
(1907) 07 BOM CK 0016

In the Bombay High Court

Case No : Second Appeal No. 46 of 1905

Hari Narayan Jog

APPELLANT

Vs

Vitai Naru Bhosle

RESPONDENT

Date of Decision : 30-07-1907

Acts Referred:

Citation : (1907) 9 BOMLR 1049

Hon'ble Judges : Heaton, J;Chandavarkar, J

Bench : Division Bench

Judgement

Chandavarkar, J.—Both the lower Courts have held that where a Hindu in this Presidency dies, leaving him surviving two or more widows as heirs, none of them has the right to alienate her life-interest in the property without some necessity justifying the alienation or without the consent of her co-widow or co-widows, as the case may be. And in support of that view they rely upon certain passages in Mr. Mayne's Hindu Law and Usage, Sixth Edition, Section 554, page 732. The passage runs as follows :-

On the principle of joint tenancy with survivorship, no alienation by one widow, even though she is the manager at the time, can have any validity against the rights of the others without their consent or an established necessity arising under circumstances which rendered it impossible to seek for consent.

This means that such an alienation cannot bind the interest or right of the other widow or widows-it does not mean that it cannot bind the interest of the widow alienating. Mr. Mayne, in support of the proposition above quoted, cites the ruling of the Privy Council in Sri Gajapati Radhamani v. Maharani Shri Pusapati Alakarajeswari where their Lordships do not lay down the law so broadly as the lower Courts in their respective judgments in the present case seem to think. What their Lordships observe is that a mortgage by one co-widow cannot be "binding upon the joint estate which had descended from their deceased husband so as to affect the interest of the surviving widow.

2. Mr. Mayne goes on to say :-

It has, however, been held that a widow can alienate her life-interest as against her co-widows just as she can against the reversioners, without prejudice to their rights of survivorship ;" and in support of that he cites *Janoki Nath v. Mothura nath* ILR (1883) Cal. 580.

3. But both the lower Courts in the present case reject the authority of that decision on the ground that it is the law under the Dayabhaga in Bengal and has no application to this Presidency. That view, however, gives the go-by to the rights which, under the Mitakshara and the Vyavahara Mayukha, the two paramount authorities in this Presidency, accrue to the widows of a deceased Hindu succeeding as joint heirs to his property. The right of each of such widows to enjoy the property by partition inter se is admitted in distinct terms both in the Mitakshara and the Mayukha. The passage bearing on the point in the former which, as pointed out by Stokes in his Hindu Law Books (page 52), is omitted by Colebrooke in his translation of the Mitakshara (page 428, placita 5 and 6 of Stokes' Hindu Law Books), is translated by Strange in his Manual of Hindu Law, Second Edition, Section 326, as follows :-

The singular number "wife" signifies the kind; hence, if there are several wives belonging to the same or different castes, (they) divide the property according to the shares prescribed to them and take it.

4. To the same effect is the Vyavahara Mayukha :-

This establishes our argument [the wife if faithful, & c., para 2nd] that a lawful wife restrained [in her conduct] takes the wealth. But if there be more than one, they will divide it and take shares." [Stokes' Hindu Law Books, page 86, placitum 9]

And following that, Arnold and Couch JJ. have held in *Ramia v. Bhagi* (1862) 1 Bom. H.C. O.C.J. 66 that "where a Hindoo dies intestate leaving no issue and several widows, the widows succeed equally and are entitled to equal shares in his estate." No doubt that was a case on the Original Side of this Court, but the learned Judges in support of their decision rely on a decision of the then Chief Justice of the Court in *In the Goods of Dadoo Mania* based on the answers obtained by him from the Shastrees of the Sadar Adalat at Poona to the effect that, "if there be more than one widow, each of them is entitled to an equal share of the property." And in (1889) L.R. 16 I.A. 186 (Privy Council) their Lordships of the Judicial Committee of the Privy Council, dealing with the right of each of two Hindu widows, holding an estate jointly, to claim partition. from the other, observe: "It is impossible to hold that a joint estate is also not partible.

5. The right of each of such widows to partition being established, it is a necessary corollary from that that she can assign it to any one she chooses. So also, if she has herself obtained her share by partition, she can alienate that share. In either case, the assignment or alienation cannot take effect or have

validity beyond her own life time. On her death her interest in the property ceases and the share goes to the surviving co-widow or co-widows, as the case may be. [Macnaghten's Hindu Law, Vol. I, pp. 20, 21]. But it is good so long as she lives.

6. This conclusion of Hindu Law is in accordance with the decision of the Madras High Court in *Ariyaputri v. Alamelu* ILR (1888) 11 Mad. 304 where it was held that, though more widows than one inheriting their husband's property "take together as a class" and "partition is permitted as between them not as in the case of male co-parceners for the purpose of converting a joint estate into two or more separate estates to be held in severalty, but for the limited purpose of securing to each widow a distributive enjoyment of the benefit of joint property," yet that "is not inconsistent with her right of separate beneficial enjoyment during her life being bound by her own voluntary act or by a Court sale in execution of a decree against her."

7. The Subordinate Judge, who decided the suit in this Second Appeal before us, relies upon that decision as supporting the view that Hindu co-widows being joint tenants with right of survivorship, "no alienation by one widow can have any validity against the right of the other without their consent or an established necessity arising under circumstances which rendered it impossible to seek for consent." That undoubtedly is the law, but that is not the present case. The plaintiff who claims partition under an assignment from defendant No. 2 of the right to a share by partition from her co-widow, defendant No. 1, is not seeking to affect in any way the rights of defendant No. 1. If her assignor has a right to a share during her lifetime he is entitled to claim it by partition and to hold it during her life-time. There is no question in that of the assignment or alienation affecting the rights of the other widow.

8. To such a partition in the present case it is objected by the lower Courts, on the analogy of a partition among the co-parceners in an undivided Hindu family, that both the widows here have unmarried daughters and that, if the alienation of her interest by defendant No. 2 in favour of the plaintiff is held valid, it must prejudice those daughters in respect of their marriages, the expenses of which are a charge on the estate inherited from their husband by both the widows. But the fact that there are unmarried daughters in a joint Hindu family, whose marriage expenses have to be provided for out of its property, has never been held to deprive any of its co-parceners of the right of alienating his own share or of demanding a partition, though that may be a reason for upholding the alienation or allowing the partition subject to those expenses. In the present case it will be for the Court, if necessary, to decide upon the evidence and circumstances of the case, after taking into consideration the pleas of the respective parties, whether the partition claimed by the plaintiff should be allowed subject to any conditions warranted by Hindu Law.

9. As the lower appellate Court has dismissed the suit practically upon a preliminary ground, viz. that the suit for partition cannot lie, we must reverse the

decree and remand the appeal for disposal according to law. Costs to abide the result.