

(2007) 05 MAD CK 0009
In the Madras High Court
Case No : S.A. No. 1128 of 1995

T. Sivagnanam (deceased by LR's) and Others	APPELLANT
Vs	
Muthu Backialakshmi alias Chellan and Another	RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 30
Succession Act, 1925 — Section 124, 133

Citation : AIR 2007 Mad 245 : (2007) 4 LW 171

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : M. Rajaraman, for the Appellant; R. Nandakumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The plaintiff and his legal heirs are the appellants in this appeal.

2. The plaintiff filed a suit for declaration that the defendants 1 and 2 are having only life interest in the suit property and that the plaintiff and his heirs are entitled to the suit property after the life-time of the defendants 1 and 2.

3. The case of the plaintiff, in brief, is that he is the brother of one T.K.T. Ramanathan Pillai and the defendants, who are sisters, are the wives of the said Ramanathan Pillai; the marriage of the second defendant with Ramanathan Pillai is null and void since it took place when the first defendant was alive; the suit property belongs to Ramanathan Pillai and he executed a registered Will dated 3-12-1965 with regard to his entire properties, breathing last on 22-8-1966; according to the said Will, a provision was made for maintenance of the defendants, giving them a limited right of enjoyment over the suit property till their life-time, without any right of alienation or encumbrance; it has been further stated in the Will that after their lifetime, the suit property would go to the school which Ramanathan Pillai intended to start; in the meanwhile, the

defendants made attempts to encumber the suit property and hence, the suit was filed by the plaintiffs for declaration.

4. In reply, the defendants filed a written statement wherein they have not disputed the execution of the Will and even according to them, they are entitled to enjoy the suit property till their life-time after which the suit property should go to the school intended to be started by Ramanathan Pillai. Their main contention is that since the proposal to build a school did not materialise due to the death of Ramanathan Pillai, the Will, which is a contingent one, fails and becomes inoperative and consequently, their right over the suit property till their life-time, gets enlarged into an absolute right, and accordingly, they become absolute owners of the suit property.

5. The trial Court, on appreciation of the oral and documentary evidence, coming to the conclusion that the Will is not a contingent one and holding that the defendants are having only life interest and not absolute right over the property and further holding that Section 14(2) of the Hindu Succession Act applies to the facts of the case, decreed the suit, as prayed for.

6. On appeal by the defendants, the lower appellate Court differed with the finding of the trial Court concluding that the Will is a contingent one and since the starting of a school by Ramanathan Pillai did not become a reality, held that the Will has become inoperative and that the life interest of the defendants gets enlarged into an absolute one u/s 14 of the Hindu Succession Act and allowed the appeal, thereby, dismissing the suit. As against this finding of the lower appellate Court, the present Second Appeal has been filed by the plaintiff and his legal heirs.

7. On 31-8-1995, this Second Appeal has been admitted on the following substantial question of law;

Whether the respondents are entitled to the benefit of Section 14(1) of the Hindu Succession Act so as to enlarge their estate into absolute one?

8. Mr. Rajaraman, learned Counsel for the appellants has contended that the lower appellate Court has failed to understand the real intention of the testator and also erred in coming to the conclusion that the second wife, i.e. the second defendant also is a first-class heir. The main contention of the counsel for the appellants is that the lower appellate Court has erred in ignoring the provisions of Section 14(2) of the Hindu Succession Act and it has further gone wrong in coming to the conclusion that Section 14(1) of the Hindu Succession Act is applicable to the facts of the case.

9. In support of his arguments, the learned Counsel for the appellants has relied on:

i. a judgment of the Supreme Court reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, . (para 13).

An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually re-affirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a Will bequeathing the properties, the legatees take it subject to the terms of the Will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His Will, hence, could not be challenged as being hit by the Act.

ii. another a judgment of the Supreme Court reported in *Sharad Subramanyan Vs. Soumi Mazumdar and Others*, (para 19) (of SCC) (Para 17 of AIR).

Learned Counsel further contended that there is no absolute rule all properties demised to a female Hindu were necessarily in recognition of or in lieu of her right to maintenance. It was possible, even after the Act came into force, to create a limited estate by reason of a gift or Will. Such a situation would fall within the ambit of Sub-section (2) of Section 14 of the Act as long as it was not in recognition of or in lieu of right to maintenance under the Shastric Hindu law or under a statute. Learned Senior Counsel relied on Section 30 of the Act, which recognises the right of a Hindu to dispose of self-acquired property by Will. Mr. Gupta relied on the judgment of this Court in *Bhura and Others Vs. Kashiram*, which was also a case of limited estate conferred on a female Hindu by a Will. This Court held that upon a proper construction of the Will, the bequeathal in favour of the female Hindu was clearly indicative of

the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of... (the female Hindu) only for her lifetime and not an absolute estate)

iii. Yet another judgment of the Supreme Court reported in *Gumpha (Smt) and Others Vs. Jaibai*, (Paras 9 and 12)

