
(1947) 11 CAL CK 0002
In the Calcutta High Court

Case No : Appeal from Original Order No. 54 of 1947 in Suit No. 354 of 1944

Kamala Bala Basu

APPELLANT

Vs

Jiban Krishna Basu

RESPONDENT

Date of Decision : 26-11-1947

Acts Referred:

Citation : (1947) 11 CAL CK 0002

Final Decision : Allowed

Judgement

Mukherjea, J.—This appeal is directed against an order of Majumdar J., dated June 3, 1947, made in a suit for partition and accounts.

2. The Plaintiff in the suit is Kamala Bala Basu, the Appellant before us, who happens to be the widow of a predeceased son of the previous proprietor, Ganesh Chandra Basu. Ganesh died in November, 1943 and the heirs, at the time of his death, were his widow, Binodini, his two surviving sons, Jiban and Tinkarhi and the widowed daughter-in-law, Kamala Bala, whose husband Sushil Krishna died during the lifetime of his father. On March 13, 1944, Kamala Bala instituted a suit claiming a fourth share of the properties, movable and immovable, left by Ganesh and the Defendants in the suit were her mother-in-law, Binodini and the two brothers, of her husband, namely, Jiban and Tinkarhi. On March 30, 1944, an order was made in the suit directing the Defendants to pay to the Plaintiff a sum of Rs. 25 per month by way of maintenance out of the rents and profits of the joint property. On November 13, 1944, a preliminary decree was passed and it was declared inter alia that the Plaintiff was entitled as a Hindu widow to one equal fourth part of share of the joint estate and the three Defendants were each entitled to a fourth part thereof,—the Defendant Binodini having, like the Plaintiff, the rights of a Hindu widow in respect to her share. The commissioner was directed to partition the joint properties in four equal shares, one of which was to be allotted to the Plaintiff to be held and enjoyed by her in the character of a Hindu widow. A further direction given in the preliminary decree was that in the event of the commissioner finding that any of the joint properties could not be

conveniently partitioned he should be competent to sell the same under the provisions of the Partition Act and the sale-proceeds after deducting the expenses and charges were to be divided amongst the four co-sharers--the shares of the Plaintiff and of Binodini being held and enjoyed by them as Hindu widows in the manner prescribed by Hindu law.

3. Sometime after this, Binodini died and on March 26, 1946, the preliminary decree was amended and it was declared that the Plaintiff and the two surviving Defendants would be each entitled to one-third share of the joint estate. The bulk of the properties left by Ganesh consisted of two house-properties, namely, premises Nos. 8 and 10, Keshab Chandra Sen Street, Calcutta, and under the directions of the preliminary decree, mentioned aforesaid, they were sold by the commissioner for partition to one Baidya Nath Datta for the price of Rs. 73,000. On May 14, 1947, the Plaintiff made an application to the Court praying, amongst other things, that the commissioner might be directed to hand over to her a one-third share of the sale-proceeds to which she was legally entitled after deducting the charges and expenses payable out of the same. In answer to this petition, it was stated, on behalf of the Defendants, that the Plaintiff resided for the most part at Banaras where living was comparatively cheap and that under Hindu law she was not entitled to squander away the corpus of the property of the estate for the benefit of her son-in-law and other interested persons. Accordingly, it was suggested that instead of ordering any direct payment of the money to her or to her attorney, the amount allotted to her share might be invested in 3 per cent, promissory-notes to be kept with the Registrar of the High Court and the interests thereon might be paid over to her as it accrues due. Majumdar J., by his order dated June 3, 1947, has directed inter alia that the amount payable to the Plaintiff under the preliminary decree shall be held by her in non-negotiable securities with liberty to apply to this Court, on notice to the other side, in case she wants to transfer any of the securities on the ground of legal necessity. It is the propriety of this portion of the order that has been challenged before us in this appeal.

4. The contention raised on behalf of the Plaintiff Appellant is that as a Hindu widow she is entitled to the uncontrolled possession of the property in her share and there is no authority for the Court to impose any restriction whatsoever on her right to hold and enjoy the same in the manner sanctioned by Hindu law. It is said that if the widow is found guilty of having committed waste or misappropriation, the reversioners have ample remedy open to them under law. They might file a suit and have an injunction restraining the widow from committing waste, but there is no warrant for making an order in the partition suit that the cash money payable to a Hindu widow should be held by her in non-negotiable securities.

