

(1962) 04 GUJ CK 0012
In the Gujarat High Court
Case No : Appeal No. 30 of 1960

Bai Kamala

APPELLANT

Vs

Occhavlal Chhaganlal and Others

RESPONDENT

Date of Decision : 10-04-1962

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15

Citation : AIR 1965 Guj 84 : (1963) GLR 509

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : N.R. Oza, for the Appellant; R.C. Mankad and N.V. Karlekar, for the Respondent

Judgement

(1) This appeal from an order is by the original defendant No. 1, who is the widow of one Choksiwala Mangaldas Ranchhoddas. The plaintiff claiming to be one of the reversioners had file a suit against the widow of the deceased Mangaldas and against two other defendants for a declaration that the will executed by her in favour of her brother, defendant No. 2 was not for legal necessity; for declaration that some other documents executed by defendant No. 1 were not binding on the rights of the reversioners; for a direction that the widow should be asked to keep accounts; for an injunction restraining her from wasting the property of her deceased husband and from injuring the rights of the reversioners and for a appointment of a receiver of the property. The suit was filed in 1954 and while the suit was pending, the Hindu Law of Succession came into force in 1956. The learned trial Judge, therefore, framed an issue as follows:

"In view of S. 14 of the Hindu Succession Act whether the suit is tenable?

On this issue he observed as follows:

"Section 14 of the Act is very clear and needs no clarification. The property mentioned by the plaintiff in his plaint and acquired by Defendant No.1 is now held by her as full owner. Nobody can have any contingent interest therein as

reversioner. Hence no suit to restrain the Defendants No.1 from making waste of the property acquired by him in inheritance can be against her. The present suit now pending before the Court now under the changed law is not tenable and the suit should therefore fail".

In the result, he found issue No.10 in the negative and dismissed the suit and ordered that each party to bear its own costs.

(2) In appeal, the learned Assistant Judge at Baroda observed that the rights of the plaintiffs as reversioners for which they had a suit on 1-10-54 cannot be said to be extinguished and abrogated when the Hindu when the Hindu Succession Act of 1956 came into force on 18th June 1956. He, therefore, held that the trial Judge was not justified in dismissing the suit on the preliminary ground. He, therefore, allowed the appeal and set aside the decree of the trial Court and also the finding of the trial Court. He remanded the suit back to the trial Court for proceeding according to law. It is against this order that the present appeal has been filed.

(3) In certain circumstances, under the old law as it stood prior to 1956, reversioners could file a suit for certain declarations and for certain reliefs in regard to the property of a deceased person, which was in the possession of his widow and in respect of which she had a limited estate. The question is whether any change has been effected in this position by the enactment of the Hindu Law of Succession in 1956. Sections 14 and 15 are very important and they read as follows:

"14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation. In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. (1) The property of a female Hindu dying intestate shall devolve according to rule set out in Section 18:

(a) firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

- (b) Secondly, upon the heirs of the husband
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1):

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased)including the children of any pre-deceased son or daughter) not upon the other heirs referred to sub-section)1) in his order specified therein, but upon the heirs of the father and

Any property inherited by a female Hindu from her husband or from her farther-in-law shall devolve in the absence of any son or daughter of the deceased) including the children of any pre deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband".

In view of these provisions, any property possessed by a female Hindu, whether acquired before or after the commencement of the Hindu Succession Act, shall be held by her as full owner thereof and not as a limited owner. But before this provision applies, the property ms be possessed by a female Hindu, whether it was acquired before, or after the commencement f the Act. The word "possessed" as decided by Their Lordships of the Supreme Court in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, includes not only actual possession but also constructive possession. The possession may be either actual or constructive or in any form recognised by law; but Their Lordships of the Supreme Court have not stated that S. 14 would apply even if somebody else was in possession and that possession is adverse to the widow. The question whether a widow was in possession of the property or whether somebody else was in adverse possession to her is a question of fact and must be decided either on the pleadings, if possible, or after taking evidence, if necessary; but the learned trial Judge did not take any evidence and did not consider the question of possession which is an important question while applying S. 14 of the Hindu Succession Act. Their Lordships of the Supreme Court observed that it is necessary to go to the extent of saying that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his title. Their Lordships of the Supreme Court, did not lay, down that the word "possession" in S. 14 of the Hindu Succession Act, would mean possession of the widow even if somebody else was in adverse possession.

(4) It is next contended by the learned counsel for the appellant that after the enactment of Sections 14 and 15 of the Hindu Succession Act, their class of

reversioners is extinguished, that the plaintiff who filed the suit as reversioners cannot therefore, the suit would cease to be maintainable after the enactment of the Hindu Succession Act. The learned counsel for the appellant relied on B. Hanuman Prasad and Others Vs. Mst. Indrawati and Others, , Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others, , Ram Ayodhya, Missir v. Raghunath Missir. Under the old law, when a widow inherits the property of a Hindu deceased male. She takes only a limited estate called a widow's estate in the estate of her husband. On her death, the entire estate goes not to her heir but to reversioners. The widow, however, is the owner of the property inherited by her subject to certain qualifications and restrictions on her powers of alienation. As observed by Their Lordships of the Privy Council in 43 Ind App 207 : (AIR 1916 PC 117) , Janaki Ammal v. Narayanasami Aiyer, her right is of the nature of a right of property; her position is that of owner, her power in that character are, however, limited; but so long as she is alive no one has any vested interest in the succession.

