

(1965) 08 MAD CK 0016

In the Madras High Court

Case No : Second Appeal No. 369 of 1962

Santhanam Kachapalaya Gurukkal

APPELLANT

Vs

V. Subramania Gurukkal

RESPONDENT

Date of Decision : 13-08-1965

Acts Referred:

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

Citation : (1967) ILR (Mad) 68

Hon'ble Judges : Veerasawami, J

Bench : Single Bench

Advocate : P.C. Parthasarathi Ayyangar and P. Parthasarathy, for the Appellant;
K.S. Sankara Ayyar, for the Respondent

Final Decision : Dismissed

Judgement

Veerasawami, J.—The scope of Sub-section (2) of Section 14 of the Hindu Succession Act, 1956, is in question in this second appeal by

the 2nd Defendant. He and the Plaintiff are the sons of the 1st Defendant whose pre-deceased brother's widow was one Sivakami. There is no

dispute that they were all members of a joint Hindu family. Sivakami instituted Original Suit No. 576 of 1917, in the Court of the District Munsif at

Kancheepuram for maintenance against the first Defendant. This suit ended in a compromise decree, dated August 30, 1917. The effect of it was a

total extent of nine acres and sixty-six cents in Sirukaveripakkam village were given to her for her life, but subject to the condition that she had no

power of alienation in any manner in respect of them. The second Defendant would appear to have been living with Sivakami Ammal and looking

after her properties on her behalf. On June 3, 1957, she settled upon him the entire properties covered by the compromise decree. The first

Defendant sued the 2nd Defendant in Original Suit No. 146 of 1958, on the file of the same Munsif's Court questioning the validity of the

settlement deed and claiming possession of the lands. His case was that the properties were given to Sivakami only for her lifetime without any

power of alienation and after her death the properties reverted to him, so that the settlement deed in favour of the second Defendant was not valid

and binding. Sivakami died on June 23, 1957. The suit of the first Defendant was settled by a compromise to the effect that the first Defendant was

given two acres nine cents out of the total extent of nine acres sixty-six cents, leaving the second Defendant to retain the remaining properties. The

Plaintiff brought the suit out of which this second appeal arises for partition and separate possession of a third share in the entire nine acres sixty-six

cents. The suit was resisted by the second Defendant on various grounds of which what is material for the present purpose is that Sivakami Ammal

became the absolute owner of the suit properties under the provisions of the Hindu Succession Act. The trial Court reached the conclusion that the

settlement deed was not binding on the Plaintiff and granted a decree in his favour for three acres twenty-two cents out of seven acres fifty-seven

cents in the hands of the second Defendant. The second Defendant preferred an appeal but unsuccessfully. The Plaintiff seems to have filed cross

objections claiming that he would be entitled to half share in the entirety of the properties, but they were dismissed. We are no longer concerned

with them. The lower appellate Court dealing with the ground based on Section 14(1) stated that Sivakami got the property under the compromise

decree which restricted her rights and, therefore, Sub-section (1) of Section 14 was not applicable and Sivakami could not, therefore, get absolute

title to the properties.

2. Mr. P.C. Parthasarathy Iyengar, learned Counsel for the Appellant in this Court, contends that the view of the lower appellate Court as to the

effect of Sub-section (2) of Section 14 is not correct. He says that where a decree of Court is merely declaratory in effect of a Hindu woman's

pre-existing right, the Sub-section will have no application. He contends that the right of Sivakami to maintenance was out of coparcenary property

and should, therefore, be regarded in a sense as a right in the coparcenary property itself under the Hindu Law. The right attaches against every bit

of coparcenary property and when a portion of the coparcenary property is given, her right is crystallised and the property so acquired in lieu of

maintenance is under the Hindu Law a limited estate. The compromise decree which gave Sivakami the properties already mentioned subject to

the condition aforesaid did no more than declare this position. In that way, learned Counsel contends the decree conferred no new right or a fresh

title on Sivakami which did not pre-exist in a certain form. On the other hand, Mr. K.S. Sankara Ayyar, learned Counsel for the Respondent, who

is the Plaintiff, argues that it is not correct to say that a right to maintenance is a right to or in property so that when, by a decree or a compromise

decree, property is given to a Hindu woman in lieu of maintenance, it cannot be said that such a decree is merely declaratory of a pre-existing right.