5. On behalf of the Respondents it is contended by the Learned Counsel that the order appealed against is a proper one and is fully justified in the circumstances of the present case.

6. Now, it is well settled that a female heir inheriting the property of a male under Hindu law does not take merely a life-interest in the property. The Hindu law, it is said, measures an estate not by duration but by user. The whole estate is for the time vested in her and she represents it completely, though her powers of alienation are restricted and she does not become a fresh stock of descent. Vide *Moniram Kolita v. Keri Kolutani* (1880) ILR 5 Cal. 776 : L.R. 7 IndAp 115; *Ramsuran Prasad v. Shyam Kumari* (1922) ILR 1 Pat. 741 : ILR 49 IndAp 342. The rule of the "Hindu law with regard to the nature of the widow's estate," thus observed their Lordships of the Judicial Committee, in *Janaki Ammal v. Narayanasami Aiyer* (1916) ILR 39 Mad. 634 : L.R. 43 IndAp 207, "may have been "subject to various forms of expression, but in substance it is not doubtful. Her right is of the nature of a right of property; her "position is that of property; her position is that of owner; her "powers in that character are, however, limited * * * "so long "as she is alive no one has any vested interest in the "succession."

7. So far as the Bengal law is concerned, a Hindu widow has, in regard to movable property inherited by her from a male, the same powers and is subject to the same restrictions in respect of, Management and alienation, as immovable property similarly inherited by her and it is also well settled in this province that a Hindu female heir is entitled to separate possession of her share in the joint property inherited by her, by partition with her co-parceners, unless there be a bar on equitable grounds. Vide *Durga Nath Pramanik v. Chintamani Dassi* (1903) ILR 31 Cal. 214.

8. The question now arises whether in a suit for partition when cash money or movables are allotted to a Hindu widow, the Court can, in the interest of reversioners, impose any kind of restriction upon the widow so as to prevent her from wasting the same.

9. In the case of *Cossinath Bysack v. Hurrosoondery Dossee* (1826) Clarke's Rules and Orders, 91, Lord Gilford, in affirming the decision of the Supreme Court at Calcutta, is reported to have said:

In the contest for possession of property between her (a Hindu widow) and the relations of her husband, she is entitled to the possession of the property, but that she is only entitled to enjoy it, according to the rights of a Hindu widow, which rights it appears to me to be absolutely impossible to define.

10. It was held in this case, after careful consideration, that the principles which are applied in Courts of equity in England, for securing for the public funds any property to which one person is entitled to possession and another is entitled in remainder, are not applicable to the case of property in India where such property is in possession of a Hindu widow. Following this decision it was held by the Judicial Committee in *Hurrydoss Dutt v. Uppoornah Dossee* (1856) 6 M.I.A. 433, that it is not sufficient to say that there is one person entitled in possession and another entitled in remainder, in order to induce the Court to interfere and take the property out of the hands of the individual who is in possession of it;

but it is necessary to show that there is a danger to the property from the mode in which the party in possession is dealing with it and in such case only, the Court will interfere. In this case a Hindu widow had inherited from her husband promissory-notes issued by the East India Company of the face value of over Rs. 50,000. The East India Company paid off this loan in July, 1853 and out of the money thus received the widow invested about Rs. 39,000 in purchasing fresh promissory-notes and the balance was kept in her hands ready for investment when a suitable opportunity should occur. It was held that the act of the widow in keeping uninvested a sum of about Rs. 11,000 did not amount to a devastavit and did not show any intention to commit waste and the bill, *quia timet*, filed by the reversioner against the widow for injunction and other reliefs was dismissed. This principle was reiterated in *Biswanath Chandra v. Khantomani Dasi* (1871) 6 B.L.R. 747, where under a decree of a Court, a Hindu widow was entitled to one-fifth share of the accumulations of the estate of her deceased father-in-law to be held by her as a Hindu widow. Execution of the decree was taken and the sum was paid into Court in March, 1869. In March, 1871, objections were raised by the reversioners and it was contended that, if this money was allowed to be withdrawn and taken out of Court, it would be totally lost to the reversioners. The allegation of waste was vague and of a general character. It was said that the widow was leading an immoral life and some portion of the money had already been assigned to one H. Seal. Paul J. overruled the objection and held that no case was made out to resist the claim of the lady who was entitled to uncontrolled possession of the property movable and immovable and full enjoyment of her rights as conferred upon her by Hindu law. The charge that the widow was leading an immoral life was not substantiated by proper evidence, and even if it was proved, that did not necessarily prove extravagance and waste on her part. The assignment in favour of a stranger could be justified as the only thing open to the widow to raise funds for the purpose of carrying on litigation. The decision was affirmed by the appeal Court and Norman J., who delivered the judgment, laid stress on the fact that for a period of more than two years the reversioners had taken no steps whatsoever to raise this question, of waste or misappropriation before the Court and it was too late to raise them in the execution proceedings.

