

(1971) 09 MAD CK 0011

In the Madras High Court

Case No : Second Appeal No, 215 of 1967

Jayalakshmi Ammal and Others

APPELLANT

Vs

T.V. Ganesa Iyer

RESPONDENT

Date of Decision : 01-09-1971

Acts Referred:

Hindu Succession Act, 1956 — Section 2, 24, 25, 26, 28

Citation : AIR 1972 Mad 357 : (1972) ILR (Mad) 59 : (1972) 85 LW 82

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—The defendants are the appellants. The respondents brought the suit for recovery of possession of the plaint schedule

properties and for mesne profits. He purchased the properties from Rajamani, the widow of one Narayanaswami, who dies in 1948 leaving his

sons Prasanna and Venugopal by his first wife Chinnammal. That lady had predeceased her husband. Narayanaswami also left being him his

brother Krishnaswami. The sale deed executed by Rajamani directed the respondent to pay out of the purchase price certain debts of Venugopal

which, however, have not up-to-date been paid. Prasanna and Venugopal died in 1953 and 1957. Even during their lifetime Rajamani instituted

O.S. 34 of 1953 on the file of the court of the Subordinate Judge. Tiruchirapalli, for partition of the properties described in the plaint Schedules A

to C and for delivery to her of a 1/6th share on the ground that those properties belonged to the joint family consisting of Narayanaswami and his

brother Krishnaswami. That suit ended in a compromise in terms of which a decree followed. The stipulation there was that Rajamani should be

paid a sum of Rs. 16000 in consideration of her giving up of her rights as

mentioned in paragraph 5 of the compromise. After the death of prasanna and Venugopal, Rajamani claimed to have succeeded to the estate of Venugopal as the widow of his father under the provisions of the Hindu

Succession Act, 1956. In defence to the suit various contentions were raised, but in the second appeal we are concerned with three questions.

The first of the questions relates to the scope of the compromise in O.S. No. 34 of 1953. The appellants maintain that as a result of this

compromise, Rajamani, had divested herself of her rights in the suit properties.

(His Lordship discussed the facts and proceeded).

It is no doubt true that the opening phraseology in paragraph 5 refers to ""in so far as it concerns the defendants""; but that should be understood in

the context and so understood, it is clear that what concerned the defendants in that suit was the claim of the plaintiff in the suit, namely, a share in

the joint family properties. That being so, the lower appellate court was right in its view that the compromise did not stand in the way of Rajamani

succeeding to Venugopal's exclusive properties.

2. The second question is this. The courts below have concurrently found that, even during the lifetime of her husband. Rajamani left him and lived

in open and notorious unchastity. The appellants contend that this disqualified Rajamani from inheriting the properties of Venugopal. We are unable

to accede to this contention. Unchastity of a widow is, under the Hindu law undoubtedly a disqualification. But the point is whether that

disqualification would any longer apply after the Hindu Succession Act 1956 came into force., Rajamani succeeded to Venugopal's properties as

his father's widow. Section 4 of the Act gives to its provision an overriding effect. It says that save as otherwise expressly provided in the Act any

text. rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act shall

cease to have effect with respect to any matter for which provision is made in the Act. It also provides that any other law in force immediately

before the commencement of the Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. In

accordance with the provisions of Section 8, the property of a male Hindu dying intestate shall devolve. according to the provisions in chapter II of

the Act, firstly upon the heirs specified in class I of the schedule and secondly, if

there is no heir of class II of that schedule. S. 8 is in substitution of the Hindu law of succession relating to the property of a male Hindu dying intestate. Once the Act has provided for that, as enacted by S. 4(1), the rule of Hindu Law relating to that matter ceases to have operation. But the appellants rely on Ramaiya Konar alias Ramaswami Konar, by father and guardian Natesa Konar and Another Vs. Mottayya Mudaliar alias Manicka Mudaliar, and content that in so far as the Hindu Succession Act has not abrogated the rule of Hindu Law as to the disqualification of a widow to succeed on the ground of unchastity. the personal law should govern with the result that Rajamani would be disentitled to succeed to the properties of Venugopal. That decision was rendered under the Hindu Women's Rights to Property Act. It was held in that case that a Hindu married woman living in adultery at the time of her husband's death was disqualified, by reason of her unchastity, from acquiring any interest under the Hindu Women's Rights to Property Act. This was upon the view that the Act conferred only a benefit upon a widow. But that did not mean that suit juris the Act meant to abrogate the rule of Hindu Law relating to the disqualification of a widow to succeed on the ground of unchastity. The court pointed out as we find from the judgment of the learned Chief Justice:--

