
(1949) 05 OHC CK 0001

In the Orissa High Court

Case No : A.F.A.D. No's. 33 and 218 of 1945

Kunja Sahu and Others

APPELLANT

Vs

Bhagaban Mohanty and Others

RESPONDENT

Date of Decision : 13-05-1949

Acts Referred:

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

Citation : AIR 1951 Ori 35

Hon'ble Judges : Ray, C.J;Panigrahi, J

Bench : Division Bench

Advocate : L.K. Das Gupta, in No. 218 of 1945 and R.N. Sinha, in No. 33 of 1945, for the Appellant; L.K. Das Gupta in No. 33 of 1945, for the Respondent

Judgement

Ray, C.J.—This is a plaintiffs' appeal in a suit for declaration that the suit lands are their ancestral joint family properties and that defendant 1 has not acquired any title thereto by virtue of a sale-deed dated 27-2-1940, executed by defendant 2. The plaintiffs and the husband of defendant 2 were members of a joint Hindu Mitakshara family at the time of the latter's death. On his death, defendant 2 succeeded to her husband's interest in the family properties under the Hindu Women's Eight to Property Act She transferred her this interest in favour of defendant 1 by the aforesaid sale-deed. The suit was resisted on the ground that defendant a had the right to alienate and the said alienation is binding on the plaintiffs. There was some dispute as between the parties as to whether the claimed properties were ancestral joint family properties. That controversy, however, has been set at rest and has not been re-agitated here. In this appeal, we shall proceed on the assumption that Judhithir was joint in mass and estate at the time of his death.

2. The learned Munsif dismissed the plaintiffs' suit on the findings that the properties, in dispute, were joint family properties and defendant 2 had no right. The learned lower appellate Court reversed the decree of the trial Court holding that defendant a had the right of alienation under 3. 8 (3), Hindu Women's Eight

to Property Act, as extended to agricultural lands in Orissa. Hence the second appeal by the plaintiffs.

3. Mr. L. K. Das Gupta, the learned counsel for the appellants, contends most strenuously that the interest that devolves upon a widow under the Hindu Women's Right to Property Act is not alienable by her till she exercises the right of partition as a male coparcener. The hard core of his reasoning is that the interest that devolves upon her is defined in Sub-section (2) of Schedule of the Act as "the same interest as he (the husband) himself had." His submission is that as the husband, before reducing his undivided interest in the coparcenary property to a specified one by partition, had no right of alienation, the same right cannot be conceded to a widow. He tries to substantiate his proposition dexterously by picking up a few judicial pronouncements in which several characteristics attributable to coparcener's interest in the coparcenary have been attributed to the widow's interest that devolves upon her under the Act and argues that the absence of right of alienation is a necessary corollary. This method of reasoning, however ingenious, does not serve well in law which is not logical. I shall deal with these cases gradually and will show that the views expressed therein do not run counter to the conception of right of alienation as inherent in the estate that devolves upon a deceased male coparcener's widow. With regard to the scheme of the Act and the language employed to carry that out, his contention, in the main, is that Sub-section (2) of the section contains the key provision as to the extent and nature of the widow's interest and, that, in that context Sub-section (3) is a limited provision, that is to say, it lays down certain limitations that detract from the right that is connoted by the defining words "the same interest as he himself had." When encountered with the question why then should the interest be described as the limited interest known as a Hindu Women's estate" in Sub-section (3), he replies that its object was to deny to her the status of being a fresh stock of descent which she would otherwise have been had not that limitation been imposed by the aforesaid words. But this answer, to my mind, is not adequate to resolve the difficulty. The legislature shall not be presumed to have been redundant in expression of its will. Right of claiming partition would obviously be included within the words "the same interest as he himself had" occurring in Sub-section (2). It would then be redundant to provide for the right of partition in the proviso to Sub-section (3). In view of the language of the section, it would be irreconcilable and inconsistent to hold that the scope and object of Sub-section (3) is confined to curtailment of the interest defined in Sub-section (2) by imposing certain limitations thereon. It is fundamentally correct to say that in the absence of compelling circumstances, full effect shall be given to the plain ordinary grammatical meaning of the words used in a statute. The relative importance of Sub-sections (2) and (3) shall have to be ascertained by interpreting the words used therein in their plain grammatical meaning. It is significant that the Sub-section (2) is subjected to the provisions of Sub-section (3) in so far as it provides for what interest the widow shall get. The word "subject," in Oxford Dictionary, means "in a state of

subjection or dependence; under the control, rule or influence of something; subordinate." The author of the lexicon illustrates the significance of the word by certain citations, such as,

"treaty is subject to ratification that this is not valid unless ratified. The arrangement is subject to your approval, that this is not final until you approve."

