

(1977) 01 MAD CK 0029

In the Madras High Court

Case No : Second Appeal No. 1036 of 1974

N. Ramaswamy Naicker and Others

APPELLANT

Vs

V.G. Ramaswamy Naicker and Others

RESPONDENT

Date of Decision : 12-01-1977

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)
Transfer of Property Act, 1882 — Section 19

Citation : (1978) ILR (Mad) 83

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Advocate : M. Shakir Ali, for the Appellant; S. Gopalaratnam and P.N. Venugopalan, for the Respondent

Final Decision : Dismissed

Judgement

Varadarajan, J.—The Plaintiffs who succeeded in the trial Court, but lost in the lower appellate Court are the Appellants They are the son, wife and daughter of one Narayanaswamy Naicker who died in 1969. They filed the suit for a declaration that the maintenance deed exhibit A-1, dated 17th February, 1905 executed by Narayanaswamy Naicker in favour of one Sayammal the widow of his brother Venkitaswamy Naicker was not valid and binding on them, for a declaration that the subsequent sale deed exhibit A-3, dated 31st August, 1959 executed by Sayammal in favour of the first Respondent first Defendant in respect of the suit properties is not valid and binding on them and for recovery of possession thereof with past profits at Rs. 500 per annum and future mesne profits at Rs. 250 per annum.

2. The suit properties have been described in Schedule A and B. The description of the property in the A Schedule is as per the document exhibit A-1, while the description in Schedule B is as per the re-survey and the sale deed exhibit A-3. The suit properties are 6.11 acres, made up of 3.49 acres in Survey No. 159/2 and 2.62 acres in Survey No. 1641 of Vadapalli village, Palladam Taluk. The

second Respondent second Defendant said to be a trespasser is alleged to be in possession of the suit properties after the death of Sayammal on 17th October, 1967. The third Respondent-third Defendant is said to be a mortgagee of the properties originally belonged to one Gangn Naicker and subsequently to his two sons, Venkitaswamy Naicker and Narayanaswamy Naicker who inherited the same prior to 1905. Venkitaswamy Naicker died prior to 1905 leaving behind his wife Sayammal and his daughter Krishnammal. After the death of Venkitaswamy Naicker his brother Narayanaswamy Naicker executed the maintenance deed exhibit A-1 in favour of Sayammal and Krishnammal conferring maintenance right in the properties in favour of Sayammal and an absolute estate on Krishnammal who was then minor. On the same day, Sayammal executed the counter document exhibit A-2, acknowledging the document exhibit A-1 and the receipt of possession of the properties in pursuance thereof. Krishnammal died unmarried in or about 1917 or 1919. The case of the Appellants was that under exhibit A-1 Sayammal had only a right to enjoy the properties for life and it did not get enlarged as per the provisions of Section 14(1) of the Hindu Succession Act, 1956 (Act XXX of 1956) here in after referred to as the Act. and she had therefore no right to execute the sale deed exhibit A-3 in favour of the first Respondent. It was further contended that Narayanaswamy Naicker had a son Subba Naicker and therefore, he had no right to execute the document exhibit A-1 in respect of the joint family properties and that he had been made to execute exhibit A-1 by under Influence of Sayammal's sister and her husband. The defence was that Krishnammal had a vested right in the properties and on her death in 1917 or 1919 Sayammal inherited the properties as her heir and even if Sayammal had a right to maintenance, her right got enlarged under the Hindu Succession, Act.

3. Both the Courts below found that it has not been proved that Narayanaswamy Naicker had a son Subba Naicker and that there was an undue influence on Narayanaswamy Naicker for the execution of exhibit A-1. The trial Court found that Sayammal had merely a right to enjoy the properties for her maintenance under exhibit A-1, that her daughter Krishnammal had not acquired any absolute Interest in the properties as she predeceased her mother and, therefore, Section 14(2) of the Act applied and not Section 14(1) and therefore exhibit A-3 executed by Sayammal was not valid and binding on the Appellants. On these findings the trial Court decreed the suit as prayed for, namely, for declaration and possession with past mesne profits at Rs. 500 per annum and future mesne profits at Rs. 250 per annum. But on appeal it was found that Krishnammal had a vested right in the properties and that on her death, her mother Sayammal had become the absolute owner of the properties and therefore the sale deed exhibit A-3 was valid and binding on the Appellants.

4. The concurrent findings of the Courts below that the Appellants have not proved that Narayanaswamy Naicker had a son Subba Naicker and was therefore, not competent to execute exhibit A-1 in respect of the joint family properties and that there was any undue influence on Narayanaswamy Naicker to

execute exhibit A-I by Sayammal's sister and her husband, are all questions of fact and they cannot be gone into in this second appeal.

