

(1962) 04 AP CK 0004
In the Andhra Pradesh High Court
Case No : Appeal No. 191 of 1958

K.M. Ramaswami Chetti and Others	Vs	APPELLANT
P.K. Lakshmmamma (Died) and Others		RESPONDENT

Date of Decision : 03-04-1962

Acts Referred:

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

Citation : AIR 1963 AP 199

Hon'ble Judges : Umamaheswaram, J; Sanjeeva Row Nayudu, J

Bench : Division Bench

Advocate : M. Krishna Rao, for the Appellant; P. Somasundaram, P. Suryanarayana and A. Venkata Ramana and N.V.B. Sankara Rao, Second Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Umamaheswaram, J.—I agree with the conclusion of my learned brother that on a true construction of Section 3, Subsections (2) and (3) of the Hindu Women's Right to Property Act (XVIII of 1937), hereinafter referred to as "the Act", the properties which fell to the share of the widow on partition devolved on her husband's heir i.e., her daughter. As regard the construction of Section 3 (2) and (3) of the Act, there are three different points of view expressed in the decided cases. The conservative or orthodox point of view was expressed by Venkatarama Ayyar. J. delivering the judgment of the Division Bench in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, . According to the learned Judge, the widow takes a Hindu Woman's estate and on her death the right of survivorship which was in abeyance comes into operation, and that the heirs of her husband are not entitled to take the properties by succession. A liberal or benevolent interpretation was given by Viswanatha Sastri in *V.M.N. Radha Ammal Vs. The Commissioner of Income Tax*, . According to the learned Judge, the interest which she takes is a Hindu Woman's estate, and on her death, it would devolve on her husband's heirs who

take it as ancestral property. This view is shared by Jagannadha Das, J., in *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, . The view expressed by Mr. Srinivasa Iyengar, who edited Mayne's Hindu Law, 10th edition, at page 720 is in the following terms:-

"The interest which devolves upon her is declared to be a Hindu Woman's estate. That means that on her death it will go to her husband's heirs which cannot mean all his coparceners. In other words, on her death, whether before or after partition, her interest will go to her husband's male-issue who will take it as ancestral property," The same view was also expressed by B.P. Sinha, J., (as he then was) in *Kedar Nath Ambasta Vs. Radha Shyam and Others*, . The intermediate or via media view was laid down by the Full Bench of the Madras High Court in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, , Subba Rao, J., (as he then was), delivering the judgment of the Full Bench, did not accept the liberal interpretation put by Viswanatha Sastri, J., in *V.M.N. Radha Ammal Vs. The Commissioner of Income Tax*, , or the conservative view taken by Venkatarama Ayyar, J., in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, . Having approved the decision in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, , the learned Judge made the following observations at page 192 (of ILR Mad) : (at p. 579 of AIR):

"In the case she asked for partition, her husband's interest should be worked out having regard to the circumstances obtaining in the family on the date of partition. If she divided herself from the other members of the family during her life time on her demise the succession would be traced to her husband on the basis that the property was his separate property. If there was no severance, it would devolve by survivorship to the other members of the joint Hindu family."

I agree with my learned brother that the decision, in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, can not stand side by side with the decision of the Full Bench in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, , when the widow has effected a partition with the members of the coparcenery and has taken her Husband's share. The observations of the Full Bench were followed by C.P. Sinha, J. (as he then was) in *Sabujpari and Another Vs. Satrugan Isser and Others*, . The same view was expressed by the Orissa High Court in *Gangadhar Rout and Another Vs. Subhashini Bewa and Others*, . I am not inclined to accept the contrary view expressed by Hidayatullah, C. J., in *Bhagobai Vs. Bhaiyalal and Others*, . The learned Chief Justice refused to follow the Full Bench decision of the Madras High Court in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, which in my view, lays down the correct law. As pointed out by my learned brother, the observations of Abdur Rahman, J., in *Vinod Sagar v. Vishnubhai* AIR 1947 Lah 388 are only obiter. I am also not inclined to accept the view expressed by him inasmuch as on a true construction of Section 3 (2) and (3), I take a different view. The observations of Gajendragadkar, J., in

Shyamu Ganapati Jadhav Vs. Vishwanath Ganapati Jadhav, are based on the concession made by counsel. In my opinion, the true rule is laid by Mr. Mulla, in his treatise on Hindu Law, 12th Edition, at page 106. The learned author states as follows: -

"In case she asks for partition her husband's interest would be worked out having regard to the circumstances obtaining in the family on the date of partition. If she divided herself from the other members of the family during her lifetime, on her demise the succession would be traced to her husband on the basis that the property was his separate property. If there was no severance, it would devolve by survivorship to other members of the joint Hindu family."