The plain grammatical meaning of subs. (2), therefore, is that predominantly her interest is that defined in Sub-section (3). In construing the extent and nature of the interest, the provision of Sub-3. (3) cannot be precluded from consideration. The words "the same interest as he himself had" must, in giving a meaning to them, be either subordinated to or reconciled with what is conveyed by the words "the limited interest known as a Hindu Women's estate in Sub-section (3). If that estate under the Hindu law gives her a larger estate, she shall get it. In order, therefore, to reconcile the meaning of the word "interest" in Sub-section (2) with the conception underneath Sub-section (3), it should either refer to quantity as distinct from quality or to such quality as appertains to a male coparcener's interest but not repugnant to nor inconsistent with the interest of a Hindu woman's estate. On a detailed analysis, it will appear that there is no repugnancy between the two sub-sections. Both can be harmonised. The words limited interest of a Hindu woman's estate" have been advisedly used by the Legislature as the most appropriate conveyancer of connotation of the "interest" conferred on the widow by the statute. The incidents of Hindu woman's estate are as follows: (i) it is not a life estate; (ii) it reverts to the heir of last full owners; (iii) it has limited power of disposal; (iv) it carries full power of enjoyment; (v) it is not a trust estate for the benefit of the reversioners; and (vi) it is subject to such liabilities as would be in the hands of prudent owner and as would prevail against her husband.

4. The object of the Act is remedial and benevolent. The rule of survivorship that stands in the way of widow succeeding to her husband's estate in a joint family property is suspended for her benefit. This suspension is not intended to disrupt the coparcenary except in so far as it is necessary to give the widow an independent status which can be worked out so as to make her economically independent. As observed by Mayne, in his commentary on Hindu Law, in Oh. XVII "Woman's Estate" para. 635:

"The typical form of estate Inherited by a woman from a male is the widow's estate. The same limitations apply to all estates derived by a female by descent from a male, or a female, whether she inherits as daughter, mother, grandmother, sister or as any other relation. In the phraseology of English law, her estate is neither a fee nor an estate for life, nor an estate tail. This is the view in all the schools except in Bombay."

5. It would be shocking to interpret the Act in such a manner as would deny to a joint coparcener's widow an estate inferior even to that of a widow's estate. The fallacy of Mr. Das Gupta's argument will be clear if we visualise that in order to

give her the same interest as her husband had, she should have an absolute interest rather than a limited estate enuring till her death. It would also follow from his argument that she exercises her right of partition and she becomes a full owner without any limitations on her right of alienation. But is that view consistent with her having the limited estate of a Hindu widow? All the limitations that would prevent her from dealing with the property as an absolute owner are attributable to her estate being defined as a limited interest of a Hindu Woman's Estate.