(5) In view of S. 14 of the Hindu Succession Act however, in respect of such property, the widow would become full owner provided she was in possession of that property on the date of commencement of the Hindu Succession Act; but in regard to the property of the widow's estate of which she is not in possession on the date of the commencement of the Act, she would not become full owner.

(6) Section 15 of the Hindu Succession Act provides that the property of a female Hindu dying intestate shall devolve according to the rule set out in section 18. Before Sections 15 and 16 could apply, a female Hindu must die intestate after the commencement of the Act. Then the two sections would apply to her property. The word "property" in S. 15 will have to be read as "property of full ownership". Section 14 of the Act deals with the full ownership of a widow in property. Then section 15 proceeds to lay down the order of succession to the property of a female Hindu. The word "property" in Section 15 is, therefore, the property of which a Hindu female is the full owner on the date of her death after the commencement of the Act. Section 15, therefore, would not apply to property which belongs to the widow's estate and which has not been perfected into full ownership of the widow by possession on the date of commencement of the Act. If, therefore, a property or a part of widow's estate was not in possession of the widow on the date of commencement of the Hindu Succession Act, that property would not be the property of full ownership of the widow and Section 15 of the Hindu Succession Act would not apply to such a property. Succession to such property would, therefore, be on the same lines as if the Hindu Succession Act, 1956 had not been passed. in case of property which is not in the possession of widow on the date of commencement of the Act, therefore, the old law of Hindu Succession would apply and it is wrong to say that idea of reversioners has been abrogated by the Hindu Succession Act. that idea of reversioners is abrogated by the Hindu Succession Act only as regards the property of the deceased Hindu, which is in possession of his widow on the date of commencement of the Act. it is, therefore, difficult to agree with the

observations made in Allahabad case in B. Hanuman Prasad and Others Vs. Mst. Indrawati and Others, , that the reversioners have completely disappeared by virtue of the provisions of Section 15 of the Hindu Succession Act, 1956.

(7) The learned counsel for the appellant also relied upon (S) AIR Pat 480 where it was declared as follows:

"The effect of Section 14 and 15 Hindu Succession Act is that a reversioner recognised as such under the Hindu Law is no more a reversioner as any property possessed by a female Hindu, whether acquired before or after the commencement of the Act is not a limited estate but an absolute estate. after the coming into force of the Act he has no right of reversion or any kind of spes successions.

The remarks have reference to property possessed by a female Hindu.

(8) In view of the provisions of Section 14 of the Hindu Succession Act different principles would apply according as whether the widow was in possession or not on the date of commencement of the Act. In regard to the property of her husband of which she was in possession on the date of the commencement of the Act, the principles of Hindu Succession Act would apply; but in regard to the property of which she was not in possession, there old Hindu Law would apply. Of course, the word "possessed" is to be given a wide meaning as decided by Their Lordships of the Supreme Court in AIR SC 577. But it is wrong to say that every suit by reversioners would not be maintainable after the commencement of the Hindu Succession Act. A suit by a reversioner would not be maintainable in respect off the property which were in the possession of Hindu widow on the date of the Act. The question of possession has therefore, to be gone into by taking evidence and the suit itself cannot be dismissed as not maintainable without taking any evidence unless the question of possession is admitted or can be decided on the pleadings.

(9) If we turn to the pleadings in this case, we find that the plaint relates to house of the deceased, ornaments, immovables and cash of the deceased. So far as the houses go, it is admitted in the plaint that the actual and constructive possession is of the widow. So far as the ornament s go, it alleged in the plaint that the ornaments have been given by the widow to defendants Nos. 2 and 3. In the plaint, the question of possession was not given any importance because the plaint was filed in 1954, two years before the enactment of the Hindu Succession Act. If it is the contention of the defendants that the suit is not maintainable because in respect of the suit property is a Hindu Widow had becom4of the full owner of the property, then it is for them to prove the circumstances in which she had become the full owner of the property. A Hindu widow would become the full owner of the property if she was in possession the date of the commencement of the Hindu Succession Act. It is therefore, for the defendants to prove that on the date of the commencement of the Act, the Hindu widow in question was in possession of all suit properties. So far as the hous go, on the

pleadings themselves, the Hindu widow was in possession of the houses of the date of commencement of the Act; but so far as the ornaments go there is no allegation in the plaint regarding the possession of the property. In the written statement of the defendants it is alleged that the ornaments were in possession of defendant No.1. The question whether defendant No.1 was in possession of the ornaments has therefore, to be decided by the Court after hearing the evidence on the point.

(10) It is contended by the learned counsel for the petitioners that the ornaments are valued at Rs.8000/- and under the Baroda Hindu Nibandha. Property up to the extent of Rs.12,000/- which a Hindu widow inherits from her husband, becomes her own absolute property. While the property in which a Hindu widow has a limited estate, is valued at Rs.1/- lac and consists of various items, it is difficult to decide at present to what property the rule of 12,000/- rupees in the Baroda Hindu Nibandha would apply and whether the application of that rule depends on the date of the alienation of the various properties. This question will revolve on evidence; and in this case no evidence has been taken whether the mortgage of the house is first the alienation of the ornaments is first. If the mortgage is denied, the question whether a mortgage has been executed will have to be gone into. The learned trial Judge was therefore, wrong in holding that the whole suit relating to all the properties was not maintainable. It is open to hold that in respect of the houses, the widow has become the full owner after the Hindu Succession Act, and, therefore, the plaintiffs have no right in respect of the houses.

(11) The order of the Appellate Judge remanding the suit is, therefore, not erroneous. The appeal is, therefore, dismissed. No order as to costs.

(12) Appeal dismissed.