

(1964) 04 KL CK 0007
In the High Court Of Kerala
Case No : S.A. No. 468 of 1960

Saraswathi Ammal

APPELLANT

Vs

Krishna Iyer

RESPONDENT

Date of Decision : 02-04-1964

Acts Referred:

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

Citation : (1964) KLJ 652

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : C.S. Padmanabha Iyer, for the Appellant; K.Kuttikrishna Menon, A.P. Chandrasekharan, for the Respondent

Final Decision : Allowed

Judgement

Raghavan J

1. A short but important question relating to the interpretation of Section 14 of the Hindu Succession Act of 1956 comes up for consideration in this case. A Mithakshara Hindu died leaving his widow and two sons, the respondent and his younger brother, Rama Iyer, the husband of the appellant. Rama Iyer also died leaving his widow, the appellant, and no children. The respondent, his mother and the appellant effected a partition in December 1952, under which some-properties were given to the appellant and the other properties were jointly left with the respondent and his mother. A portion of the lands allotted to the appellant was subsequently acquired by the Government towards the end of 1956 after the Hindu Succession Act came into force; and the appellant and the respondent both laid claim to the compensation money. The Government referred the matter to the court and both the lower courts have held that the respondent alone is entitled to the amount and the appellant is not.

2. Sub-section 1 of Section 14 of the Act enacts that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act,

shall be held by her as full owner and not as a limited owner. An explanation is added to this Sub-section, which explains that "property" in the Sub-section 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 by 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 manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of the Act. Sub-section 2 then provides that 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.

3. These provisions indicate (1) that any property possessed by a female Hindu, irrespective of the time of its acquisition, whether before or after the commencement of the Act, shall be her absolute property in the sense that she will be the full owner thereof and not a limited owner; (2) that "property" herein means movable and immovable property acquired in any manner whatsoever-by inheritance, by devise, at a partition, in lieu of maintenance, by gift, by the female's own skill, by purchase or by prescription, etc., in short, in any conceivable manner; (3) that sub-section 2 is in the nature of a proviso restricting the operation, or taking away from the effect, of Sub-section 1; (4) that Sub-section 2 covers only property acquired in the modes specified therein, namely, by way of gift under a will or any other instrument or under a decree or order of a civil court or under an award, and not property generally, i.e. acquired in any manner whatsoever; and (5) that in the last foregoing case, if the terms of the gift, will or other instrument or the decree, order or award prescribe only a restricted estate in such property, the female Hindu will be bound by such restriction. In short, what emerges from these provisions is that if property is acquired in any of the modes mentioned in Subsection 2, the right of the female Hindu to that property will be regulated by the terms of the acquisition and not by the law contained in Sub-section 1. To put it differently, property acquired in any of the modes enumerated in Sub-section 2 is taken out of the ambit of Sub-section 1.

4. In the case before me the property was obtained by the female Hindu at a partition; and therefore, the learned counsel of the appellant contends that the property remains within Sub-section 1 and the appellant is entitled to it as full owner. But Mr. Kuttikrishna Menon, the learned counsel of the respondent, claims that the partition deed will come within the term "any other instrument" in Sub-section 2. The result of the latter contention is that if any property is obtained by a female Hindu under a partition document or a partition decree or a partition award, her right will be regulated by the document, decree or award, in spite of the document, decree or award being a petitioner deed, partition decree or partition award; and Sub-section I will not apply.

5. I do not think that this argument of Mr. Kuttikrishna Menon is sound. The acquisition contemplated by Sub-section 2 is an acquisition similar to or ejusdem generis one by a gift or will under which the female Hindu gets her right or title to the property for the first time. This applies to a decree or an award as well. That is, if the female Hindu gets her right to the property for the first time under a decree or an award, the terms of the decree or the award will govern her right and not the law as enacted in Sub-section 1. If, on the other hand, the instrument, decree or award, only recognises her right and gives exclusive possession of the property in which she had already a right by inheritance under the Hindu Law, the acquisition under such a document, decree or award is not an acquisition coming within Subsection 2. In other words, the acquisition itself must be under the instrument, decree or award to come within Sub-section 2; whereas if the acquisition was by inheritance and the instrument, decree or award merely recognised or declared her right, then such acquisition is not acquisition under the instrument, decree or award; and such acquisition will not fall within Sub-section 2.

