

(2003) 04 KAR CK 0014

In the Karnataka High Court

Case No : Regular Second Appeal No. 460 of 1983

Yemanappa Dudappa Marve (Since deceased by his L.Rs.)
and Others

APPELLANT

Vs

Smt. Yellubai, (since deceased by her L.Rs) and Others

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

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

Citation : (2003) ILR (Kar) 3188

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : Ananth Mandagi, for the Appellant; G. Balakrishna Shastry, for the Respondent

Final Decision : Dismissed

Judgement

Sabhahit, J.—This appeal is directed against the judgment and decree passed by the learned First Additional Civil Judge, Belgaum, in Regular Appeal No. 17/1982 dated 18/12/1982 confirming the judgment and decree passed by the trial Court in O.S.No. 55/1975 dated 05/01/ 1982.

2. The essential facts of the case leading up to this appeal are as follows:

The parties would be referred to, with reference to their rank before the Trial Court.

3. The plaintiff filed O.S.No. 550/1975 seeking for declaration that plaintiff is the owner of the suit schedule property and to restrain the defendant from obstructing with the possession and enjoyment of the suit schedule property comprised in Sy.No. 121/6 and also western half of house No. 673 in Rayatgalli, Madhavpur, Belgaum. It is averred in the plaint that she was given half share of the suit land half of the other land bearing Sy.No. 809 of Yallur Village and the suit house towards her maintenance under an agreement by her father-in-law as her husband pre-deceased his father and subsequently by agreement, she gave

up her half share in Yallur land Sy. No. 809 in exchange for remaining half of the suit land in Sy.No.121/6, as a result of which, she came to be given the entire suit land in Sy.No.121/6 and the suit house and she has been in actual possession and enjoyment of the suit property in lieu of her maintenance and after coming into force of the Hindu Succession Act, she being in actual possession of the property became the absolute owner of the suit property and the plaintiff is in possession for more than 12 years and has perfected title by adverse possession and the defendant who has no right or title what so ever in the property tried to interfere with the possession of the property and also sent representation to the Municipal Commissioner complaining about the entries made in the revenue records and she went in revision to the Divisional Commissioner and the Divisional Commissioner dismissed the said revision on 17/11/1975 and her name stood deleted in the Municipal records in respect of the suit land and taking advantage of the deletion, the defendant threatened to interfere with the possession and wherefore the suit.

4. The defendant resisted the suit denying the averments made in the plaint that the suit property was given to Yellubai in lieu of her maintenance. It was contended by the defendant that the property belong to his grand father Irappa and that Irappa had 3 sons namely, Monappa-husband of Yellubai, Dudappa and Bharmappa and Monappa pre-deceased Irappa and subsequently, there was a partition in the properties and the present suit land came to the share of Dudappa in the partition while the present suit house was the self acquired property of Dudappa. Defendant contended that yellubai has filed a suit in R.O.S.No.122/50 against him and his father-Dudappa and the heirs of Bharmappa for partition and possession of her share and the suit was dismissed through out by holding that the property was the self acquired property of Irappa and Yellubai had no pre-existing right of maintenance over the suit property and in the absence of pre-existing right, her right did not widen in to absolute right after coming into force of the Hindu Successions Act and the defendant denied that the plaintiff has perfected the title by adverse possession.

5. The Trial Court framed appropriate issues. The defendant had filed O.S.No. 429/1973 against the plaintiff in O.S.No. 550/1975 seeking for an order of permanent injunction against the defendant in the said suit contending that the suit schedule properties belong to him and that the defendant in his suit, who is the plaintiff in O.S.No. 550/1975 has no right, title or interest in the suit property.

6. The suit filed by the defendant in O.S.No.550/1975 was tried along with O.S.No.429/1973 and the plaintiff in O.S.No. 429/1973, examined himself and also examined 4 witnesses while as the defendant in O.S.No. 550/1973, he once again examined himself and also examined another witness and closed his side. Ramchandra, adopted son of Yellubai and his father Laxman Jadhav gave evidence on the other side as D.Ws-1 and 2. On behalf of the plaintiff, Exs. P-1 to P-12 were got marked. On behalf of the defendant, Exs. D-1 to D-15 were got marked.