6. In accordance with Hindu law, as administered in certain provinces, a coparcener has a right to alienate his undivided share in the joint family property, e.g., in Madras. His interest is liable to be seized by attachment by a creditor. It is a property which is reducible to possession either on partition or on mere declaration of an intention to separate. But this right of separation from the coparcenary by declaring one's intention cannot belong to the widow within the meaning of the Act. That is only available to a coparcener. A Hindu widow on whom the interest devolves, under the Act, of a coparcener, is undoubtedly not a coparcener. On the other hand, in order to give effect to Mr. Das Gupta's argument, she should also be clothed with the rights which her husband had, or could have called to his aid, had he chosen to do so and this will include a right to disrupt the coparcenary by a declaration of her intention. This would amount to *reductio ad absurdum*. The general effect of the Act is that the rule of survivorship is kept in abeyance. The widow succeeds to her husband's interest without being a coparcener. The interest that devolves upon her becomes defined and definable in her hands though continues to be a part of the joint family estate in the sense in which a male member of a joint family under the Dayabhag School or such a male member's widow has. Like any other property, it is alienable and can be alienated by her. There must be express words in the Statute to deny to her right of alienation which is fundamentally inherent in every right to or in property. In the statute, under consideration, the only words of limitations are to be found in the expression "limited interest of a Hindu Woman's Estate" occurring in Sub-section (3). In short, interpreting the provisions of Sub-section (3), according to the plain grammatical meaning of the language in which it is enacted and after assigning such meaning to the terms of art (namely, Hindu Woman's Estate), such meaning as they carry under the law in which the terms are used, the interest that a widow gets in her husband's interest in a joint family estate is the same as she would get in her separate or self acquired properties. If there is nothing in conflict as between the two sub-sections due to the plain grammatical meaning of the words "the same interest" in Sub-section (2), it should be limited in its connotations to quantity rather than quality or nature and character of the interest for the sake of reconciling the two sub-sections so as to produce a coherent and harmonious working of the Act. As Sub-section (3) is clear and unambiguous, any ambiguity or indistinctness in the meaning of Sub-section (2) emerging from its language must be dissolved on account of the latter's subordination to the former and a harmonious

construction should be put upon it so as to give effect to Sub-section (3). In this view, the widow has a limited power of disposal over the interest that devolves upon her. The objection as to alienation by a coparcener of his interest in the joint family estate is not applicable when that interest devolves upon or is acquired by one who is not a coparcener of the joint family. Take the instance of a coparcener's interest having been attached by his creditor during his life time. His subsequent death does not prevent the attaching creditor from getting the attached interest sold. It is because as soon as it is attached, it is prevented from lapsing into the joint family estate and stands out of fluctuation. It then becomes a specified interest. It so happens when it devolves upon the widow, After devolution, it is an interest which unlike a coparcener's interest can be predicated with certainty. In that event, as a property, it carries with it the incidents of transfer ability at the hands of its holder either limited or absolute.

7. I shall now proceed to deal with some of the cases relied upon by the learned counsel for the appellants.

8. *Vinod Sagar v. Vishnubhai Shankar*, A. I. R. (34) 1947 Lah. 388-This has been cited to establish that the widow and her interest that has devolved on her under the Act still continues under the management of the Karta of the joint family until she has exercised her right of partition and from this it is urged that she is under the disability of a coparcener which means absence of right of alienation in her. This argument is fallacious. As I have already said, in a Dayabhag joint family, the interest of a member is defined and is not subject to the same limitation as to its alienability as that of a Mitakshara family; but as regards the management of the family property, the Karta has the same dominion and the same right of representation as that of a Mitakshara family.

9. *Jadadbai v. Puranamal*, A. I. R. (31) 1944 Nag. 243 : (I. L. R. (1944) Nag. 832)-This case decides that the devolution of the interest on the widow under the Act is by way of succession and not survivorship. This favours the contention that the widow holds the property as a tenant-in-common and not as a joint tenant though after her death it, again lapses into the joint estate. The learned Judges, who decided this case, referred to a decision of Horwill J. reported in *Natarajan Chettiar v. Perumal Ammal*, A. I.R. (30) 1943 Mad. 246 : (206 I. C. 356) in which Horwill J. is reported to have said that the effect of Schedule cls. (2) and (3) may be regarded as survival of the husband's persona in the wife, giving her the same rights as her husband had except that she can alienate property only under certain, circumstances. The theory of survival of husband's persona was not accepted by the Hon'ble Judges of the Nagpur High Court. But the theory of her right of alienation was not repelled.

10. *Kalian Rai v. Kashi Nath*, A. I. R. (90) 1943 ALL. 188 at p. 190 : (I. L. R. (1943) ALL, 307). Here, her interest in the joint family estate is compared to that of a member of Dayabhag joint family. In this view, she shall have a right of alienation.

11. M. C. Chinniah Chettiar v. Sivagami Achi, AIR (32) 1945 Mad. 21 : (I.L.R. (1945) Mad. 402). This is a case in which it has been held that before partition is effected, the interest devolving upon the widow is liable to fluctuation so as to be reduced on an adoption. With great respect, I cannot go so far as that because it would be difficult to assume that her interest will be enhanced on the death of a coparcener as it would have been had her husband been alive.