6. The learned advocate of the respondent urges that Section 14 (1) will have no application in a case where the female Hindu's rights are enlarged or restricted by the instrument, decree or award. I think the counsel is right in this contention. Any person is entitled to deal with his or her existing rights at any moment; and if the female Hindu chooses to relinquish some of her rights or the reversioner chooses to give away his reversionary rights in favour of the female Hindu, such transactions are valid and conclusive; and the parties will not be entitle to reopen those transactions u/s 14 (1) of the Act. This naturally leads me to a consideration of the provisions of the partition document with a view to the application of this proposition. I shall briefly indicate the relevant provisions of the document.

7. The document is styled partition deed. Clause 2 recites that the 3rd party (the appellant), after the death of her husband, demanded partition and separate possession of her husband's share and the other parties agreed to give her share according to the Hindu Widows' Rights to Property Act (evidently the Hindu Women's Rights to Property Act) and the appellant also agreed to the same. Clause 3 states that the moveables and the income from the other properties inclusive of Kanni 1128 M.E. have already been partitioned. This clause also recites that the immovable properties are shown in Schs. A and B, the outstandings due to the family in Schs. A 1 and B 1 and the debts of the family in Sch. A 2. Clause 4 then provides that the properties in Sch. A and the outstandings in Sch. A 1 along with the liabilities in Sch. A2 are allotted to the joint share of parties 1 and 2 (the respondent and his mother) and the properties in Sch. B are allotted to the appellant subject to the conditions mentioned in clause 5. It is also stated in this clause that the appellant has, in addition, a third share in the house, item No. 16 in Sch. A, in the money received by selling the reared forest in Schs. A and B and in the outstandings shown in Schs. A1 and B1. Deducting there from her share of the debts of the family, it is decided to pay Rs.

2,000/- to the appellant as her third share; and towards this a sum of Rs. 1,184-4-0 due to the family on a chit fund transaction and shown in Sch. B1 is allowed to be collected by the appellant and the balance of Rs. 818-12-0 is recited to have been paid in cash by the respondent. It is further recited in this clause that by this payment the partition has become equal and the appellant is entitled to spend the sum of Rs. 2,000/- as she likes.

8. Then comes clause 5, which contains the conditions which are relevant for the case. Clause 5 says that the appellant will have, on the properties allotted to her in Sch. B, a "Hindu Widow's Life Estate" and she may enjoy the income of the properties without encumbering them or alienating them. It is also recited that after her death the properties will "revert" to the respondent's family. Clause 6 follows, which provides that it is likely that a portion of the properties in Sch. B be acquired for the Malampuzha Irrigation Project; and in case the acquisition is made, the respondent will be entitled to the compensation amount and he is also authorised to take the entire amount from the Government; and the appellant will have no right to the amount. This clause continues to recite that in case the rent of the properties allotted to the appellant is reduced by reason of the acquisition, the respondent shall give her every year, till she dies, enough paddy to compensate for the loss and the properties in Sch. A will be a charge for the same. The other clauses are not material.

9. From these provisions what appears clearly is that the document did not give any additional rights to the appellant, nor did it restrict her rights under the law then prevailing. It merely recognised or gave effect to those rights. Even the sum of Rs. 2,000/- got by her was only the value of her share in the house and her share of the price of the trees sold from the reared forest less her share of the debts. The partition was allegedly on the basis of the "Hindu Widows' Rights to Property Act"; and what the appellant obtained under the document was just her husband's share and that, to be enjoyed as a "Hindu Widow's Life Estate". The properties have to "revert" to the family of the respondent on the death of the appellant. It is also stated that the partition was equal in the sense that the widow obtained only a third share, her husband's share. In the light of these clear provisions, the provision contained in clause 6 regarding the compensation money is nothing but a declaration or recognition of the life estate of the female Hindu under the then existing Law, under which the corpus of the properties had to revert to the respondent's family. It is not a restriction to be sure, not an enlargement-of the appellant's rights beyond or outside her rights as a female Hindu under the Hindu Women's Rights to property Act. It cannot also be said that she acquired the properties under the partition deed. Wherefore, Sub-section 1 of Section 14 must apply to the case and not Sub-section 2 as held by the lower courts.

