
(2000) 01 MAD CK 0081

In the Madras High Court

Case No : S.A. No. 403/88 and Memo of Cross Objection and C.M.P. No. 15886/92

Sundarathammal and 2 others

APPELLANT

Vs

Ralhinathammal and 2 others

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Evidence Act, 1872 — Section 68, 69

Hindu Succession Act, 1956 — Section 15(1)(a), 15(1)(b), 15(2)(b), 16

Succession Act, 1925 — Section 63

Citation : (2000) 01 MAD CK 0081

Hon'ble Judges : S. Thangaraj, J

Bench : Single Bench

Advocate : M. Chandrasekaran, for the Appellant; S.V. Jayaraman, for M/s. T. Susindran, for the Respondent

Final Decision : Allowed

Judgement

S. Thangaraj, J.—The unsuccessful defendants/respondents in A.S. No. 88 of 1986 on the file of District Judge, West Thanjavur at Thanjavur has filed this Second Appeal challenging the Judgment and decree of the said Court. The plaintiffs have filed a Cross Objection.

C.M.P. No. 15886/92:- The petitioner has filed this petition to implead her as 3rd appellant in the Second Appeal "No. 403 of 1988.

The respondents herein as plaintiffs have filed O.S. No. 75 of 1981 on the file of Subordinate Judge, Thanjavur for partition and for separate possession of their half share in the suit properties. Learned Subordinate Judge dismissed the suit and aggrieved by the judgment and decree passed by learned Subordinate Judge, the plaintiffs have filed A.S. No. 88 of 1986 in the Court of District Judge Thanjavur. Learned District Judge set aside the judgment and decree passed by the trial Court and decreed the suit as prayed for with costs. The unsuccessful defendants have filed Second Appeal.

2. The following substantial questions of law have been framed in the Second Appeal:

i) Whether the lower appellate Court while reversing the judgment and decree of the first Court erred in not taking note of the legal position that the daughter of a deceased wife of a Hindu will not be a heir, when she had died in the year 1920 long before coming into force of the Hindu Women's Right to Property Act, 1937?

ii) Whether the lower appellate Court properly appreciated and applied the principles, governing prescription of title by adverse possession to the facts of the present case?

iii) Whether the lower appellate Court misconstrued and omitted to construe the material evidence on record when it chose to reverse the judgment and decree of the first Court?

3. The question which has to be decided in C.M.P. No. 15886 of 1992 is:

Whether the petitioner can be impleaded as 3rd appellant?

4. One Narayanasami was the original owner of the properties in question. He had married one Pappammal, who predeceased him. He married Sivagami as his second wife, who lived with him till his death in 1920. Pappammal had a daughter by name Paramayee. She died leaving behind two daughters and one son, the plaintiffs 1 to 3 in the present suit. Sivagami lived long and died on 3.7.1981. Sivagami had a daughter by name Sundarathammal, the first defendant in the suit, who died on 25.5.1987. It is the case of the second defendant and Chandrodayam, the proposed 3rd appellant, that Sundarathammal's husband had first wife to whom the proposed 3rd appellant was born and the present second appellant is the son of the proposed 3rd appellant. Apart from Sundarathammal, the second appellant Sekar was said to be the foster son of Sundarathammal. Her husband and Sundarathammal had executed a Will in favour of the second appellant herein in respect of her share in the suit properties. To appreciate the case of the parties, the genealogy is drawn hereunder :

5. The first appellant Sundarathammal was the daughter of Sivagami who was the second wife of Narayanasami. The respondents 1 to 3/Cross Objectors are the legal heirs of Narayanasami through his first wife Pappammal, who predeceased him leaving behind her a daughter Paramayee, who died leaving behind the cross-objectors/plaintiffs 1 to 3. The succession to the properties of Narayanasami opens on the death of Sivagami his second wife on 3.7.1981 and not on the date of the death of Narayanasami in the year 1920. Their Lordships of the Supreme Court in Fateh Bibi etc. Vs. Charan Dass, have held:

Succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life estate/holder. It has also been held that during the lifetime of the life-estate holder, the reversioners in Hindu law have no vested interest in the estate, and they have a mere spes successionis. The point

of time for the applicability of the Act is when the succession opens, viz., when the life estate terminates.

