

(1998) 12 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 7190 of 1997

Smt. Nanjamma and Another	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Hindu Succession Act, 1956 — Section 6

Citation : (1999) ILR (Kar) 1094 : (1999) 2 KarLJ 109

Hon'ble Judges : R.P. Sethi, C.J.; Mohamed Anwar, J

Bench : Division Bench

Advocate : Sri H.K. Vasudeva Reddy and Sri H.N. Shashidar, for the Appellant;
Sri U. Abdul Khader, A.G.A. and M/s. Mylaraiah Associates, for the Respondent

Judgement

R.P. Sethi, C.J.—Heard.

2. Section 6-A was inserted in the Hindu Succession Act, 1956 (Central Act XXX of 1956) vide Karnataka Act No. 23 of 1994, which received the assent of the President on 28th of July, 1994 and was published in the Karnataka Gazette, dated 30th of July, 1994. The said section provides:

"6-A. Equal rights to daughter in coparcenary property.-

Notwithstanding anything contained in Section 6 of this Act:

(a) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(b) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allottable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

(c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by Will or other testamentary disposition;

(d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990".

3. The petitioners who are married daughters of respondent 2 have by this petition prayed to:

(a) declare that the words "to a daughter married prior" in clause (d) of Section 6-A of the Hindu Succession (Karnataka Amendment) Act, 1990, Act No. 23 of 1994, as unconstitutional and null and void;

(b) declare that the daughter as coparcener is entitled to seek partition in the coparcenary property in her own right as the son,

4. The offending portion of clause (d) of Section 6-A is stated to be unconstitutional being violative of Article 14 of the Constitution. According to the petitioners, the State Amendment conferred upon a daughter of a coparcener to become a coparcener in her own right in the same manner as the son and to have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and subject to the same liabilities and disabilities as the son. It is contended that the State of Karnataka, following the example of some other States in India made a provision to confer equal rights to daughter in coparcenary property governed by Mitakshara Law. However, by limiting the operation of the provisions in respect of married daughters by Section 6-A(d), the daughters married prior to the commencement of the Act are alleged to have wrongly been deprived of the right conferred upon such daughters under clauses (a) and (b). It is contended that there is no rationale or nexus sought to be achieved by making the alleged discrimination against the married woman prior to the date of the amendment. According to the petitioners, the married daughters, irrespective of the date of marriage, are a class in themselves and thus cannot be differentiated.

5. According to the traditional old Hindu Law, a Joint Hindu Family consists of all

persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A daughter ceases to be a member of her father's family on marriage, and becomes a member of her husband's family. A Hindu coparcenary has been held to be a much narrower body than the joint family. Generally speaking it includes only those persons who acquire by birth an interest in the joint or coparcenary property. They are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent. A revolutionary change was made in the Hindu Law by insertion of Section 6-A vide Karnataka Act No. 23 of 1994, by which a daughter of a coparcener was declared to become a coparcener upon her birth and entitled to same rights in the coparcenary property as were available to a son inclusive of the right to claim by survivorship and be subject to the same liabilities and disabilities in respect thereto as the son. It was further provided that upon partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son. However, by virtue of clause (d) a classification was made between married daughters. The daughters married prior to the commencement of the Amendment Act were deprived of the right to claim the share in the coparcenary property as was available to an unmarried daughter or a daughter married after the enforcement of the said Act. The alleged discrimination cannot be termed to be either unreasonable or irrational and without basis. The offending portion of clause (d) of Section 6-A is intended to achieve an objective. The two types of married daughters as contemplated by the offending portion of the section are the well defined classes in themselves.

6. The principle of equality as guaranteed by Article 14 of the Constitution does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons are found to be requiring separate treatment. Classification is permissible for legitimate purposes.

7. The Supreme Court in *Gopi Chand Vs. The Delhi Administration*, , while interpreting Article 14 held:

"The point about the construction of Article 14 has come before this Court on numerous occasions, and it has been consistently held that Article 14 does not forbid reasonable classifications for the purpose of legislation. In order that any classification made by the legislature can be held to be permissible or legitimate two tests have to be satisfied. The classification must be based on an intelligible differentia which distinguishes persons or things grouped together in one class from others left out of it, and the differentia must have a reasonable or rational nexus with the object sought to be achieved by the said impugned provision. It is true that, in the application of these tests uniform approach might not always have been adopted, or, in dealing with the relevant considerations emphasis might have shifted; but the validity of the two tests that have to be applied in determining the vires of the impugned statute under Article 14 cannot be

doubted".

8. Section 6-A of the Karnataka Act was intended to achieve the object of treating the daughters at par with sons in the coparcenary property entitling them the allotment of equal share upon partition. However, keeping in view the interests of the society and with the object of not unsettling settled matters the provisions of clause (d) were incorporated. It is common knowledge that in the absence of a statutory right in the coparcenary property, the married daughters used to get an extent of their share in the property by way of gift, dowry or settlement at the time of their marriages. It appears that keeping the aforesaid position existing in the Hindu society, the legislature in their wisdom decided to deprive the daughters married prior to the commencement of the Karnataka Act all the rights conferred upon the daughters by virtue of Section 6-A of the Karnataka Act. Such an intention is evident from the other part of the clause, which emphatically reiterates that nothing in clause (b) of Section 6-A shall authorise a daughter married prior to the commencement of the Act to demand a partition with respect to the property settled before the coming into operation of the said Act. The learned Counsel appearing for the petitioners was fair to concede that he did not find any illegality in the aforesaid clause insofar as it deprived a married daughter to demand the partition reopened, which had been effected before the commencement of the said Act. Purpose of both the provisions contemplated under clause (d) of Section 6-A is the same and cannot be differentiated.

9. Justification for classification in the instant case appears to be on the basis of social necessity keeping in view the prevalent system in a section of the society for whose benefit the Karnataka amendment was made. The object of excluding the married daughters and the cases of partition already effected from the application of the Act appears to be reasonable, intended to avoid reopening of the partition, which were effected in the family and the settled rights of the brother and the sister. Extending the benefit of the Act to a daughter married even prior to the commencement of the Amendment Act is likely to unsettle things which stood settled long back in the family and may even affect the third parties, who had acquired valid rights and title in the property on the basis of such settled rights or partitions. We are satisfied that there is a definite nexus between the classifications made, and the object which has been intended to be achieved by the legislature by making a provision in the form of clause (d) to Section 6-A of the Act.

10. The petition otherwise is also liable to be dismissed on account of unexplained delay and laches. The Hindu Succession (Karnataka Amendment) Act, 1990 being Act No. 23 of 1994 is shown to have come into force with effect from 30th of July, 1994 and given effect to till date. The petitioners though feeling aggrieved by the passing of the Act did not challenge its constitutionality or legality for a period of about three years. No reason explaining the delay, much less any satisfactory, has been mentioned in the writ petition. Allowing the

writ petition at this stage would result in reopening of thousands of settled matters in the joint Hindu families and their properties, which would not only affect the parties thereto, but admittedly to an unspecified number of third parties as well. Such a course, if adopted, would defeat the interest of justice rather than serving the interest of any party and would also affect the sanctity of the Hindu coparcenary.

11. The learned Counsel for the petitioners submitted that quashing of the aforesaid clause can be made prospectively with specific declaration of not affecting the rights settled hereinbefore. Such a plea cannot be accepted because it would amount to repeating what the legislature had already done by way of clause (d) to Section 6-A of the Act.

12. We, therefore, do not find any merit in this petition, which is accordingly dismissed, but without any order as to costs.