Counsel submits that the property in lieu of maintenance accrued to Sivakami only by virtue of the terms of the compromise decree which

restricted her estate therein and that the extent of interest which accrued to or was acquired by Sivakami under the compromise decree should be

ascertained only from the terms of the decree, without reference to any pre-conceived notion of any disability attaching to a Hindu woman in

relation to the quantum of estate she is entitled under her personal law to have or any presumption in respect thereto.

3. Section 14 is in two parts, the first of which enlarges the limited estate possessed by a female Hindu into an absolute one. The limited ownership

of a female Hindu, a limitation springing from her status as a Hindu female and the personal law governing her, is enlarged into full ownership. The

object of this limb of the section is to remove the disability which was or might be assumed to have attached to a Hindu female under her personal

law to own property absolutely and thereby to abolish the inequality based on sex and the personal law of the female Hindu. For this result to

accure to a female Hindu, she must possess property which might have been acquired before or after the commencement of the Act. There is an

explanation to the first part which says that property for purposes of Sub-section (1) would include both movable and immovable property

acquired by a female Hindu by certain means, or in lieu of maintenance or arrears of maintenance, among other things. It is clear from the

explanation that from whatever source a female Hindu acquired property, her limited estate therein would be enlarged into an absolute estate. We

have then the second limb which reads:

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.

4. This Sub-section is in the nature of an exception or proviso to Sub-section (1), depending on the source of acquisition and the source

prescribing a restriction on the quantum of estate. The Sub-section singles out acquisition of property by certain means including a decree of Court

and says that, if the terms of the decree prescribe a restricted estate in such property, Sub-section (1) will have no application thereto. Having

regard to the stated means of acquisition in Sub-section (2), it appears the intention of the Legislature was apparently to leave inviolate decree or

order of a civil Court or terms of a contract or gift, Will or other instrument, which lay a restriction upon the extent of the estate acquired by such

means. At first sight Sub-section (2) does not seem to exclude from its purview even cases of acquisition pursuant to a pre-existing right. One view

may be that having regard to the explanation to Sub-section (1), the scope of Sub-section (2) may not depend on pre-existing rights. The Sub-

section may apply if its terms are satisfied, namely, that acquisition of property was by means of a decree of Court, including a compromise decree

and the terms of the decree restricting the extent of the property acquired thereunder. Property as explained in the explanation to Section 14(1), as

already stated, includes property acquired by a female Hindu in lieu of maintenance or arrears of maintenance. It is true the opening words of the

explanation show that it is an explanation to Sub-section (1). But I do not see why property in Sub-section (2) should be read in a manner different

from that in Sub-section (1) read with the explanation thereto, for Sub-section (2) after all is an explanation to Sub-section (1). It does not stand to

reason that Sub-section (2) meant to deal with a property different in nature than that in Sub-section (1), the scope of which it is supposed to limit.

If, therefore, property in Sub-section (2) is read as exclusive of property acquired by a female Hindu in lieu of maintenance or arrears of

maintenance, it would follow that the applicability of Sub-section (2) will not

necessarily depend upon whether a decree or other kind of instrument mentioned therein is merely declaratory of a pre-existing right.

5. But there is a current of judicial opinion that Sub-section (2) has no application to declaratory decrees, decrees which merely declare pre-

existing rights. This view seems to be based on the scope of the word acquired in Sub-section (2). The word is understood in the sense of

acquisition of a new right. In no case cited before me except one has the bearing of the explanation to Sub-section (1) on the scope of Sub-section

(2) has been considered. *Gadam Reddayya Vs. Varapula Venkataraju and Another*, has been strongly relied on by learned Counsel for the

Appellant as directly supporting his contention that where property is given to a female Hindu in lieu of maintenance under a compromise decree

the decree is merely declaratory of her preexisting right and to such a case Sub-section (2) of Section 14 will be inapplicable. That was a case of

an adoptive mother in her suit against her adopted son getting a compromise decree which provided that she might enjoy the land given to her

during her lifetime, but she could not contract any debt on the security thereof. In her suit she challenged the factum and validity of the adoption and

claimed that she was as a widow entitled to succeed to her husband's estate. Subsequently, after the death of the widow, the question arose

whether the estate she had obtained under the compromise decree became enlarged into an absolute one under the provisions of the Hindu

