

(2012) 12 AP CK 0022

In the Andhra Pradesh High Court

Case No : Second Appeal No. 544 of 1995

Dasari Sainath and Another

APPELLANT

Vs

Mareddy Bujanga Bhushanam (Died) per L.Rs.

RESPONDENT

Date of Decision : 31-12-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 15(1), 15(1)(a), 15(2), 15(2)(a)

Citation : (2013) 3 ALD 62 : (2013) 1 ALT 678

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : J. Ugra Narasimha, for the Appellant; K.R. Sasidharan Nair, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Shankar, J.—The only question of law that arises for consideration in the second appeal is the interpretation of Section 15 of the Hindu Succession Act, 1956 (the Act, for short). The suit was laid by the 1st plaintiff seeking for a declaration of her title to the plaint "B" schedule property, for recovery of possession of the same and other ancillary reliefs. During the pendency of the suit, the 1st plaintiff died. After the death of the 1st plaintiff, the 2nd plaintiff was brought on record as the legal representative of the 1st plaintiff. The plaintiffs examined two witnesses in support of their claim. The defendants examined the 3rd defendant as the only witness on their behalf. The plaintiffs marked Exs. A-1 to A-3. The defendants in their turn exhibited Exs. B-1 to B-3. The suit was decreed. The defendants 3 and 4 unsuccessfully preferred appeal from the judgment. By the time the appeal came up for hearing, the 2nd plaintiff also died. His legal representatives were brought on record as respondents 2 to 7 in the appeal. As the defendants 3 and 4 failed in the appeal, this second appeal was preferred by them assailing the concurrent judgments of the trial court and the appellate court.

2. The facts leading to the filing of the present appeal, which are not in

controversy, are as follows:

(a) One Dasari Audemma had two daughters. Medisetty Venkata Subbamma, elder daughter of Audemma was the 1st plaintiff. Mareddy Subbarathnamma was the younger daughter of Audemma. Audemma purchased the plaint "A" schedule property. She died in 1955 intestate. She left the 1st plaintiff Venkata Subbamma and the other daughter Subbarathnamma as her only children.

(b) The two sisters who inherited the plaint "A" schedule property divided the same by effecting partition on 29-11-1956 through Ex. B-1 registration extract of the partition deed. In the said partition, the western portion of the plaint "A" schedule property fell to the share of the 1st plaintiff. The eastern portion of the plaint "A" schedule property fell to the share of the other daughter Subbarathnamma. It is the plaint "B" schedule property. Subbarathnamma died in August, 1981, without any issue Sankaraiah, husband of Subbarathnamma, executed a registered relinquishment deed registration extract of which is Ex. B-3, on 01-3-1983 in favour of the 1st defendant, who is his nephew being the son of his brother.

(c) Claiming that the plaintiff is entitled to the plaint "B" schedule property as the surviving daughter of Audemma, the 1st plaintiff issued a notice to the husband of Venkata Subbamma that by virtue of Section 15(2) of the Act, the plaintiff became the owner of; he plaint schedule property vide Ex. A-1. The 1st defendant issued a reply on 23-02-1983 through Ex. A-2 contending that Sankaraiah became the absolute owner of the plaint "B" schedule property and that he executed Ex, B-3 relinquishment deed in favour of the 1st defendant. Hence, the suit by the plaintiff.

3. As already pointed out, the trial court decreed the suit through judgment dated 21-9-1988 holding that in view of Section 15(2) of the Act, the 1st plaintiff became the absolute owner of the plaint B" schedule property and that the 2nd plaintiff consequently was entitled to the decree as sought for. The appellate court, through judgment dated 12-7-1995 affirmed the view of the trial court. Hence, the second appeal.

4. The question of law involved in this case is whether Section 15(2) of the Act applies to the case of the plaintiff or otherwise.

5. For the sake of convenience, Section 15 of the Act may be quoted, which reads as under:

15. General rules of succession in the case of female Hindus:-- (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,

(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 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 sub-section (1) in the order specified therein, but upon the heirs of the husband.

6. Section 15(1) of the Act provides the mode of intestate succession of the property of a female Hindu. Section 15(2) of the Act however is an exception to the succession as provided u/s 15(1) of the Act. Section 15(2) of the Act starts with a non obstante clause that notwithstanding Section 15(1) of the Act, the property inherited by a female Hindu from her parents devolves upon the heirs of the father of such a female Hindu if such a female Hindu dies without any issue. Section 15(2) of the Act further envisages that the property inherited by a female Hindu either from her husband or from her father-in-law devolves upon the heirs of her husband if she dies without any issue.

