

(1957) 07 MAD CK 0038
In the Madras High Court

Ramalingam Pillai and Others

APPELLANT

Vs

Ramalakshmi Ammal and Others

RESPONDENT

Date of Decision : 15-07-1957

Acts Referred:

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

Citation : AIR 1958 Mad 228 : (1958) ILR (Mad) 7 : (1957) 70 LW 837 : (1957) 2 MLJ 382

Judgement

1. The only substantial question in this appeal against the decree and judgment of the learned Subordinate Judge of Madurai in O.S. No. 9 of 1951 is whether a Hindu widow who becomes entitled to her husband's share in joint family property under the Hindu Women's Rights to Property Act can challenge an alienation made by the other member of the family who was a coparcener with her husband. The facts necessary for the disposal of this appeal may be briefly stated. The plaintiff first respondent is the widow of one Subramania Pillai who died in August, 1942. He was survived by, besides his widow, the plaintiff, his undivided son, the first defendant, and two unmarried daughters, defendants 2 and 3. On 13th August, 1950, the first defendant alienated item 1 of Schedule A of the plaint, a family house, to the fourth defendant for an alleged consideration, of Rs. 10,000. In 1951 the widow filed a suit for partition and separate possession of her half share in the property set out in Schedules A and B to the plaint including this item which had been sold to the fourth defendant. She alleged that the said alienation was not binding on her and, therefore, she was entitled to her half share in that item as well. The first and fourth defendants contended that the alienation in favour of the fourth defendant was valid and supported by necessity and therefore binding on the plaintiff. But their case was rejected by the learned trial Judge. There was an alternative plea by the contesting defendants that the widow, the plaintiff, was not in any event entitled to challenge the alienation because she was not a coparcener and her only right under the Hindu Women's Rights to Property Act was to take whatever properties remained in the family and she was not entitled to question an alienation made by the sole surviving coparcener, that is, the first defendant in

this case. This contention was overruled by the learned trial Judge. He also held that the fourth defendant was not entitled to any equities because of his conduct. In the result he passed a decree in favour of the plaintiff for partition and separate possession of a half share in plaintiff schedule properties including item I of Schedule A. He also passed a decree for maintenance fixing it on the income of the agricultural land set out in Schedule C. We are not concerned with this part of the decree in appeal. This appeal by defendants 1 and 4 mainly concerns item 1 of Schedule A of the plaintiff which had been alienated by the first defendant in favour of the fourth defendant.

2. Appellant's learned Counsel contended before us that the plaintiff-respondent as a widow entitled to rights under the Hindu Women's Rights to Property Act could not question the validity or binding nature of the alienation made by the first defendant who was the sole surviving coparcener on the death of her husband in 1942. He was unable, however, to draw our attention to any decision of this Court or of any other Court which would support his contention. He relied on certain observations in *Rathnasabapathi v. Samswathi* (1953) 2 M.L.J. 459, decided by Mack and Krishna -swami Nayudu, JJ. The facts in that case were briefly as follows. One K died on 27th February, 1947, possessed of considerable immovable properties consisting of agricultural lands and houses and also moveables. The suit was filed by the widow for partition and separate possession of a third share in the properties of her husband. She attacked a deed of gift of a part of the joint family property on the ground that it was beyond the powers of the manager of a Hindu family. She also alleged that the deed of gift was a nominal transaction brought into existence for ulterior purposes and it was never acted upon and the properties covered by the deed continued to be treated as joint family properties. The learned Judges of this Court accepted the finding of the learned trial Judge that the gift was a nominal transaction. The widow was therefore entitled to her share in the properties covered by the gift deed. The learned Judges, however, went on to deal with an alternative contention which had been urged before them that in any event the gift deed was invalid because it was a gift of joint family property. The learned Judges were inclined to hold that it was not open to the widow to challenge the gift on this ground because she was not a coparcener, who alone had the right to challenge an alienation of joint family property on the ground that it was not supported by legal necessity. The one important fact which must be mentioned and by reason of which that case can be distinguished from the case before us, is that the deed of gift attacked by the widow in that case was a deed executed by her husband himself. Apart from any other legal considerations it will be highly doubtful if the widow who becomes entitled to her husband's share in the joint family properties can attack any alienation by her husband when her husband himself could not have attacked the alienation so far as at any rate his share was concerned. But it must be conceded that there are observations in the judgment of Krishna-swami Nayudu, J., which would equally apply to a case like that before us where the alienation has been made by the surviving coparcener after the death of the other