12. Siveshwar Pd. Narain Singh v. Haranain Mal, A. I. R. (32) 1945 Pat. 116 ; (23 Pat. 760) has been relied upon for the proposition that her interest is an undivided interest in the joint family; but the actual decision is against Mr. Das Gupta's submission. Firstly because, Fazl Ali. C. J. (as he then was) has held that it is an asset of her husband in her hands, the position untenable in the light of Mr. Das Gupta's contention. This may be contrasted with the position that such an interest could not have been seized in the hands of a coparcener as an asset left by a deceased coparcener. This reason proves that the interest in her hands is a defined and definable interest. Fazl Ali C.J. quotes with approval from the decision of Venkataraman Rao J. reported in Saradambal v. Subbarama Ayyar, A. I.R. (29) 1942 Mad. 212 : (I. It. E. (1942) Mad. 630) which has also been cited by Mr. Das Gupta. I shall quote a passage from this learned Judge's observation. He says:

"Giving the language its plain meaning, the widow takes that interest subject to the rights and obligations attached to that interest and subject to the restrictions placed on her powers by Cl. (3) of Schedule of the Act. That clause leaves the right to partition untouched but restricts the right of alienation because the nature of the interest which she takes is a Hindu woman's interest. What a Hindu woman's interest is, is well defined in Hindu law, that is she is competent to alienate that interest only for purposes sanctioned by Hindu law and that interest is liable to be seized in execution of decrees for the payment of debts of the last male owner. * * * * Once the rule of survivorship no longer operates, there is nothing to preclude a creditor from attaching the property

As pointed out by the Judicial Committee in Mont Ram v. Kerikolitani, 5 Cal. 776 at p. 789 : (7 I A 115 P. C.) the whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest,"

13. In consideration of what I have said above, I am unhesitatingly of opinion that defendant 2 was competent to alienate the interest that devolved on her on the death of her husband in the joint family estate and that defendant 1, has acquired a good title thereto. In the result the appeal is dismissed with costs throughout.

Panigrahi, J.

14. The facts giving rise to the litigation out of which this second appeal arises are simple. Plaintiff 1, Narottam father, of plaintiff 2, Dharu, father of plaintiffs 3 and 4, and Judhisthir, husband of defendants, were brothers and lived in a joint

family. On the death of Judhithir sometime in 1939, his widow defendant 2, executed a sale-deed of the suit lands in favour of defendant 1 on 27-2-40. The plaintiffs there upon filed a suit in 1944 for a declaration that the suit lands being their ancestral family lands, no title passed to defendant 1 under the sale deed executed in Ma favour by defendant a. The plaintiffs prayed for confirmation of, or, in the alternative, for recovery of possession. Both the Courts below found that Judhithir was the Karta of the family and died while living jointly with the plaintiffs. The learned Munsif who tried the suit in the first instance gave a decree to the plaintiffs, but, on appeal, the learned Subordinate Judge ordered the dismissal of the plaintiffs suit as he held the alienation valid under the Hindu Woman's Right to Property (Extension to Agricultural Land in Orissa) Act Act v [5] of 1944, by which the provisions of the Hindu Woman's Right to Property Act, 1937, were extended to agricultural land with retrospective effect.

15. The question agitated in this appeal is as to whether the widow of a deceased coparcener has the right to alienate her husband's interest in the coparcenary estate. The Hindu Woman's Right to property Act-Act XVIII [18] of 1937-came into force on 14-4-37. The Act was intended to improve the status of Hindu widows in a joint family. Prior to the passing of the Act, a widow, in a joint family, had no interest in the coparcenary property of her husband except a right to maintenance. The Act gave her a right to claim the share that her husband would have had and this right can be enforced by partition. Section 3, Sub-section (2) provides as follows:

"When a Hindu governed by any school of Hindu law other than Dayabhag school or by customary law dies, 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."

Sub-section (3) of Schedule says :

"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."

