

(1961) 10 AP CK 0013

In the Andhra Pradesh High Court

Case No : Second Appeal No. 500 of 1958

Jilledumudi Parvathamma

APPELLANT

Vs

Vempati Subhadramma and Others

RESPONDENT

Date of Decision : 11-10-1961

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : AIR 1963 AP 236

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : G. Balaparameswari Rao, for the Appellant; E. Venkatesam and V. Neeladri Rao, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This is an appeal against the judgment of the Additional District Judge, Visakhapatnam, in A. S. No. 376 of 1957, confirming the judgment of the District Munsif, Visakhapatnam, in O. S. No. 298 of 1956, dismissing the plaintiff's suit.

2. The plaintiff is the appellant. She is the widow of one Appala Raju, who died as a member of a joint family. She has instituted the present suit, O. S. No. 298 of 1956, seeking partition of the family house in Chaganti street, Visakhapatnam, into two equal shares and possession of one such share.

3. The defendants to this action are the other members of the family, the mortgage-decree-holder who obtained a decree and the auction-purchaser in execution of the decree. The following are the relevant facts.

4. The relationship of the parties to this action could be seen from this pedigree-table :

Jilledumudi Appa Rao : Jilledumudi Subbamma died on 1934 (R. 2) (D. 2) |
_____|_____ | | | | Appalaraju :

Parvatamma Venkata Rao (died in (Appellant) (R. 3) (D. 3) 1940))Plaintiff) |
| Appa Rao (R. 4) (d. 4).

5. The late Appa Rao was trading in roots and Ayurvedic herbs till his death. Of his two sons, Appellant's husband Appala Raju was the eldest, Venkata Rao is his second son. They were living jointly. After Apparao's death, appellant's husband was continuing the family trade and managing the family. He died in 1940 undivided from his younger brother. Since then, Venkata Rao, his younger brother has been carrying on the family trade and managing the family. The appellant has been continuing to live in the family house as a member of the family. While so, Venkata Rao mortgaged the family house to one Vempati Subhadramma (R-1) under a mortgage dated 11-2-1947 (original of Ex. B-2) and borrowed Rs. 1,000/-. Venkata Rao's mother (R-2) and his minor son Appa Rao (R-4) joined in the execution of the said mortgage. The mortgagee sued for the recovery of the debt in the Court of the District Munsif, Visakhapatnam in O. S. No. 13 of 1955 and obtained a decree on 11-4-1955. The hypotheca was sold in execution and it was purchased by the 5th respondent. During the pendency of the execution proceedings the appellant laid a claim to that property, claiming a half share in it, but the claim was dismissed. Thereafter, she laid the suit O. S. 298 of 1956, claiming half share in the family house.

6. It is the case of the appellant that the mortgage debt was not incurred for family necessity, that as such the decree obtained therein and the sale in execution thereof do not bind her, and that she was entitled to a half share in the family house, free of the encumbrance.

7. Respondents 1 to 4 (Defendants 1 to 4) were ex parte. The auction-purchaser (R-5) contested the suit, pleading inter alia that the mortgage debt was incurred for the ancestral business, that the debt was binding on the appellant as incurred for family necessity and that the sale in execution of the decree could not be questioned, and further that he was a bona fide purchaser for value.

8. The District Munsif dismissed the plaintiff's (appellant's) suit with the findings: that the third respondent, who is the manager of the trading family incurred the debt for trade and for sustenance that the debt and the proceedings for the recovery thereof are binding on the appellant, that she was not entitled to question the alienation and that there was no joint family property in existence to claim a partition thereof.

9. The Additional District Judge agreed with the findings of the learned District Munsif and dismissed the appeal. The present second appeal is filed against the concurrent judgments of the Courts below.

10. The concurrent findings of the Courts below are: that the mortgage-debt incurred under the original of Ex. B-2 dated 11-2-1947 was contracted for family necessity, that it was binding on the appellant who is the widow of a deceased coparcener, and that the property having been sold for the discharge of a debt binding on the family and that being the only item of the family property, the

appellant's suit for partition failed.

11. When the appeal came on for hearing before our learned brother, Seshachelapathi, J., he noticed a conflict of judicial opinion with regard to the right of a widow of a deceased coparcener to question an alienation made by a manager, and referred the case to a Bench.