Section 3 (3) clearly enacts that the interest devolving on a Hindu widow under the provisions of Sub-section (2) shall be the limited interest known as a Hindu woman's estate, and she shall have the same right of claiming partition as a male owner. If really she is entitled to claim partition as a male owner, she is entitled to sever her husband's branch from the coparcenery by a unilateral declaration of intention or by instituting a suit for partition. If she effects a severance in status or if she actually gets the property divided, the course of devolution must be traced to her husband's heirs. If all the members of the joint family become divided by an unequivocal declaration of intention being expressed by one of the coparceners or by the deceased widow of one of the coparceners or by a partition suit being instituted, I fail to see how survivorship would be in abeyance as pointed by Venkatarama Ayyar, J., in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, and operate upon the death of the widow for the benefit of the divided members i.e. the ex-coparceners. The expression "Hindu woman's estate" also indicates that the property which she acquires on partition must devolve upon her husband's heirs. The decision of the Privy Council in *Monirarn Kolita v. Keri Kolutani* ILR Cal 776 (PC) makes it clear that upon the termination of the Hindu Woman's estate, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death. I am not inclined to agree with Venkatarama Ayyar, J., as to the statement of law as to Hindu Woman's Estate. The passage in Mayne's Hindu Law, 11th Edition at page 753 to the effect that the distinctive feature of the estate is that, at her death, it reverts to the heirs of the last male owner is in my opinion correct. It was no doubt held in *Alamelu Ammal and Others Vs. Chellammal (Died) and Others*, , that the decision of Venkatarama Ayyar, J. in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, , is not impliedly overruled by the Full Bench decision of the Madras High Court in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, I am not inclined to share the same view. Mr. Justice Venkata Rama Ayyar, who delivered the judgment in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, was a party to the Full Bench decision and he agreed with all the observations made by Subba Rao, J. (as he then was). Even assuming that the decision in *Movva Subba Rao and Another Vs. Movva Krishna*

Prasadam by Padyala Muthaiya and Another, was not impliedly over-ruled, I am not prepared to follow that decision. I prefer to follow the observations of Subba Rao, J., (as he then was) in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, as also the view expressed by B.P. Sinha, J. as he then was) in Sabujpari and Another Vs. Satrugan Isser and Others, and the passage in Mulla's Hindu Law, 12th Edition, at page 106.

2. In Satyanarayana Murthy and Bros v. State of Madras (Unreported judgment in T.R.C. Nos. 83, 273, 284, 285, 148 and 192 of 1953), D/- 20-1-1955 of Andhra High Court, I held that the decision of the Full Bench of the Andhra. High Court in M. Subbarayudu and Others Vs. The State, holding that the decisions of the Madras High Court prior to 5th July, 1954 are binding on the Andhra High Court required reconsideration. I held as follows:

"As matters might not stop here but might be taken to the Supreme Court, I wish to add a few words regarding the decision of the Full Bench in Criminal Revn. Case No. 603/54: M. Subbarayudu and Others Vs. The State, . The High Court of Andhra was constituted under Article 214 of the Constitution read with the provisions of the Andhra State Act (XXX of 1953). In my opinion, it is not correct to regard the Andhra High Court as an off-shoot or successor of the Madras High Court on the ground that it exercises jurisdiction over the territory which formed part of the territory over which the Madras High Court exercised jurisdiction before the formation of the Andhra. State. The Andhra High Court which came into existence on 5th July, 1954 cannot be regarded as a Court of co-ordinate jurisdiction with the Madras High Court. In my view the decision of the Supreme Court in The State of Bihar Vs. Abdul Majid, directly governs this point, and the ground of distinction pointed out by the Full Bench in the following terms:

"The decision" of the Supreme Court in The State of Bihar Vs. Abdul Majid, is also not of much help in the present case, for neither His Majesty deciding a case on the advice of the Privy Council, nor the Federal Court entrusted only with a limited jurisdiction could be considered to be Courts of co-ordinate jurisdiction with that of the present Supreme Court of India. is not convincing. The Supreme Court of India is exercising jurisdiction over the same territory over which the Federal Court as also the Privy Council was exercising jurisdiction. If the decisions of the Federal Court and the Privy Council are not binding upon the Supreme Court as held by the Supreme Court in The State of Bihar Vs. Abdul Majid, and Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, , I fail to see how the decisions of the Madras High Court would be binding upon the Andhra High Court which was constituted only in July 1954. The view taken by the High Courts of Travancore-Cochin, Madhya Bharat, Patna, Lahore and Rangoon are in support of my conclusion. The Patna High Court which was constituted to exercise jurisdiction over the part of the territory over which the Calcutta High Court was exercising jurisdiction formerly has been consistently taking the view that the decisions of the Calcutta High Court were not binding on it, but were entitled to great respect. The decisions of the Patna High Court have

not been referred to by the Full Bench. The principle of Stare decisis has no bearing on this question. Where there is a conflict between the view taken by the Madras High Court and the view taken by other High Courts, the Andhra High Court in ray opinion, is entitled to examine the question on principle and adopt the view which appeals to it. By regarding the decisions of the Madras High Court prior to 5-7-1954 as binding on the Andhra High Court, this Court will only be "forging fetters on its own feet."