The Court by interpretative process, thus, removed the anomaly arising out of "inapt drafting" by construing the Sub-section (1) widely and reading Sub-section (2) as a proviso. But, this wide meaning has to be so read as to be in conformity with Section 30 and Sub-section (2) of Section 14. *Tulasamma* case AIR 1977 SC 1944 was concerned with the right of maintenance granted to a widow in a decree. It became necessary, therefore, to evolve the principle of pre-existing right. That is, if the maintenance was given in recognition of pre-existing right, then, such acquisition of property was taken out of Sub-section (2) to promote the objective of Section 14. But, if that concept is extended to a Will executed u/

s 30, it would militate against express provision in Section 30 and Sub-section (2) of Section 14. The right of maintenance explained in Tulasamma AIR 1977 SC 1944 and reiterated in Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, was the one recognised under customary Hindu law to maintain a widow, daughter-in-law, a mother as a member of the joint family property. It would not operate where a Hindu is bequeathing his property in exercise of his right u/s 30 of the Act. In G. Appaswami Chettiar and Another Vs. R. Sarangapani Chettiar and Others, , it was held by this Court that where a female got a life estate under a Will executed by her father, she was not entitled to claim absolute rights u/s 14(1) and her claim was covered by Section 14(2). In Kothi Satyanarayana Vs. Galla Sithayya and Others, , a life estate created under a Deed of Settlement was held to be an instrument contemplated under Sub-section (2) and, therefore, a female Hindu was held not to have acquired better right than what was given to her under the instrument. That the Legislature was aware of the unrestricted power of a Hindu to dispose of his property in any manner, he considered proper subject to such restrictions as were operating in different schools is clear from Sub-section (2) of Section 14. It does not curtail or erode the absolute estate which comes into operation by law but excludes from it specifically the property acquired in the manner mentioned therein. That is if any property is acquired by a female Hindu as provided in Sub-section (2) then, it would be beyond the purview of Sub-section (1). Reason for it was that the legislature never intended to confer larger estate on females than on males. If a Hindu could bequeath his property of which he was capable of and could create life interest or restricted estate for a male, it would have been incongruous to create an absolute estate in favour of female. Sub-section (2) of Section 14 was read as proviso or exception to Sub-section (1) so that it may impinge as little as possible on the broad sweep of the ameliorative provision contained in Sub-section (1). In Tulasamma, it was observed that "it cannot be construed in a manner which would subvert its efficacy and deprive a Hindu female of the protection sought to be given to her by Sub-section (1)". True, it is an exception to Sub-section (1) and should be read in such a manner as not to rob Sub-section (1), "of that modicum of certainty which it must always possess". Yet, the field of operation of the two sub-sections is independent and separate. The legislature while obliterating the dark side of Hindu law could not have intended to encroach upon right which existed under customary law and which it widened by adding explanation to Section 30.

10. Per contra, Mr. Nandkumar, learned Counsel for the respondents, while arguing on the conduct of the plaintiff and his relationship with his brother, has relied on the deposition of P.W. 1 himself and contended that P.W. 1 had deposed inimically towards Ramanathan Pillai. It is his further contention that since the plaintiff himself has admitted that the defendants had been given right of maintenance under Ex. A. 1, it can safely be presumed that Ex. A. 1 deals with the preexisting right of maintenance.

11. On the legal aspects, the main contention of the counsel for the respondents

revolves around the applicability of Section 14(1) of the Hindu Succession Act to the facts of the case. According to him, the trial Court is correct in decreeing the suit by holding that it is only Section 14(1) of the Hindu Succession Act which is applicable to the facts of the case and not Section 14(2).

12. To add strength to his arguments, the counsel for the respondents has relied on a judgment of the Supreme Court reported in *Balwant Kaur and Another Vs. Chanan Singh and Others*, (paras 8 and 24) (of SCC) (Paras 8 and 23 of AIR):

The aforesaid relevant recitals in the Will show that appellant 1 widowed daughter of the testator, was a destitute and was solely dependent upon the testator for maintenance and the testator himself was also anxious about making provision for her maintenance even after his demise and relied upon his brothers, the other two legatees, for looking after his destitute widowed daughter of the testator, after his lifetime. It, therefore, becomes clear that appellant 1 widowed daughter of the testator, was a destitute and had no one else to fall back upon for maintaining herself but for the testator, her father. Under these circumstances when the testator granted 1/3rd interest in the suit land to appellant 1 by his Will (as a residue after deducting 2/3rd interest of his brothers), even though he conferred life interest on her to that extent, can it be said that the said provision was in lieu of any pre-existing legal right of maintenance from his estate as available to his destitute widowed daughter? If any pre-existing right is culled out in her favour, at least on the date on which the Will started operating upon the death of the testator, then the appellant's case would squarely be covered by Section 14(1) of the Succession Act but if, on the other hand, it is held that she had no preexisting right in the testator's estate on the date of coming into operation of the Will, then, it could be said that she got for the first time interest in the testator's property under the Will and consequently Section 14(2) would get attracted, as held by the High Court.