From this decision, it is clear that the succession in case of the properties of the Hindu male, who died intestate leaving behind a life estate holder opens on the date of the death of the life estate holder and not on the death of the Hindu male and the reversioners have an interest of mere spes successionis.

6. This Court in *Shanmughasundrathammal Vs. Narayana Konar and Others*, has held-

Succession opens to the reversioners only on the death of the life estate holder and not on the death of the last male holder. Therefore when a Hindu male dies intestate prior to the Hindu Succession Act but is succeeded by a female heir who dies after coming into force of the Act the succession will be governed by the Act and the one most nearly related to the last male holder at the time of the death of female heir will be entitled to the properties.

7. When we apply the principle to the instant case, as Narayanasami's first wife Pappammal predeceased him, on the date of death of Narayanasami in the year 1920, Sivagami, the second wife, was alive and was the only life estate holder, the succession opens on the date of death of Sivagami on 3.7.1981. On the said date Sivagami had a daughter by name Sundarathammal. However, Sundarathammal died on 25.5.1987, as she was alive on the death of Sivagami on 3.7.1981, she was the legal heir entitled to succeed the properties of her father Narayanasami. On 3.7.1981, the legal heirs of Paramayee, the other daughter of Narayanasami through his wife Pappammal who are the plaintiffs 1 to 3/Cross Objectors herein had succeeded the properties of Narayanasami is the question which has to be decided.

8. Section 15 (1) (a) of the Hindu Succession Act, 1956 says--

The property of a female Hindu dying intestate shall devolve according to the rule set out in Section 16, (a) firstly, upon the sons and the daughters...

Section 15(2) (b) of the Hindu Succession Act says that any property succeeded by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the husband. From Section 15(1) (a), it is clear that firstly, the property devolves on the sons and daughters. Even if the property was succeeded by a female Hindu from her husband, it devolves on other legal heirs of the husband in the absence of any son or daughter. In the instant case, Sivagami succeeded the property of her husband Narayanasami. On her death on 3.7.1981, her daughter Sundarathammal was alive. Naturally, the properties had devolved on Sundarathammal, daughter of Sivagami.

9. Both sides have relied on the decision of the Apex Court in *Seethalakshmi Ammal Vs. Muthuvenkatarama Iyengar and Another*, Their Lordships have held-

In order to decide who are the heirs of a female Hindu under category (b) of S. 151 (1), one does not have to go back to the date of the death of husband to ascertain who were his heirs at that time. The heirs have to be ascertained not at the time of the husband's death but at the time of the wife's death because the succession opens only at the time of her death. Her heirs under S. 15(1) (b) will have to be ascertained as if the succession to her husband had opened at the time of her death.

In that case, Their Lordships have considered whether the wife of the predeceased son was the legal heir to the properties of the mother-in-law and therefore, they have relied upon Section 15(1)(b) of the Hindu Succession Act, 1956. Even the said Section says that any property succeeded by a female Hindu devolves on the other heirs in the absence of a son or daughter. When Sivagami had a daughter Sundarathammal who was living on the date of death of her husband, the property devolves on Sundarathammal. Section 15(1) (a) clearly says the property of a Hindu female devolves first upon sons or daughters. As Sivagami had no son, naturally, the entire property devolves upon her daughter Sundarathammal as she was the only heir. When once the properties have devolved upon Sundarathammal, the claim of the plaintiffs/Cross Objectors cannot be sustained as the legal heirs of Paramayee, the other daughter of a predeceased wife of Narayanasami.