5. The questions for consideration are whether Sayammal had only a limited right in the properties and it got enlarged by the provisions of Section 14(1) of the Hindu Succession Act, 1956 and whether Krishnammal had a vested right in the properties and on her death, Sayammal became entitled to the absolute right in the properties and whether the same deed exhibit A-3 is binding on the Appellants.

6. Sayammal's husband, Venkitaswamy Naicker had died prior to 1905 and on the date of the document exhibit A-1, it is not disputed that she had a right to be maintained from the income from the joint family properties. It is seen from exhibit A-1 that Venkitaswamy Naicker and Narayanaswamy Naicker were undivided and that ever after the death of Venkitaswamy Naicker, Sayammal continued to live with her husband's brother Narayanaswamy Naicker. The relevant recitals in the document exhibit A-1 are these:

7. The learned Counsel for the Appellants submits that Krishnammal did not get a vested right in the properties. But in respect of the contention that Sayammal's right will not get enlarged u/s 14(1) of the Act, he submitted that the right conferred on Krishnammal by the document would amount to a restriction imposed on the maintenance right conferred on Sayammal in respect of the properties, Section 14 of the Hindu Succession Act, 1956 run thus:

14 Any property possessed by a female Hindu, 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.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance, or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase, or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift will or other instrument or the decree, order or award prescribed a restricted estate in such property.

Learned Counsel for the first Respondent stresses on the words or In lieu of maintenance in the explanation to Sub-section (i) of Section 14, and submits that since Sayammal had a right to be maintained from the income from the joint family properties of her deceased husband and his brother, and the suit properties had been given to be enjoyed by her in lieu of maintenance, it would be property

within the meaning of Section 14(1) of the Act and the right would get enlarged by that clause in Section 14. In this connection he submitted that the observations of a Bench of this Court in *Hussain Uduman Vs. Venkatachala Mudaliar and Others*, would amount to reading into the explanation to Section 14(1) of the Act certain words which are not there and that there is no warrant to hold that Section 14(1) would apply only to properties in the possession of a woman in respect of which she had a pre-existing right. The Bench has observed as follows:

A perusal of the section makes it clear that Section 14(1) governs all kinds of estate "acquired" by a female Hindu before or after the commencement of the Act, whether by way of inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance, or by gift from any person or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever or by way of stridhana immediately before the commencement of this Act. On the other hand, sub-Section (2) of Section 14, which is in the nature of an exception to sub-Section (1) provides that nothing contained in sub-section shall apply to any property acquired by a female Hindu by way of gift or under a decree or order of a civil court or under an award, where the terms of the gift, will or other instrument or the decree or order or award "prescribe" a restricted estate in such property. In other words the intention of the Legislature was to remove the disability imposed on women by Hindu law on the ground of sex, but not to interfere with the sanctity of contracts and grants, whereby only a restrictive estate had been deliberately conferred upon them. Sub-Section (1) removes the restriction imposed by Hindu Law, on the ground of sex upon the estate held by a woman and enlarges it into an absolute estate. On the other hand, Sub-section (2) leaves intact the restriction on the estate of a woman, not imposed by law on account of her sex, but prescribed by the terms of a contract or grant. Some difficulty may arise in the application of sub-Section (2) of Section 14 to the facts of a given case. The document, by instrument, decree or award may, in certain cases, of its own force, create a restricted estate in property and may in certain other cases only re-state the restricted estate which the female Hindu possessed even prior to the date of the instrument, decree or award. Before applying Sub-section (2), the proper question to ask is, does the instrument or decree "prescribe" a restricted estate in the property, or does it merely acknowledge and recognise (and not prescribe) a pre-existing estate upon which the Hindu law had imposed a restriction, because the holder of the estate was a woman.

Though it cannot be stated that there is no substance in the submission of the learned Counsel for the first Respondent, It is unnecessary to go into that question in this second appeal in the view that I have taken regarding the right which Krishnammal had under the document exhibit A-1.

8. Learned Counsel for the Appellants invited my attention to the decision of the Supreme Court in *Sarupuri Narayanamma and Others Vs. Kadiyala*

Venkatasubbaiah and Others, . In support of his contention that Krishnammal should be held to have had no vested right in the suit properties. In that case, one Nagaiah, a member of a joint Hindu family consisting of himself and his brothers died leaving behind him his widow Raghavamma and daughter Vengatasubbamma. The brothers of Nagaiah executed a gift deed on 29th April, 1930 in favour of the widow and her daughter in the following words:

