

(1981) 08 KAR CK 0022

In the Karnataka High Court

Case No : Regular Second Appeal No. 210 of 1974

Jinnappa Thavannappa Patil and Others

APPELLANT

Vs

Kallavva and Others

RESPONDENT

Date of Decision : 11-08-1981

Acts Referred:

Hindu Succession Act, 1956 — Section 14 (1), 14 (2)

Citation : AIR 1983 Kar 67

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Advocate : B.V. Krishnaswamy Rao, for the Appellant; N.A. Mandagi, for the Respondent

Judgement

1. This appeal by the plaintiff is directed against the judgment and decree dated 8th Aug. 1973 passed by the II Additional District Judge, Belgaum, in R.A.No.11 of 1971 on his file, dismissing the appeal and confirming the judgment and decree passed by the I Additional Civil Judge, Belgaum, on 3-4-1971 in O.S.No.79 of 1969 on his file, dismissing the suit of the plaintiffs.

2. The genealogy of the family of the plaintiffs and defendants is as under :-

TUKAPPA

Khemanna Lokkappa

died on 16-1-84 died

W. Basawa Tavanappa

18-7-69

Ratnava Kallavva died on 8-4-66

(died) (Deft.No.1) W. Gangava plff.5

Jinappa Parisa Shrikant Babu

Plff.1 Plff.2 Plff.3 Plff.4

Tukappa has two sons, namely, Khemanna and Lokappa. Khemanna died on 16-1-34 leaving behind him Basawa his widow. Basawa had two daughters, namely, Ratnava and Kallavva. Basawa died on 18-7-69. Ratnava had already died Kallavva is defendant No.1 in the suit.

In the other branch Lokappa died leaving behind him his son Tavanappa, who died on 3-4-66 leaving behind him his widow Gangava, plaintiff 5 and his sons Jinappa, Plaintiff-1, Parisa, Plaintiff 2, Srikant, Plaintiff-3 and Babu, Plaintiff-4.

3. Khemanna executed a registered will, Ext. P-1, on 3-1-1930 by which he bequeathed his properties for life in favour of the widow Basawa. Thereafter, the properties were to go to Tavanappa, his brother's son and he was to enjoy it as full owner. As stated above, after the death of Khemanna, Basawa became the limited owner of the properties as per the will, Ex.P-1, executed by Khemanna. The widow Basawa, however, instead of enjoying the properties as widow's estate, gifted away the properties in favour of her daughter Kallavva-defendant-1 by a registered gift deed Ext. D-3 dated 13-5-1968. Aggrieved by the said gift deed executed by Basawa the present suit was instituted by the plaintiffs for declaration that the gift deed in question was illegal and not binding on the interests of the plaintiffs and for possession of the suit properties.

4. The suit was resisted by Kallavva through her counsel by filing a written statement. She contended that her mother Basawa became the full and absolute owner of the property by virtue of S. 14(1) of the Hindu Succession Act, 1956, and that therefore, her mother Basawa had the right to gift away the property in spite of the condition to the contrary mentioned in the will Ex, P-1, dated 3-1-1930. Hence, according to her the suit for declaration and possession was not tenable against her.

5. The trial Court raised the following issues as arising from pleadings.

1. Do plaintiffs prove that the suit properties fell to the share of Khemanna at the alleged partition and Khemanna was the absolute owner thereof?
2. Whether the plaintiffs prove that Khemanna executed the alleged registered will dated 3-1-1930 and it was attested according to law?
3. If the second issue is answered in the affirmative, whether Basawa acquired a restricted estate as alleged by the plaintiffs?
4. Whether the plaintiffs prove that they have title to the suit properties as contended?
5. Do plaintiffs prove that the registered gift deed dated 13-5-1968 in favour of defendant No.1 Kallawa, by Basawa is illegal and void?
6. Whether the defendants are in wrongful possession of the suit properties?
7. Whether the plaintiffs are entitled for possession of the suit properties?

8. Do defendants prove that Khemanna was incompetent to will away the properties and the will was void and inoperative in law as alleged?
9. Whether Basawa wife of Khemanna acquired title to the lands in question in her own rights as contended by defendants?
10. Whether Basawa had perfected her title to the suit properties by adverse possession?
11. Whether Basawa acquired absolute title in respect of the suit properties under the Hindu Succession Act, 1956, as pleaded alternatively by defendants?
12. Is the suit barred by limitation?
13. Are defendants 2 and 3 tenants in the suit house?
14. Are defendants entitled for compensation costs of Rs.1000/-?
15. To what reliefs are parties entitled?