10. The question raised herein is that since Narayanasami died in the year 1920 long before coming into force of The Hindu Women's Rights to Property Act 1937 whether the decree passed by the first appellate Court is maintainable. When we see the legal position, the succession opens only at the time of female life estate holder and not on the death of her husband and this position is clear from the decision of the Apex Court stated supra and as such, the date of death of Narayanasami is not relevant for consideration of the devolution of the property on his legal heirs. The entire property devolved on his daughter Sundarathammal and therefore, the judgment and decree passed by the first appellate Court are liable to be set aside.

11. The defendants/appellants have claimed adverse possession to the property. The first appellate Court has rightly held the claim should be "ouster" and not adverse possession, since as legal heirs of Narayanasami both had joint possession of the property along with his other legal heirs. However, from the foregoing discussion, it is clear that the appellants herein cannot plead adverse possession, since Sundarathammal has got succession over the entire properties as per Section 15 (1) (a) of the Hindu Succession Act, 1956. Therefore, we need not harp much upon the question of adverse possession, as the properties are devolved upon Sundarathammal. The second question of law is answered accordingly.

12. It is the case of the second appellant/second defendant that Sivagami executed a Will Ex. B-11 in favour of her daughter and foster son, giving life estate to her daughter and vested remainder to the second defendant. The trial

Court without looking into the validity and proof of the Will as contemplated under Sections 68 and 69 of the Evidence Act and Section 63 of the Indian Succession Act, dismissed the suit. As rightly held by the first appellate Court, the Will has not been proved by examining the attestors. As the Will Ex. B-11 has not been proved in a way known to law, it cannot be held that the second defendant is getting right in the property as per the Will. Further, Sivagami was only a life estate holder and on the date of her death, the properties succeeded from her husband devolves on her only daughter Sundarathammal and as a life estate Holder, the Will Ex. B-11 executed by her is totally invalid in law and the second defendant/second appellant cannot have any right over the properties on the basis of Ex. B-11.

13. The Courts below have considered whether the present suit is barred under the principle of *res judicata* in view of the earlier suit filed by Paramayee in O.S. No. 164 of 1931 on the file of District Munsif, Thiruvaiyaru and the first appeal in A.S. No. 94 of 1933 on the file of Subordinate Judge, Thanjavur between the predecessors-in-title and the plaintiffs/Cross Objectors herein. The said suit was filed by Paramayee on the basis of a family arrangement and not on the question of succession to the property of Narayanasami as his legal heir. Therefore, as rightly held by the first appellate Court, the present suit is not barred by the principle of *res judicata*.

14. C.M.P. No. 15886 of 1992: One Chandrodayam has filed an impleading petition saying that she is the daughter of the first wife of Sundarathammal's husband and she has got interest in the suit property inherited by Sundarathammal from her father Narayanasami. She is not at all legal heir of Sundarathammal and she has got no right or interest in the property and therefore, she is an unnecessary party in the suit and C.M.P. No. 15886 of 1992 is liable to be dismissed.

15. The grounds raised in the Cross Objection have been considered in the foregoing paragraphs and as things stand, Sundarathammal, who was the first defendant in the suit and first appellant in the Second Appeal expired during the pendency of the Second Appeal and therefore, her legal heirs are entitled to the property. It is stated that the second defendant/second appellant is the foster son of Sundarathammal and her husband. He has not let in any evidence to prove that he is the foster son of Sundarathammal and her husband. However, it was held herein, that the Will Ex. B-11 is invalid and as such, as foster son, the second defendant/second appellant is the only legal heir of Sundarathammal who is entitled to the properties. The claim of the second defendant as foster son is not challenged by the plaintiffs/Cross Objectors in the suit itself. In fact, they filed the suit impleading him as a party on the basis of the alleged Will. In such circumstances, the judgment and decree passed by the first appellate Court are to be set aside. In the result, Second Appeal No. 403 of 1988 is allowed and the judgment and decree passed by the first appellate Court are set aside and the suit tiled by the plaintiffs/Cross Objectors is dismissed. Cross Objection is

dismissed. CM.P. No. 15886 of 1992 is also dismissed. No costs.