(1971) 03 AHC CK 0031

In the Allahabad High Court

Case No : Second Appeal No''s. 232 and 233 of 1965

Rajendra Nath Shukla APPELLANT

Vs

Shiva Nath Shukla and Others RESPONDENT

Date of Decision : 04-03-1971

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)
Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : AIR 1971 All 448

Hon'ble Judges : O.P. Trivedi, J

Bench : Single Bench

Advocate : Sheo Gopal, for the Appellant; S.B. Bajpai, for the Respondent

Final Decision : Allowed

Judgement

O.P. Trivedi, J.—These are two connected appeals and have been filed by Rajendra Nath Shukla in the following circumstances:--

2. Shiva Nath Shukla respondent had filed a suit (No. 333 of 1959) in the Court of Munsif South, Lucknow for cancellation of a gift deed which was executed by Smt. Gomti Devi, widow of Hardeo Prasad, dated 28th September, 1968 in favour of Rajendra Nath in respect of one-half share in the disputed house on the ground that under the Hindu Law Smt. Gomti Devi inherited only the interest of her husband and under the Hindu Law a coparcener could not alienate his share in the joint family property by gift and the disputed property being joint Hindu property Smt, Gomti Devi also could not make a valid gift of that property. The contesting defendant denied that Smt. Gomti Devi was a coparcener and maintained that she had acquired an absolute right of ownership in the property u/s 14 of the Hindu Succession Act, 1956 in respect of property inherited by her from her deceased husband. The trial Court held that the gift deed was invalid and decreed the suit for cancellation. Meanwhile, Rajendra Nath had filed a suit (No. 447 of 1959) before the same Munsif for partition of the joint family property claiming one-half share in the disputed house on the basis of the gift

deed executed by Smt. Gomti Devi in his favour and some other property. In that case the defence was that Rajendra Nath Shukla possessed only 1/21st share in the house because Smt. Gomti Devi could not make a valid gift of coparcenary property. On the basis of the findings in suit No. 333 of 1959 the Munsif held that Rajendra Nath Shukla had 5/9th share in the house and awarded a decree passed by the Munsif in suit No. 333 of 1959. An appeal was filed by Rajendra Nath Shukla. In appeal the Munsif''s finding that Smt. Gomti Devi had a right to execute a valid gift deed in respect of her share was upheld, but for other reasons which it is no longer relevant to state the case was remanded to the lower court for findings on some issues which had not been framed. On remand the two suits were consolidated and tried together by the Munsif and the suit for partition was decreed for 5/9th share only in the disputed house. Both parties went up in appeal before the Civil Judge and this time it was heard by the Additional Civil Judge who held that Smt. Gomti Devi was not legally competent to execute the gift deed and a decree for cancellation of the same was awarded. The decree in the partition suit was modified in the light of the above finding. It is in these circumstances that the two connected appeals come before this Court.

3. Arguments were addressed before me only on one point. It was urged for the appellants that Smt. Gomti Devi was competent to execute a valid gift deed as she had become absolute owner of the property u/s 14(1) of the Hindu Succession Act, 1956. The contention of learned counsel for the respondents is that this was coparcenary property at the time of death of Hardeo Prasad, husband of Smt. Gomti Devi. Hardeo Prasad under the Mitakshara Law could not make a valid gift of coparcenary property and, therefore, it was submitted that his widow Smt. Gomti Devi who succeeded to the property u/s 6 of the Hindu Succession Act could not acquire better right or interest in the property than was possessed by her deceased husband. The contention raised on behalf of the respondents is, to my mind, devoid of any substance. Admittedly this was joint family property of Hardeo Prasad and admittedly he had coparcenary interest in the property. It is further admitted that Hardeo Prasad died in 1953 before the coming into force of the Hindu Succession Act, 1956 (hereinafter called the Act) with the result that the provisions'' of Section 6 of the Act did not apply and the interest of Hardeo Prasad on his death did not devolve on his widow u/s 6 of the Act. The interest of Hardeo Prasad, on the other hand, devolved on his widow Smt. Gomti Devi u/s 3 (2) of the Hindu Women''s Rights to Property Act. (Act XVIII of 1937) Section 3 (2) provides:--

"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 (3), have in the property the same interest as he himself had."

Sub-section (3) of Section 3 of the same Act provides:--

"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."

Section 14(1) of the Hindu Succession Act, 1956 provides :--

"Any property possessed by a female Hindu, whether acquired before or after 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 device, 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 stridhan immediately before the commencement of this Act."

