Potti Lakshmi Perumallu

Vs

Potti Krishnavenamma

Civil Appeal No. 519 of 1961

(Mudholkar JJ)

13.08.1964

JUDGMENT

MUDHOLKAR J.

This is an appeal by special leave form the judgment of the High Court of Andhra Pradesh affirming the decrees for partition and separate possession certain movable and immovable properties, passed by the second Additional Subordinate Judge, Vijayawada.

The genealogical table showing the relationship between the parties set out below will be of assistance in appreciating the facts of the case :

Potti Subba Rao (died in 1919) | ---------- | | | First wife - Sitaramaiah - Second wife Lakshmi Perumallu Krishnamurti | (dies on (Plaintiff) (defendant) (died in 1930) | 10.8.1938) Krishnavenamma | Pulla Paodied in 1939##

Potti Subba Rao who died in the year 1919 was survived by three sons Sitaramaiah, Lakshmi Perumallu and Krishnamurti. Sitaramaiah was married twice. From the first wife he had a son named Pulla Rao. After the death of the first wife he married Krishnavenamma, the plaintiff in the suit. Sitaramaiah died on August 10, 1938. No issue was born to Krishnavenamma who was only 14 years of age at the time of Sitaramaiah's death. Pulla Rao died in the year 1939 at the age of 11 years. Krishnamurti died in the year 1930 i.e., before Sitaramaiah, without leaving any issue or a widow. The plaintiff continued to stay in the same house as the defendant till the beginning of July, 1950. They she suddenly left the house and instituted the suit in question on the 6th of that month, According to her Sitaramaiah and his two brothers, the defendant and Krishnamurti, acquired large movable and immovable property at Vijayawada, described in the schedule to the plaint, with the aid of their ancestral business. She claimed half share in the entire property set out in the schedules, by virtue of the provisions of the Hindu Women's Rights to Property Act, 1937. She admitted that her husband had purported to execute a will before his death but contended that it was inoperative because he was a member of a Hindu joint family at the time of his death.

The defendant contested the claim on various grounds. According to him there was no ancestral property and the suit properties were acquired by the brothers by their individual efforts and treated as self-acquisition. Further according to him the will executed by Sitaramaiah is valid and binding on the plaintiff and that the property allotted to the plaintiff under the will was being enjoyed by the plaintiff and further the properties allotted to Pulla Rao developed upon him after Pulla Rao's death. Lastly, according to him even if the property were held to be joint family property of Sitaramaiah and the defendant the plaintiff would be entitled only to 1/4th share in them and not half share.

The courts below have found that the suit properties were the joint family properties of Sitaramaiah and the defendant, that the will executed by Sitaramaiah was inoperative and not binding on the plaintiff and that the plaintiff is entitled to half share in the suit properties. The trial court gave direction to the effect that a commissioner be appointed for ascertaining the property liable to be partitioned and for dividing them into two equal shares by metes and bounds for the purpose of awarding to the plaintiff the separate possession of her half share in the properties.

Mr. S. T. Desai who appears for the defendant-appellant has not challenged the concurrent finding of the courts below to the effect that the properties acquired by the family were joint family properties. He, however, urged the following three contentions before us :

> (1) The will executed by Sitaramaiah on August 3, 1938 itself resulted in severance in the status of the two brothers constituting the joint family and that in any event separation ensued between them at the death of Sitaramaiah;
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> (2) that at any rate the will should be construed to be a family arrangement made by the karta of the family and assented to by the defendant any by the father and the foster-father of the plaintiff on her behalf;
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> (3) assuming that neither of the two contentions is correct, the interest to which the plaintiff would be entitled would be 1/4th share in the property and not half share therein. This interest has to be ascertained as on the date of the death of Sitaramaiah.