10. The appellant's counsel has cited the following decisions in support of his case: Saila Bala Dasi Vs. Saila Bala Dasi, ; Smt. Janak Dulari Vs. District Judge, Kanpur and Others, ; Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari

Dasi and Others, ; Lalchand Bhur and Another Vs. Sm. Sushila Sundari Dassi and Others, ; V. Sampathkumari Vs. M. Lakshmi Ammal and Others, ; and Rathinasamy Konar v. Nagammal (AIR 1963 Mad. 133); and they do support him. The District Judge has referred to three decisions of the Calcutta High Court and has opined that they do not support the appellant. I do not agree. In the first of those decisions, Billabasini Datta and Others Vs. Dulal Chandra Dutta and Others, , it is held that in a case where the Hindu Succession Act came into force after the preliminary decree and before the final decree in a partition suit, the female Hindu can get her share allotted absolutely in the final decree. The second decision, Krishna Dassi Saha Vs. Akhil Ch. Saha and Another, follows the earlier ruling and amends the preliminary decree by allowing an absolute estate to the female Hindu. This is re-affirmed in the third case, Bepin Behary Mullick and Others Vs. Sm. Lakshasona Dassi and Others, . It is evident that these decisions also support the appellant."

11. The respondent's counsel has drawn my attention to a few other decisions as well. One of the rulings is Jaria Devi Vs. Shyam Sundar Agarwalla and Others, . A Hindu widow has been allotted properties, not strictly according to her share, under a deed of family arrangement, though described as a partition deed; and the High Court holds that Section 14 (2) applies. The learned Judges make it clear that if it had been a simple case of partition allotting properties to the parties in proportion to their shares, the position would have been different. The next ruling is Karri Venkamma Vs. Karri Venkatareddi and Another, . A will in favour of a Hindu widow has been declared to be a forgery; and pending appeal against that decision the Hindu Succession Act comes into force. The High Court thereafter allows the appeal holding that the widow is entitled to an absolute estate. Subba Rao C.J. observes that the decree has not become final, as the appeal is pending and hence Section 14 (2) cannot have any application. The respondent's counsel argues from this that if the decree has become final, Section 14 (2) would have applied. I think it is not correct reasoning; and this decision has no such effect. This decision has been followed in Vadrevu Annapurnamma Vs. Vadrevu Bhima Sankararao and Others, . There is an observation in this ruling also that Section 14 (2) contemplates only those cases where the decree has become final and not cases where appeals are pending. Both these rulings have been approvingly referred to by this Court in Pathumma Beebi v. Krishnan Asari (1961 KLJ 171). I do not think these decisions lay down any proposition that in cases where final decrees for partition have been passed, Section 14 (2) applies, irrespective of whether the decrees are partition decrees pure and simple or whether they are decrees restricting or enlarging the rights of the female Hindu. In the last of the cases, Mali Bewa v. Dadhi Das (AIR 1960 Orissa 81), the Orissa High Court has interpreted the provisions of a particular compromise decree and held that the decree confers only a restricted estate on the widows and hence Section 14 (2) applies. I do not find any general principle laid down in this case. In my judgment none of the decisions referred to herein before has laid down any principles different from those I have given expression.

The result is, the second appeal is allowed, the concurrent decision of the lower courts is set aside and the appellant is held to be entitled to the compensation money. It is also ruled that the respondent is not entitled to claim the amount. In the circumstances of the case, I direct both parties to suffer their costs throughout. Leave granted.