

(1979) 01 KL CK 0023
In the High Court Of Kerala
Case No : Second Appeal No. 573 of 1975

Joseph	Vs	APPELLANT
Joseph Annamma		RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:

Transfer of Property Act, 1882 — Section 3
Travancore Christian Succession Regulation Act, 1092 — Section 24

Citation : AIR 1979 Ker 219 : (1982) CriLJ 595 : (1979) 2 ILR (Ker) 15

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramaniyan, for the Appellant;
C.K. Sivasankara Panicker, P.G.P. Panicker and D.N. Poti, for the Respondent

Final Decision : Allowed

Judgement

T. Chandrasekhara Menon, J.—The plaintiff is the appellant in the Second Appeal. He had filed the suit for an injunction to restrain the defendant-respondent herein from committing waste in the suit properties by cutting and removing valuable trees including yielding rubber trees and/or carry on slaughter tapping and for other appropriate reliefs. The plaintiff is the son of the defendant and one Joseph. The defendant, the widow of Joseph has only a life interest in the suit properties, her rights being governed by Section 24 of the Travancore Christian Succession Act, The plaintiff being the only son of Joseph is entitled to the properties as his heir after the death of the defendant The defendant is not entitled to commit waste in the property or cut and remove the rubber trees which are yielding. The allegation is that the defendant is recklessly cutting and removing yielding rubber trees and other valuable trees and slaughter tapping rubber trees and that she, according to the plaintiff, is liable to be restrained from doing so.

2. The suit was resisted by the defendant contending inter alia that though she has only a "Jeevanamsa Avakasam" she has the right to carry on slaughter

tapping and replant the property. She contended that she has neither committed any waste nor has any intention to commit waste. In the circumstances, the plaintiff is not entitled to restrain her from enjoying the property as she likes. Both the Courts below have held against the plaintiff on the basis of the decision in 1960 KLT 463. The Courts below took the view that a Christian widow is the absolute owner of her share of the property till her death or remarriage. As the defendant is a Christian widow, who has got the property concerned as per the decree for partition of her husband's estate in O. S. No. 196 of 1956, she is absolutely entitled to her share as such and she can enjoy the property in any manner she likes and nobody would be competent to impose any restriction on her. Her rights would only be terminated by her death or re-marriage. On this basis, the plaintiff was denied the relief sought" for. I have no hesitation in holding that both the Courts below have thoroughly misunderstood the law on the matter.

3. A Christian Widow's right to the immovable properties of her husband's estate is governed by Section 24 of the Travancore Christian Succession Act, Section 24 of the Act reads:--

"Over any immovable property to which a widow or mother becomes entitled to under Sections 16, 17, 21 and 22 she will have only a life-interest terminable at death or re-marriage.

On the determination of the limited estate of the widow or the mother, the property over which she had such limited interest shall be distributed among the heirs of the original intestate, as if the holder of the life-estate had not survived the intestate.

" The nature of the widow's estate under the Travancore Christian Succession Act is entirely different from a widow's estate under the Hindu Law The nature of widow's estate has come up for consideration in some cases. In Nicholas Decosta v. Sivasubramonia Nadar 1956 KLT 177 Justice Vitha-yathil has pointed out that Section 24 provides that over any immovable property to which a widow becomes entitled, she will have only a life-interest terminable at death or re-marriage, and that on the determination of the limited interest of the widow, the property over which she had such limited interest shall be distributed among the heirs of the original intestate as if the holder of the life estate had not survived the intestate. But then the position of a person who under the said Act succeeds to an estate in respect of which a life-interest is created in favour of the widow of the intestate is entirely different from that of a reversioner under the Hindu Law in respect of a property subject to widow's estate, that under the Christian Succession Act the heir of the original owner gets a vested interest in the property on the death of the owner subject to the life-interest of the widow which is terminable on death or re-marriage, that the right of a person who succeeds to an estate subject to a life-interest created in favour of another is not a mere spes successionis and that it is a vested interest which is transferable property. Under the Hindu Law a reversionary heir cannot be said to have a vested right in the

property taken by the widow of the last owner though he succeeds to the estate on the death of the widow. But it is the person who will be the heir of the last owner at the time of the death of the widow that succeeds to the estate. He need not necessarily be the person who was the heir of the last owner at the time of his death. For this reason, under the Hindu Law a person who is the heir of the last owner at the time of his death cannot be said to have a vested interest in the property during the lifetime of the widow. It has been held in various cases that the right of a reversionary heir expectant on the death of a Hindu widow is a spes successions and is not a transferable property.

