

(1958) 11 MP CK 0016
In the Madhya Pradesh High Court
Case No : Second Appeal No. 153 of 1956

Bhagwant Amar Singh Teli

APPELLANT

Vs

Mt. Manmati and Another

RESPONDENT

Date of Decision : 06-11-1958

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3(2), 3(3)

Citation : AIR 1959 MP 249 : (1958) ILR (MP) 882 : (1959) 4 MPLJ 613

Hon'ble Judges : P.K. Tare, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; G.C. Koshal, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.

This case comes before us for decision upon a reference made by one of us (Tare J.) upon the following question :

"Whether a woman having interest in the joint family property by virtue of Section 3(2) of the Hindu Women's Right to Property Act, 1937, can challenge an alienation made by the manager of a joint Hindu family."

The genealogy of the parties is as follows :

GOPI (dead) | _____
| | (Died before = Mst. Narbadia Jaitram Nandram 1945) | (Plaintiff 2) |
(Respondent 2) Darasram = Mst. Manmati (Plaintiff 1) (Respondent 1) The suit property i.e. khasra No. 1083/1 area 2.25 acres including other property was the-ancestral joint Hindu family property of Gopi. After his death, Nandram and Jaitram got the property. Nandram died sometime before the year 1945, leaving his widow, Mst. Narbadia and son Darasram. In the year 1945, there was a partition, between Darasram and Jaitram. Mst. Narbadia did not claim any share, nor was any share allotted to her. In the partition khasra No. 1083/1 was allotted

to the share of Darasram. He sold the same to defendant appellant Bhagwant by a registered deed dated 7-1-1954 (Ex. P. 1) for a consideration of Rs. 1500/-.

The present suit was filed by Darasram's mother, Mst. Narbadia and wife Mst. Manmati for setting aside the alienation dated 7-1-1954. So far as Mst. Manmati is concerned, it is clear that under the Hindu law, she could claim a share if a partition was effected between her husband and his sons. (See Section 315 Mulla's Hindu Law) as there was no partition of this kind, she has no right in the property during Darasram's life-time, except the right of maintenance. Therefore, it is not necessary to consider the question with reference to Mst. Manmati.

The question concerns Mst. Narbadia, who has the same interest in the family property as her deceased husband, Nandram, u/s 3(2) of the Hindu Women's Right to Property Act, 1937, with a further right to claim partition. Sir Dinshaw F. Mulla, in his "Principles of Hindu Law" 11th Edition, Section 270, page 344, has referred to the Division Bench decision of the Allahabad High Court in Mt. Ram Dei Vs. Mt. Gyorsi and Others, , wherein it was held that a female member, of a joint Hindu family was not entitled to challenge the alienation made by the Karta of the family, which could only be challenged by a co-parcener or by a transferee who has acquired the interest of the entire joint family in the property alienated, This statement of the law was taken to be the settled view of that Court on the authority of the earlier decisions in Madan Lal and Others Vs. Gajendrapal Singh and Madan Lal Vs. Chiddu and Others

A Division Bench of the Madras High Court in Jonnagadla Seethamma and Another Vs. Jonnagadla Veerana Chetty and Others, has held that the widow of a deceased co-parcener has not under the Hindu Women's Right to Property Act, 1937, the status of a co-parcener, but only that of a member of the joint family with certain statutory rights. This case was referred to in the later decision in Rathinasabapathy Pillai and Another Vs. Saraswathi Ammal, , in which it was held that what a widow gets under the Hindu Women's Right to Property Act, 1937 is not by survivorship or inheritance but a special statutory right, which she gets solely by reason of her being the widow of her husband.

In coming to this view, reference was made to Nagappa Narayan Shetti Vs. Mukambe Venkatraman Shetti, , in which it was held that the interest of the widow is fluctuating and until a partition was demanded, it was not possible to determine it. In Ramsaran Sao Vs. Bhagwat Shukul, , the view was affirmed that the widow does not get the status of a coparcener and cannot inhibit the operation of the ordinary rule of Hindu Law that the sole surviving co-parcener has absolute right of disposal over the joint Hindu family property, but it was held that this power of the co-parcener to alienate the property is necessarily limited by the interest to which the widow of the deceased co-parcener succeeds under the Act. Reference was made to Bhatwat Shukul Vs. Mt. Kaparni, and it was explained that what has been held in Radhi Bewa and Another Vs. Bhagwan Sahu and Others, as the power of the widow to question the alienation made

behind her back is not any right of challenge wider than that which she was held to have in the earlier Patna case.

A Division Bench of the Bombay High Court consisting of Gajendragadkar and Vyas JJ. in *Shivappa Laxman and Another Vs. Yellawa Shivappa Shivagannavar and Others*, has held : "that the position of a Hindu widow's interest u/s 3 (2) of the Hindu Women's Right to Property Act, 1937 is somewhat analogous to the undivided right of the coparcener at least so far as the manager's power of management and alienation are concerned, so that if the said interest of the Hindu widow is sought to be defeated by an unjustified alienation, she would be entitled to challenge it just in the same manner as a coparcener would". A Single Bench of this Court preceded over by Mudholkar J. in *Uderaj v. Manakarnika*, Second Appeal No. 322 of 1955, D/-23-7-1955 noted as 1956 Nag LJ Notes 27, adopted the same view without reference to the said case.

