

(2007) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : SA No. 764 of 2004 and CRP No. 3322 of 2004

Gopireddy Andhra Pratap Reddy

APPELLANT

Vs

Pochana Sudarshan Reddy and Others

RESPONDENT

Date of Decision : 07-06-2007

Acts Referred:

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

Citation : (2007) 6 ALD 297

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : J. Seshagiri Rao, for the Appellant; R. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Since these two proceedings arise out of the same suit, they are being disposed of by a common judgment.

2. Appellant in the second appeal is the revision petitioner in the revision petition. He filed the suit for partition of his 1/25th share in the plaint schedule properties and for other consequential reliefs which was dismissed by the trial Court and also the first appellate Court. For the sake of convenience, I would hereinafter refer to the parties to these proceedings as they are arrayed in the trial Court.

3. Defendants 1 to 6 are the children of Konda Reddy son of Obulamma. Defendants 8 and 10 are the brother and sister respectively of the 7th defendant. Plaintiff and defendants 11 to 14 are the children of Chinna Venkatamma, sister of the 7th defendant. 9th defendant is the daughter of Lakshumma wife of the 16th defendant. For the purpose of clarity, Ex.A.I Geneology Tree is appended to this judgment. The case, in brief, of the plaintiff is that the plaint schedule properties originally belonged to Chittem Narapu Reddy, who died about 60 years prior to the filing of the suit in 1999, whose wife, Subbakka, predeceased him leaving behind his son Thirupal Reddy and two

daughters Venkatamma and Obulamma, his maternal grandmother, and Narayana Reddy, grandson of Narapu Reddy through his son Thirupal Reddy. As Narayana Reddy died on 27-4-1955 unmarried, his maternal grandmother Obulamma became entitled to the plaint schedule properties which are left behind by him. Even otherwise also as Obulamma, his grandmother, was in possession of the plaint schedule properties by the time of coming into force of the Hindu Succession Act, 1956 (the Act), her limited estate got enlarged into a full estate and for that reason also he is entitled to 1/25th share in the plaint schedule properties.

4. The case of the defendants is that Chinna Venkatamma, elder sister of Obulamma, was married to Pedda Konda Reddy who died about 55 years back leaving behind the son. Since Narayana Reddy died intestate on 27-4-1955 i.e., before the coming into force of the Act, Pedda Konda Reddy, husband of 15th defendant, and others have inherited the property left behind by Narapu Reddy. Obulamma, being the paternal aunt of Narayana Reddy, is not and cannot be his heir as per Hindu Law in force at that time. So, the plaintiff, who is claiming through Obulamma, is not entitled to the relief sought.

5. The trial Court accepted the contention of defendants that Pedda Konda Reddy s/o. Venkatamma, being the male bandhu, has preference over the female bandhus and so though Obulamma is nearer in degree than that of male bandhu Konda Reddy, she did not inherit the estate of Narayana Reddy and so the plaintiff is not entitled to seek partition of the plaint schedule properties and dismissed the suit. Aggrieved thereby plaintiff preferred an appeal to the Court of the Senior Civil Judge. During the pendency of the appeal, plaintiff filed an application seeking amendment of the plaint taking a plea that as he came to know that the plaint schedule property in fact did not belong to Narayana Reddy and were the property of Subbakka mother of Obulamma, he may be permitted to make the necessary amendments in the plaint taking a plea that the plaint schedule property belonged to Subbakka. After contest by the defendants the first appellate Court dismissed that petition and the appeal also. Hence the civil revision petition and the second appeal.

6. The second appeal was admitted by a learned Judge on the following substantial questions of law:

(1) Whether succession opens as per the principles of old Hindu Law or as per the principles of Hindu Succession Act ?

(2) Whether the possession of Obulamma got itself enlarged with absolute rights u/s 14(1) of the Hindu Succession Act ?

