

(2001) 06 MAD CK 0120

In the Madras High Court

Case No : S.A. No. 1215 of 1987 and C.M.P. No. 12636 of 1987

Rukmani Ammal

APPELLANT

Vs

Annamalai Pillai and 3 others

RESPONDENT

Date of Decision : 19-06-2001

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1), 14(2), 19(1), 21, 22(2)

Citation : (2001) 3 MLJ 231

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. V. Raghavachari, for the Appellant; Mr. S.V. Jayaraman, for Mr. N. Maninarayanan, for the Respondent

Final Decision : Allowed

Judgement

1. The unsuccessful plaintiff filed the above second appeal. The plaintiff filed a suit in O.S. No.1657 of 1980 on the file of the District Munsif, Vridhachalam for declaration of his title to the suit property and for injunction and in alternative for possession of the suit property.

2. According to the plaintiff, the suit property was given by Sivalingam in favour of his widowed daughter Thangammal for her maintenance. She executed a Will under Ex.A3 dated 29.11.75 in favour of the plaintiff. Thangammal died. According to the plaintiff, the said Sivalingam had executed a settlement deed under Ex.A1, dated 23.2.1927 in favour of the said Thangammal, his widowed daughter for her maintenance. On that basis, the plaintiff has come forward with a plea that Thangammal's right is enlarged and thereby the plaintiff is entitled to absolute right in the property.

3. The defendants contested the suit contending inter-alia that Thangammal cannot claim any absolute right on the basis of the settlement deed and so the plaintiff also cannot claim any right on the basis of Ex.A3 Will executed by Thangammal.

4. The Trial Court, without accepting the case of the plaintiff, dismissed the suit. So the plaintiff filed an appeal in A.S. No.6 of 1985 on the file of the Sub court, Vridhachalam. Even the Lower Appellate Court has concurred with the findings of the Trial Court and dismissed the appeal. So the appellant has filed the above second appeal.

5. At the time of admission, the following substantial questions of law have been framed:-

1. Whether the Lower Appellate Court was right in holding that Section 14(2) of the Hindu Succession Act would apply to the settlement under Ex.A17?

2. Whether the Lower Appellate Court was right, in affirming the dismissal of the suits without recording any finding on the truth and genuineness of Ex.A3?"

6. Since the facts are not in dispute, I am inclined to decide only the legal issue involved in this case whether Thangammal's right given under Ex.A1 settlement deed dated 2.3.1927 would be enlarged so as to enable her to execute a Will under Ex.A3, dated 29.11.1975 in favour of the plaintiff. The Courts below rejected the case of the plaintiff only on the ground that Thangammal is the daughter and her father Sivalingam has no obligation to maintain her and so the claim of the plaintiff that Thangammal's right would be enlarged in view of Section 14(1) of the Hindu Succession Act cannot be accepted.

7. Before dealing with the said issue, it is beneficial to deal with the recital in Ex.A.1 itself. Ex.A1 is the settlement deed executed by Sivalingam in favour of Tangammal for her maintenance. In the said document it is stated as follows:-

8. From the above said document, the following facts are clear:-

1. Thangammal's husband died.

2. She has been maintained from and out of joint family property.

3. To safeguard her interest to maintain herself after the death of her father Sivalingam, the said document has been executed settling the said property mentioned in the document.

9. On the basis of the above said facts, now we have to decide whether the plaintiff can take advantage of Section 14(1) of the Hindu Succession Act to claim right in the suit property. As rightly submitted by the learned counsel appearing for the appellant, the father is having a legal obligation to support his destitute daughter and if any property is given while discharging such obligation, Section 14(1) of the Hindu Succession Act would apply to such cases.

10. A Division Bench of the Andhra Pradesh High Court in a judgment reported in Kota Varaprasada Rao and another Vs. Kota China Venkaiah and others, , while dealing with the similar issue, held as follows:-

"16. The next important case on the subject is that of the Madras High Court in Gudimetla Venkatarazu Vs. Bollozu Kotayya, . In this view of Ranede, J., in Bai

Mangal's case, ILR (1899) 23 Bom 291 (supra) was dissented from by holding that there is a legal obligation on the father and his family to support a destitute daughter (though she had been married away) if she could not get sufficient provision from her deceased husband's family for her maintenance. The learned Judge, Sadasiva Aiyar, J., also noted that according to Bhattacharya under the Hindu Law Texts widowed daughters are entitled to maintenance and

"justice requires that their right should be recognised".

Referring to the argument that "by marriage she becomes member of another family and becomes so to say, "dead" to her own family, the learned Judge held, is merely carrying legal fictions to absurd lengths. The learned Judge illustrated this absurdity thus:

"A wife is half her husband's body but you cannot on that ground give doubt rations to the husband for his meals and give none to the wife; nor does the daughter lose her consanguineness, blood relationship to her father and her right of inheritance to him and other similar rights, simply because she becomes attached by Pinda, Gotra and Sootake to her husband's family by marriage."