Succession Act. The learned Judges of the Andhra High Court held that Sub-section (2) had no application to that case and by reason of Sub-

section (1) the estate in the hands of the widow obtained under the compromise became enlarged. The basis for this view is to be found in the

following observations:

A perusal of the document shows that it was Clause (7) that made the estate conferred on her limited to her life. So, this document evidences a

family settlement, in that the differences between the parties were resolved and the pre-existing rights of each other, recognised. As such it is not a

new right that was conferred upon the widow under this document. The restriction referred to above merely set out the legal effect on her estate as

maintenance holder. This was another way of stating that the widow could have a life estate in the property and that she is to enjoy these properties

in lieu of her maintenance.... In these circumstances, the instant case falls outside the scope of Sub-section (2) and is governed by Sub-section (1)

of Section 14.

6. The Court felt that Sub-section (2) came into effect only in case a new right was created with certain restrictions and conditions and could have

no application to cases of recognition of existing rights.

7. This Court also in Sampath Kumari v. Lakshmi Ammal ILR (1962) Mad. 832 and Rangaswami v. Chinnammal ILR (1964) 1 Mad. 570 was

inclined to the view that where a decree of Court was declaratory of a pre-existing right, Sub-section (2) of Section 14 would have no application

thereto. Both the division Benches in these cases proceeded upon the view that for Sub-section (2) to apply, there must be acquisition of a new

right or title to property. In the first of these cases, Ganapatia Pillai and Venkataraman JJ were of opinion that the word acquired in Sub-section

(2) meant acquired for the first time. In Rangaswami v. Chinnammal ILR (1964) 1 Mad. 570 another division Bench consisting of the then learned

Chief Justice and Ramamurti J., said that the word acquired in the Sub-section meant gain oneself for one's self and, in that sense, they were

inclined to think that a decree which is merely declaratory of a pre-existing right, is not within the purview of Sub-section (2). Jagadisan J., in

Guruswami Naicker and Anr. v. Guruswamy Naicker and Ors. Second Appeal No 470 of 1981 after referring to Sampath kumari v. Lakshmi

Ammal ILR (1962) Mad. 832 and Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari Dasi and Others, was of a similar view. The learned

Judge held that the word acquired in Sub-section (2) indicated that it had a restricted meaning and that it was not intended to have a meaning wider

than the ordinary-plain meaning of the expression. He adopted the view of the Calcutta High Court that a property could be said to be acquired

when, prior to the acquisition, the person acquiring it had no interest in the property. Though on my understanding of the Sub-section (1) I am

disposed to take the view that there is no justification to exclude from the scope of Sub-section (2) decrees, which are but declaratory of pre-

existing rights, in view of this current of judicial opinion, out of deference thereto, I do not propose to differ from it in the circumstances of this

case, for, I think it will be unnecessary to do so on the view I take as to what

precisely is meant by a pre-existing right in the context of this case.

8. I do not find it possible to accept the contention for the Appellant that where a female Hindu is given property in lieu of maintenance, it is merely

declaratory of her pre-existing right. Right to maintenance, as it seems to me, is an abstract right which is in the nature of *spes successionis*. In no

sense can such a right be described as a right to or in property. It is true a Hindu female as Sivakami having regard to her status in the joint family

would be entitled to a right to maintenance and that right could be enforced against the coparcenary property. But that does not mean that because

she is in a position to enforce her right against every bit of the joint property, the right itself is one to or in property. No authority has been cited

before me in support of the proposition that a right to maintenance by itself is property or becomes a right to or in property, when in lieu of it, the

property is given to a maintenance-holder. No doubt in *Gadam Reddayya Vs. Varapula Venkataraju and Another*, observations are to be found,

which may appear to support the contention of learned Counsel for the Appellant. But that case as well as the cases decided by this Court, to

which reference has already been made, related to the rights of a widow which are well recognised. She is entitled to succeed to her husband's

estate and get what is known as a woman's estate or a widow's estate. Where the effect of a decree of Court is merely to recognise or declare a

widow's estate, it is obvious that the decree did nothing more than state what she is already entitled to under the personal law and conferred

nothing new. But that is not the case, in my view, where one is concerned with a bare right to maintenance, which does not carry with it any estate

or interest in the property unlike in the case of a widow's estate. The pre-existing right of Sivakami in this case was not to the property, which she

obtained under the compromise decree, but only to a right to maintenance. The two rights, therefore, are not indetical. It seems to me, there fore,

that when, in lieu of maintenance, Sivakami obtained some of the properties of the joint family, " it was a new acquisition by her, though in

consideration of her right to maintenance.