The same view was taken by my learned brother in Katikineni Rangaswami Rao v. P. Satyanarayana Raju (Unreported judgment of this Court in Appeal No. 281 of 1958, D/- 8-12-1961 (Andh Pra)). As pointed out by him, it is not the function of a precedent to issue directions or orders as to what should be done or should not be done as it falls within the province of legislation. I therefore take the view that we are not bound by the decision of the Madras High Court in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, . In any event, it cannot stand side by side with the Full Bench decision of the same High Court in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, . I therefore follow the observations of Subba Rao, J. (as he then was) in preference to the decision of Venkatarama Ayyar, J, in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, .

Sanjeeva Row Nanyou, J.

3. This appeal is directed against the judgment and decree of the Additional District Judge's Court, Chittoor in O.S. No. 22 of 1957 on the file of that Court, dismissing the plaintiffs' suit with costs.

4. The plaintiffs are the appellants. The facts leading to the filing of this appeal may be briefly noticed. There were originally two brothers Ratnavelu Chetti and Desappa Chetti constituting "members of a joint Hindu family. Eatnavelu Chetti had four sons, Govindaswami who predeceased him leaving a son Vadivelu who is the 4th plaintiff, and three other sons Ramaswami, Nata-rajana and Kumaraswami, who figured as plaintiffs 1, 2 and 3 respectively. Ratnavelu Chetti died on 3-5-958. Subsequently, his brother Desappa Chetti died on 3-1-1939 leaving a widow Muniamma, and a daughter Lakshmamma, who figured as the 1st defendant in the suit. Lakshmamma has a son, who is impleaded as the 2nd defendant.

5. On the death of Desappa Chetti, Muniamma, claiming to be entitled to her husband's share in the joint family properties filed O.S. 16 of 1939 in the Court below for partition of the family properties. She stated in the plaint that her husband had been divided in status. A preliminary decree for partition was passed, and against that an appeal was preferred to the High Court. During the pendency of this appeal, the decision of the Federal Court (since reported in In re, Hindu Women's Rights to Property Act, 1937 AIR 1941 72 (Federal Court) declared that the Hindu Women's Rights to Property Act (XVIII of 1937)

hereinafter referred to as "the Act", did not apply to agricultural properties. The High Court accordingly modified the decision of the Court below and the matter went back for the passing of the final decree, after effecting partition by metes and bounds. It was at that stage that a compromise was entered into between Muniamma and the plaintiffs in the present suit under which the present suit properties comprising of four items of houses, were given to Muniamma with rights which devolved on her in respect of these properties under the Act. Subsequently, Muniamma died on 8-4-1956. Thereupon, the present plaintiffs claiming to be entitled to the properties that were given to Muniamma under the compromise, by survivorship, sued for declaration of their rights and for possession. It was pleaded by the plaintiffs in their plaint that plaintiffs 1 to 3 are the brother's sons of Desappa Chetti, and the 4th plaintiff, the grandson of Desappa Chetti, and as there were no other reversioners entitled to the properties except the plaintiffs, they are entitled to recover possession of the properties as the properties devolved on them by survivorship and did not belong either to Muniamma's daughter, the 1st defendant, or the grandson the 2nd defendant.

6. The 1st defendant contended in her written statement that neither the decree nor the judgment in O.S. No. 16 of 1939 the previous suit, was binding on her, that Desappa Chetti had died in a divided status from his brother and nephew, and that after Muniamma's death, the 1st defendant became heir and reversioner to the estate of Desappa Chetti and came into possession of the suit properties in that capacity. It was further claimed that even if it were to be held that Desappa had not died divided, as the proceedings in the previous suit were admittedly taken under the Act, the suit brought by Muniamma effected severance and a division in the family, and that, thereafter, Desappa's estate could only be inherited by his own heirs, and the 1st defendant being the daughter of Desappa was entitled to succeed to the properties.

7. The 2nd defendant, the son of the 1st defendant, pleaded that he was not a necessary party to the suit as he had no present interest in the property, and that the suit against him should be dismissed. The remaining defendants impleaded in the suit were either the tenants of Muniamma during her life time or subsequently under the 1st defendant.

8. The learned Additional District Judge framed a number of issues and it is necessary only to refer to issues 3 and 4 framed by the learned Additional District Judge for the purpose of this appeal. They are:

ISSUE 3: Whether by virtue of the decree in O.S. No. 16 of 1959 the schedule properties given to Desappa's widow Munemma became the separate estate of Desappa and therefore have passed to the 1st defendant, his daughter?

ISSUE 4 : Whether the plaintiffs are entitled to the possession of the schedule properties by survivorship?

The learned Additional District Judge, after considering the materials placed

before him, came to the conclusion that the properties allotted to Muniamma under the compromise constituted her separate properties, which devolved on her death on the heirs of her husband Desappa, and that as Desappa. left no sons, the 1st defendant is his only heir, being the daughter, and he therefore held that the plaintiffs were not entitled to the declaration prayed for, or for recovery of possession of the properties from the 1st defendant. So holding, he dismissed the suit with costs. Hence the present appeal.

9. The simple point that falls for determination in the appeal is whether the properties that were given to Muniamma under the compromise (Exhibit A-5) became her properties as heir to her husband, which devolved on her death on the heirs of her husband, or whether the property would revert to the plaintiffs as members of the coparcenary by survivorship.

10. Before we take up for consideration, the various aspects of the above mentioned point for determination, it would be necessary to refer to the relevant provisions of the Act.