In the light of this settled legal position, therefore, the relevant recitals in the Will have to be construed in the background of admitted and well-established facts referred to by us earlier. It is easy to visualise that if the testator had created a life interest to the extent of 1/3rd of his property in favour of his maidservant or female cook who might have served him during his lifetime, then such female legatees could not have claimed benefit of Section 14(1) and their claim would have been confined only to Section 14(2) as they would not have any pre-existing legal right of maintenance or dependency qua the estate of the deceased employer but appellant 1, as a destitute widowed daughter of the testator, stands on entirely a different footing. The Will in her favour does not create for the first time any such right as might have been created in favour of a maidservant or a cook. In fact, the Will itself recognises her pre-existing right in express terms and provides that even after his death, his other legatee brothers have to look after the welfare of his widowed daughter. Under these circumstances, Section 14(1) can legitimately be pressed into service by the learned Senior Counsel for the appellants on the basis of legal right flowing to

her under the relevant provisions of the Maintenance Act. Once that conclusion is reached, the result becomes obvious. The judgment and order passed by the High Court cannot be sustained and will have to be set aside. Instead, the decree of dismissal of the respondents' suit as passed by the lower appellate Court will have to be confirmed, though on entirely a different set of reasoning, as indicated hereinabove, and not on the ground that the earlier part of the recitals in the Will supersede the latter part of the recitals.

13. I have given careful thought and consideration to the arguments of Mr. M. Rajaraman, learned Counsel for the appellants and Mr. R. Nandakumar, learned Counsel for the respondents and have also carefully perused the judgment of the Courts below and the evidence on record.

14. Before proceeding to decide the substantial question of law, it would be useful to have a look at the intention of the testator with regard to bequeathing his properties. As argued by the counsel for the respondents, P.W. 1 himself has categorically admitted in his deposition that he had enmity with the deceased Ramanathan Pillai. He has further admitted that Ramanathan Pillai might have lodged a complaint against him with the Devadanapatti police station. In this regard, it would also be useful to refer to some portions of Ex. A. 1, Will dated 3-12-1965 made by Ramanathan Pillai and the same are extracted as under:

(Vernacular matter omitted.... Ed.)

15. From the portion of the Ex. A. 1 extracted above, it is seen that the testator, viz., Ramanathan Pillai has made it clear that after his life time, the suit property has to devolve upon his wives till their lifetime and even in the event of demise of one of his wives, the suit property should devolve on the wife who is alive. He has further made his intention clear that after their life-time, the property should go to the educational institution intended to be started by him. Finally, the most important point to be noted from the above extracted portion of the Will made by the testator is he has expressed in strong terms that the appellant plaintiff or his heirs cannot have any right towards the suit property. Thus, it is evident that Ramanathan Pillai was very particular that the suit property should be enjoyed only by his wives and not by his brother.

16. Next, while deciding the substantial question of law, it would also be useful to refer to Sections 14(1) and 14(2) of the Hindu Succession Act and they read as under:

Section 14(1)

Property of a female Hindu to be her absolute property

Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub-section, "property 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 from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

Section 14(2)

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.

17. In the judgment reported in *Sadhu Singh Vs. Gurdwara Sahib Narike and Others*, relied on by the counsel for the appellants, it is held that when a male Hindu executes a Will bequeathing the properties, the legatees take it subject to the terms of the Will unless of course, any stipulation therein is found invalid. In the present case, the Will states that the defendants are entitled to enjoy the suit property till their life-time and after that, the suit property would go to the school intended to be started by the testator. Since the proposal to start a school did not turn into a reality, the trial Court has held against the respondents saying that their right is limited to their lifetime and not an absolute one. Even according to the judgment relied on by the counsel for the appellants (*supra*), the legatees can take the property subject to the terms of the Will. In the Instant case, since the proposal to start a school had not turned Into a reality, naturally, the right of the defendants over the suit property gets enlarged into an absolute one and this aspect Is substantiated In the judgments of the Supreme Court relied on by the counsel for the respondents.

