(1970) 01 KL CK 0008

In the High Court Of Kerala

Case No : A.S. No. 475 of 1964

Parvathi Ammal APPELLANT

Vs

T.R.S. Ramanatha Iyer and Brothers and others RESPONDENT

Date of Decision : 30-01-1970

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 31, 4(1)(b)

Citation : (1970) KLJ 493

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, for the Appellant; T.S. Venkiteswara Iyer, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Krishnamoorthy Iyer, J.—The appeal is filed by the 8th defendant against the judgment and decree of the Subordinate Judge of Palghat decreeing the plaintiff''s claim for recovery of his 3/4th share in the plaint items after partition by metes and bounds. The joint family of defendants 1 to 3 is the owner of 1/4th share in the plaint items while the joint family of defendants 4 to 6 and 8 had 3/4th share therein.

2. Defendants 4 to 6 and 8 are governed by Hindu Mitakshara Law. Jayagopala Chettiar who died in December 1941 is the husband of the 8th defendant and the father of defendants 4 to 6. When Jayagopala Chettiar died the Hindu Women''s Rights to Property Act (XVIII of 1937 amended by XI of 1938) which introduced important changes in the law of succession among the Hindus following Hindu Law was in force and governed the parties. It is agreed that the 8th defendant obtained an interest in the joint family property as per the terms of Sections 3 (2) and 3(3) of the Act.

3. Defendants 4 to 6 for the purpose of their joint family trade had on 7-7-1955 executed an equitable mortgage in favour of the plaintiff in respect of the

interest of their joint family in the plaint schedule items and had borrowed a sum of Rs. 15000/-. The plaintiff instituted O.S.58 of 1959 for the recovery of the said amount and obtained a decree on 30-6-1960 for the sale of the hypotheca. Ex. A1 is the copy of the judgment. Defendants 4 to 5 were defendants 1 to 3 in Ex. A1 suit. The 3rd defendant was represented by the 8th defendant as guardian as he was of unsound mind. In execution of the decree the plaintiff purchased in court auction the 3/4th share of the joint family of defendants 4 to 6 and 8 in the plaint items, and obtained symbolical delivery. Ex. A2 is the sale certificate and Ex. A3 is the delivery account The claim of the plaintiff for partition is based on his court purchase of the rights of the joint family of defendants 4 to 6 and 8 in the plaint items.

4. The main plea of the 8th defendant is that her interest in the plaint schedule items is not affected by the equitable mortgage and by the court sale evidenced by Ex. A2 and that the plaintiff is not entitled to a decree in respect of her 3/16 share in the plaint items. The plea of the 8th defendant was overruled by the trial Judge and his finding is challenged in the appeal.

5. The appellant''s counsel raised two contentions before us. The first was that since by Section 14 of the Hindu Succession Act, 1956 (Act XXX of 1956) the 8th defendant had become the absolute owner of her share in the plaint items, she became divided from the joint family on the date of the Act and thereafter the 4th defendant is not competent to represent her in Ex. A1 suit and the decree and the court sale therein are not binding on her interest in the plaint properties. The second contention was that defendants 4 to 6 and 8 became divided in view of the agreement dated 17-16-1952 and the partition deed of 17-11-1957 and the 4th defendant was therefore incompetent to bind her interest in the plaint items after 1952.

6. We shall take up the first ground. This point depends on the effect of Section 14 of the Hindu Succession Act 1956. Under the Mitakshara Law prior to the Hindu Women''s Rights to Property Act, 1937 on the death of a coparcener his interest in the coparcenary property devolved on the remaining coparceners by survivorship and his widow is entitled only to maintenance out of the coparcenary property. Act 18 of 1937 has in cases governed by Section 3 (2) thereof invested the widow with the same interest which her husband had in the coparcenary property and also the right to claim partition and separate possession of her interest. This is made clear by sub-section (3) of Section 3 of the Act XVIII of 1937. Sub-sections (2) and (3) of Section 3 of the Hindu Women''s Rights to Property Act (XVIII of 1937) which it is agreed would apply to the case before us read as follows:

Section 3(2). When a Hindu governed by any school of Hindu law other than the Dayabhaga 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 (2), have in the property the same interest as he himself had.