7. It is the case of Sri K.R. Sasidharan Nair, learned counsel for the respondents-plaintiffs, that as the property was inherited by Subbarathnamma, 2nd daughter of Audemma, on the demise of Audemma, the property devolves upon the heirs of the father of Subbarathnamma when Subbarathnamma died issueless in view of Section 15(2)(a) of the Act and that as the 1st plaintiff was the only heir of the father of the 1st plaintiff and Subbarathnamma, the 1st plaintiff would inherit the "B" schedule property on the demise of Subbarathnamma.

8. Sri J.Ugra Narasimha, learned counsel for the appellants-defendants 3 and 4, on the other hand, contended that Section 15(2) of the Act has no application since Subbarathnamma did not inherit the property within the meaning of "inheritance". The learned counsel for the defendants 3 and 4 placed reliance upon *Emana Veeraraghavamma Vs. Gudiseva Subbarao and Another*, . It was observed in that case that when a female Hindu succeeds to the property by way of inheritance from her parents and if such inherited property was sold away and other properties were purchased with the produce, such subsequently purchased property would not constitute the "inherited property" within Section 15(2)(a) of the Act. A Division Bench of this Court held that the special rule of succession u/s 15(2)(a) of the Act applies in case the very property inherited by a female Hindu

from her father or mother was still available at the time of her death and not in other circumstances.

9. It is contended by the learned counsel for the defendants 3 and 4 that Subbarathnamma did not inherit the plaint "B" schedule property and that she acquired the plaint "B" schedule property by virtue of partition with her elder sister through partition deed dated 29-11-1956. The learned counsel for the plaintiffs, on the other hand, contended that the plaint "B" schedule property did not change the character of being inherited property since the plaint "B" schedule property was not the property purchased subsequent to the inheritance as in the case of Emana Veeraraghavamma (1 supra) and that consequently, the Division Bench decision of this Court has no application. I am afraid that the contention of the learned counsel for the plaintiffs is not correct. It is not as though the property held by Subbarathnamma was the property inherited by her. The 1st plaintiff and Subbarathnamma inherited the plaint "A" schedule property. They effected partition of the inherited property in November, 1956. From then onwards, it should be considered that the 1st plaintiff and Subbarathnamma held the property as partition property and not as inherited property.

10. In Babballapati Kameswararao and Another Vs. Kavuri Vesudevarao, a Division Bench of this Court considered the meaning of "inheritance". The Division Bench held that the term "inheritance" occurring in Section 15(2) of the Act should be given a restricted meaning and not a wider interpretation as in other enactments.

11. In Ayi Ammal Vs. Subramania Asari and Another, , a learned single Judge of the Madras High Court considered the meaning of "inheritance" u/s 15(2) of the Act. In that case, a lady acquired title to the property from her father through a gift. The Court held that the property was not inherited by her as she did not acquire the same through succession. The Court defined inheritance as, "to receive property as heir, i.e. succession by descent".

12. It is the contention of the learned counsel for the 1st defendant that so long as Subbarathnamma did not acquire title through inheritance, Section 15(2) of the Act has no application and that Section 15(1)(a) of the Act would operate. The real question for consideration is whether the acquisition of title to the property through partition shall be considered to be inheritance within the meaning of Section 15(2) of the Act where the property partitioned in fact was acquired by inheritance. In the light of Emana Veeraraghavamma (1 supra), I consider that once an inherited property is intermeddled with, such property loses its character as an inherited property so far as Section 15(2) of the Act is concerned. It is true that the 1st plaintiff and Subbarathnamma inherited the plaint "A" schedule property. However, once there was a partition and the plaint "B" schedule property was allotted to Subbarathnamma, the plaint "B" schedule property as well as the remaining part of the plaint "A" schedule property lost their character as "inherited property". Consequently, Section 15(1)(a) of the Act came into operation once Subbarathnamma died. Her husband succeeded to the

plaint "B" schedule property as the only heir u/s 15(1)(a) of the Act. As the owner of the property, Sankaraiah, husband of Subbarathnamma, was entitled to dispose of the plaint "B" schedule property in any manner of his choice. He chose to settle the same in favour of the 1st defendant. The plaintiffs cannot question the disposal of plaint "B" schedule property by Sankaraiah in favour of the 1st defendant.

13. The trial court and the appellate court erred in considering that the plaint "B" schedule property was the inherited property of Subbarathnamma and that consequently by virtue of Section 15(2)(a) of the Act, the 1st plaintiff became the owner of the plaint "B" schedule property. As Section 15(2)(a) of the Act does not apply to the plaint "B" schedule property, the plaintiffs are liable to fail in their case. Consequently, the second appeal is allowed. It is found that the plaint "B" schedule property was inherited by Sankaraiah on the demise of his wife Subbarathnamma and that the 1st defendant became entitled to the same by virtue of the relinquishment deed executed by Sankaraiah under Ex. B-3. The plaintiffs are not entitled to the declaration, possession and mesne profits as claimed. The suit is accordingly dismissed. However, the parties shall bear their respective costs.