Raghavamma of you is our sister-in-law and Venkatasubbamma our elder brother daughter and we have been living jointly eve during the lifetime of cur brother and up till now. So, we had as per your wish and that of ours given in marriage Venkatasubbamma of you to our nephew Madanapalli Pitchaiah son Nagaiah Subsequent thereto, you being unwilling to remain joint with us represented to us that you would remain separate from us, to which we had agreed and so on the advice given by our relations to which both of us have agreed, we have executed this deed in your favour settling that the seri land of the extent of K.4-14 described in the Schedule hereunder should be taken by you towards your maintenance and after the death of Raghavamma by Venkatasubbamma towards "Pasupu Kumkuma" and that you should have nothing to do with our joint family debts. It is therefore, settled that you should take possession of the said property this day itself and enjoy only the income therefrom and that on the death of the said Raghavamma of you, the said property should pass to Venkatasubbamma. Further, it is settled that Venkatasubbamma of you and her children (Santhathivaru) should be in enjoyment thereof with absolute powers of gift, transfer and sale etc, ft is settled that Raghavamma of you should not in any manner come any separate maintenance, etc. to be given to her during the rest of her life time by us. So you, may subject to the aforesaid terms, the possession of the aforesaid property and be m enjoyment thereof, you, yourselves shall pay the sarkar kist etc. thereon and get the said land entered, in your name in the Government accounts. In respect of hereof, we or our heirs shall not raise and dispute whatsoever either with you or your descendants. This deed is executed with the arrangement the incase no female or male issue is born to the said Venkatasubbamma, the said Schedule mentioned property should on her death, pass to us or our descendants, and no to the heirs of the said Venkatasubbamma.

The Supreme Court observed as follows:

This is not a case of an immediate conferment of absolute tittle on Venkatasubbamma subject to a right of maintenance for Raghavamma. It is a case of right of maintenance for both maturing into an absolute estate in favour of Venkatasubbamma on Raghavamma's death If Venkatasubbamma had survived Raghavamma she would have got the properties absolutely and the question might have arisen whether the subsequent provision in the document is one repugnant to the earlier one and therefore void or is only a defeasance clause which came into effect on Venkatasubbamma dying childless. As it was. Venkatasubbamma died before she became the absolute owner.

The Supreme Court held that Venkatasubbamma did not get a vested interest in the properties. On the their hand the learned Counsel for the first Respondent elieve on the decisious in Akkaraju Visvanadham and Others Vs. Duthalur Anjaneyulu and Another, and Pappammal (died) and Others Vs. K. Kuppuswamy, and submitted that having regard to Section 19 of the Transfer of Property Act, Krishnammal must be held to have had a vested right in the properties and that Sayammal had inherited that right on the death of Krishnammal in 1917 or 1919 and therefore she was entitled to convey the properties to the first Respondent under exhibit A-3, The principle laid down in both these decisions is that if an absolute estate is devised to B after the life time of A, it is not a contingent interest that B gets, but a vested right that he gets nad it does not matter if B predeceases A. Learned Counsel for the first Respondent further submits that the said decision of the Supreme Court in Sarupuri Narayanamma and Others Vs. Kadiyala Venkatasubbaiah and Others, could not be made applicable to the facts of the present case having regard to the fact that no reference has been made to Section 19 of the Transfer of Property Act in that decision. The learned Judges themselves have observed in paragraph 3 of the judgment in that decision that it is a principle settled beyond dispute that each document ha s to be interpreted on the words of that document itself and the other documents interpreted in earlier decisions cannot provide a binding precedent in interpreting a document. There is no reference to Section 19 in that decision.

9. Section 19 of the Transfer of Property Act, 1882 reads thus:

Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation : An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is giver, or reserved to some other person, of whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

Sayammal had been given the right to enjoy the properties for her life and Krishnammal had been given an absolute interest in the properties thereafter. The death of Sayammal would put an end to the right to enjoy the properties for her maintenance which is a certain event and therefore it will be clear from a reading of Section 19 of the Transfer of Property Act that the right which Krishnammal got under the document is a vested interest. Consequently, though Krishnammal had predeceased her mother, Sayammal would inherit that right as

the heir of the daughter. It is not possible to agree with the learned Counsel for the Appellants that Section 19 of the Transfer of Property Act would not apply and that a contrary intention has been expressed in the document, namely, that Krishnammal would get the properties only if she survives Sayammal. No such contrary intention could be inferred from the terms of the document, for, if Narayanaswamy Naicker had intended that the properties should revert back to the family in the event of Krishnammal predeceasing Sayammal, he would have made a specific provision for that purpose in the document itself. It is significant in this connection to note that Narayanaswamy Naicker himself has attested the document exhibit A-3 and that he had not taken any steps to see that the alienation was not binding on him beyond the life-time of Sayammal even though he had lived for nearly two years thereafter, and had died only in 1969. Under these circumstances, I agree with the learned Subordinate Judge that Krishnammal had a vested interest in the suit properties and that Sayammal had become the absolute owner of the properties as the heir of Krishnammal in 1917 or 1919 and that she was therefore competent to alienate the properties in favour of the first Respondent under exhibit A-3 and that it is not open to the Appellants to contend that exhibits A-1 and A-3 are not valid and binding on them.

10. In the result, the second appeal fails and the same is dismissed with the costs of the first Respondent. No leave.