11. The principles laid down in this case have never been challenged, but subsequent authorities have made it clear that when it is established to the satisfaction of the Court that there is a danger to the property a bill, *quia timet*, or a separate suit for injunction is not the only remedy which the reversioners have got. Relief may be given by the Court in a suit for partition and when danger of the estate being wasted is apprehended from the conduct of the widow, an order for protection of the estate may be made in the partition suit itself. Vide *Durga Nath Pramaniik v. Chintamani Dassi* (supra). We cannot, therefore, go so far and say, as we are pressed to do by the Learned Counsel for the Appellant, that Majumdar J. had no jurisdiction to make an order like this in the partition suit and that the only remedy of the Respondents is to file a

separate suit where this question of waste and misappropriation could be raised. We also cannot agree with the Learned Counsel for the Appellant that, in order to justify an order of the Court which interferes with the full possession or enjoyment of the husband's estate by the widow, actual waste or spoliation has got to be proved. It will be clear from the judgment of the Judicial Committee in *Hurrydoss Datt v. Uppoornah Dossee* (supra) referred to above, that it is not necessary that the widow should be guilty of actual devastavit. It is enough if there is an intention of committing waste or misappropriation which is apparent from her conduct. The question in such cases, therefore, is whether the conduct of the widow has been such as to lead to a well-grounded fear that the interests of the reversioners are being substantially interfered with. Vide *Muthu Lakshmi Ammal Vs. Narayana Pattar and Others*, and *Boganatham Arunachalam Chetty and Another Vs. Boganatham Krishnaveni Ammal and Another*, .

12. If we apply this principle to the facts of the present case, we are bound to say that, although an order like the one made by Majumdar J., could have been made in a suit for partition, yet the order in the present case is not justified by the facts and circumstances of the case. No allegation of waste or misappropriation has been or could be made against the Plaintiff. -The widow has not up till now obtained possession of any property. The only money which she had so long is a maintenance allowance of Rs. 25 a month, which we consider to be altogether inadequate to meet her bare necessities. The only allegation against her is that she had executed a mortgage-bond in respect of her share of the joint property to raise a sum of about Rs. 1,000. This, she says, she was compelled to do in order to avoid starvation, and considering the trifling amount that she was receiving as maintenance out of the property, we are of the opinion that the story is by no means improbable. The total amount that would be allotted to her in her share will be about Rs. 17,000. If the whole amount is invested in 3 per cent, promissory-notes, as suggested by the other side, her monthly income could not possibly exceed Rs. 42 or Rs. 43 and we consider that, at the present -day, this is totally insufficient, even for the frugal necessities-of" a Hindu widow. On the facts of this case and on the affidavit filed by the Defendants, which does not contain any allegation whatsoever of any act of waste or misappropriation by the widow and does not suggest anything from which a well founded apprehension of such waste could be made, we are of the opinion that no case has been made out to justify our interference with the directions of the preliminary decree in the present case.

13. We direct that this portion of the order of Majumdar J., dated June 3, 1947, should be set aside and the entire sale-proceeds payable to the widow in her share, be handed over to her without any restriction or condition whatsoever. The reversioners would have certainly their remedy under the law, if, in future, the widow is found to be guilty of waste or spoliation.

14. The result is that the appeal is allowed and the order of Majumdar J. is modified. The Appellant will have her costs here and in the Court below.

Harries, C.J.

15. I agree.