4. The right of a reversioner like the appellant plaintiff in respect of the property to which the defendant is now entitled under life-estate is already a vested right and his right to see that the property is preserved would be stronger than the case of the reversioner to a widow's estate under the Hindu Law. Even in the case of a reversionary heir, succeeding to a widow's estate under the Hindu Law, it has been recognised by Courts of law that he has got a right to demand that the estate be kept free from danger during its enjoyment by the widow or other limited heir. He has got the right to sue to restrain a widow or other limited heir from committing waste or injuring the property. The reason why such a suit by a reversionary heir is allowed is that the suit is by him in a representative character and on behalf of all the reversioners, so that the corpus of the estate may pass unimpaired to those entitled to the reversion. Where a Hindu widow or other limited heir in possession of property inherited by her commits waste or does any act which is injurious to the reversioner, the next reversioner may institute a suit for an injunction restraining her from doing so. But the court will not grant an injunction and will not take the management of the property out of her hands, unless the act complained of constitutes "danger to the property". If that be the right of a reversioner in respect of the estate in the hands of a Hindu widow, a reversioner's right under the Travancore Christian Succession Act as regards the estate under that Act cannot in any view be a lesser one as such reversioner unlike in the former case has got a vested right. The principles governing issue of injunction in respect of limited estates are clearly indicated by Kerr in his well known treatise on Injunction, 6th Edn. Page 49. It is pointed out that a tenant for life or years, or other owner of a limited estate planted with timber trees, has at common law only a right to their shade and fruit during the continuance of his estate. It is waste if he cuts them down or does any act to impair their value or cause their decay.

5. If this is the law, then the courts below have grievously erred in holding that the defendant is the absolute owner of the properties and she can deal with it as she pleases. In coming to this conclusion, both the courts below have really misunderstood the scope and ambit of the decision in *George v. Narayana Pillai* 1960 K LT 463 to which decision they have referred. The facts of that case are as follows:--

The suit properties belonged to the husband of the first defendant in that case

and father of defendants 2 to 5. After the death of the 1st defendant's husband, the first defendant executed a promissory note in favour of one Eliswa and the latter endorsed the promissory note in favour of the plaintiff. The plaintiff then instituted O. S. No. 245 of 1114 against the first defendant and her children for recovery of the amounts due under the promissory note executed by the first defendant. The plaintiff obtained a decree only as against the first defendant in that suit. The plaintiff then appeared to have obtained an attachment before judgment of the properties and proceeded to execute his decree in O. S. 245 of 1114 and sold in court auction the 1/5 share of the first defendant in the suit properties on 28-1-1124 and he became the purchaser of that share. Attempts were made to have the sale set aside but without any success. The plaintiff obtained delivery of the properties also. The plaintiff then filed the suit for partition of the 1/5 share belonging to the first defendant in the suit properties. That suit was contested by the defendants, one of the main contentions being the widow had no attachable or saleable interest in the suit properties and as such the plaintiff could not be considered in law to have purchased anything in execution of his decree in O. S. 245/1114. In considering this question, Justice Vaidialingam, who disposed of the appeal in the High Court observed after referring to the various provisions of the Christian Succession Act as follows :--

"No doubt Section 24 states that in respect of the share allotted to the widow, she will have only a life interest terminable at death or remarriage. The fact that it is called a "life interest terminable at death or re-marriage" does not in any way curtail the rights already given to her namely of claiming her share and having a separate allotment of the properties and enjoying them. No doubt, her rights in the property will terminate at her death or remarriage. There is no provision in the Act, which in any way, puts a restriction upon the manner of her enjoyment or dealing with the property allotted to her share, till her lifetime or re-marriage. In the absence of any such restriction, the only logical conclusion is that the Christian widow is the absolute owner of her share and of the income accruing from her share, during her lifetime and till re-marriage and she can deal with it as she pleases till any of those contingencies happens. It is open to her to make transfers, assignments or alienations, but all the rights in the alienee or transferee, based on those assignments made by the Christian widow will come to an end with her death or remarriage. A transferee or a purchaser, who buys property from a Christian widow, must be considered to be aware of the rights conferred upon such persons under the Act. I do not think that the fact that the widow's right is said to be a life-interest terminable at death or re-marriage, the Act does not contemplate her full ownership in her share till either of those contingencies arise."

The observation quoted above to the effect that the Christian widow is the absolute owner of her share and of the income accruing from her share during her lifetime and till her re-marriage and she can deal with it as she pleases till any of those contingencies happens, does not mean that she can endanger the estate by committing waste or such other actions. Her rights cannot entitle her

to cut down the trees and remove those trees which are yielding. Therefore, the plaintiff in this case will certainly be entitled to get an injunction to restrain the respondent-widow from committing any waste in the properties, Now with regard to the question of cutting down the rubber trees, anjili trees, jack trees, coconut palms etc. and sell the timber, it is contended, that such cutting will cause loss and injury to the plaintiff. But, however, what is contended by the defendant is that she is only slaughter tapping the rubber trees for the purpose of re-plantation. No doubt, for the good of the estate, slaughter tapping could be done. It is stated that she has not cut down any tree standing on the plaintiff's scheduled properties. She would like to plant vacant spaces in the plaintiff's scheduled properties with rubber.