9. There is also another way of looking at the matter. I cannot subscribe to the view that where, in lieu of maintenance, property is given to a Hindu

female, it must be assumed that it is only for her lifetime or that the property

carried with it only a limited estate. The motive for conferment is one thing and the extent of it is another matter. Where property was given in lieu of maintenance, the question whether the grant was absolute or was only of a limited estate will have to be ascertained entirely from the terms of the grant, without regard to any assumption or presumption one way or the other, though of course, the surrounding circumstances and the prevailing notions of Hindus may not be irrelevant considerations to be borne in mind, while ascertaining and assessing the terms of the grant. But learned Counsel for the Appellant argues that where a grant is made to a Hindu female, it must be assumed or presumed to be resumable after her lifetime. In *Malladi Venkatappayya v. Jonnalagadda Venkatasubbayya* (1906)

16 M.L.J. 852 this Court stated that in the absence of any evidence that lands set apart for the maintenance of a female member of the family

(there, a co-parcener's widow) were not intended to be resumed on her death, the presumption was that they were resumable. In *Debi Mangal*

Prasad Singh v. Mahadeo Prasad Singh ILR (1911) All. 234, 242 (P.C.) the Judicial Committee observed:

If the share given to a widow on partition is given to her as a substitute for that to which she would be entitled upon inheritance, then, according to

the foregoing authorities, it would seem reasonable that it should follow the same rule of descent and revert on her death to her husband's heirs. If,

on the other hand, it is given to her by way of provision for her maintenance, it seems equally reasonable that when the necessity for her

maintenance has ceased the property should revert to the estate from which it was taken.

10. In *Marina Mangamma and Others Vs. Mutyala Dorayya and Others*, this Court held:

Though in a sense there was no presumption that properties given to a female are given only with limited rights and not with absolute rights,

nevertheless, in a case of this kind the question of the quantum of interest has to be decided independently of any particular presumption or any

particular view as regards onus of proof.

11. This Court indicated that a decision must take into account the surrounding circumstances and the notions and dispositions of the parties to the

transaction, in the course of which the properties came to the widow. But the

Supreme Court in Ram Gopal Vs. Nand Lal and Others, held:

It may be taken to be quite settled that there is no warrant for the proposition of law that when a grant of an immovable property is made to a

Hindu female, she does not get an absolute or alienable interest in such property, unless such power is expressly conferred upon her....

12. In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the

surrounding circumstances are to be considered, but that is only for the purpose of finding out the intended meaning of the words which have

actually been employed....

13. I do not think that the mere fact that the gift of property is made for the support and maintenance of a female relation could be taken to be a

prima facie indication of the intention of the donor, that the donee was to enjoy the property only during her life-time. The extent of interest, which

the donee is to take, depends upon the intention of the donor as expressed by the language used.... The desire to provide maintenance or

residence for the donee would only show the motive which prompted the donor to make the gift, but it could not be read as measure of the extent

of the gift.

14. These observations of the Supreme Court must be taken to be the law and that means that, while interpreting the decree, one cannot approach

it on the basis of a presumption that because the grant is to a Hindu female, unless the contrary is shown, it must be regarded as a limited estate.

15. The compromise decree in favour of Sivakami, while giving properties already mentioned to her in lieu of maintenance, also provided that she

had no power of alienation. It is difficult to see how this prohibition against alienation flowed from her right to maintenance. The prohibition is rather

related to the property given to her in lieu of maintenance and cannot be taken to be inherent in the right to maintenance itself, for it is not difficult to

visualise cases where property is given to a Hindu female in lieu of maintenance absolutely. It follows, therefore, that the restriction by way of

prohibition against alienation in this case flows from the decree and not from the nature of any estate or interest in property possessed by Sivakami

Ammal prior to the compromise decree. In that sense, this was a case of acquisition by Sivakami Ammal for the first time of the properties covered

by the compromise decree under the terms thereof, though it was of course in lieu of her right to maintenance.

16. I am of the view that the Court below formed the correct view as to the scope of Sub-section (2) of Section 14. The second appeal fails and is dismissed with costs.

17. Leave granted.