4. It is, therefore, clear that Smt. Gomti Devi became full and absolute owner of the interest which was acquired by her in the disputed property u/s 3 (2) of the Hindu Women''s Rights to Property Act on the death of her husband. The argument that the interest which she possessed at the time of making the gift was limited interest is entirely untenable; firstly because Section 3 of the Hindu Women''s Rights to Property Act stood repealed by Section 4 of the Hindu ''Succession Act with the result that the provision contained in Sub-section (3) of Section 3 of the Hindu Women''s Rights to Property Act according to which the interest acquired u/s 3 was to be limited interest no longer held the field when, the Hindu Succession Act was enacted; and secondly because in view of the clear language of Section'' 14 of the Act itself there is no scope for the argument that Smt. Gomti Devi had anything short of full and absolute ownership in the property, the ''wordings of Section 14 being "shall be held by her as full owner thereof and not as a limited owner." The explanation to Section 14(1) further makes it clear that the right of full ownership shall be conferred on the female in respect of property acquired by her "in any other manner whatsoever". The wordings "in any other manner whatsoever" are of such wide amplitude that they necessarily cover property acquired u/s 3 (2) of the Hindu Women''s Rights to Property Act.

5. In the case of Sukhram and Another Vs. Gauri Shankar and Another, Shah, J. speaking for the Court held that the wordings of Section 14 of the Hindu Succession Act are express and explicit; thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner. Dealing with the question whether Kishan Devi became entitled on the death of her husband to alienate the property his Lordship observed :--

"The interest to which Kishan Devi became entitled on the death of her husband u/s 3 (2) of the Hindu Women''s Rights to Property Act. 1937, in the property of the joint family was indisputably her ''property within the meaning of Section 14 of Act 30 of 1956, and when she became "full owner" of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition."

Before the Supreme Court in that case an argument was advanced that the property which devolved upon the female on the death of her husband was joint family property and under the Hindu law be- cause the husband did not possess unlimited power of alienation of the property, the widow who had acquired interest could not possess better interest In the same property. This argument also was rejected by the Supreme Court with the following observations:--

"A male member of a Hindu family governed by the Benaras School of Hindu Law is undoubtedly subject to restrictions qua alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of the Hindu Succession Act is not subject to any such restrictions. That is however not a ground for importing limitations which the Parliament has not chosen to impose."

The same view was reiterated by the Supreme Court in the cases of Nirmal Chand v. Vidya Wanti. , Punithavalli Ammal Vs. Minor Ramalingam and Another, and Seth Badri Prasad Vs. Srimati Kanso Devi,

6. It was submitted by the learned counsel that these cases before the Supreme Court related to alienations by sale and not by gift and it was pointed out that under the Hindu law whereas there was a total prohibition against a gift of coparcenary property by a male coparcener, an alienation of such a property by a coparcener by sale could be made upon the consent of the other coparceners. This is a difference without a distinction. As held by the Supreme Court, a female Hindu acquires absolute ownership u/s 14(1) of Act XXX of 1956, the same being uninhibited and unrestricted in any manner. That being so, Smt. Gomti Devi possessed full power to make a transfer of the property by gift. The fallacy in the argument put out by the respondents lies in the false assumption that at the time of making the gift Smt. Gomti Devi was a coparcener and then in drawing an analogy between her rights and rights possessed by her husband during his lifetime. The status of Smt. Gomti Devi was not that of a coparcener at all qua the disputed property. Indeed, under the Mitakshara Law no female can be a coparcener although a female can be a member of a joint Hindu family. A Hindu coparcener is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property (see Section 217 of Mulla''s Principles of Hindu Law.) Being a female therefore, Smt. Gomti Devi was not a coparcener and the prohibition against alienation by gift which applied under Mitakshara Law to a coparcener did not apply to her. On the other hand having become full and absolute owner of the property u/s 14(1) of the Hindu Succession Act, 1956, she possessed unrestricted right to transfer the property by gifts.

7. For the above reasons I allow Second Civil Appeal No. 232 of 1965, set aside

the decree passed by the lower appellate court and restore the decree passed by the Munsif South, Lucknow with Costs throughout.

8. Second Civil Appeal No. 233 of 1965 is also allowed, the judgment and decree of the lower appellate Court are set aside and the decree of the Munsif South, Lucknow for partition of appellant''s 5/9th share in the property is restored with costs throughout.

9. This judgment shall govern both the connected Second Civil Appeals Nos. 232 of 1965 and 233 of 1965.