All these contentions were also urged before the High Court but were negatived by it and in our opinion, rightly. Mr. Desai has, however, placed reliance upon a recent decision of this Court in A. Raghavamma & anr. v. A. Chenchamma & anr. ([1964] 2 S.C.R. 933) in support of the contention that the will itself effected a severance in status. What was held in that case was that a member of a joint Hindu family can bring about a separation in status by a definite and unequivocal declaration of his intention to separate himself from the family and enjoy his share in severally by expressing such an intention even in a will. It was further held that the knowledge of the expression of intention to separate has to be brought home to the persons affected by it and if that is done it relates back to the date when the intention was formed and expressed. A perusal of the will, Ex. B-1, does not however unmistakably show that the intention of Sitaramaiah was to separate himself from the joint family. At the outset he has states : "I have executed this will regarding the arrangements to take effect after my life-time with regard to the enjoyment of the joint immovable and movable properties which are possessed by me and under my management by my brother and others". In the second paragraph he has stated that he had no ancestral property at all and that the business carried on by himself and his brother was established by them. In the third paragraph he directed that the plaintiff shall maintain his son Pulla Rao and that his brother would look after the interest of Pulla Rao. The 4th, 5th and the 8th paragraphs on which reliance is placed by Mr. Desai run thus :

> "4. If for any reason the said Krishnaveni does not agree to be like that my younger brother Lakshmi Perumallu shall deliver possession of the upstair house constricted newly on the house site purchased from Nadakurthi Kristamma and others and the tiled room situate in the big street and purchased from Gunda Subbarayudu out of the immovable property possessed by me in Bezwada town on condition of including them in the half share of the property that shall pass to my son after my life-time.
>
> 5. The said Krishnaveni shall be at liberty to take possession of the two properties

> mentioned in paragraph 4 above, to pay all kinds of taxes payable thereon and to enjoy freely throughout her life-time only the income got every year form the said two properties without powers of gift, mortgage, exchange and sale by following the age-old custom and by maintaining the family respect and custom and the said two properties shall pass to my son Pulla Rao alias Venkatasatyanarayana after her life-time.
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> 8. My younger brother Lakshmi Perumallu shall keep the remaining entire property joint till my son Pulla Rao alias Venkatasatyanarayana attains majority and manage the same, shall bring up the boy property, celebrate the marriage and deliver possession of the same to my son".

It seems to us difficult to infer from the recitals in these paragraphs that Sitaramaiah had expressed his unequivocal intention to get separated in status. No doubt, in the 4th paragraph he has observed that in certain circumstances certain property will be included in the half share of the property that would pass to his son after his death and he has also said in paragraph 5 that the plaintiff shall be at liberty to take possession of the two properties indicated in paragraph 4, enjoy them during her life time and that on her death they will pass to Pulla Rao. But in paragraph 6 he has referred to the remaining property us "joint property" and has repeated that in paragraph 7. Again, what he has said in paragraph 8 militates wholly against the inference of separation in status. There he has enjoined upon the defendant to keep the remaining property joint till Pulla Rao after the latter attained majority, manage the same and divide that property between himself and Pulla Rao after the latter attained majority. Nowhere in the will has he stated that he wanted to put an end to the coparcenary. Indeed, the very assertion which has been concurrently found to be untrue that the property was not joint family property would preclude an inference that Sitaramaiah intended to express his intention to separate in status and put an end to a coparcenary which, according to that assertion, in fact did not exist. In the circumstances we cannot accept the first contention of Mr. Desai.

No doubt, a family arrangement which is for the benefit of the family generally can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. It is quite clear that there is complete absence of evidence to show that there was such an occasion or the arrangement indicated in the will was acted upon. The letter Ex. B12 upon which reliance was placed before the High Court on behalf of the defendant has not been found by it to be genuine. The defendant had also pleaded that the provision under the will were given effect to but no satisfactory evidence has been adduced to prove that the plaintiff was in enjoyment of the properties, allotted to her under the will. We cannot, therefore accept the second contention of Mr. Desai.

Coming to the last question there is a certain amount of conflict in the decisions of the various High Courts. One view is that the quantum of interest to which a Hindu Widow is entitled under s. 3(2) of the Hindu Women's Rights to Property Act, 1937, is to be determined as on the date on which she seeks to enforce partition under sub. s. (3) of s. 3. The other view is that it has to be determined as on the date on which her husband died, that it has to be determined as on the date on which her husband died, that is to say, that it is not a fluctuating interest increasing or decreasing as a result of deaths or births in the family.