16. As I read the two sub-sections, I come to the conclusion that Sub-section (2) limits the extent of the widow's estate to "the same interest as her husband had" while Sub-section (3), describes the character of that estate as a Hindu Woman's estate. The proviso to Sub-section (3), creates a right in the widow to reduce the interest of her husband to her separate possession by claiming partition as a male-owner. The expression "She have interest as he himself had occurring in Schedule , Sub-section (2), is not very happily worded and is capable of different interpretations. It is contended for the plaintiffs-appellants that the expression means that the interest that the widow acquires is of the same kind and is subject to the same limitations as it was while in the hands of her husband as coparcener. It is, therefore, argued that as the husband was

incapable of alienating the undivided interest in the coparcenary, his widow suffers from the same disability so long as the coparcenary has not been disrupted by a suit for partition. This is the only ground on which the alienation in favour of defendant 1, is challenged.

17. The Act does not effect a statutory severance of status though it creates, on the death of a coparcener a limited interest known as the Hindu Women's Estate in favour of his widow, The coparcenary remains intact, but the husband's interest does not pass to his coparceners by survivorship and devolves on his widow. The widow remains a member of the coparcenary though she is not a coparcener herself. She can thus be represented by the Karta of the family and the interest that she has acquired is liable to fluctuation as the interest of any other living coparcener is, unless she carves out her estate from the coparcenary by a partition. Prior to the passing of the Act, she had no such right which could be enforced in a Court of Law. The Act being remedial, it should receive a beneficial construction so that the purpose of the legislation may be carried out. If the appellants' contention were to be accepted, the result would be that, on the death of a coparcener, his widow should Invariably be driven to file a suit and She can claim no right in the coparcenary unless it is disrupted. This could hardly have been the result intended by the Legislature. On the other hand, by recognising the right of the widow to alienate for purposes for which a woman's estate can be sold even while the coparcenary is left intact, no disruption of the coparcenary would be necessary. According to the appellants' argument, the husband was incapable of alienation during his lifetime and there fore his widow would likewise be unable to alienate because Sub-section (2) of Schedule says that she has the same interest as her husband had. It would equally be arguable that the widow becomes a coparcener or the manager as her husband was the one or the other quoad the family property because she succeeds to the same "interest" of her husband. This reading of the section would render the next succeeding sub-section nugatory as the interest devolving on the widow shall be limited interest known as Hindu Woman's estate if she is deprived of her right to alienate during her lifetime which she would have if she were the widow of a sole surviving coparcener. Sub-sections (2) and (3) would, therefore, be inconsistent with each other and would stultify the object and intendment of the Act.

18. In my judgment, therefore, "the same interest" means that the interest of the husband shall devolve on his widow to the same extent, i.e., subject to the rights and obligations which that interest had at the time of her husband's death. If that interest had been encumbered or had been otherwise charged, the widow cannot ignore them. If there were debts of the family for the discharge of which the husband's interest was liable, they can be recovered from the husband's interest in the hands of the widow. "Same interest" is not synonymous with "same kind of interest" or "same status" it means "same right a share.

19. Having regard to the intendment and purview of the Act, the two sub-

sections can be reconciled only in the way that I have indicated above. I agree with the order proposed that this appeal should be dismissed. Re:-Second Appeal 33 of 1945.

Ray, C.J.

20. For the reasons, stated in my judgment in S. A. No. 218 of 1945, the appeal is dismissed. There shall be no order for costs of this Court.

Panigrahi, J.

21. This is a defendant's appeal, and the very same question that has been raised in another case before this Court viz., S. A. 218/1945, arises in this appeal also.

22. The plaintiff-respondent alleging to be the adopted son of one Krupasindhu filed the suit, out of which this appeal arises, for a declaration that the alienation made by his adoptive mother defendant 2, in favour of defendant 1, is invalid and is not binding upon him. The plaintiff obtained a decree in the trial Court and it was confirmed by the learned District Judge on appeal. We have held in S. A. No. 218 of 1945 that a widow can alienate the interest devolving upon her, on the death of her husband, and that such alienation will be valid as against the other member of the coparcenary. In this case, both the Courts have found in favour of the plaintiff's adoption. The plaintiff and defendant 2 therefore succeed to the property of Krupasindhu Pandu and take it in equal shares. The plaintiff shall accordingly be entitled to the joint possession of the suit properties with defendant 1, the alienee from the adoptive mother of the plaintiff.