Much reliance was placed on S. 2 which declares that the provisions of Section 3 shall apply notwithstanding any rule of Hindu law or custom to the contrary. It is important to note that the language is not "notwithstanding any rule of Hindu Law or custom" but "notwithstanding any rule of Hindu Law or custom to the contrary". If there is any rule of Hindu law or custom which is contrary to the provisions of S. 3, then it is such a rule that is abrogated and not every rule of Hindu law which is not directly contradicted by the provisions of Section 3".

It seems to us that the position under the Hindu Succession Act is entirely different. The Hindu Succession Act, in so far as it covers the matters therein, is meant to be a complete Code relating to Hindu Succession and to that extent the Act prevails and the Hindu Law in respect of it will cease to operate. That is the effect of Section 4 which, as we said, gives the provisions of the Act an effect of overriding the Hindu Law except to the extent save as otherwise, expressly provided for in the Act itself. The effect

of Section 8 is to limit succession to the class of persons in the order of priority specified. Unless, therefore, any rule of Hindu Law with reference to the disqualification of any of the heirs mentioned in any of the classes is covered by Section 8 each one of them will be, as a matter of right entitled to succeed in accordance with the provisions of that section.

As a matter of fact the Act has, by Sections 24 of 26, provided otherwise which relates to the disqualification as enjoined by Hindu Law in respect

of remarriage, murder and conversion. Where a widow has remarried, she will not be entitled to inherit as the widow. So too murder will be a

disqualification as enjoined by Section 25 and conversion u/s 26. Section 28 makes it manifest that no person shall be disqualified from succeeding

to any property on the ground of any disease, defect or deformity, or save as provided in the Act, on any other ground whatsoever. That means, in

our opinion the Act has made its intention specific that unchastity of a widow will, after the Act has made its intention specific that unchastity of a

widow will, after the Act came into force, no longer be a disqualification for her to succeed as the father's widow. The second point of the

appellants also fails.

3. The third and last question is as to the appellants contention that the respondent failed to comply with the stipulation in the sale deed for payment

of a total sum of Rs. 11,350 to the creditors of Venugopal in repayment of his debts. the lower appellate court has found as a fact that the

respondent has not discharged his obligation under the conveyance to repay the debts of Venugopal. Nevertheless it held that the payments by

defendants 5 to 9 being voluntary and they having been paid subsequent to issue of notice they could not be considered to have paid them bona

fide. We think this is not the correct way of looking at the matter. The debts of Venugopal had to be paid and if defendants 5 to 9 had done that.

the respondent could not take credit for it and he could not be excused from his obligation under the terms of the conveyance to him. We accept

the appellants' contention in this regard. While we sustain the decree for possession granted to the respondent by the lower appellate court. We

make recovery of possession conditional upon the respondent depositing in the trial court a sum of Rs. 11,350. The respondent claimed mesne

profits at the rate of Rs. 3,000 per annum. But, inasmuch as he failed to pay the

sum of Rs. 11,350 as he was bound to under the terms of sale, he would be liable to pay interest. He could not withhold this sum and at the same time claim mesne profits. In the circumstances of the case, we do not think it necessary to send the matter back for determination of mesne profits. But it would be fair and reasonable to direct that the respondents should not be made liable for interest and at the same time the defendants also should not be made liable for mesne profits. One will roughly set off the other on the basis that if the defendants had the benefits of Rs. 11,350 at the proper time, that sum should have earned much larger interest than what the court would normally allow.

The decree of the lower appellate court is confirmed so far as it related to recovery of possession. But it is modified by providing that the respondent would be entitled to recovery of possession only on depositing in the trial court a sum of Rs. 11,350. In making this order, we have taken into account also a sum of about Rs. 2,000 which the appellants have deposited to the credit of the suit towards mesne profits, which the respondent had already drawn and which the respondent will appropriate to himself. As and when the amount is deposited, the trial court will disburse to the defendants entitled to the same in proportion to their relative rights. The parties will bear their costs throughout.

4. Appeal allowed in part.