

(2000) 11 KAR CK 0004
In the Karnataka High Court
Case No : Revision Petition No. 789 of 2000

Marigowda by L.Rs. and Others

APPELLANT

Vs

Ningamma by L.Rs. and Others

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Hindu Women Rights Act, 1933 — Section 8 (1)

Citation : (2001) 3 KCCR 1825

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : B.T. Parthasarathy and Somegowda, for the Appellant;
Bharamagouda, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—This petition is filed seeking review of judgment in Regular First Appeal No. 405 of 1995 delivered on 18.1.1999. The suit was one for partition, where in, the Plaintiff claimed 1/7th share in the suit schedule properties. The suit was dismissed by the Trial Court holding that the Plaintiff is entitled to partition, finding that the Plaintiff's husband died prior to 1933 and subsequently under Act 10 of 1933, she has got right of maintenance and no right of partition. The suit was dismissed though the other issues were rendered in her favour. The appeal was allowed on the ground that issue No. 5, wherein the Plaintiff's right to enforce partition was decided by the Trial Court earlier and was confirmed by the High Court in Civil Revision Petition No. 652 of 1991 and that finding has become final. Subsequently, it is open to the Defendant to question the very same right of partition.

2. In the review now filed, four grounds were raised. The first ground urged was in the absence of issue relating to the year of death, fresh trial should have been ordered framing crucial issue. The second ground was that once palapatti is held to be not a partition, Ningamma could claim her share only at a partition as held by 1976 Kar Page 30. This is what the decision in Hanumakka v. Dase Gowda,

says in para 10:

Section 4 of the Act overrides all laws in force in the territory of India immediately before the commencement of the Act in so far as such law is repugnant to any of the provisions of the Act in Mysore Act X of 1933, a widow of a deceased coparcener is not entitled to enforce her right to a share by instituting a suit for partition. Section 8 of Mysore Act X of 1933 provides that where partition takes place out of Court or through Court between coparceners, specified female heirs are entitled to be allotted a share. Section 8 provides for a contingency where the partition in a joint Hindu family takes place and there are widows and other female heirs in the family who are entitled to a share at such partition. This is not a case which falls u/s 8 of Mysore Act X of 1933. If the Plaintiffs husband had died before the Act came into force, then her right was only to claim a share at a partition of the joint family properties but she could not have enforced her right by bringing a suit for partition. As already stated, the Plaintiff is a Class I heir. Her husband Thimmegowda would have been entitled to a one half share in the joint family properties if a partition had taken place immediately before his death. The Plaintiff therefore, succeeded to the one half share of Thimme Gowda u/s 6 of the Act. By virtue of Section 14 of the Act, she becomes the absolute owner of the share of Thimme Gowda.

3. The third ground urged was that the dismissal of the Civil Revision Petition regarding the find on issue No. 5, cannot stand in the way of deciding the issue at the time of trial and finally, it is contended in the last ground that the dictum in 1942, Mysore Law Journal Reports, Page 377, (P.T. Chicknarasappa Alias Chinna Narasappa v. B. Govindappa and Anr.) to the following effect has not been considered.

The succession to a Hindu male who has died intestate before the Hindu Law Women's Rights Act, X of 1933 came into force is governed by Section 4 of that Act. The section is not intended to be prospective only in its application but affects the succession to the property of a Hindu who may have died even before the Act came into force. This interpretation is further confirmed by the provisions of Section 21 of the Act.

That as in the present case which had been brought by the Plaintiffs as nearest reversioners to set aside the alienations of a limited owner, it appeared that there was in existence a grandson of the maternal uncle of the deceased, the Plaintiffs who were related distantly to the deceased on paternal side could not maintain the action, as u/s 4, Sub-section (4), the former was a nearer heir than the Plaintiffs, though according to the Hindu Law as it stood at the time of the death in 1932 of the last male holder, it was the other way.

4. Apart from the other grounds, another decision reported in 1945 Mysore High Court reports, in page 88 (Rangamma and Two Ors. v. Neelappa and Three Ors.), to the following effect were relied upon:

Section 10(1) of the Hindu Law Women's Rights Act is not retrospective in effect,

and limited grants made prior to the introduction of the Act do not get enlarged into absolute estates automatically after the Act came into force.

5. The dictum reported in 1946, The Mysore High Court Reports, in page 317 (Shivaswamy v. Chikkanagamma and Anr.) to the effect also relied upon:

There is nothing in Section 8(1)(d) of the Hindu Law Women's Rights Act to show that its provisions were intended to be retro-operative; on the other hand, the words used in Clause (d) of Section 8(1) indicate a prospective application, for they contemplate a situation which can arise only after the Act became Law.

Where joint-family property had passed to a single coparcener before the Act came into force, the widow of a predeceased coparcener does not become entitled to a share by reason of Clause (d) of Section 8(1).

A widow under Clause (d) of the section has no doubt been enable to demand a partition in her own right but this does not and cannot make her coparcener.

6. The provisions of Section 8(1) reads as follows:

At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters or his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them.

On these grounds, the review sought for.

7. I heard the Counsel in detail. To entertain the review, there are limitations fixed and the limitations are spelt out by Supreme Court in more than one cases, namely (a) Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , (b) K.A. Mohammed Ali Vs. C.N. Prasannan, , (c) AIR 2000 NOC 24 (D. Thimmappa Sheika and Anr. v. State of Karnataka and Ors.). There is no dispute that in Civil Revision Petition No. 652 of 1991, filed by the Defendant itself, the finding about the right of the Plaintiff to ask for partition has been uphold by this Court and that finding has become final. I do not think that such a finding can be reopened. All the cases as cited above were cases before the Hindu Succession Act, came into force. In the case of Hanumakka, reported in 1976 Kar 30, the contingency contemplated was the partition in joint family take place. It is not a case of the Defendant that no partition has taken place. Infact, their very case is that the partition did not take place and palapatti was made. In such contingency, the right of the Plaintiff to ask for partition automatically is born. The contention contra that once palapatti is not accepted, right also goes is not acceptable nor sustainable in the eye of law.

8. In this view holding that there is no merit, the review petition is dismissed.