7. The Trial Court after considering the oral and documentary evidence on record held that the plaintiff in O.S.No. 550/1975 has failed to prove that the properties were given to Yellubai in lieu of maintenance and that therefore she had no pre-existing right and had further held that the suit schedule property was the self acquired property of Irappa and wherefore she did not acquire absolute right over the property u/s 14(1) of the Hindu Succession Act, 1956. However, the trial Court held that she had perfected her title by adverse possession and accordingly, decreed the suit of the plaintiff. Being aggrieved by the said judgment and decree, the defendant filed R.A.No.17/1982 on the file of the learned I Additional Civil Judge, Belgaum and the first Appellate Court by its judgment dated 18/12/1982 held that the Trial Court was not justified in holding that the plaintiff-Yellubai in O.S.No. 550/1975 had perfected title by adverse possession and further held that since the property was given to Yellubai in lieu of maintenance, she had a pre-existing right, which limited right became absolute in view of the provision of Section 14(1) of the Hindu Succession Act and wherefore, she had become absolute owner of the schedule property and was entitled to injunction as sought for and accordingly, confirmed the decree passed by the trial Court and dismissed the appeal. Being aggrieved by the said judgment and decree, the defendants have preferred this appeal.

8. I have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents.

9. This appeal has been admitted for consideration of the following substantial questions of law.

(i) Having regard to the fact that the joint family of which the husband of Smt. Yellubai was the member, did not possess any property and the suit properties which were the self acquired properties of her father-in-law were given to her by her father-in-law towards her maintenance, whether the possession of the suit properties by Smt. Yellubai, even though, she continued to remain in possession, even after the death of her father-in-law and continuously even after the coming into force of the Hindu Succession Act, can be said to have created any legal right in the suit properties in Smt. Yellubai ?

(ii) If so, whether such right can be said to have expanded into a full right of ownership, on the coming into force of the Hindu Succession Act, having regard to the provisions contained in subsection (1) of Section 14 of the said Act.

10. It is necessary to note before considering the substantial questions of law that arise for determination in this second appeal that the suit filed by the appellant herein O.S.No. 429/1973 seeking for an order of temporary injunction against the respondents herein was dismissed by the trial Court and the same was confirmed in Regular Appeal No. 17/1982 dated 18/12/1982 and being aggrieved by the same, the appellant preferred Regular Second Appeal No. 361/1983 which has been dismissed by this Court and the same has become final and being aggrieved by the order passed by this Court, in this appeal Civil

Appeal 4034/1992 was filed on the file of the Supreme Court has set aside the judgment passed by this Court and remanded the case back for its decision afresh by order dated 30th August 2001.

11. The learned Counsel appearing for the appellants submitted that the earlier proceedings in O.S.No. 122/1950 has culminated in the order passed by this Court in Regular Second Appeal No.31/ 1956. It was held that the properties were the self acquired properties of Irappa and the husband of Yellubai-Monappa pre-deceased Irappa and therefore, the properties which were the self acquired properties of Irappa devolved upon his two sons Dudappa and Barmappa and the Courts below have held that Yellubai has failed to prove that Ramachandra was the adopted son of Yellubai and wherefore, Yellubai was not entitled to the pre-existing right towards maintenance, as the joint family did not own any property and there was no liability on her father-in-law to settle any property in her favour and even according to the plaintiff, the property has been settled upon her, in lieu of her maintenance by Dudappa and not her father-in-law and therefore she did not have any pre-existing right and she was also not in possession of the property when the Hindu Succession Act, 1956, came into force and therefore, the provisions of Section 14(1) of the Hindu Succession Act would not be applicable and accordingly submitted that the judgment and decree passed by the Courts below is liable to be set aside.