7. The contention of the learned Counsel for appellant is that since the appellant was not fully aware of the fact as to how his ancestors acquired the plaint schedule property and was informed that the plaint schedule property belonged to Narapu Reddy he filed the suit on that basis and during the pendency of the appeal in the first appellate Court he came to know that the plaint schedule

property in fact belonged to Subbakka w/o Narapu Reddy and that it was her Stridhana property, and since Stridhana property would be inherited by the daughters, Subbakka and Obulamma inherited the plaint schedule property from Subbakka and so he filed the petition seeking amendment of the plaint and that the first appellate Court erroneously dismissed the said petition for amendment. It is his contention that since Obulamma admittedly was in possession of the plaint schedule properties by the date of coming into force of the Act, the same got enlarged into full estate by virtue of Section 14 of the Act and as both the Courts below failed to take into consideration the said fact, and erroneously applied the law of inheritance which was in vogue prior to the coming into force of the Act the judgment and decree under appeal are liable to be set aside and placed strong reliance on Vadrevu Lakshmana Rao Vs. Vadrevu Venkata Ramana Rao and Others, , in support of the said contention. The contention of the learned Counsel for contesting defendants is that as the specific case of the plaintiff in plaint is that the plaint schedule property belonged to Narapu Reddy, and as plaintiff adduced evidence in support of that plea he cannot, at the stage of first appeal, take a plea which is diametrically opposite to the original plea and take the defendants by surprise contending that the plaint schedule property did not belong to Narapu Reddy but was the Stridhana Property of the wife of Narapu Reddy and so the first appellate Court, by dismissing the said petition for amendment, cannot be said to have committed any error. It is his contention that succession to the property of Narayana Reddy opens immediately on his death i.e. on 27-4-1955 and as the Act was not in force by the date, question of applying the provisions of the Act for determining the heirship of his estate does not arise. Relying on Kaliammal and Others Vs. Muthu Pillai alias Perathambia Pillai and Others, where it is held that male bandhus are to be preferred over female bandhus, though the latter are nearer in degree, he contended that the Courts below did not commit any error in dismissing the suit.

CRP No. 3322 of 2004:

8. Though a petition for amendment of plaint can be filed at any stage of the suit, in the suits instituted prior to the coming into force of 1999 and 2002 amendments to CPC, as it is well known that amendments which change the nature of the suit and cause of action cannot be permitted and since the specific case of the plaintiff in the plaint is that he is claiming succession to the property of Narayana Reddy inherited by Obumalla and adduced evidence accordingly, the plea he wants to take by way. of the proposed amendment that the plant schedule property was the Stridhana property of Subbakka and was inherited by Obulamma as daughter of Subbakka would change the cause of action on which the plaintiff is claiming. So, such amendment cannot be allowed. That apart, the contention of the plaintiff that he was not aware to whom the plaint schedule property actually belonged to, till he looked into some papers, must be a story invented to gain sympathy of the Court because he, admittedly, was a party to the earlier litigation in respect of the plaint schedule property and so he should be imputed with knowledge of the earlier proceedings and the pleas taken

therein. Even then he came to Court with a specific case that he is claiming inheritance to the property of Narayana Reddy. So, the cause of action for the suit is the death of Narayana Reddy in 1955. If the plaint schedule property were the Stridhana property of Subbakka W/o Narapu Reddy, who predeceased Narapu Reddy, it would devolve on both her daughters as per the Hindu Law of inheritance in vogue at that time. In Mithakshara School, succession to Stridhana property other than "Shulka" prior to the coming into force of the Act, as per Mulla's Hindu Law (16th Edition (1990)) at page 172 Para 147 would be to (1) unmarried daughter; (2) married daughter who is unprovided for; (3) married daughter who is provided for; (4) daughter's daughter; (5) daughter's son; (6) son; and (7) son's son. If the proposed amendment were to be allowed question whether the plaint schedule property was the "Shulka" of Subbakka, or other than Shulka has to be established first, because if it is a "Shulka" the succession according to mithakshara will go to uterine brother, mother, and in default of issue, to the father, father's heirs i.e. his sapindas and then his samanodakas and then his bandhus. The proposed amendment does not disclose whether the plaint schedule property was the "Shulka" or a "non-shulka" property, and who were the relatives or bandhus that were left behind by Subbakka at the time of her death. In the above circumstances, if the proposed amendment were to be allowed it would result in a de novo trial, which is not permissible. So, the first appellate Court dismissing the petition for amendment cannot be said to be erroneous and so I find no merit in this revision petition.