"Section 3(2): When a Hindu governed by any school of Hindu Law other than the Dayabhaga school or by customary law dies (intestate) having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section 3, have in the property the same interest as he himself had."

"Section 3(3) ; Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however, that she shall have the same right of claiming partition as a male owner."

To analyse the above provisions we find that these would apply to a widow of a Hindu who died having an interest in a Hindu joint family property, and provides that his widow shall have in the property the same interest as the husband himself had. It further lays down that this interest which devolves on the widow on the death of her husband is a limited interest, which is the same as a Hindu woman's estate known to Hindu law. Sub-section (3) further gives a right to the widow to claim partition in the same manner as a male owner could have done i.e., her right of claiming partition is exactly the same as that of her husband.

11. The question that requires to be considered in, is, what is the effect in law of these provisions and how far and in what manner the Act changed the existing law? It requires to be noticed in this connection that before the passing of the Act, a Hindu widow had no right to the joint family property. She had only a right to claim maintenance, although that claim could be secured by the creation of a charge on the joint family property. This had undoubtedly left the widow at the mercy of the surviving members of the coparcenary on the death of her husband. Naturally in many cases it resulted in hardship to the woman is the matter of claiming and securing her maintenance. Obviously the Legislature realised that the continuance of this state of affairs is not conducive to the well-being of the

widow. Hence, it was laid down that the widow would, under the Act, be entitled to a share in the joint family properties, a share which is equaled by the Act to the interest which her husband himself had at the time of his death. But the Legislature did not intend to go beyond creating an interest in the widow equivalent to an interest which would have devolved on her had her husband died separately, losing no male issue. By the employment of the expression that the limited interest which the widow could acquire under the Act is that of a Hindu woman's estate, the Legislature at once imparted to that interest all the incidents of a Hindu woman's estate, but as this by itself would not be sufficient, the Legislature went further and gave the right to the widow to claim partition of her interest in the joint family property, which previously she could not do, not being a coparcener, in whom alone the right to claim partition existed. And this right of claiming partition was treated by the Legislature as of the same kind and quality as the right which her husband himself had as a member of the coparcenery. In other words, the widow could ask for her husband's interest in the joint family property to be separated and partitioned in the same manner as her husband himself could have done; so that even an unilateral declaration of intention to separate, which is invariably included in a demand for partition would be sufficient to secure a severance of the joint state of the family property.

12. In this context, it would be necessary to consider and examine what exactly is meant by the expression "Hindu Women's estate". This has become necessary for us to do in view of the varied opinions expressed on the scope of this expression. Reference in this connection may be usefully made to the Privy Council decision reported in ILR Cal 776 (PC). At page 789, the scope of this expression, viz., "the Hindu woman's estate", has been very ably set out by Their Lordships of the Privy Council, in the above decision. The following observations may be quoted with advantage.

"According to the Hindu law, a widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship -- as to which see *Katama Natchier v. Rajah of Shivagunga* 9 Moo Ind App 539 at p. 543, 604, (PC) -- does not take a mere life estate in the property. The whole estate is for the time vested in her absolutely for some purpose, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of tenant-in-tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is it is clearly that, until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up and died at the moment of her death.."

More or less to a similar effect are the observations of their Lordships of the Privy Council in *Janaki Animal v. Narayanaswami Aiyer* ILR Mad 634 : AIR 1916 PC

117. The following observations may be referred to:

"The rule of the Hindu law with regard to the nature of the widow's estate 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 owner; her powers in that character are, however, limited; but to use the familiar language of Mayne's Hindu Law, paragraph 625, page 870, so long as she is alive no one has any vested interest in the succession. These propositions were not disputed

The law as to the situation of the reversionary heirs is also in substance quite clear; there is, as stated, no vesting at the date of the husband's death, and it follows that the questions of who is the nearest reversionary heir or what is the class of reversionary heirs fall to be settled at the date of the expiry of the ownership for life or lives; that is to say, in the present case, at the death of the survivor of the appellant and her late husband's mother."

Lower down, there are the following observations: "It is also true that a reversionary heir, although having only those contingent interests which are differentiated little, if at all from a special successions, is recognised by Courts of Law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life.

But a reversionary heir thus appealing to the Court truly for the conservation and just administration of the property does so in a representative capacity, so that the corpus of the estate may pass unimpaired to those entitled to the reversion."

It is clear from the above quoted observations of their Lordship of the Privy Council that a Hindu woman's estate is an estate which comes to the widow by succession and inheritance, and passes on her death to her husband's heirs. This being the essential nature of a Hindu Woman's estate, the same would necessarily have to be applied to the interest that vests in Hindu widow under the Act.