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

7. There can no longer be any doubt regarding the scope of Section 3 (2) and (3) of Act XVIII of 1937. The principle underlying these provisions was stated thus by Rajamannar C. J. and Venkatarama Ayyer J., in Subba Rao v. Krishna Prasadam AIR 1954 Mad 227:

To sum up, S.3(2) of the Act does not operate as severance of interest of the deceased coparcener; the right which a widow gets under that section is not as heir of her deceased husband; it is a statutory right based on the recognition of the principle that a widow is the surviving half of her deceased husband; that the incidents of that right are those specified in the Act; that such right is one personal to the widow and comes to an end on her death, that the estate which the widow taken under S.3(2) does not, on her death, devolve on her husband''s heirs; and that the right of the coparceners to take by survivership is suspended as against the widow of a deceased coparcener and such right reasserts itself on her death.

And again at page 229, their Lordships discussed the scope of Section 3(3) thus:

It would be erroneous to regard the expression ''woman''s estate'' in S. 3(3) as enacting by implication that on the death of the widow the estate devolves on the heirs of her husband. That would in substance be substituting the Dayabhaga rule of succession in the place of the Mitakshara law of survivorship and for that, as already stated, there is no foundation in the statute. The true purpose of S.3(3) is not to confer rights on persons other than the widow, but to limit her rights over the estate to which she becomes entitled under 3.3 (2). The substance of the matter is that she cannot alienate the properties except for purposes recognised by Hindu law as proper and binding. Incidentally, it may be observed that if the widow takes as heir under S.3(2), there is no need to enact a provisions like S. 3 (3) because as heir the widow will take only a woman''s estate. On the other hand, if the widow takes as the surviving half of her husband it may be open to argument whether she is not entitled to alienate the property absolutely in the same manner as her husband and the need for such a provision as it contained in S. 3 (3) becomes obvious.

8. A full bench of the Madras High Court in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, followed the decision in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, and observed at page 579 thus:

The Act therefore has conferred a new right on the widow of a deceased coparcener in modification of the preexisting law. Section 3(2) of the Act does not bring about a severance of interest of the deceased coparcener. Certainly the widow is not raised to the status of a coparcener though she continued to be a member of the joint Hindu family as she was before the Act. The joint family would continue as before subject only to her statutory right. The Hindu conception that a widow is the surviving half of the deceased husband was invoked and a fiction was introduced, namely, that she continued the legal persons of the husband till partition.

From the standpoint of the other male members of the joint family the right to survivorship was suspended. The legal effect of the fiction was that the right of the other members of the joint family would be worked out on the basis that the husband died on the date when the widow passed away.

9. Mudholkar, J. in Potti Lakshmi Perumallu Vs. Potti Krishnavenamma, after holding that the above decisions have laid down the law correctly observed:

The various decisions to which we have adverted rest on the view that the interest which the law has conferred upon the widow is a new kind of interest though in character it is what is commonly known as the Hindu widow''s estate. This interest is in substitution of her right under the pre-existing Hindu law to claim maintenance. The decisions also recognise that though the widow does not, by virtue of the interest given to her by the new law become a coparcener she being entitled to claim partition of the joint family property is in the same position in which her deceased husband would have been in the matter of exercise of that right. That is to say, according to those decisions her interest is a fluctuating one and is liable to increase or decrease according as there are deaths in or additions to the members of the family or according as there are accretions to or diminutions of the property. In our opinion these decisions lay down the law correctly. To hold, as contended for by Mr. Desai and as would appear from the two decisions upon which reliance was placed by him before us-- AIR 1944 243 (Nagpur) and Siveshwar Prasad Narain Singh and Others Vs. Lata Harnarain Mal Bahal, , would mean that whenever a coparcener in a Hindu joint family dies leaving a widow a disruption takes place in the family. For, unless a disruption is deemed to take place, it would not be possible for the widow''s share to be crystallised. The argument of Mr. Desai, however, is that the words in the Act ''his widow shall, subject to the provisions of sub-s.(3) have in the property the same interest as he himself had'' can only mean the interest which the deceased coparcener had at the moment of his death hand the words ''shall be the limited interest known as a Hindu woman''s estate'' show that the nature of her interest was to be the same as already recognised by the Hindu law. The legislature did not, he says, intend to create a new kind of interest nor to make her a coparcener. Undoubtedly she does not become a coparcener, though her interest in the family property is to be the same as that of her deceased husband except that in extent it is to be that of a Hindu widow. (Now, of course, it has been enlarged by S.14 of the Hindus Succession Act, 1956). But a coparcener has no defined interest in the joint family property and the right which he has is to claim for partition.. The quantum of his interest would be determinable with reference to the date on which such member unequivocally declares his intention to separate and thus put an end to the coparcenary. It cannot even be suggested that the event of the death of a coparcener is not tantamount to an unequivocal declaration by him to separate from the family. According to the theory underlying the Hindu law the widow of a deceased Hindu is his surviving half and therefore as long as she is alive he must be deemed to continue to exist in her person. This surviving half had under the Hindu law texts no right to claim a partition of the property of the family to which her husband belonged But the Act of 1937 has conferred that right upon her. When the Act says that she will have the same right as her husband had it clearly means that she would be entitled to be allotted the same share as her husband would have been entitled to had he lived on the date on which she claimed partition.

10. The above decisions establish clearly that when a widow of a Hindu acquires an interest in the Hindu Joint family property in accordance with Section 3 (2) of the Hindu Women''s Rights to Property Act it does not operate as a severance of the interest of her husband from the other coparceners, she herself does not on that account become a member of the coparcenary, the acquiring of interest by her is not on account of inheritance or by survivorship but because of statutory substitution owing to Section 3 (2) of the Hindu Women''s Rights to Property Act, and there is no dissolution of the coparcenary because of the death of her husband who was a coparcener so as to carve out a defined interest in favour of the widow in the coparcenary property. The interest acquired by her u/s 3(2) is always subject to fluctuation depending upon the number of deaths and births in Joint Hindu family till a demand for partition on the part of the widow. When a widow dies before demanding partition the right of the remaining coparceners to take by survivorship the interest of her deceased husband in the joint family property which was remaining in a state of suspense during her lifetime reasserts itself on her death. But when she claims partition the interest in respect of which she had a women''s estate would devolve on her husband''s heirs. The interest secured to a Hindu widow by Section 3 (2) of the Hindu Women''s Rights to Property Act is an undefined interest in the property referred to therein. During the currency of the Hindu Women''s Rights to Property Act the vesting u/s 3 (2) takes place on the death of the coparcener. Though until the widow claims partition the extent of her interest is undefined it cannot be contended on the wording of Section 3 (2) that the widow gets only an imperfect or an inchoate right.

11. Until partition the widow is a member of the joint family having an interest in the joint family property created by Section 3(2) of the Hindu Women''s Rights to property Act 1937 in lieu of her pre-existing right of maintenance and the manager of the Hindu joint family is therefore competent to represent her in transactions entered into on behalf of the joint family and bind her interest in the joint family property in the same way as he can bind the interests of the coparceners therein. That this is the position until the date of the passing of the Hindu Succession Act, 1956 cannot be doubted.