The first mentioned view has been stated with approval in Mulla's Principles of Hindu Law, (12 ed.) and it is stated at pp. 109-110 :

> "The share which devolves on a widow of a deceased coparcener is not a fixed and determinate she but what she takes is the 'same interest as he himself had'. Therefore, until there is partition, she cannot predicate the particular fraction of her share for it is likely to increase or decrease by birth or death of other coparceners. Her share would include a share in accretions to the join family property till partition is effected. Prior to the Act, a window was entitled to a share in partition among her sons in her capacity as a mother (expect in Madras). It has been held in a number of cases that after the Act the window cannot claim a double share on partition between the sons, one in her capacity as a window and another as a mother. Under the prior law, stridhan acquired by a female from her husband or father-in-law was taken into account when a share was allotted 3(2) is not affect by any rule of Hindu law to the contrary and it has been held in Nagpur case that such stridhan received by her would not be deducted from her share on partition."

In support of this statement in law reliance has been placed upon the following decisions :

Nagappa v. Mukambe (I.L.R [1951] Bom. 442); Mahadu v. Gajarabai (I.L.R. [1954] Bom. 885); Shivappa v. Yellewa (I.L.R.[1953] Bom.958); Gangadhar v. Subhashsini (A.I.R 1955 Orissa 135); Tukaram v. Gangi (A. I.R 1957 Nag. 28); Ramchandra v. Ramgopal (I.L.R. [1956] Nag 362); Hanuman v. Tulsabai (A.I.R 1956 Nag 63).

In addition to these decisions our attention was invited to Gurudayal v. Sarju (A.I.R 1952 Nag. 43); Kamal Kishore v. Harihar (I.L. R. [1951] Pat. 357); Sabuipari v. Satrughan Isser (A.I.R. 1958 Pat. 405); Movva Subba Rao v. Movva Krishna Prasadam (I.L.R. [1954] Mad 257); Parappa v. Nagamma (I.L.R. [1954] Mad. 183 (F.B.)); Manicka v. Arunachala (I.L.R. [1961] Mad. 1016); Harekrishna v. Jujesthi (I.L.R. [1955] Cutt. 709); Keluni v. Jagabandhu (I.L.R [1957] Cutt. 630); The Indian Leaf Tobacco Development Co. Ltd., v. K. Kotayya (A.I.R. 1955 Andh 135); Laxman v. Gangabai (I.L.R. [1955] M.B. 282); Bhondu v. Ramdayal (A.I.R. 1960 M.P. 51); Ratan Kumari v. Sunder Lal (A.I.R 1959 Cal. 787).

The High Court itself referred to the decision in Chinniah Chettiar v. Sivagami Achi (I.L.R. [1945] Mad. 402) which is a decision of the Full Bench constituted for resolving an apparent conflict between the decisions in Chinniah Chettiar's case (I.L.R. [1945] Mad. 402) and Subba Naicker v. Nallammal ((1949) 2 M.L.J. 536). In the opinion of the Full Bench there was really no conflict between the two decisions and that the right conferred by the Hindu Women's Rights to Property Act was a new right in modification of the Pre-existing one. The Full Bench further held that s. 3(2) of the Act does not bring about a severance of interest of the deceased coparcener, that his widow is not raised to the status of a coparcener though she continues to be member of the joint family as she was before the Act, that the joint family would continue to exist as before subject only to her statutory rights and that the rights of the other members of the family would be worked out on the basis that the husband died on the date when the widow passed away, the right to survivorship being suspended till then. Further according to the Full Bench a widow can under the Act claim a share not only in the property owned and possessed by the family at the time of his death but also in the accretions arising therefrom, irrespective of the character of the accretions. The various decisions to which we have adverted rest on the view that the interest which the law has conferred upon the widow is a new kind of interest though in character it is what is commonly known as the Hindu widow's estate. This interest is in substitution of her right under the pre-existing Hindu law to claim maintenance. The decisions also recognise that though the widow does not, by virtue of the interest given to her by the new law become a coparcener she being entitled to claim partition of the joint