6. On behalf of the plaintiffs, P.W.1 Jinappa and one Parisappa were examined during the hearing. Defendants examined two witnesses, D.W.1 Appanna, husband of defendant No.1 and D.W.2 Bapu Patil the attestor of Ext. D.3, gift deed. 11 documents were got raked on behalf of plaintiffs and 4 documents were admitted into evidence on behalf of defendants. The trial Court appreciating the evidence on record held under issue No.1 as not disputed. The trial Court answered issue No.2 in the affirmative and answered issue Nos. 3,4,5,6 and 7 in the negative. Under issue No.8 the trial Court answered in the negative with regard to lands and issue No.9 was answered in the affirmative. So also issue No.11. The trial Court recorded its finding under issue No.10 in the negative. It recorded its finding under issue No.12 stating that the issue did not arise. It answered issue No.13 in the affirmative and issue No.14 in the negative, and in that view the trial Court dismissed the suit of the plaintiffs for possession and mesne profits.

7. Aggrieved by the said judgment and decree, the plaintiffs went up in appeal before the District Court, Belgaum, in R.A.No.11 of 1971 and the appeal heard by the II Additional District Judge Belgaum. The learned District Judge in the course of his Judgment, raised the following points as arising for his consideration :

1. Whether the deceased Basawwa mother of first defendant took the suit lands under Ext : P.1 D/- 3-1-1930, will of her husband Khemanna or did she take the same debtors the will and by virtue of the heirship proceedings as per Ext. D.2 and D.3?
2. If she is held to have taken it under the will and not under the heirship proceedings, whether the limited right of enjoyment of those properties conferred under the will ripened into an absolute and full estate on the coming into force of the Hindu Succession Act, 1956, with the result she became the

absolute owner therein?

3. Whether the suit house which is admittedly taken under the will becomes her absolute property after the coming into force of the Hindu Succession Act, notwithstanding the bar u/s 14(2) of the said Act?

Re-assessing the evidence on record the learned District Judge answered the material points in favour of the defendants-respondents and in that view he dismissed the appeal by his judgment and decree dated 8-8-1973. Aggrieved by the same, the plaintiffs have come up in the above second Appeal before this Court.

8. The learned Advocate B.V. Krishnaswamy Rao appearing for the appellants strenuously urged before appellants strenuously urged before me that the Courts below were not justified in coming to the conclusion that Basawa got her rights enlarged in the Immovable properties by virtue of S. 14(1) of the Hindu Succession Act, 1956. He submitted that it was S. 14(2) of the Hindu Succession Act which applied to the facts of the case and that therefore, Basawa the widow took only restricted rights under the will Ext. P-1. Hence, he submitted that the Courts-below ought to have decreed the suit of the plaintiffs for declaration and possession.

9. As against that the learned Advocate Shri N.A. Mandagi, appearing for the defendants-respondents in the appeal argued supporting the Judgment and decree passed by the trial Court and confirmed by the first appellate-Court. He submitted that the provision of law applicable to the facts of the case was S. 14(1) of the Hindu Succession Act, 1956 and not sub-section (2) of that Section.

10. Hence, the sole point that arises for my consideration in this appeal is : whether the Courts below were justified in holding that it is S. 14(1) of the Hindu Succession Act that applies to the facts of the case and that therefore, the rights in the Immovable properties acquired by Basawa under the will Ext. P-1 became enlarged and she enjoyed the properties after the coming into force of the Hindu Succession Act in her absolute right.

11. The learned Advocate appearing for the appellants very much relied upon the following decisions :

1. A decision of the Supreme Court rendered in the case in Mst. Karmi Vs. Amru and Others,
2. A full Bench decision of the High Court of Punjab and Haryana in the case of Smt. Jaswant Kaur Vs. Harpal Singh and Others, and
3. A Division Bench decision of the Andhra Pradesh High Court in the case of Poosarla Achuta Rao and Others Vs. The Union of India and Others, .

As against that the learned Advocate appearing for the respondent-defendants in the appeal pressed into service the following decision of the Supreme Court :

1. A decision in the case of Vaddeboyina Tulassamma v. Vaddeboyina Sesha Reddi (AIR 1977 SC 1944).

2. A decision of the Supreme Court in the case of Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, .

He submitted that since there was a pre-existing right to maintenance vested in the widow, namely, Basawa, rights created by the will in favour of the widow are governed by the provisions contained in S. 14(1) of the Hindu Succession Act.