12. Then the only question is how far Section 14 of the Act has taken away that

right. The Hindu Women''s Rights to Property Act was one of the enactments repealed by Section 31 of the Hindu Succession Act. Section 31 was repealed by Act 58 of 1960. It was not contended before us that the rights vested on a widow u/s 3 (2) of Act 18 of 1937 would be impaired in the absence of any demand for partition on account of the Hindu Succession Act, 1956. The Section reads thus:

14. (1) 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 prescribe a restricted estate in such property.

13. The only plea before us was that Section 14 would operate to bring about a divided status as far as the widow is concerned from the Hindu joint family on the date of the Hindu Succession Act. We have no hesitation to overrule this contention.

14. It is no doubt true that because of the words "whether acquired before or after the commencement of this Act" Section 14 is retrospective in character in that it governs the property acquired by a Hindu female even before the commencement of the Act. The quality of such estate has been also enlarged and converted into her absolute property. We do not find anything in Section 14 of the Hindu Succession Act to hold that the interest taken by a widow u/s 3(2) of the Hindu Women''s Rights to Property Act has become defined or been made definite by giving the widow a divided status separating her from the other members of the joint family from the commencement of the Act. What is done by Section 14 of the Hindu Succession Act is only to bring about a change in the quality of her estate and not to bring about a change in her status in the joint family or in the quantum of her interest which depends on the demand to be made by her for partition. The effect of the said provision is only to terminate the limitations which were regarded under the general principles of Hindu Law as inherent in her estate. The Hindu Women''s Rights to Property Act, 1937 gave the Hindu widow the same interest in the property which her husband had at the time of his death. This refers to the quantum of the estate which a widow could have taken u/s 3 (2) of the Act. The quality of the estate to be taken u/s 3(2) is

indicated by Section 3(3) of the Act. The principle to be followed for interpreting Section 14 of the Hindu Succession Act has been laid down by their Lordships of the Supreme Court in Mangal Singh v. Rattno AIR 1967 S.C. 1786 where it was observed that the word ''possessed'' would include also cases where a widow on account of her ownership in the property is capable of taking possession. In view of the decision the 8th defendant will be entitled to take absolutely the share of the property which she got u/s 3 (2) of the Hindu Women''s Rights to Property Act, 1937. Thus the effect of Section 14 of the Hindu Succession Act read with Section 4 (1)(b) thereof is only to take away the conception of a women''s estate created by Section 3(3) of the Hindu Women''s Rights to Property Act. The representative capacity of the 4th defendant to encumber her interest in the joint family property for binding family necessity or to represent her in litigations connected with the joint family property is not in any way effected by anything contained in the Hindu Succession Act. We therefore overrule the contention of the 8th defendant''s counsel on the effect of Section 14 of the Hindu Succession Act, 1956.

15. The second contention of the 8th defendant was based on the agreement of 17-10-1952 and the partition of 7-11-1957. There was no such plea in the written statement nor was such a plea raised even at the time of the argument in the lower court. This is a question of fact requiring investigation. We therefore disallow the appellant from raising the plea at this stage.

16. There was a faint suggestion in the course of the argument by the 8th defendant''s counsel that in view of the contents of Ex. A2 and Ex. A1 there was no attempt to obtain a decree in O. S. 58 of 1959 binding on the interest of the 8th defendant in the coparcenary property and purchase the same in execution of the decree. As was pointed out by their Lordships of the Judicial Committee in Daulat Ram v. Mehr Chand ILR 15 Cal. 70 this is a matter of intention to be ascertained from the pleadings in O.S. 58 of 1959. It cannot be disputed that the decree in O.S. 58 of 1959 is for the sale of the share of the property belonging to the joint family of defendants 4 to 6 and 8 and that the 4th defendant was impleaded as the manager of the joint family. The burden is therefore upon the 8th defendant to prove that she was not represented in spite of the impleading of the 4th defendant as the manager of the joint family and that her interest in the coparcenary property was intended to be excluded. Here again we do not find any pleading. The appeal is therefore devoid of any substance and we dismiss the same. But we make no order as to costs.