18. Further, it is also worthwhile to discuss the aspect of "kalakshemam" dealt with in the judgment relied on by the counsel for the respondents reported in *Ranganayakiammal (died) and another Vs. R. Srinivasaraghavan and another*, . In that judgment, the term "kalakshemam" is discussed as hereunder:

A reference to Tamil Lexicon Vol. II, Part I, published under the authority of the University of Madras, at page 897, would show that the word "kalakshemam" has several meanings and one of them is "means of subsistence". If we are to understand the word "kalaksheman" in the context in which it is used in Ex. B. 2., Will, it would only mean "means of subsistence" and nothing else. The words (matter in vernacular omitted) manifestly indicate that Ranganayakiammal wanted some properties for her maintenance after the death of Ramasamy Iyengar. Then, Mr. R.S. Venkatachari would argue that in the document Ranganayakiammal Is given right to the income from the properties not only for her "kalakshemam" but also to pay wages to her attendants and also for doing "dharma" and therefore, in any event, it cannot be said that the right in the property was given to her only for her maintenance. But payment of wages or

salary to her attendants and doing some "dharma" can justifiably be construed as part of her maintenance and not different. Therefore, without any hesitation, it can be safely concluded that Ranganayakiammal was given right in the property for her maintenance during her lifetime.

19. Even in the instant case, the testator has made it in a clear language that the purpose of his writing the will is towards the means of subsistence of his wives, which in other words, can be interpreted as for the maintenance of his wives after his lifetime.

20. In the case of *V. Tulasamma v. V. Sessa Reddy (dead)* by L.Rs. (in short "the Tulasamma case") reported in AIR 1977 SC 1944, while deciding as to whether 14(1) or 14(2) is applicable, it was held as follows (Paras 3 and 4):

Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude...it will therefore be seen that Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

Where, however property is acquired by a Hindu female at a partition or in lieu of a right of maintenance, it is in virtue of a preexisting right and such an acquisition would not be within the scope and ambit of Sub-section (2) even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

21. In this context, some useful reference could be made to para 15 of the judgment of the Supreme Court reported in *Sadhu Singh Vs. Gurdwara Sahib Narike and Others*, and the same reads as under:

Dealing with the legal position established by the decisions in *Tulasamma* AIR 1977 SC 1944 and *Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others*, the position regarding the application of Section 14(2) of the Act is summed up in *Mayne on Hindu Law* thus:

Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new title in favour of females for the first time and has no application where the instruments concerned merely seek to confirm, endorse, declare or recognise pre-existing rights. The creation of a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in such a case. Where property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of Sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

22. From a reading of the last portion of the above referred judgment of the Supreme Court which is a recent one, in which the decision of the Supreme Court

in the Tulasamma's case is followed, it is clear that once a property is allotted to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of Sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee. In the instant case also, since Ramanathan Pillai has bequeathed the suit property in favour of the defendants in lieu of their maintenance the life-time interest which the defendants have got from Ex. A. 1, the will, gets blossomed or enlarged into an absolute right.

23. Of course, the counsel for the appellant, in support of his argument that since the intention of the testator to start an educational institution did not materialise and as such the Will is not a contingent one and the defendants have only life interest and not absolute right over the property, has pointed out Section 124 of the Indian Succession Act, 1925 which reads as under:

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence-

Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

24. But, in this context, it is worth-referring to Section 133 of the Indian Succession Act which reads as under:

Original bequest not affected by invalidity of second:

If the ulterior bequest be not valid, the original bequest is not affected by it.

Thus, from a reading of Section 133 of the Indian Succession Act referred to above, it is clear that the transfer made to the transferee is not affected by the non-occurrence of a particular event, in the case on hand, starting of educational institution by the testator.

25. Since the recent judgment of the Supreme Court in *Sadhu Singh Vs. Gurdwara Sahib Narike and Others*, is squarely applicable to the case on hand in which the defendants get the suit property in lieu of maintenance or means of subsistence or *kalakshemam* and more so, when the plaintiff had not maintained a cordial relationship with his deceased brother, viz., Ramanathan Pillai, the testator, who has also very specifically expressed in the Will that the plaintiff or his heirs cannot claim any right over the suit property, I am of the considered view that the defendants are entitled to the benefit of Section 14(1) of the Hindu Succession Act so as to enlarge their estate into an absolute one. As such, the substantial question of law formulated in this appeal is answered in favour of the respondents.

26. In view of the above, the judgment of the lower appellate Court in declaring that the respondents are entitled to enlarge their estate into absolute one is

upheld and accordingly, the suit is dismissed.

In the result, the appeal fails and is accordingly dismissed. No costs.