Adverting to the question, namely has not a widowed destitute daughter whose husband's family is unable to give her anything has she not a legal claim on her father for her maintenance atleast when she lives with him as a member of his family. Has she not, at least, a social and moral claim against her father which ripens into a legal right against his estate after his death just as in the case of a daughter-in-law who has only a social and moral claim against her father-in-law if he has no ancestral property and whose moral claim becomes a legal claim after his death/"

the learned Judge, Sadasiva Aiyar, J., observed:

"The authorities are all in favour of the existence of such a right in the destitute married daughter except one doubtful decision in Bai Mangal v. Bai Rukhmani, ILR 1899 23 Bom 291, J.C. Ghose says (Hindu Law pages 295 and 296) "The law of Narada is clear, that when the husband's family is in destitute circumstances, the father's family has to maintain a female. It is difficult to see how it is only a moral duty When the father's family marry a girl to a poor man.... how can it be said that when she becomes helpless on account of the indigence of the husband's family the father's family the father's family can turn her out without a maintenance?..... According to the strict letter of the Hindu Law and also according to the nature of the Constitution of Hindu Society, it is clear legal duty on the part of the father's family to maintain a woman under the circumstances noted above."

11. Even the Apex Court has held in Balwant Kaur and Another Vs. Chanan Singh and Others, as follows:-

"19. Under the proviso to Section 19(1) the words used are "(a) from the estate of her husband or her father or mother" and they mean that she has a right

apart from the right she has against the estate of her husband - a personal right against her father or-mother during their respective lives. The words "the estate of before the words "her husband" are not to be read into the latter part of the clause as estate of her father or mother. What the proviso does here is to create (i) a right against the estate of her husband and also (ii) an independent and personal right against the father during his lifetime (or against the mother) if the daughter is unable to maintain herself out of her earnings or other property etc. The right against the father during his lifetime can be enforced against the property he is holding. The legislature has deliberately not used the Words "estate of her father" in the proviso (a) to Sec. 19(1). That right of "the widowed daughter is covered u/s 21(vi) read with Section 22(2). We have already referred to that right of maintenance against the estate of her father in Sec. 22(2) read with Sec. 21(vi). If indeed we read (he words "estate of before the words "father" in Section 19(1)(a), then Sec. 22(2) read with Sec. 21(vi) would become utiose. That is why we say that the proviso (a) to Sec. 19(1) creates a personal right in favour of the widowed daughter against her father during his lifetime. Any property given in lieu thereof, during his, lifetime or to go to her after" the father s lifetime would certainly fall u/s 14(1) of the Hindu Succession Act, 1956, that being in lieu of pre-existing right during the father's lifetime.

20. On facts, it must be held that the widowed daughter had a right against her father, during the latter's lifetime, as she was a destitute and not taken care of by her husband or his estate, It is in lieu thereof, he gave her 1/3rd of his property.

21. This provision clearly indicates that the widowed daughter-in-law is destitute and has no earnings of her own or other property and if she has nothing to fall back upon for maintenance on the estate of her husband or father or-mother or from the estate of her son or daughter, if any, then she can fall back upon the estate of her father-in-law. This provision also indicates that in case of a widowed daughter-in-law of the family is she has no income of her own or no estate of her husband to fall back upon for maintenance, then she can legitimately claim maintenance from her father or mother. On the facts of the present case, therefore, it has to be held that appellant No.1, who was a destitute widowed daughter of the testator and who was staying with him and was being maintained by him in his lifetime, had nothing to fall back upon so far as her deceased husband's estate was concerned and she had no estate of her own. Consequently, as per Sec. 19(1)(a) she could claim maintenance from the estate of her father even during her father's lifetime. This was a pre-existing right of the widowed daughter qua testator's estate in his own lifetime and this right which was tried to be crystallised in the Will in her favour and his demise fell squarely within the provision of Sec. 22(2) of the Maintenance Act. Thus, on a conjoint operation of Sec. 19(1)(a) and 22(2) read with Sec. 21(vi), there is no escape from the conclusion that appellant No.1 had a pre-existing right of being maintained from the estate of the testator during the testator's lifetime and also had got a subsisting right of maintenance from the said estate even after the

testator's death when the estate would pass in favour of his testamentary heirs and the same situation would have occurred even if the testator had died intestate and if appellant No.1 could have become a Class heir. As we have already seen earlier, if the testator had died intestate, instead of 1/3rd interest she would have got full interest, in the suit land and that interest which was curtailed upto 1/3rd in lieu of her claim for maintenance against the estate of the testator pursuant to the Will in question. It, therefore, cannot be said that the provision in the Will in her favour was not in lieu of pre-existing right and was conferred only for the first time under the Will so to attract Sec. 14(2) of the Succession Act as, with respect, wrongly assumed by the High Court."

12. From the above said judgments, it is clear that the destitute daughter is entitled to get support from her father and the father is having legal obligation to maintain the destitute daughter. From the recitals of Ex.A1, it is clear that Sivalingam while discharging such obligation settled the properties for maintenance of her daughter.

13. Learned Senior counsel appearing for the respondents has submitted that though there cannot be any dispute regarding the above said legal proposition in the present case, no evidence is available to show that Thangammal was not able to maintain herself so as to enable her father to settle the property. As rightly pointed out by the learned counsel appearing for the appellant, in Ex.A1 itself, it is clearly stated that the said Thangammal, after the death of her husband, was maintained from and out of family income and to safeguard her interest after his death, he had executed the said document.

14. So, I am not able to accept the submission of the learned Senior counsel that there is no evidence to show that Thangammal was not able to maintain herself and so the document was executed. When the recital in the document is very clear, the question of search for oral evidence will not arise.

15. Unfortunately, the Courts below have not properly appreciated the legal position involved in this case. Hence the Judgments and decrees of the Courts below are set aside and the plaintiff is entitled for a decree for declaration and for injunction. Consequently the second appeal is allowed. The connected C.M.P. is closed. No costs.