13. In this connection, the learned Judges of the Madras High Court in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, , dealing with a case arising u/s 3, Sub-sections (2) and (3) of the Act observed as follows:

"She would have during her life time all the powers which her husband had, save that her interest was limited to a widow's interest. She could alienate her widow's interest in her husband's share; she could even convey her absolute interest in the same for necessity or other binding purpose. She could ask for partition and separate possession of her husband's share. In case she asked for partition, her husband's interest should be worked out having regard to the circumstances obtaining in the family on the date of partition. If she divided herself from the other members of the family during her life-time, on her demise, the succession would be traced to her husband on the basis that the property was his separate property." These observations in the matter of dealing with

succession to the property vesting in a widow on partition under the Act, correctly describe the Hindu woman's estate as laid down by the Privy Council. This being the position, the following observations contained in a Division Bench decision of the Madras High Court in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, cannot be regarded as laying down the correct law.

"That the provision in Section 3(3) that the widow is to take a woman's estate means that after her death the estate will devolve on her husband's heirs, the contention being that it is an incident of a woman's estate that it should revert to the heirs of the last male-holder, and, therefore, the daughter would take as heir and not the brothers, as surviving coparceners. There is nothing, however, in the language of the Act to support the broad contention, that the right of the coparceners to take by survivorship is completely extinguished by Section 3 (2) and that there results a severance of status by operation of the statute; nor is the argument that it is an incident of a woman's estate that it should revert to the heirs of the last male-holder quite accurate as a statement of the law."

Similarly, the following observations at page 263 (of ILR Mad): (at p. 228" of AIR):

"The right of the coparceners to take by survivorship, which was in abeyance so long as the widow was alive comes into operation the moment she dies."

and also at page 265 (of ILR Mad): (at p. 229 of AIR: :

"It would be erroneous to regard the expression "woman's estate" in Section 3(3) as enacting by implication that, on the death of the widow, the estate devolves on the heirs of her husband."

Hence, on a careful consideration of the relevant provisions of the Act, the following conclusions may be reached namely; (i) that on the death of her husband, the interest of the husband vests in the widow, the benefit of which she could have by claiming the right of partition of that interest from the joint family; (2) when this is done, the property vests in the widow as an owner and devolves on her demise, on the heirs of her late husband, in the same manner as his separate property would devolve; (3) and that all the incidents that would attach to 3 Hindu Woman's estate known and recognised under the Hindu law, also attach to the interest that devolved on the widow under the Act.

14. In this connection, Mr. M. Krishna Rao, the learned counsel for the appellant, placed reliance on a number of decisions, viz. AIR 1947 Lah 388, *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, ; *Shyamu Ganapati Jadhav Vs. Vishwanath Ganapati Jadhav*, , (S) *Bhagobai Vs. Bhaiyalal and Others*, and ILR 1959 Mad 106 : AIR 1959 Mad) (FB). We shall refer to the same to the extent necessary for the disposal of this appeal briefly.

15. In AIR 1947 Lah 388, the question that arose for determination was, whether

a suit for rent can be maintained by a karta of a joint Hindu family when two widows were left surviving by two different male members of the family without impleading the widow as parties. It is true that the question as to the nature of the interest of the widows acquired under the Act was dealt with. But most of the discussion, as stated by the learned Judge, Mr. Justice Abdur Rahman, was unnecessary for the purpose of the disposal of that case, and the observations made by the learned judge are merely obiter and cannot be regarded as an authoritative pronouncement. In *Shyamu Ganapati Jadhav Vs. Vishwanath Ganapati Jadhav*, , the learned judges of the Bombay High Court, were dealing with a case where a partition had in fact not been effected. Strictly speaking, that decision does not in any way touch upon the point that arises for determination in this appeal, and Gajendragadkar, J., who delivered the judgment of the Bench, was conscious of the fact that if the widow had claimed her right of partition, different considerations would arise. That apart, the judgment in the case was more or less based on concessions made by the counsel appearing in the case and cannot therefore be regarded as of much value as a precedent.

16. AIR 1953 Sau 175, is a case where it was doubtful whether the Act applied or not, as apparently, the husband of the widow died before the Act came into force. It would not therefore be necessary to consider this decision.

17. In *Bhagobai Vs. Bhaiyalal and Others*, , Hidayatulla, C.J. as he then was, has interpreted the Full Bench decision of the Madras High Court in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, , correctly when he observed as follows:

"In that decision the Full Bench observed that if a widow asked for partition of her husband's interest from the other members of the family during her lifetime the succession would on her demise be traced to her husband on the basis that the property was separate property.

X X X Having referred to the above quoted Madras Full Bench decision, the learned Chief Justice observed as follows:

"In my judgment -- and I say it with profound respect--the statement of the law does not follow from the Act at all. All that the Act has allowed is a right of enjoyment either as a member of the joint family without partition or separately after a partition, to the widow during her lifetime. She is not enabled to bring the coparcenery to an end as a coparcener can by asking for a partition. She has the same right of claiming a partition as a male owner but not as coparcener. That right is available only to a coparcener, which, as the Full Bench admits, the widow is not."