SA No. 764 of 2004:

9. It is well known that succession will never be in abeyance, and opens immediately on the death of the individual, and deceased's property vests in his heirs, as per the law of succession in force on the date of his death.

10. The specific case of the appellant is that his forefather Narapu Reddy's wife predeceased her husband and that the said Narapu Reddy died intestate about 60 years prior to the filing of the suit, leaving behind his son Thirupal Reddy, who died about 50 years prior to the filing of the suit, and a daughter Venkatamma who had a son by name Pedda Konda Reddy husband of the 15th defendant. It is also the specific case of the plaintiff that Obulamma succeeded to the property of Narapu Reddy consequent on the death of Narayana Reddy and that she came into possession of that property after the death of Narayana Reddy and was in possession of the said property by the date of coming into force of the Act and as such she became absolutely entitled to the plaint schedule property by virtue of Section 14 of the Act.

11. In my considered opinion, the two stands taken by the appellant are mutually inconsistent. If Obulamma inherited the property it cannot be a limited estate governed by the provisions of the Hindus Women's Right to Property Act, 1937. As per the provisions of the said Act, the paternal aunt of a deceased male Hindu does not get any right in the property left behind by a deceased Hindu. Section 14 of the Act reads:

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.

So, as per explanation to that section for Section 14 of the Act to apply the property in possession of a Hindu woman must have been "acquired" by her either by inheritance or by 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. Assuming that Obulamma was managing the properties left behind by Narayana Reddy, grandson of Narapu Reddy, such management cannot be an "acquisition" contemplated by the explanation to Section 14 of the Act. So, question of her becoming the absolute owner of the properties that was being "managed" by her by the time of coming into force of the Act, by virtue of Section 14 of the Act does not arise.

12. The ratio in Vadrevu Lakshmana Rao's case (supra), is that if a female Hindu holds the property by virtue of a pre-existing right to maintenance or possesses the property in any of the capacities referred to in Section 14(1) of the Act her limited rights enlarges into absolute rights and if the right is created for the first time, after the Act came into force, Section 14(1) of the Act would not come into play. As stated earlier, it is not the case of the appellant that Obulamma came into possession of the property by virtue of a pre-existing right to maintenance or in any of the modes referred to in the explanation to Section 14(1) of the Act extracted above. So, Section 14 of the Act has no application to the facts of this case.

13. As stated earlier since succession would not be kept in abeyance, inheritance to the property left behind by Narayana Reddy would be as per the Hindu Law of inheritance in force at the time of his death on 27-4-1955.

14. The trial Court relying on the commentaries on Hindu Law by Mulla, that the degree of "blood relationship" decides the guidelines for inheritance, and that "blood relations" are divided as Gotraja Sapindas i.e., Sapindas belonging to the same gotra or same family of the deceased and Bhinna-gotra sapindas i.e., sapindas belonging to a different gotra or family of the deceased, and that gotraja sapindas are all agnates i.e., persons connected with the deceased by an unbroken line of male descent, and that gotraja sapindas are further divided into Sapindas and Samanodakas and that Sapinda relationship extends to seven

degrees reckoned from and inclusive of the deceased, and that Samanodakas of a person include all his cognates from the eighth to the fourteenth degrees, and since Ex.A.1 genealogy shows that Peda Konda Reddy is the son of Venkatamma the daughter of Narapu Reddy, he would be a male bandhu to Narayana Reddy, and so his heirs would become entitled to that property dismissed the suit and that finding is confirmed by the first appellate Court. The said finding of the Courts below is in accordance with the ratio in Kaliammal's case (supra) and S.M.K.K.M. Gurukul's case (supra), where it is held that male bandhus have to be preferred to female bandhus though the latter are nearer in degree of relationship. In view thereof, merely because Obulamma is nearer in degree of relationship to Narayana Reddy she cannot be preferred to Peda Konda Reddy son of Venkatamma. So, Peda Konda Reddy only would be the heir to the estate left behind by Narayana Reddy and so I find no merits in this second appeal.

15. Therefore, both the revision petition and second appeal are dismissed with costs.