 SC 65

[\[3\]](#) (1969) 2 SCC 201

[\[4\]](#) (2007) 14 SCC 318

[\[5\]](#) AIR 1992 SC 248

[\[6\]](#) (1895) 2 Ch. 273

[\[7\]](#) AIR 1962 SC 903

[\[8\]](#) AIR 1919 PC 79

[\[9\]](#) AIR 1976 SC 807

[\[10\]](#) AIR 1960 SC 335

[\[11\]](#) AIR 1954 SC 379