One of the decisions relied upon by learned Counsel appearing for the appellants is as stated above, what is contained in the case of Smt. Jaswant Kaur v. Harpal Singh, a Full Bench Decision of the Punjab and Haryana High Court, Gurnam Singh, deceased was the owner of the properties in question. He executed a will in respect of his entire property on June 5, 1938 and bequeathed half of his landed property and some houses in favour of Major Harpal Singh, his younger brother and the remaining moveable and Immovable property in favour of Smt. Jaswant Kaur his wife subject to the condition that she would utilise the income of the property during her lifetime for the purpose of maintaining herself and her two daughters, and after her death, they should revert to the plaintiff. Gurnam Singh got the aforesaid will registered on June 6, 1938, at Kasauli. He died on June 8, 1938, leaving behind Smt. Jaswant Kaur his widow, two minor daughters, and Major Harpal Singh his brother.

Smt. Jaswant Kaur executed five instruments regarding the property in dispute, namely, three gifts deeds, Exhibits P.22, P.23 and P.24 in favour of her two daughters, one sale deed, Exhibit P-25 in favour of defendant No.4 and one mortgage deed, Exhibit P-26 in favour of defendants 5 and 6. Major Harpal Singh, plaintiff, instituted a suit for declaration to the effect that all the alienations effected by Smt. Jaswant Kaur, were illegal and in excess of the rights conferred upon her by the will and consequently they were not binding on the plaintiff. The suit was contested by Smt. Jaswant Kaur defendant, inter alia, on the ground that by virtue of Hindu Succession Act, 1956, the estate conferred on her was enlarged and she became full owner of the property. The trial court held that she did not become full owner by virtue of the provisions of the Act. Consequently, it decreed the suit of the plaintiff. The defendant went up in the appeal before the Additional District Judge. He affirmed the judgment and decree of the trial Court and dismissed the appeal. Subsequently, the defendant went up in second appeal before the High Court in second appeal before the High Court of Punjab and Haryana, and it was on these facts that a Full Bench of the said High Court considered the question whether on the facts of the case it is Section 14(1) of Hindu Succession Act or S. 14(2) of the Act that governed the facts of the case it is Section 14(2) of the Act that governed the facts of the case and the Full Bench having reviewed the authorities came to the conclusion that it was S. 14(2) of the Act that was attracted on the facts of the case.

12. The learned Advocate appearing for the appellants in the present case also

invited my attention in the present case also invited my attention to the facts of the present case which are similar in nature. Hence, he submitted that it should be Section 14(2) of the Act that should govern the facts of the case and the right of the widow in the present case also should be held restricted as derived under the will.

Similarly in the next case relied on by him, namely the decision of the Division Bench of the Andhra Pradesh High Court, stated above, it is held that, where the daughter-in-law was given only life estate in suit property under the will, she had no right to bequeath that property to be enjoyed after her lifetime, as her right in the property ceased on her death and the legatees under her will could not claim any title to the suit property on the basis of the will executed by her. Their Lordships relied on the decision of the Supreme Court reported in *Mst. Karmi Vs. Amru and Others*, , which is also relied upon by the learned Counsel for the appellants in this appeal.

13. The Supreme Court in the case of *Mst. Karmi Vs. Amru and Others*, has held :

"Where only life estate is conferred on her under the will, she cannot claim to have become absolute owner under the Act. Her grand-daughter cannot, therefore claim any title to the properties on the basis of will executed in her favour by the widow".

That being so, it is no doubt true that it appears, prima facie, that when the husband executes a will in favour of his wife and the widow derives restricted rights in the properties, her estate would not get enlarged into absolute property by virtue of S. 14(1) of the Act.

14. The learned Advocate appearing for the other side, however, invited my attention as stated above to the later decisions of the Supreme Court wherein the Supreme Court has made it clear that S. 14(2) comes in only as a proviso to S. 14(1) of the Act and that proviso should be strictly construed. In that view, the Supreme Court has held that, if a female acquires the property even by a will, gift or any other instrument by virtue of the pre-existing right vested in her, it is S. 14(1) that comes into play and not the proviso contained in S. 14(2) of the Act. The learned Counsel further pointed out that the earlier decision of the Supreme Court did not at all consider the aspect of pre-existing right and that therefore, the decisions of the Supreme Court contained in AIR 1977 SC 1944 and *Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others*, represent the current law and that the same binds all the High Courts in India.

