
(1979) 12 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 485 of 1969

Kamalabai Champalal Sahu	Vs	APPELLANT
Annappurnabai Sahu and another		RESPONDENT

Date of Decision : 13-12-1979

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1), 15, 15(1), 16

Citation : (1980) MhLj 250

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : K.Y. Pande, for the Appellant; S.N. Kherdekar, for the Respondent

Judgement

S.C. Pratap, J.—This appeal by the original defendant is directed against the decree dated 4th January 1968 passed by the learned Civil Judge, Senior Division, Wardha, in Regular Civil Suit No. 93 of 1965, which decree was confirmed by the learned Assistant Judge, Wardha, on 25th July 1969, while dismissing defendant's Civil Appeal No. 15 of 1968.

2. The original suit is one for possession of the suit house described in item No. 1 in paragraph-2 of the plaint. Plaintiff No 1 claims to be the full and absolute owner of the said suit house. If the suit property is held to be the absolute property of Sitalabai, the mother-in-law of plaintiff No 1 and grand-mother of plaintiff No. 2, then decree in the alternative is claimed to the extent of half share in the said suit property in favour of plaintiff No. 2-Pushpalata Mohanchand Sahu, the other half going to the defendant-Kamalabai Champalal Sahu. This claim is contested by the defendant, contention being that neither plaintiff No. 1 nor plaintiff No. 2 have any right, title or interest in the suit property, and that the same belongs to the defendant wholly and absolutely, and the instant suit was, therefore, liable to be dismissed both on the main relief in favour of plaintiff No 1 as also on the alternative relief in favour of plaintiff No. 2. The trial Court, on the original pleadings, came to the conclusion that plaintiff No. 1 was entitled to the suit house absolutely and that the defendant had no right, title or interest

therein. The suit for possession of the suit property in favour of plaintiff No 1 was, consequently, decreed. This decree was challenged by the defendant in appeal to the District Court, but the learned Assistant Judge dismissed the said appeal and confirmed the aforesaid decree. Hence, this second appeal by the original defendant.

3. The appellant-defendant appears through her learned Advocate, Mr. K. Y. Pande. The respondents-plaintiffs appear through their learned Advocate, Mr. S. N. Kherdekar.

4. Going through the judgments of the two Courts below and the undisputed position relating to the legal nature and character of the suit property as also considering the undisputed genealogical position and relationship between the parties, I am of the view that the decree passed by the Courts below awarding the suit property to plaintiff No. 1 as her absolute property is not justified in law. Indeed, the correct position in law would, in my opinion, be that plaintiff No. 1 would not be entitled to the suit property or any share therein but that it would be plaintiff No. 2-Pushpalata and the defendant-Kamalabai who would be entitled to half share each therein.

5. The suit property was originally possessed by one Tulshiram either as his self-acquired property or as joint family estate. Whatever that be, for the decision of the present dispute, it makes little difference whether the suit property in the hands of Tulshiram was joint family property or separate property. Tulshiram died in the year 1930 leaving behind him, his widow Sitalabai, son Kisanlal and daughter Kamalabai (Present defendant). Kisanlal's wife is Annapurnabai, the present plaintiff No. 1. Present plaintiff No. 2-Pushpalata is the daughter of Kisanlal and Annapurnabai. Now, when Tulshiram died in the year 1930, position was that Kisanlal, the son of Tulshiram, was the sole surviving coparcener, the joint family being of himself, his mother Sitalabai (the widow of Tulshiram) and his wife-Annapurnabai. Tulshiram having died in the year 1930, Sitalabai, his widow, could not have claimed any share in the suit property as she had, at that stage, a mere right of maintenance.

6. In 1940, Kisanlal, the husband of plaintiff No. 1, died leaving behind, his mother Sitalabai aforesaid and his widow, plaintiff No 1-Anna-purnabai, and daughter Pushpalata, Plaintiff No. 2. By 1940 when Kisanlal died there had already come into force Hindu Women's Rights to Property Act, 1937. Under sub-section (2) of section 3 of the said Act, Plaintiff No. 1-Annapurnabai got in the suit property the same interest as her husband Kisanlal had indeed, even in the absence of the Hindu Women's Rights to Property Act, plaintiff No. 1-Annapurnabai could be said to be entitled to the suit property as widow of Kisanlal. However, for the decision of this appeal it would not make much difference as to how plaintiff No. 1-Anna-purnabai succeeds or succeeded to the property of her husband-Kisanlal, whether by virtue of the provisions of the Hindu Women's Rights to Property Act or by virtue of the law governing Hindus prior thereto, because in either event conclusion would be the same, namely,

Annapurnabai succeeded to the suit property as widow of Kisanlal. The position in 1940, thus was that there were in the family of the erstwhile Tulshiram, his widow Sitalabai, his daughter-in-law plaintiff No. 1-Annapurnabai, his grand daughter-Pushpalata (Plaintiff No. 2) and his own daughter-Kamalabai, the defendant.

7. In this situation, there can hardly be any dispute of the position that Sitalabai was entitled to be maintained from out of the joint family estate. She could not succeed to any share or interest as such to the estate of Tulshiram as Tulshiram had died in 1930, but she nevertheless continued to have a right to be maintained from joint family property at all relevant times. Record. of the present case shows that Sitalabai was given the right to recover rent out of the suit property and the right to use the said rent for her maintenance. In pursuance thereof, Sitalabai was recovering rent and was utilising the same for her maintenance.