family property is in the same position in which her deceased husband would have been in the matter of exercise of that right. That is to say, according to these decisions her interest is a fluctuating one and is liable to increase or decrease according as there are deaths in or additions to the members of the family or according as there are accretions to or diminutions of the property. In our opinion these decision lay down the law correctly. To hold, as contended for by Mr. Deasi and as would appear from the two decisions upon which reliance was placed by him before us - Jadaobai v. Puranmal (I.L.R. [1944] Nag. 832) and Siveshwar Prasad v. Lala Har Narain (I.L.R. (1944) 23 Pat. 760) - would mean that whenever a coparcener in a Hindu joint family dies leaving a widow a disruption takes place in the Family. For, unless a disruption is deemed to take place, it would not be possible for the widow's share to be crystallised. The arguments of Mr. Desai, however, is that the words in the Act "his widow shall, subject to the provisions of sub-s. (3) have in the property the same interest as he himself had" can only mean the interest which the deceased coparcener had at the moment of his death and the words "shall be the limited interest known as a Hindu women's estate" show that the nature of her interest was to be the same as already recognised by the Hindu law. The legislature did not, he says, intend to create a new kind of interest not to make her a coparcener. Undoubtedly she does not become a coparcener, though her interest in the family property is to be the same as that of her deceased husband except that in extent it is to be that of a Hindu widow. (Now, of course, it has been enlarged by s. 14 of the Hindu Succession Act, 1956). But a coparcener has no defined interest in the joint family property and the right which he has is to claim for partition. The quantum of his interest would be determinable with reference to the date on which such member unequivocally declares his intention to separate and thus put an end to the coparcenary. It cannot even be suggested that the event of the death of a coparcener is not tantamount to an unequivocal declaration by him to separate from the family. According to the theory underlying the Hindu law the widow of a deceased Hindu is his surviving half and, therefore, a long as she is alive he must be deemed to continue to exist in her person. This surviving half had under the Hindu law texts no right to claim a partition of the property of the family to which her husband belonged. But the Act of 1937 has conferred that right upon her. When the Act says that she will have the same right as her husband had it clearly means that she would be entitled to be allotted the same share as her husband would have been entitled to had he lived on the date on which she claimed partition.

Jadaobai's case (I.L.R. [1944] Nag. 832) in which a different view has been taken and on which reliance has been placed by Mr. Desai may now be considered. In that case it was contended that the widow does not take any property by succession and, therefore, she is not liable to produce a succession certificate for the execution of a decree obtained by her husband. In support of this contention reliance was placed on behalf of the widow upon the decision in Natarajan Chettiar v. Perumal Ammal (A.I.R. 1943 Mad. 246). In that case Horwill J. observed as follows :

> "The widow does not obtain the right given under this section (section 3 of the Hindu Women's Rights to Property Act, 1937) by survivorship. She was not a coparcener before her husband's death and she was not one afterwards. I do not however think that it follows that because the widow does not obtain it my inheritance. The effect of s. 3 cls. (2) and (3) may be regarded as a survival of the husband's persona in the wife giving her the same rights as her husband had except under certain circumstances. As the widow did not inherit her right, no succession certificate is necessary".

The learned Judges of the Nagpur High Court observed that a person can take the property of another either by survivorship or by succession and that if, as held in the Madras case, the widow of

a deceased coparcener does not take it by survivorship the only way in which she could take it would be by succession. In the course of the judgment the learned Judges observed :

> "Horwill J., in the Madras case quoted above, is of the opinion that the mere fact that the widow does not obtain her right by survivorship does not lead to the conclusion that she obtains it by inheritance. If she does not claim it by inheritance we fail to understand how she is claiming it in the face of the clear wording of the Act. The observations that the effect of section 3, clauses (2) and (3), may be regarded as a survival of the husband's persona in the wife, giving her the same rights as her husband had except that she can alienate property only under certain circumstances, do not indicate very clearly what was really intended to be laid down. Survivorship having been ruled out the only other mode by which she will be clothed with the rights of her husband in the property, though to a limited extent, would be by succession or inheritance if she claims under the Hindu Women's Rights to Property Act".