12. On the other hand, the learned Counsel appearing for the respondents submitted that admittedly, Yellubai was in possession of the property when the Hindu Succession Act, 1956, came into force and the property was settled upon her in lieu of maintenance and therefore her pre-existing right ripened into an absolute right u/s 14(1) of the Hindu Succession Act, 1956, and when once it is rightly held by the Courts below that Yellubai had absolute right over the schedule property, the question of application of Section 14(2) of the Hindu Succession Act would not arise and therefore he submitted that the order passed by the Courts below does not suffer from any error or illegality and does not call for interference in this second appeal.

13. I have considered the contentions of the learned Counsel appearing for the parties and perused the oral and documentary evidence adduced by the parties before the trial Court and also perused the judgments relied upon by the learned Counsel appearing for the respondents and I answer the substantial question of Law framed as follows:

1. in the affirmative, Against the appellants and in favour of the respondents; and
2. in the affirmative, Against the appellants and in favour of the respondents. for the following reasons:

14. REG. POINTS 1 AND 2: This points are considered together since they are interconnected and to avoid repetition.

15. It is clear from the perusal of the oral and documentary evidence adduced by

the parties that the fact that Yellubai continued to be in possession of the property when the Hindu Succession Act, 1956, came into force cannot be disputed, as the suit filed by the appellant herein seeking for an order of permanent injunction in O.S.No.429/1973 was dismissed and was confirmed in Regular Appeal 18/1982 and the said concurrent findings of the Courts below have been confirmed by this Court in Regular Second Appeal No. 361/1983 dated 22/06/1992 and wherefore it is not open to the appellants herein to contend that Yellubai was not in possession of the property when the Hindu Succession Act, 1956, came into effect and wherefore the said contention of the appellants that though there was an arrangement under which Dudappa had agreed to settle the property upon Yellubai, the possession of the property was not given to Yellubai and that she was paid maintenance cannot at all be believed and the same has been negatived by the Trial Court and the question that would arise for consideration is as to whether Yellubai was in possession of the property in exercise of her preexisting right in lieu of her maintenance and wherefore the said right ripened into an absolute right after coming into force of Section 14(1) of the Hindu Succession Act as held by the Lower Appellate Court. The finding of the Trial Court that Yellubai had perfected her title by adverse possession cannot at all be sustained. As it is the case of the Yellubai herself that she was in possession of the property in exercise of her right towards maintenance and therefore the question of exercise of any adverse possession against the appellants would not arise and the Trial Court was not at all justified in holding that the plaintiff had perfected title by adverse possession and the said finding is clearly erroneous as rightly held by the lower Appellate Court.

16. The interpretation of the provisions of Section 14(1) of Hindu Succession Act as also the right of a Hindu widow towards the maintenance has been considered by the Supreme Court in detail in the case of VADDEBOYINA TULASAMMA AND OTHERS vs. VADDEBOYINNA SESA REDDY(DEAD) BY L.RS. AIR 1977 SC 1944 and the said decision has been reiterated in the subsequent decision of the Supreme Court and in the decision of Raghubar Singh and Others Vs. Gulab Singh and Others, . The Supreme Court had an occasion to consider again the right of widow's estate towards maintenance and right to maintenance of Hindu Female and the provisions of the Hindu Widow's right and Hindu Succession Act and it has been held that right of maintenance of a Hindu female is a pre-existing right which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts came into force and is not a creation of the statute which only recognises that position. The Supreme Court has laid down in RAGHUBAR SINGH AND OTHERS vs GULAB SINGH AND OTHERS as follows:

"16. The obligations, under the Shastric Hindu Law, to maintain a Hindu widow out of the properties of her husband received a statutory recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. The law on the subject was, thereafter, consolidated and codified by the Hindu Married Women's right to Separate Maintenance and Residence Act, 1946, which came

into force on April 23, 1946. The right to maintenance of the Hindu widow, as a pre-existing right, was thus recognised by the two statutes referred to above but it was not created for the first time by any of those statutes. Her right to maintenance existed under the Shastric Hindu Law long before statutory enactments came into force. After the attainment of independence the need for emancipation of women from feudal bondage became even more imperative. There was growing agitation by Hindu women for enlargement of their rights as provided by the Shastric Hindu Law in various spheres. It was at this juncture that the Parliament stepped in and enacted various statutes like the Hindu Marriage Act, 1956. The Hindu Adoption and Maintenance Act, 1956, and the Hindu Succession Act, 1956 providing for intestate succession.

