

(2009) 07 SC CK 0130

In the Supreme Court Of India

Case No : Civil Appeal No's. 4126-4127 of 2009 (Arising out of Special Leave Petition (Civil) No's. 23606-23607 of 2007)

Gangamma etc.

APPELLANT

Vs

G. Nagarathnamma and Others etc.

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Hindu Succession Act, 1956 — Section 14, 14(1)

Citation : AIR 2009 SC 2561 : (2009) AIRSCW 4471 : (2009) 6 ALD 1 : (2009) 3 AWC 2794 Supp : (2010) 3 BomCR 888 : (2010) 109 CLT 713 : (2009) 9 JT 160 : (2009) 6 MLJ 77 : (2009) 4 PLJR 48 : (2009) 9 SCALE 46 : (2009) 15 SCC 756 : (2009) 9 SCR 1167 : (2009) 5 Supreme

Hon'ble Judges : S. B. Sinha, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : G.V. Chandrashekar, for Anjana Chandrashekar, for the Appellant; S.N. Bhat, for the Respondent

Final Decision : Disposed Of

Judgement

Asok Kumar Ganguly, J.—Leave granted.

2. The subject matter of challenge before this Court is the judgment and order dated 1st December, 2006 passed by a Learned Single Judge of the High Court of Karnataka at Bangalore in Regular First Appeal 617/2004 and in the cross objection 47/2006 filed under Order 41, Rule 22 against the judgment and decree dated 28.01.04 passed in Original Suit No. 6169/92 by the XX Additional City Civil Judge, Bangalore City.

3. The dispute arose out of a partition suit filed by i) Smt. Nagarathnamma wife of late G. Srinivas and ii) by G. Hemlata who was a minor at the time of filing of the suit in 1992. Plaintiff was the only child of the plaintiff No. 1, who was her mother and natural guardian and she represented the plaintiff No. 2. The plaintiffs are respondent Nos. 1 & 2 before this Court.

4. This suit was filed for partition claiming 1/3rd share in suit properties and also claiming separate possession by metes and bounds and for mesne profits and other incidental reliefs.

5. The first defendant in the suit is the mother- in-law of the plaintiff No. 1 and the defendants 2, 3 & 4 are the daughters of the defendant No. 1 and the defendant No. 5 is the son of the defendant No. 1. Defendants 6 to 14 are tenants in the suit properties.

6. The plaint case is Sri. Ganganna, the father-in- law of the plaintiff No. 1, expired in 1973 leaving behind his wife, three daughters and two sons. The genological table of the family is as under:

Ganganna	(Died	in	1973)		Gangamma	(Pet.	1)
Srinivas	Yashoda	Padma	Manju	Kumar	S. Moorthy	(son)(Died	(Daughter)
(Daughter)	(Daughter)	(Son)	in 1984)	(D-2)	(R-3)	(D-3)(P-2)	(D-4 (P-3) D-5
(P-4)		Nagarathna	(wife)	(Plf. No.1)	(R-1)		Hemalatha (daughter) (Plf. No.2)
(R-2)							

7. The suit properties consist of both agricultural lands and urban properties and the plaint case is they are ancestral properties belonging to the joint family. The further plaint case is though some of the properties stand in the name of first defendant, they were bought benami in her name by the late Ganganna out of the income from agricultural lands and the income of the first plaintiff's husband who was working as an accountant in a private firm and drawing salary. He also had a leather business and had earning from running a taxi. Thus he was contributing seven to eight thousand every month to the family and out of such income the suit properties were purchased. The first defendant being a housewife had no income to purchase properties. However, latter on relationship between the plaintiff No. 1 and her husband and defendant No. 1 became strained and the plaintiff No. 1 and her husband had to leave the ancestral house. The plaint case is that out of the properties those at item Nos. 1 to 4 are the joint family properties.

8. In the written statement filed by the first defendant, the plaint case was denied excepting the relationship between the parties. The other defendants adopted the stand of the first defendant.