coparcener and whose widow is claiming a partition in exercise of the right conferred on her by the Hindu Women's Rights to Property Act. The learned Judge was inclined to hold that it is only a coparcener who had the right to challenge an alienation made by another member of the coparcenary, and as the widow who became entitled to her husband's share by virtue of the special provisions of the Hindu Women's Rights to Property Act was not in law a coparcener, she had no right to interdict an alienation or to challenge it. The learned Judge said

The right to interdict an alienation is one peculiar to a member of the coparcenary, which he gets by reason of his having acquired an interest in a property immediately on his conception or birth and which right could be exercised by him alone and not by the other members of the family, his wife or daughter. The Act only conferred on the widow a right to claim partition and separate possession of whatever her husband was entitled to in the joint family property on the date of the partition claimed by the widow, instead of her right to claim a sum of money as and for maintenance out of the estate....We are inclined to agree with the view taken by Bhagwati and Dixit, JJ. in *Nagappa Narayan v. Mukumbe Kom Venkataraman* I.L.R. (1951) Bom. 442, that under the Act she does not get either by survivorship or by inheritance, but it is a special statutory right which she gets solely by reason of her being the widow of her husband. She would not be entitled to question any alienation made by the manager even though her husband would be entitled to such a right. Interest, therefore, in Section 3(2) of the Act does not include a right to interdict an alienation, or any other right, which her husband possessed and which could only be exercised by a coparcener and not by any member of the joint family.

3. There are later passages in his judgment which suggest that the learned Judge was thinking of alienations made by the husband of the widow himself because he says:

If instead of gift, her husband had alienated most of the family properties in favour of strangers for a consideration...though such an alienation would not be upheld if challenged by a coparcener if in such a case she claims a partition under the Act, she could only ask for a share in the joint family property as it then stands, the extent of which must have been considerably reduced by reason of the improvident alienation made by her husband or by the karta of the family.

4. Of course the learned Judge was dealing with a case in which the alienation was made by the husband himself. With great respect to the learned Judge and we may say that the other learned Judge did not deal with this point—we are unable to agree with his general observations. u/s 3(2) of the Act when a Hindu governed by the Mitakshara school of Hindu 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. In the present case, when Subramania Pillai died in 1942, the plaintiff-respondent as his widow became entitled to his half share in the joint

family properties, including item 1 of Schedule A. No doubt she did not choose to file a suit for partition till 1951 but that does not take away the right to which she become entitled on her husband's death. Now it appears to be reasonable as well as legal that the right to which she became entitled on her husband's death cannot in any way be adversely affected except on justifiable grounds. It is true that the first defendant became the manager of the family on the death of his father, that is, the plaintiff's husband, as manager he could have alienated any part of the joint family property for legal necessity and for purposes binding on the family. The widow would then be bound by such an alienation. If, on the other hand, the alienation was such that it cannot be supported by necessity or benefit, then it is obvious that the widow who is entitled in her husband's right to a half share in the property would not be bound by any alienation made by the manager of the family even though he may be the sole surviving coparcener. We find that this point has been considered by other Courts which have all taken the same view as we are inclined to take. In *Shivappa Laxman v. Xellawa* I.L.R. (1953) Bom. 958, a coparcenary consisted of S and his son L. L died in 1945 leaving behind a widow L W.. In 1946 S made a gift to his daughter of the major portion of the lands belonging to the joint family. After the death of S.L.W adopted P.L.W. and JP filed a suit challenging the gift on the ground that S was not competent to make a valid gift of the joint family property. It was held that when the gift was made by S.L.W had a share in the properties under the Hindu Women's Rights to Property Act, 1937, and therefore S, although he was the sole surviving coparcener, was not entitled to make the gift. It was contended before the learned Judges, Gajendra-gadkar and Vyas, JJ., that the only effect of Sub-sections (2) and (3) of Section 3 of the Hindu Women's Rights to Property Act is in substance to give the widow a right to demand a partition and that until this right was actually exercised by the Hindu widow, the sole surviving coparcener could deal with the property in any manner he liked. That contention was repelled. Gajendragadkar, J., who-delivered the judgment of the Bench said:

The position of a Hindu widow's interest in the family properties is, in our opinion, somewhat analogous to the undivided right of the coparcener at least so far as the manager's powers of management and alienation are concerned; so that if the said interest of the Hindu widow is sought to be defeated by an unjustified alienation, she would be entitled to challenge it just in the same manner as a coparcener would. It may be that the effect of this Act is not to cause the severance of status, automatically on the death of a coparcener, and that the family may continue to be joint; in that case-

the manager would still be entitled to exercise his ordinary powers under Hindu Law. But it is clear that it is beyond the competence of a manager to make a gift of Immovable properties belonging to the family.

5. The decision in *Ramsaran Sao Vs. Bhagwat Shukul*, , takes the same view and in *Mahadu Kashiba Varnekar Vs. Gajarabai Shankar Varnekar*, , the decision in *Shivappa Laxman v. Tellawa* I.L.R. 1953 Bom. 958., was followed. In *Udai Narain*

Rai v. Dharamraj Rai ILR (1954) All. 204, a suit was brought on a mortgage executed by the manager of a joint Hindu family. One of the parties was the widow of a deceased coparcener who was entitled to an interest under the Hindu Women's Rights to Property Act and the question was whether she could put the plaintiff to proof that the mortgage was binding on the joint family property. The learned Judges held that she was so entitled. It is sufficient to cite the following passage in the Judgment of Malik, G.J.

Under the Hindu Women's Rights to Property Act, Smt. Nuna Juer has been given the same interest in the property as her husband had. It is not necessary to define the extent of that interest but there seems to be no good reason why she should not have the right to plead that the mortgage is not binding as it was not executed for legal necessity, that is to say, why she should not have the same right as her husband had of challenging the mortgage?

6. In that case the mortgage had been executed before the death of the widow's husband. In the case before us a fortiori she would have such a right as the alienation was made long after her husband's death. In Mst. Gujarati v. Mst. Ram Dei (1955) A.L.J. 364, the inequitable results which would follow by taking the other view are well pointed out. We entirely agree with the following observations of the learned Judges in that case:

Even if it be conceded, as it must be, that the Act does not make the widow a Hindu Law coparcener and does not invest her directly with the rights of a coparcener, the Act does confer upon her the same interest as her husband had subject to the limitation that the interest, so far as she is concerned, is the limited interest known as a Hindu woman's estate and that she has a right to claim partition as a male owner....After she has obtained partition, there could be no doubt that she, as the holder of a Hindu woman's estate, would have full rights to protect that estate. Must the right of protecting that estate be denied to her before she seeks partition? If so, her limited interest itself would be at the mercy of the coparceners....If the rights under the Hindu Law which appertain to the surviving coparceners are such that they could destroy the limited estate itself of the widow by exercising those rights, then those rights must be curtailed in view of Section 2 of the Act. In this view the surviving coparceners would have no authority to do acts which would destroy the limited estate of a Hindu widow. On the other hand, the Hindu widow would be entitled to such rights as were necessary to protect the limited Hindu widow's estate which the statute creates for her.

7. We agree with the learned trial Judge that both in law and in common-sense the contention urged on behalf of defendants 1 and 4 that the plaintiff cannot challenge the alienation made by the first defendant in favour of the fourth defendant cannot be accepted.

8. The only other point which needs mention is that the fourth defendant may be declared to be entitled to an equity, namely, that if it is possible to allot item 1 of

Schedule A to the first defendant's share, then the alienation in favour of the fourth defendant may not be disturbed. The fourth defendant is, of course, not entitled to have this unless the Court is satisfied that no injustice or hardship would enure to the plaintiff. This is a matter which could be gone into in final decree proceedings and all that we can say is that if without causing any prejudice to the plaintiff's rights item 1 of Schedule A could be allotted to the first defendant and to the fourth defendant as his alienee, then it might be done.

9. There is no substance in the other points raised in this appeal. The appeal fails and is dismissed with costs of the plaintiff-respondent.