17. The Hindu Succession Act, 1956 made far reaching changes in the structure of Hindu law by removing the traditional limitations on the powers of a Hindu widow to deal with the property of her deceased husband, in her possession in lieu of her right to maintenance and the Act made her an absolute owner of the property, over which hitherto she had only a limited right.

18. A most elaborate discussion about the rights of a female Hindu before and after the coming into force of the Hindu Succession Act, 1956 and particularly the provisions of Section 14 of the Act, is contained in a three Judge Bench judgment of this Court in *V. TULASAMMA vs. SETHA REDDY (DEAD)* (SUPRA). Dealing with the provisions of the Hindu Succession Act, 1956, this Court in *V. Tulasamma vs. SETHA Reddy (Dead)* by L.Rs..., (supra) observed:

"The Act is codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate....."

19. Fazal Ali, J, in his exhaustive judgment, dealing with the question of the pre-existing right of the Hindu widow laid down (AIR 1977 SC 1944):

"Thus on careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of Hindu Woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is *jus ad rem* and not *jus in*

rem it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court.

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946 and is, therefore, a pre-existing right:

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in position to make due arrangements for her maintenance."

20. Dealing with the scope of Section 14 of the Act, the learned Judge opined that the provisions of the Section must be liberally construed in order to advance the object of the Act, which is "to enlarge the limited interest possessed by a Hindu widow" in "consonance with the changing temper of the times" and observed:-

"that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long-felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession.

The learned Judge then interpreted Section 14 thus:

"1. Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the Socio-economic ends sought to be achieved by this long-needed legislation.

2. Sub-section(2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

3. Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. Which create independent and new titles in favour of the females for the first

time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restriction placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to 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.

4. The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance," "or arrears of maintenance" etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2)."

21. The judgment in Tulasamma's case, has held the field till date (See also with advantage: RAM KALI (SMT.) vs. CHOUDHRI AJIT SHANKAR AIR 1977 SC 1944 : (1977) 9 SCC 613 and Bhoomireddy Chenna Reddy and another Vs. Bhoospalli Pedda Verrappa (dead) by LRs., and another,

22. Thus, we find that there is enough authority for the proposition that the right to maintenance of a Hindu female is a pre-existing right, which existed in the Hindu Law long before the Act of 1937 or the Act of 1946 came into force and is not a creation of those statutes, which only recognised that position. In the words of Fazal Ali, J. in Tulasamma's case AIR 1977 SC 1944 (supra):

"The Hindu female's right to maintenance is not empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shashtric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

23. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of widow is "a pre-existing right," which existed under the

Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those acts merely recognised the position as was existing under the Shastric Hindu Law and gave it to a "Statutory" backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance."