15. It is no doubt true that even the Full Bench decision of the Punjab and Haryana High Court referred to above, in the course of its judgment states (at p.344) :

"In order to decide whether a case falls under sub-section (1) or sub-section 92), the facts of each case have to be taken into consideration. In this regard I may refer to observations of the Supreme Court in *Seth Badri Prasad Vs. Srimati*

Kanso Devi, , which support the above view. It was held in that case that while determining whether a particular case is governed by sub-section (1) or sub-section (2) of Section 14, the section has to be read as a whole and it would depend on facts of each case to come to the conclusion as to by which section it is governed. It is further observed that sub-section (2) is more in the nature of a proviso or an exception to sub-section (1) and it comes into operation only if acquisition is by any of the methods indicated therein and made for the first time without there being any pre-existing right by the female Hindu who is in possession of the property."

(Emphasis added)

Thus, the Full Bench was aware of the preposition laid down by the Supreme Court in the case of Seth Badri Prasad Vs. Srimati Kanso Devi, , that Sub-section (2) of Sec. 14 of the Act would apply if the acquisition is for the first time without there being any pre-existing right in the female Hindu. But as can be seen from the discussion in the judgment this principle was not discussed nor applied by the learned Judges to the facts of that case. Even in the decision of the Supreme Court in Mst. Karmi Vs. Amru and Others, , that aspect was never considered. The aspect was focussed and considered by the Supreme Court for the first time, in the case of Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi (AIR 1977 SC 1944) wherein it is observed thus (at P.1948).

"Sub-sec (1) of S. 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso of exception to sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of woman in Hindu Society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1).

Sub-sec(2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even

if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

16. In the case with which the Supreme Court was concerned, the appellant claimed maintenance out of the joint family properties in the hands of the respondents who were her deceased husband's brothers. The claim was decreed in favour of the appellant and in execution of the decree for maintenance a compromise was arrived at between the parties allotting the properties in question to the appellant for her maintenance and giving her limited interest in such properties.

It is on these facts that the Supreme Court held that since in that case the properties in question were acquired by the appellant under the compromise in lieu of her right of maintenance, it was sub-section (1) and not sub-section (2) of Section 14 of the Act which would be applicable and hence the appellant must be deemed to have become the full owner of the properties notwithstanding that the compromise prescribed a limited estate.

17. The *ration decidendi* of this case is further reiterated by the Supreme Court in the case of *Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others*, : In that case, the direct question that came up for consideration before the Supreme Court was whether the right of maintenance of a widow could be said to be a pre-existing right in the properties of the family. The Supreme Court has held (Para 3) :

"The widow's right to maintenance, though not an indefeasible right to property, is undoubtedly a "pre-existing" right. It is true that widow's claim for maintenance does not ripen into a full fledged right to property, but nevertheless it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existing right. The claim to maintenance, as also the right to claim property in order to maintain herself, is an inherent right conferred by the Hindu law and, therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document the widow had no vestige of a claim or right at all." Thus, the law laid down by the Supreme Court is very clear. If the female heir gets property by virtue of any pre-existing right in her in the properties, it cannot be said that she gets the right to property, however restricted, for the first time, by the document as contemplated in sub-s. (2) of Sec. 14 of the Act. Such acquisition falls within the purview of S. 14(1) of the Act.

18. The sole question that falls for my decision in this appeal is : whether it can be said that Basawa the widow of Khemanna got the rights in the suit properties for the first time, by virtue of a will Ext. P.1, executed by her husband, or she

had a pre-existing right of maintenance in these properties? As pointed out by the Supreme Court in the aforesaid decision reported in Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, , a Hindu widow has an inherent right of maintenance charged on the properties of her husband and as such it cannot be said that the widow Basawa got the rights in the suit properties, for the first time, by virtue of Ext. P-1 and in fact, she was given these properties in lieu of her right of maintenance. That being so, following the decision of the Supreme Court cited above, I am constrained to hold that the provisions of S. 14(1) of the Hindu Succession Act are applicable to the facts of the case and not the provisions contained in sub-section (2) which is in the nature of a proviso.

19. That being so, it is obvious that on the coming into force of the provisions of S. 14 of the Hindu Succession Act, the restricted rights of the widow became enlarged and she became the full owner of the properties. That is what the Courts below have held concurrently. I have no reason to differ.

20. In the result, the appeal fails and is dismissed.

21. On the peculiar facts of this case, I make no order as to costs.

22. Appeal dismissed.