It is pertinent to note that even these two cases recognise that a widow having interest in joint family property by virtue of Section 3 (2) of the Hindu Women's Right to Property Act, 1937, is not a coparcener and cannot have all the rights of a coparcener. But they go further and hold that the position of a Hindu widow's interest in the family properties is some what analogous to the undivided right of the co-parcener at least so far as the manager's powers of management and alienation are concerned; so that if the said interest is sought to be defeated by an unjustified alienation, she would be able to challenge it in the same manner as a coparcener would.

It would be relevant to consider the nature of the widow's interest u/s 3 (2) of the Hindu Women's Right to Property Act, 1937. So far as this Court is concerned, the nature of the interest is indicated in the Division Bench case of *Tukaram Raghoji v. Gangi Nivruti* 1956 Nag LJ 770 : (AIR 1957 Nag 28) and the Single Bench case of *Bhagobai Vs. Bhaiyalal and Others*, decided by Hidayatullah C. J., namely, that the widow is not a co-parcener and that her interest is undefined and fluctuating, till an actual partition is demanded. All the High Courts are, therefore agreed that the interest that she gets under the Act is a special statutory right. But the question is whether she gets thereby the right to challenge an alienation effected by the sole surviving co-parcener, who acts as manager of the joint Hindu family.

Even before the enactment of the Hindu Women's Right to Property Act, 1937, the females of a joint Hindu family had the right to be maintained out of the joint family property. If a charge for maintenance were created on the property before alienation, they were entitled to pursue the property in the hands of an alienee. The obligation to maintain was extended to the Government, when it took the estate by escheat or by forfeiture, as was laid down by their Lordships of the Privy Council in *Mt. Golab Koonwar v. Collector of Benares* 4 Moo Ind App 246.

What the Act of 1937 did was to confer upon a widow the same share as a son in her husband's separate property under Sub-section (1) of Section 3 of the Act,

and the same interest as her deceased husband in the joint family property under Sub-section (2) of Section 3 of the Act. Her right was to be known as a Hindu woman's estate with a further right to claim a partition as a male owner. It is true that her interests under Sub-section (2) of Section 3 of the Act remains undefined and fluctuating till a partition is actually claimed. Even so, the interest, when it devolves upon the widow vests in her rights in praesenti even though, as observed in *Ramsaran Sao Vs. Bhagwat Shukul*, the interest was a mere spes successionis during the life time of her husband.

Section 2 of the Act provides that notwithstanding any rule of Hindu law or custom to the contrary, the provisions of Section 3 shall apply where a Hindu dies intestate. Therefore, in order to give effect to the Act, the provisions themselves have to be interpreted notwithstanding any rule of Hindu law or custom to the contrary. It is true that by operation of Section 3(2) a Hindu widow does not get the status of a co-parcener, but she certainly gets the same interest as her deceased husband. Under the rule of Hindu law the right to challenge an alienation effected by a manager is the special right of a co-parcener, but in giving effect to Section 3(2), this rule has to be ignored. The nature of her right has been specified by Section 3(2), which also prescribes the limitations imposed on that right. No more limitations can, therefore, be imported into the section from the general Hindu law. Subject to the limitation imposed by Section 3(3), a widow has the same interest as her deceased husband. If her deceased husband had the right to protect the property against mis-management, waste or unjustified disposal of the family property, we see no reason to deny her the same right for the purpose of protecting her interest.

An alienation of joint family property by a sole surviving co-parcener, not for legal necessity certainly reduces" the share of interest that has been conferred upon a widow by the Hindu Women's Right to Property Act 1937. in addition to her former rights or maintenance and residence out of the joint family property. It was for this reason that the learned Judges of the Bombay High Court in : *Shivappa Laxman and Another Vs. Yellawa Shivappa Shivagannavar and Others*, and *Mudholkar J. of the Nagpur High Court in 1956 Nag LJ 27 (supra)*, upheld the widow's right to challenge the alienation effected by the manager of a joint Hindu family. If this right were not to be upheld, a sole surviving co-parcener would be able to defeat the widow's share or interest as the case may be, by alienating all the family property for no legal necessity and the widow would be left without any remedy whatsoever. In our opinion the view taken by the learned Judges of the Bombay High Court as also *Mudholkar J. of the Nagpur High Court* is in consonance with the letter and spirit of the Hindu Women's Right to Property Act 1937.

Having uphold the second respondent's right to challenge the alienation, we have next to consider the relief that she may be given. In the present case both the Courts below found that there was no legal necessity. What, therefore, the defendant got by the transfer is the undivided interest of Darasram in the

alienated property which can only be determined by a suit for partition. In these circumstances, Mst. Narbadia should be placed in possession of the alienated property leaving the defendant to enforce his right of partition separately.

In the view that we have taken, the question is answered in the affirmative. The appeal accordingly fails and is dismissed with costs. Counsel's fee Rs. 50/.