6. Learned counsel for the defendant -- Shri Parameswara Panicker contended that the rubber trees will come within the definition of the term "standing timber". He would further contend that immovable property does not include standing timber under the Transfer of Property Act. A Christian widow would be entitled to appropriate for herself the value of such trees sold by her. What is standing timber has come up for consideration in many cases. They are trees fit for use for building or repairing houses. No doubt, in some decisions it has been held that if trees are of the categories like babul trees or neem trees or teak trees, they are standing timber, regardless of when they are intended to be cut. But as pointed out by Mulla in his treatise on the T. P. Act, Sixth Edn. page 19 those decisions ignore the meaning underlying the expression standing timber. The learned author points out that had it been the intention of the legislature to exclude from the definition of immovable property all timber trees, it would have been easy to say so. If a tree is a growing tree, drawing sustenance from the soil, it is immovable property, where however it is to be cut soon, the amount of sustenance it will draw from the soil is negligible and is to be disregarded. The matter has been put in the proper perspective in the decision of Justice Bose in *Shantabai Vs. State of Bombay and Others*, :

"(29) Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the T. P. Act. draws one in the definitions of "Immovable property" and "attached to the earth"; and it seems to me that the distinction must lie in the difference between a tree and timber. It is to be noted that the exclusion is only of "standing timber" and not of "timber trees".

(30) Timber is well enough known to be "wood suitable for building houses, bridges, ships, etc., whether on the tree or cut and seasoned," (Webster's Collegiate Dictionary).

Therefore, "standing timber" must be a tree that is in a state fit for these purposes and, further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree because, unlike timber, it will continue to draw sustenance from the soil.

(31) Now, of course, a tree will continue to draw sustenance from the soil so long as it continues to stand and live; and that physical fact of life cannot be altered by giving it another name and calling it "standing timber". But the amount of nourishment it takes, if it is felled at a reasonably early date, is so negligible that it can be ignored for all practical purposes and though, theoretically, there is no distinction between one class of trees and another, if the drawing of nourishment from the soil is the basis of the rule, as I hold it to be, the law is grounded, not so much on logical abstractions as on sound and practical commonsense. It grew empirically from instance to instance and decision to decision until a recognisable and workable pattern emerged; and here, this is the shape it has taken.

(32) The distinction, set out above, has been made in a series of Indian cases that are collected in Mulla's Transfer of Property Act, 4th Edn. at pages 16 and 21. At page 16, the learned author says-

"Standing timber are trees fit for use for building or repairing houses. This is an exception to the general rule that growing trees are immovable property."

At page 21 he says-

"Trees and shrubs may be sold apart from the land, to be cut and removed as wood, and in that case they are movable property. But if the transfer includes the right to fell the trees for a term of years, so that the transferee derives a benefit from further growth, the transfer is treated as one of immovable property."

The learned author also refers to the English law and says at page 21-

"In English law an unconditional sale of growing trees to be cut by the purchaser, has been held to be a sale of an interest in land; but not so if it is stipulated that they are to be removed as soon as possible".

(33) In my opinion, the distinction is sound. Before a tree can be regarded as "standing timber" it must be in such a state that, if cut, it could be used as timber; and when in that state it must be cut reasonably early. The rule is probably grounded on generations of experience in forestry and commerce and this part of the law may have grown out of that. It is easy to see that the tree might otherwise deteriorate and that its continuance in a forest after it has passed its prime might hamper the growth of younger wood and spoil the forest and eventually the timber market. But however that may be, the legal basis for the rule is that trees that are not cut continue to draw nourishment from the soil and that the benefit of this goes to the grantee."

This distinction pointed out by Justice Bose is well brought out by Sir Edward Vaughan Williams in a passage cited by Lord Coleridge C. J. in *Marshall v, Green* (1875) 1 CPD 35

"The principle of these decisions appears to be this, that wherever at the time of the contract it is contemplated that the purchaser should derive a benefit from

the further growth of the thing sold from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as for an interest in land; but where the process of vegetation is over, or the parties agree that the thing sold shall be immediately withdrawn from the land, the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods".

7. In the light of law explained above and in the light of the facts revealed in the case which will indicate that the plaintiffs apprehension is not without any basis in the interest of justice, it is necessary to restrain the defendant by means of an injunction from committing waste in the properties, No doubt, she cannot be restrained from effecting improvements but in regard to cutting down the trees etc, there should be an injunction. If she would like to cut down the old rubber trees standing on the plaint schedule properties and replant the same in the vacant space, she could do so by making an application to the trial court to appoint a commission for doing this slaughter tapping and replanting with the amount obtained by the sale of the cut down trees. If she does not want to replant the trees, the amount that could be obtained by cutting down the trees can be invested in Government security or in a nationalised Bank, she being entitled to get the interest on such investments during her lifetime. The suit is decreed in the above terms. The judgment and decree of the courts below are consequently set aside. In the circumstances of the case, I think it is only proper to direct the parties to bear their costs throughout.