"In my opinion, on the death of a widow who has taken on partition her husband's share, there is a reverter of the property back to the coparcenary, with all interest of the deceased coparcener ceasing,"

With great respect, we are unable to agree with the latter observations, in the light of the reasons already given,

18. Mr. M. Krishna Rao, placed great reliance and emphasis on the judgment of Mr. Justice Venkatarama Ayyar in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, to which reference has already been made. The learned Judge, in that case seems to regard the interest vesting in the widow under the Act as a statutory right given personally to the widow and not as an heir of her deceased husband, and that right being personal to the widow came to an end on her death and that, the estate did not devolve on her death, on her husband's heirs, and that the right of the coparceners to take by survivorship reasserts itself on her death. In view of the clear exposition of the law applicable to Hindu woman's estate, by the Privy Council in the above mentioned cases, and which were reiterated by the Full Bench of the Madras High Court in the observations quoted earlier in this judgment we regret, with great respect, that we are unable to accept as correct the conclusions reached by the learned Judge in that case. For the same reasons, we are unable to subscribe to the conclusions reached by the learned Judges in *Alamelu Ammal and Others Vs. Chellammal (Died) and Others*, . We do not consider it necessary to consider the Madras decisions further as we are not in any way bound by those decisions. In this connection, it is enough to make reference to a judgment of mine in A.S. 281 of 1958. D/-8-12-1967 (Andh Pra) and the observations contained therein.

19. As against these decisions relied on by Mr. M. Krishna Rao, Mr. Suryanarayana, the learned counsel for the respondent, placed reliance on *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, , *Kedar Nath Ambasta Vs. Radha Shyam and Others*, and *Sabujpari and Another Vs. Satrugan Isser and Others*, and AIR 1944 243 (Nagpur) and the observations of the Madras Full Bench in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*,

20. The decision in ILR 1946 Cal 32 : AIR 1946 Cal 461 is not of much assistance, as in that case, the question related to the rights of a widow of a Hindu governed by the Davabhaga school of Hindu law u/s 3(1) of the Act.

21. In ILR 1944 Nag 832 : AIR 1955 Nag 243, the learned Judges of the Nagpur High Court disagreed with the Judgment of Horwill, J., of the Madras High Court in *Natarajan Chettiar Vs. Perumal Ammal and Another*, and held that as a Hindu widow under the Act acquired her husband's interest by succession, she was bound to produce a succession certificate to the extent of her interest in the property, namely a decree u/s 214 of the Indian Succession Act, XXXIX of 1925.

22. In the decision in *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, , Mr. Suryanarayana placed reliance on the judgment of Jagannadha. Das, J., and the observations contained therein. Reliance has been placed particularly on the following observations at page 386:

"The relevant provisions are Sub-sections (2) and (3) of Section 3 of the Act. These provisions have come in for consideration before the various High Courts

during the thirteen years for which the Act has by now been in force. It is now well settled that the Act has not the effect of introducing the widow as a coparcener into the joint family along with the other coparceners, that the widow gets the interest of her husband by succession as his heir and not by survivorship, but that no disruption of the coparcenery is effected thereby, that the widow holds her interest in the property not as the interest of a tenant-in-common with the coparceners, but as an interest in joint family property, subject to all the normal and well understood incidents relating to ownership of joint family property viz., its liability to common management by the family manager, its liability for family debts, family expenses, and so forth." Referring to a number of decisions including the one in AIR 1941 72 (Federal Court) the learned Judge observed :

"They emerge from the wording of the subsections above referred to. The widow gets "the same interest in the joint family property which the husband had", but the interest which devolves on her is "the limited interest known as the Hindu woman's estate". She gets her interest from her husband by "devolution". By the "devolution" of the interest on her she intercepts the right of survivorship thereto of the other coparceners, including the direct lineal male descendants of the husband himself. She has the right, under Sub-section (3) to obtain separation of her interest by claiming a partition. Her interest is a present interest capable of enjoyment, as such, even without division, and is not dependent upon her enforcing partition. Her interest is, in this respect, unlike that of the mother under the pre-existing law who was entitled to a share only on partition but who had no right to compel partition and whose right to get a share depended on partition."

Lower down, the learned Judge stated :

"The interest which she gets from her husband, in her hands being the limited interest of a Hindu Woman's estate, is subject to alienation and devolution in the same way. It follows that while her interest is an interest in the joint family property, it is not a coparcenery interest -- it is only an ex-coparcenery interest. On her death, her interest in the joint family property or the share therein which she may take on separation does not prima facie, revert back to the joint family or coparcenery as such, but goes to the heirs of her husband as the fresh stock of descent." I am in full agreement with the above observations. (23) In Kedar Nath Ambasta Vs. Radha Shyam and Others, , B.P. Sinha, J. (as he then was) had to consider the scope and applicability of Section 3(2) and (3) of the Act. The following observations require to be referred to: (at page 83).

"The next question that arises for determination is whether, on the death of defendant 7, her moiety share in the joint family properties would devolve upon Kedar Nath by survivorship, or upon the daughters, and after their death, their sons. (some of whom are already in existence) by inheritance. If there had been no cessor of jointness by virtue of the compromise aforesaid, it could have-been seriously argued that the properties would go by survivorship; but, in view of the

fact that it has been settled by a compromise between the parties that the widow would hold a moiety share in her own rights, apart from any other considerations, the moiety share of the defendant 7 must, devolve upon the heirs of Kanta Prasad by inheritance, and not by survivorship.....

