
(1962) 04 GUJ CK 0005
In the Gujarat High Court

Bai Kamala

APPELLANT

Vs

Ochhavlal Chhaganlal and Others

RESPONDENT

Date of Decision : 10-04-1962

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14, 15, 15

Citation : (1963) 4 GLR 509

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—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 filed 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 an 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 Section 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 defendant No. 1 from making waste of the property acquired by him inheritance can lie against her. The present suit now pending before the Court now under the changed law is not tenable and the

suit should therefore fail.

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

In appeal the learned Assistant Judge at Baroda observed that the rights of the plaintiffs as reversioners for which they had filed a suit on 1 cannot be said to be extinguished and abrogated 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.

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 arrear 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 the rules set out in Section 18.

(a) Firstly upon the sons and daughters including the children of any predeceased 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 predeceased 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 father: and

(b) any property inherited by a female Hindu from her husband or from her father-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.

3. 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 must be possessed by a female Hindu whether it was acquired before or after the commencement of the Hindu Succession Act. The word possessed as decided by Their Lordships of the Supreme Court in 1959 S.C. 577 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 Section 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 Section 14 of the Hindu Succession Act. Their Lordships of the Supreme Court observed that it is not 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 therefore did not lay down that the word possessed in Section 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 the class of reversioners is extinguished that the plaintiffs who filed the suit as reversioners cannot therefore file a suit as reversioners and that 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, (R.A. Missir v. Raghunath). Under the old law when a widow inherits the property of a Hindu deceased male she takes only a limited estate called a widows estate in the estate of her husband. On her death the estate goes not to her heirs 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 LA. 207 (Janaki Ammal v. Narayansami Aiyer) her right is of the nature of a right of property; her position is that of owner her powers in that character are however limited; but so long as she is alive no one has any vested interest in the succession.

In view of Section 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 widows estate of which she is not in possession on the date of the commencement of the Act she would not become full owner.

5. Section 15 of Hindu Succession Act provides that the property of a female Hindu dying intestate shall devolve according to the rules 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 Section 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 the 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 widows estate and which has not been perfected into full ownership of the widow by possession on the date of the commencement of the Act. If therefore a property or a part of the widows 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 the full ownership of the Hindu 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 the widow on the date of the commencement of the Act therefore the old law of Hindu Succession would apply and it is wrong to say that the 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 the 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, (Hanuman Prasad v. Indrawati) that the reversioners have completely disappeared by virtue of the provisions of Section 15 of the Hindu Succession Act 1956.

The Learned Counsel for the appellant also relied upon *Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others*, *R.A. Missir v. Raghunath*, where it was observed as follows:

The effect of Sections 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 successionis.

These remarks have reference to property possessed by a female Hindu. 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 the 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 1959 S.C. 579. 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 of the properties which were in the possession of a 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.

6. If we turn to the pleadings in this case we find that the plaint relates to houses 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 ornaments go it is 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 a Hindu widow had become 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 on 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 the suit properties. So far as the houses go on the pleadings themselves the Hindu widow was in possession of houses on the date of the 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.

It is contended by the Learned Counsel for the petitioner that the ornaments are valued at Rs. 8000/- and under the Baroda Hindu Nibandh property upto 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. one 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 Nibandh 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 houses is first or the alienation of the ornaments is first. If the mortgage is denied the question whether a mortgage has been executed will have also 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.

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