12. In Rathinasabapathy Pillai and Another Vs. Saraswathi Ammal, it would appear that it was expressed that a right to interdict an alienation is one peculiar to a member of a coparcenary and that a widow who is not a coparcener could not have that right, and that the term "interest" occurring in Section 3(2) of the Hindu Women's Right to Property Act could be no more than an interest to claim a partition. This view seems to have been considerably shaken by a subsequent ruling of that Court in Ramalingam Pillai v. Ramalakshmi Ammal 70 Mad LW 837 : AIR 1958 Mad 328 which expressed the view that a Hindu widow could challenge an alienation made by a coparcener. Apparently on account of this difference in views, our learned brother referred this matter for the decision of a Bench.

13. On the concurrent findings of the Courts below, this matter of the right of a widow of a deceased coparcener to interdict an alienation does not arise for consideration.

14. Even on the assumption that she could interdict the alienation, the Concurrent findings of both the Courts are that the manager of the family viz., the third respondent had contracted the debt in question for the family business and for family maintenance, and that the debt was therefore, contracted for legal necessity and binding on the other members of the family.

15. Sri Balaparameswari Rao has attempted to present the case of the appellant on the footing that the appellant became divided from the family before the debt in question was contracted by the manager, and that if that was the case, the debt would not be binding on the plaintiff at all. But it is at once seen that this case is entirely new and was not set up in the plaint. The further infirmity is that the evidence of the appellant is quite contrary to this case. The plaint (a translation of which has been placed before us) is to this effect in its relevant part:

"The husband of the plaintiff was jointly enjoying the schedule mentioned property with Venkat Rao Gam while he was alive and on his death with the 3rd defendant. While so, he died on 14-4-40 at Visakhapatnam. Subsequent thereto, the plaintiff and the 3rd defendant were living in the very same house and to this day the plaintiff has been enjoying jointly the plaint schedule property along with the 3rd defendant. While giving on rent a portion of the schedule mentioned house, and paying house-taxes etc., with the rents got therefrom, the plaintiff and defendants 2, 3 and 4 have been getting on by residing in the remaining portion of the house."

These express averments in the plaint rule out the supposition that the appellant became divided from the family prior to the institution of the suit. In her evidence, she stated thus:

"Except the suit house, the family has no other houses or lands. Our people were not employed. We had trade only and from the income of the trade we used to go to Puri. My father-in-law did trade in roots and Ayurvedic herbs, till his death, and from the income of that trade we were living. My father-in-law was paying house-tax till his death. Then we were all living jointly. My father-in-law was the manager. After my father-in-law's death, my husband was the manager. He was doing trade in herbs, roots and was protecting us. My husband was paying taxes. The house was not given on rent then. After my husband's death, defendant No. 3 was trading in roots and was trading in the same shop where my father-in-law and my husband used to sit. From the income, we were all living."

There is absolutely no justification, therefore, for this entirely new case.

16. It was faintly urged by Sri Balaparameswari Rao that the mortgage debt would not be binding on the appellant as the debt was contracted for an entirely new business. This contention is equally bereft of any substance, as there is nothing in the evidence of the appellant to show that the manager of the family embarked on a new business involving risks and contracted the debt for that purpose. The recitals in Ex. B-2 were that the money was borrowed under the mortgage deed for the purposes of trade and for family expenses. The family was a trading family belonging to the Vysya community. The evidence of the appellant as P. W. 2 extracted by us *supra* leaves no room for doubt that the borrowing was for purposes binding on the family.

17. Sri Balaparameswari Rao has urged a further point that the appellant was not a party to the proceedings for enforcement of the debt and that would be a circumstance which bears on the question of the binding nature of the sale in execution of the mortgage.

18. If the debt was binding on the members of the joint family, the mere fact that the appellant was not impleaded in the suit to enforce that debt, does not really make any difference. There can be no controversy that a managing member of a joint Hindu family could effectively represent the entire family and that a decree passed against him would be binding upon all the members. In Mayne's Hindu Law (Mayne's Hindu Law, 11th Edition, 1953 page 371) at page 372 against the Marginal note "Managing member represents family in all transactions", the following occurs:

"In other words, the managing member has a right to represent the entire family in all transactions relating to the family, whether they are in connection with immovable properties or otherwise *Vadlamanati Venkatanarayana Rao Vs. Gottumukkule Venkata Somaraju*, etc. The managing member represents the family in a suit on mortgage *Sheo Shankar Ram v. Mt. Jaddo Kunwar* 41 Ind App 216 : AIR 1914 PC 136, as well as in a suit for recovery of possession of

immovable property AIR 1927 56 (Privy Council) and the family is bound by the decree passed therein."

That we accept as a correct statement of law. The appellant, who is the widow of a deceased coparcener cannot say that she is not bound by the sale of the family house for the mere reason that she was not a party to the suit on the mortgage and the proceedings in execution thereof.

19. No other point has been taken before us. The appeal fails and is dismissed with costs. No leave.