Their Lordships of this Court have held that the interest which is acquired, by a widow under the Hindu Women's Rights to Property Act, 1937, is not as a survivor but as an heir of her husband. For this proposition, their Lordships relied upon the decision of a single Judge of the Madras High Court in the case of *In Re: Kandasami Solagar*, ."

Finally, the learned Judge summed up as follows:

"In my opinion, there is no justification for holding that defendant 7 in the present case, on her husband's death became a coparcener with Kedar Nath, the plaintiff, in full sense of the term, so as to attract the survivorship. The better opinion, in my view, is that the widow takes the property, the share of her deceased husband, by inheritance, with the result that, on her death, the property goes not by survivorship to the plaintiff, but by inheritance to her husband's heirs, namely, in the present case to the daughters, and, after them, to such of the sons of the daughters as may then be in existence. That being so, it must be held that the plaintiff has no "locus standi" to institute the suit."

I follow the views expressed by B. P. Sinha, J., (as he then was) in the above decision.

24. In *Sabujpari and Another Vs. Satrugan Isser and Others*, C.P. Sinha, J. (as he then was) followed the decision in *Kedar Nath Ambasta Vs. Radha Shyam and Others*, where in quoting the observations already extracted in this judgment earlier of the Full Bench decision in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, the learned Judge observed:

"With this lucid exposition of the law, I am in respectful agreement, except, of course, with this reservation as to whether the widow became a coparcener or not as, in my opinion, this matter is not free from doubt. Their Lordships also approved the summing up already quoted by me, of the learned Judges, in the former case, *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, . Doubts have been raised as to how this Full Bench approved the summing up by their Lordships in the earlier case. But I think, that, if the summing up by their lordships in the previous case be taken to relate to a period of the time after the husband's death and the widow dying without effecting severance of the joint family status, in my opinion, no fault could be found with the views expressed in the summing up by their Lordships. I say, however, with respect, that the summing up cannot be correlated to the facts of that case and, in particular, to the fact that a suit for partition had been instituted by the widow, and during the pendency of that suit she had died. I have already said that the attention of their Lordships does not appear to have been drawn to that aspect of the case as to whether the institution of a suit for

partition by a widow by itself effected severance or not."

Finally the learned Judge observed:

"After having considered the various authorities and the various aspects of the case, my conclusions are that, under the provisions of the 'Act a widow of a deceased coparcener is placed in the same position as the deceased coparcener was, for the reason of the fiction that half the body of the deceased husband survived in the widow; that, like her husband, the widow also is entitled to effect severance of the joint status of the family by an unequivocal expression of intention to separate; that such unequivocal expression of intention is evidenced by instituting a suit for partition; that after severance is effected in the joint family status by institution of a suit for partition by the widow, the lawful heirs, namely, the heirs of the deceased husband, are entitled to continue the partition suit, if the widow dies during the pendency of the suit; that in case the widow does not exercise her right of partition and dies without expressing any intention to separate, the interest of the husband, which she enjoyed goes by survivorship to the other members of the joint family; that the right which the widow gets under the Act is not by way of inheritance or survivorship or succession but she gets that right as representing the husband himself, it is a statutory right and that the property which she gets after partition does not devolve after her death on her heirs but goes by inheritance to the heirs of the husband."

Finally, reliance is placed on the observations of the Full Bench in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, when they say that on the death of the widow after effecting partition, the property which devolved on her under the Act would pass to her husband's heirs in the same manner as the property constituting a Hindu Woman's estate.

25. This view receives support from the well-known Text Book Writers on Hindu Law, namely, Mr. Mulla and Mr. Mayne. In Mayne's Hindu Law, nth Edition, at page 708, it is stated as follows:

"When a widow succeeds to her husband's interest in a joint family, she takes it only by inheritance and not by survivorship! for, she had no right by birth and she was not a co-owner prior to his death. There are no words in the Act by which she can be deemed to be a coparcener. The interest which devolves upon her is declared to be a Hindu Woman's estate. That means that on her death it will go to her husband's heirs which cannot mean all his coparceners. In other words, on her death whether before or after partition, her interest will go to her husband's male issue who will take it as ancestral property."

To a similar effect are the observations in Mulla's Hindu Law, 12th Edition, at page 105 although not so wide.

26. A perusal of the above decisions shows that even as regards the devolution of the interest in property vesting in a Hindu widow under the Act on her death after claiming partition, there is a divergence of opinion among the judgments of

various High Courts. Venkatarama Ayyar, J. in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, , and Hidayatulla, J., in *(S) Bhagobai Vs. Bhaiyalal and Others*, have taken the view that if the widow dies, even after claiming and obtaining partition, the property that had been taken by her under the Act would pass to the persons who were coparceners with her husband, by survivorship, and not to the heirs of her deceased husband, whereas Subba Rao, J., in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, B. .P Sinha, J., (as he then was) in *Kedar Nath Ambasta Vs. Radha Shyam and Others*, , C.P. Sinha J., in *Sabujpari and Another Vs. Satrugan Isser and Others*, , Jagannadha. Das, J. in *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, and Puranik, J. in AIR 1944 243 (Nagpur) and Viswanatha Sastry, J. in *V.M.N. Radha Ammal Vs. The Commissioner of Income Tax*, and Venkatramanarao, J. in *Saradambal Vs. S. Subbarama Aiyar*, have taken what, in our opinion, is the correct view, namely, that the widow takes a Hindu Woman's estate under the Act, as her husband's heir by inheritance, and succession to him. and that all the incidents of a, Hindu woman's estate apply to the interest so devolving on the widow, so that the property so vesting in her, would pass on her death to the heirs of her husband by succession, and would not pass to the whilom coparceners by survivorship.