8. Question now arising for determination is whether this allotment of the suit property to Sitalabai was de hors her pre existing right of maintenance or in lieu thereof. The Courts below have come to the conclusion that the said allotment of the suit house to Sitalabai was not in lieu of her right of maintenance and, consequently. Sitalabai cannot be said to be in possession, with the result she would not and did not, at the time of her demise in 1960, become absolute owner thereof by virtue of section 14 (1) of the Hindu Succession Act. I am not in a position to agree with this conclusion though concurrent of the Court below. In my view, the legal position is clear to the contrary. The possession and the position of the suit property is already indicated above. Irresistible conclusion following therefrom is that Sitalabai undoubtedly had a right to be maintained from the joint family estate. The suit house undisputedly was part of the joint family estate. If in this position and context, Sitalabai was given the right to recover rent from the suit property and what is more important, the right to enjoy the said rent for her maintenance, no other conclusion is possible than the only one, namely, that such allotment of the suit property to her was in lieu of her right of maintenance. That there was an agreement between Annapurnabai and Sitalabai in respect of the right to recover rent by Sitalabai and the right to enjoy the same for her maintenance made no legal difference. Such agreement between the daughter-in law and the mother-in-law must be construed as an agreement giving recognition to Sitalabai's pre-existing right of maintenance. Such an agreement cannot be construed to mean that the right of maintenance arose or was created, for the first time, by virtue thereof. Right of maintenance was already there. It was long pre-existing and was much prior to the said agreement. All that the agreement did was to give an additional recognition and assertion and reconfirmation of the said right.

9. This being the position, then the further consequence also is clear by virtue of the provisions of section 14(1) of the Hindu Succession Act under which any property possessed by a female Hindu (in this case Sitalabai), whether acquired

before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. This important provision has been more than once interpreted by this Court as also by the Supreme Court. The word "possessed" in the said section has been given the widest possible meaning, and possession of every kind has been held to come within the meaning of the word "possessed" in section 14 (1) of the Hindu Succession Act. It is unnecessary to refer to these authorities. There can hardly be any dispute of the position, by now well settled, that possession constructive, possession symbolical and of course possession actual are all situations covered by the word "possessed" in section 14 (1) of the Act supra. In this case, we have the picture of Sitalabai actually recovering the rent from the tenants in the suit property and enjoying the same as and by way of her maintenance. Sitalabai, thus, was in charge and management of the suit house. She was enjoying the rent thereof. She was maintaining herself therefrom. She was undoubtedly, therefore, in possession and her possession is further undoubtedly covered by section 14 (1) of the Hindu Succession Act. Consequently, she having died much after the coming into force of the Hindu Succession Act, became the full and absolute owner of the suit property.

10. That, therefore, was the nature of the suit property when Sitalabai died in the year 1960, Now, what was the position of the family in 1960? We have on one side Annapurnabai, plaintiff No. 1 the daughter-in-law of Sitalabai, and Pushpalata (Plaintiff No. 2), the grand daughter of Sitalabai, and on the other side, we have the defendant Kamlabai. There is no dispute that Sitalabai died intestate. Inheritance would, therefore, be governed by section 15 of the Hindu Succession Act under which the property of a female Hindu dying intestate devolved according to the rules set out in section 16:

(A) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.

Under the very aforesaid clause (a) of section 15 (1) of the Act, the defendant-Kamlabai, who was the daughter of Sitalabai, and plaintiff No. 2 -Pushpalata, the daughter of Sitalabai's pre-deceased son Kisanlal, were entitled to succeed to the suit house. Their shares would be half and half each. This being the position, Annapurnabai, plaintiff No. 1, is not entitled to any share or right, title or interest in the suit property. Whatever interest she had was extinguished in 1956 by virtue of the provisions of section 14(1) of the Hindu Succession Act under which provision Sitalabai became the full and absolute owner thereof. Sitalabai, as indicated, having died intestate, the property would devolve upon her daughter--Kamlabai, and Pushpalata, the daughter of her pre-deceased son Kisanlal in equal share.

11. In this view of the matter, this appeal is allowed. The decrees passed by the Courts below are set aside and in lieu thereof I pass the following preliminary decree.

12. Plaintiff No. 2 Pushpalata Mohanchand Sahu and defendant- Kamlabai Cbampalal Sahu are entitled to half share each in the suit house mentioned in item No. 1 in paragraph-2 of the plaint as full and absolute owners thereof.

13. The trial Court will appoint commissioner to effect equitable partition of the suit house submit a report in that behalf to the trial Court which report will be considered by the trial Court after hearing objections if any, thereto by plaintiff No. 2 and defendant. Final decree will thereafter be passed.

14. Defendant appears to be in actual possession of part of the suit house. In these circumstances, while effecting partition, the portion in actual possession of the defendant should, as far as possible, be retained with her towards her half share in the suit house. If it is found that the defendant is in-actual possession in excess of her half share, then the trial Court will fix fair and reasonable compensation of the excess share, which compensation the defendant, if she wants to retain the said excess, must pay to plaintiff No. 2.

15. If partition is found not to be fairly and reasonably feasible and convenient, then question of invoking the provisions of the Partition Act may be considered.

16. Both plaintiff No. 2 and the defendant give up any claim towards past mesne profits.

17. Enquiry into future mesne profits under Order 20 Rule 12 (1)(c) of the CPC may be held upon an appropriate application in that behalf by one entitled thereto against one found to be in wrongful possession from the date of the final decree till delivery of possession.

18. As the parties are very closely related, they will bear their own respective costs throughout.