17. The contentions of the parties and the oral and documentary evidence on record and the finding of the lower Appellate Court has to be considered in the light of the above principles & laid down by the Supreme Court to find out as to whether Yellubai had pre-existing right in the schedule properties when the Hindu Succession Act, 1956 came into force and as to whether the said right has blossomed into an absolute right. It is already held that the fact the Yellubai was in possession of the schedule property on the date of coming into force of the Hindu Succession Act is proved. It is also clear from the earlier proceedings between the parties that Ex.p-1 to p-3- the judgment and decree passed in O.S.No. 122/1950, the judgment in Regular Appeal No.92/1952 and the judgment in S.A.No.3./1956 passed by this Court would clearly show that the said suit had been filed by Yellubai against Yamanappa and in the said suit, the father of the appellants-Dudappa admitted that the property was settled in favour of Yellubai under the document marked as Ex. p.-52 in the said case dated 07/01/1931 and that Yellubai was put in possession of the properties in lieu of her right towards maintenance. There is no force in the contention of the learned Counsel appearing for the appellants that the said admission was made by his father Dudappa and is not binding upon him as he did not make any admission in the said suit and the admission made by his father would not be binding upon him as it is clear from the perusal of the judgment Exs. p-1 to p-3 that appellant herein had been impleaded as PW-2 and remained *exparte* and his father Dudappa has clearly admitted that Ex.D.5(a) which has been marked by consent without any objection by the appellant herein that the property was settled in favour of Yellubai in lieu of her right of maintenance, as it is stated that he has filed a written statement that half share was given for her maintenance, the said admission made by Dudappa who is the father of the appellant herein would be binding upon the parties including the appellant herein who did not choose to appear before this Court in the said proceedings. Further, the said admission is not sought to be explained by the appellant herein in the present proceedings also as it is clear from the facts elicited in the cross-examination of DW-1 Yamanappa- the appellant herein that he was aged 50 years at the time of giving evidence before this Court and it is true that himself and his father were defendants in O.S.No 122/ 1950. It is elicited in the Cross-examination of Dw-1 that he does not know what was the defence filed by his father in the said suit in respect of the schedule property. He does not know what contentions he had taken in the suit. He does not know whether in the said suit the document was produced as Ex.P-52, being an agreement passed by his father in favour of Yellubai. He has no personal knowledge about the arrangement between Yellubai

and his father regarding the schedule property. he does not remember whether the schedule properties were given to Yellubai for maintenance and contents of Ex. D-5 (a) and he has no personal knowledge, if, it was agreed between Yellubai and Dudappa that the property was given to Yellubai in lieu of maintenance and therefore the above facts elicited in the cross-examination of DW-1-appellant would clearly show that he has feigned ignorance about the contentions taken by his father in the earlier proceedings and has not chosen to explain the admission made by his father in the earlier proceedings that the schedule property was given to Yellubai in lieu of her maintenance is not binding upon or that his father did not make such admission in the earlier proceedings and wherefore, it is clear that the lower Appellate Court was perfectly justified in holding that the schedule property was settled in favour of Yellubai in lieu of her maintenance in recognition of her pre-existing right of maintenance under the agreement dated 07/01/1931 which was marked as Ex. P-52 in the earlier proceedings. There is also no merit in the contention of the learned Counsel appearing for the appellant that when it was held in the earlier proceedings that the schedule properties in the said suit were the self-acquired properties of Irappa and the husband of Yellubai pre-deceased his father Irappa and after the death of Irappa, the property has devolved upon his father Dudappa and Bharmappa and the question of setting the property in favour of Yellubai by way of maintenance does not arise. This contention has to be rejected in view of the finding that Dudappa who had settled the property in favour of Yellubai under the agreement dated 07/01/1931 and Dudappa has admitted that property was given to Yellubai in lieu of her maintenance and further the lower Appellate Court has also rightly held that even, if, it is assumed that there was no partition of the property during the life time of Irappa, there was existence of the joint family and Yellubai being a member of the joint family was in fact given property by Dudappa under agreement dated 07/01/1931 in lieu of her maintenance and wherefore it must be held that she had a pre-existing right towards maintenance and the schedule property which was given to her in lieu of her maintenance and therefore the provisions of Section 14(2) of the Hindu Succession Act, 1956, would be attracted which would naturally exclude the provisions of Section 14(2) of the Hindu Succession Act, 1956. Wherefore, it is clear that the Lower Appellate Court has rightly held that Yellubai had a limited widow's estate in the schedule properties which was given to her in lieu of her maintenance and the same ripened into an absolute estate in view of the provisions of Section 14(1) of the Hindu Succession Act and accordingly, the substantial questions of law have to be answered against the appellant and in favour of the respondents. In view of the same, I hold that there is no merit in this appeal and pass the following order:

18. This Regular Second Appeal is dismissed with costs.