27. Among the latter set of decisions, which-all agree as to the devolution of the property-acquired by the widow under the Act, namely, that on the widow's death it goes to the heirs of her husband, there is a difference of opinion," as to whether this consequence would follow evert when the widow died without claiming partition. Jagannadba Das, J. in *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, , had taken the view that the Act bad the effect of producing automatic disruption of the family, as a woman and a limited estate holder cannot, in the concept of Hindu coparcenery, be a coparcener. This view received support from Mayne in the portion extracted earlier in this judgment. C.P. Sinha, J. in *Sabujpari and Another Vs. Satrugan Isser and Others*, held that when the widow dies without claiming partition, there is no severance in the joint status of the family, and" the property would pass to the coparceners by survivorship.

28. In my opinion, there should be no room for this divergence of views if the correct position of the widow under the Act vis-a-vis the coparceners of the family is appreciated. As the Act confers a Hindu Woman's estate on the widow, the interest devolving on the widow being the same as her husband's, in quantum though not in content, this right in property vesting in the widow is the same as the right in property, which devolves on her as her husband's heir in regard to separate property, an idea which is necessarily involved in her interest having been declared by the Act to be a Hindu Woman's estate. To assume that there is no consequential change in the coparcenery would involve the assumption that the widow steps into the shoes of her husband as a coparcener resulting in the coparcenery continuing as a coparcenery with a woman as coparcener and the widow coparcener holding limited rights, while the other coparceners have full and absolute rights and the advent of the widow into the

coparcenery automatically suspended survivorship, an inseparable incident of a coparcenery, without causing a disruption of the coparcenery, are all totally repugnant to the concept of the institution of a Hindu Coparcenary and its constitution and composition known to and recognised by Hindu Law and Hindu Society. In my considered opinion, the view taken by Jagannadha Das, J., as he then was, that the Act has the effect of effecting automatic disruption of the family, at least so far as the widow's interest of a Hindu woman's estate was concerned, and that, thereafter, there could be neither jointness, nor survivorship, is the correct one.

29. I wish to add that a discussion on this aspect of the matter becomes academic in the instant case, as the widow Muniamma had sued for and obtained a decree for partition, and died only subsequently, and the question to be determined, therefore, relates to the devolution of a Hindu Widow's estate obtained after claiming and obtaining partition in enforcement of her rights under the Act.

30. To sum up the legal position under the Act:

(a) A Hindu Widow acquires the same interest in the Joint family property as her husband had therein, when he died;

(b) This interest, however, is limited and not absolute, and is a Hindu Woman's estate;

(c) This interest vests in the widow under the Act by inheritance, as an heir of her husband succeeding to him, and on her death, devolves as Hindu Woman's estate on the heirs of her deceased husband, and not on the surviving coparceners by survivorship;

(d) The widow has a right to claim partition of her share in the same way as her husband could have claimed during his life time, which could be exercised and effected by an unequivocal declaration of her intention to separate, or by the making of claim or demand for partition;

(e) The widow does not become a coparcener in place of her deceased husband, nor would her interest pass by survivorship to the surviving coparceners even if she did not claim partition as such.

It would also be necessary to add, that, in my opinion, the provisions of the Act do not justify the assumptions made in some of the decisions cited above that the widow is regarded by or under the Act as the surviving half of her husband, or that half the body of her deceased husband survived in the widow. It would, in my opinion, be unnecessary and perhaps, not relevant to import such notions when the language of the Act is so plain and clear.

31. Hence, I am clearly of opinion that the property that belonged to Miniamma in this case on her death devolved on her daughter, the 1st defendant, who was the next heir to her husband. Hence, the plaintiffs cannot maintain the suit.

32. In the result the appeal fails and is dismissed with costs of contesting respondents 2 and 9, one set.

33. The Court below has awarded separate sets of costs to the 2nd defendant, to the tenants-defendants 3 to 5, and also separately to 8th defendant. Defendants 3 to 5, and 8 are all tenants under the 1st defendant. There is no special defence that they had to take in the matter, and, therefore, the separate award of costs to them is by no means justified. As regards the and defendant, he sails with the 1st defendant, and if the 1st defendant succeeds his subsequent interest is ensured. Even if the 2nd defendant is not a necessary party, we think he is a proper party to the suit. We do not consider that separate award of costs in his favour is justified in the circumstances. The decree of the Court below is modified to the extent that the direction awarding separate sets of costs to the defendants, other than the 1st defendant, be deleted,

34. Subject to this reservation, we dismiss the appeal with the costs of respondents 2 and 9, one set.