9. The Trial Court however decreed the suit for partition in part and held that the plaintiffs are entitled to 1/6th share in the schedule property and to separate possession by metes and bounds. They are also entitled to an enquiry into mesne profits under Order 20, Rule 12 of the Civil Procedure Code.

10. Challenging the said judgment, the present appellants filed a Regular First Appeal being RFA 617/2004 and the plaintiff - respondent filed a cross objection, as mentioned above.

11. In the First Appeal the High Court found that no evidence was adduced by

the appellant to show that she had any independent sources of income. It has also come in evidence that at the time of death of the husband of the appellant only G. Srinivasan was 16 years old and the other children of the appellant herein were minors and they had no income.

12. The High Court found that evidence was adduced to show that the husband of the plaintiff had substantial income and he owned an ambassador car. In view of this evidence, High Court held that properties at items 1 & 2 are joint family properties.

13. The learned Counsel for the appellant contended that without any evidence the High Court came to a finding that the husband of the plaintiff No. 1 had substantial income. From the list of the documentary evidence produced before the Trial Court nothing appears on record to indicate that there was any document evidencing the income of the husband of the plaintiff No. 1. Therefore the High Court fell into an error by holding that though the properties at item Nos. 1 & 2 are recorded in the name of the appellants, they are joint family properties.

14. Section 14(1) of the Hindu Succession Act (hereinafter referred to as the Act) has a bearing on the issue. As the properties at item Nos. 1 & 2 are recorded in the name of the appellant, in the absence of any evidence to the contrary in this case, the appellant by operation of Section 14(1) of the said Act is the full owner of those properties. In the facts of this case discussed above it has to be accepted that those properties are not joint properties but the appellant is the sole owner of those properties.

15. The principle laid down in Section 14(1) of the said Act has been read by courts in a very comprehensive manner since the said Act overrides the old law on Stri Dhana in respect of properties possessed by female Hindu. In *Eramma Vs. Verrupanna and Others*, , Justice Ramaswami speaking for the Court held that Section 14(1) of the Act contemplates that a female Hindu, who in the absence of the said provision would have been a limited owner of the property, will now become full owner by virtue of the said section. Such female Hindu will have all powers of disposition to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.

16. Again in the case of *Punithavalli Ammal Vs. Minor Ramalingam and Another*, , a three- Judge Bench of this Court reiterated the position that the said Act has overriding effect and confers full ownership on Hindu female and made it very clear that rights conferred u/s 14(1) to a Hindu female are not restricted or limited by any rule of Hindu law. In the opinion of the Court in *Punithavalli* (supra) the said section makes a clear departure from all texts of Hindu laws and rules and those texts and rules cannot be used for circumventing the plain meaning of Section 14(1) of the said Act.

17. In *Seth Badri Prasad Vs. Srimati Kanso Devi*, , the learned Judges held that the word 'acquired' in Sub-section (1) of Section 14 of the said Act has to be

given the widest possible meaning (See paras 6 & 7).

18. In *Vaddeboyina Tulasamma and Ors. v. Vaddeboyina Sesha Reddi (dead)* by L.Rs. AIR 1977 SC 1944, Justice Bhagwati speaking for the Court held that Sub-section (1) of Section 14 is very large in its amplitude and covers every kind of acquisition of property by a female Hindu. Regardless of whether such property was possessed by a female Hindu on the date of commencement of the Act or was subsequently acquired or possessed, she would be the full owner of the property.

19. In view of such consistent views taken by this Court on the interpretation of Section 14, we hold that Section 14(1) of the said Act would apply in respect of the properties which stand in the name of the appellant and the appellant would be the full owner of those properties.

20. Therefore the order of the High Court cannot be upheld and is set aside. The order of the Learned Trial Judge is affirmed. The appeal is allowed to the extent indicated above. There is no order as to costs.