It seems to us that the learned Judges were not quite correct in saying that the property of one person can, on his death, devolve on another only by survivorship or by inheritance and in no other way. For, it is competent for the legislature to confer a right on a person to get the property of another on the latter's death in certain circumstances. This is precisely what has been done by the legislature in enacting s. 3. sub-s. (2) of the Hindu Women's observed by another division bench of the same High Court in Gurdayal v. Sarju (A.I.R. [1952] Nag. 43) :

> "Reliance was, however, placed for the defendants on Jadaobai v. Puranmal (I.L.R. [1944] Nag. 832) where a Division Bench of this Court held that the interest of the husband devolves on the widow by inheritance and not by survivorship. We have no quarrel with that. It does not matter for the purposes of this case how the interest which the Hindu Women's Rights to Property Act gives Sarjubai devolved on her. The question is of what does that interest consists. Even if it devolves on her by inheritance the interest is, according to the Act, ' the same interest as the husband had', and 'the same right of claiming a partition as a male owner'. Whether this right devolved on Sarjubai by way of inheritance, or by succession, or whether because of the Act, as a statutory right, would make no difference. The right is the same as that of a male owner and the interest is the same as her husband had. For these limited purposes she merely steps into his shoes and can be regarded as a continuation of himself".

In the next case relied upon, Siveshwar Prasad v. Lala Har Narain (I.L.R. (1944) 23 Pat. 760) Division Bench has held that the interest which is acquired by a widow under the Hindu Women's Rights to Property Act, 1937 is not as a survivor but as an heir of her husband. The interest, therefore, is an asset of her husband in her hands and can be proceeded against by a creditor even though it may be an undivided interest in a joint family property. It is difficult to appreciate how this decision is of assistance to the appellant. No doubt, the husband's interest does not devolve on the widow by survivoship but it does not follow from that the husband's interest gets crystallised at the moment of his death and that it is to this interest that the widow succeeds. On the other hand the view of the learned Judges that the husband's interest is liable to be attached at the instance of the husband's creditors despite its devolution on the widow seems to accord with the view that the widow takes the husband's interest as the surviving half of the husband. A passing reference was also made by learned counsel to Rajendrabati v. Mungalal (I.L.R. (1952) 31 Pat. 477). The question

for consideration in that case was the same as in Jadaobai's case and the High Court relying upon its earlier decision held that the provisions of s. 214 of the Indian Succession Act. 1925 were attracted, the suit being one for the recovery of her share of the money due to the joint family of which her decreased husband was a member. In course of the argument reliance was placed on a decision of the Madras High Court in which it was held that under s. 3 of the Hindu Women's Rights to property Act a widow of a deceased coparcener in a joint Hindu family becomes entitled to a right not as an heir but by statute and that she stands in the shoes of her deceased husband and continues to be a member of the joint family. This arguments was rejected by the learned Judges who observed :

> "With the greatest respect I cannot accept this proposition specially in view of the principles which have been so definitely laid down in two Bench decision of this Court referred to above. The lady may be regarded as a member of the joint family but as has been pointed out by this Court the interest which devolves upon her after the death of the last male holder, must be regarded as an interest descending to her as an heir, and as soon as it is held that she acquires her interest as an heir section 214 of the Succession Act would come into play and no decree can be passed in her favour unless she produces a succession certificate".

As we have already pointed out the interest devolving upon the widow need not necessarily be either by survivorship or by inheritance but could also be in a third way i.e., by statute and where the interest is taken by her under a statute no further difficulty arises.

We are, therefore, clearly of the view that the High Court was right in allotting to the respondent half share in the family property as its partition. Accordingly we affirm its decree and dismiss the appeal with costs.

Appeal dismissed.

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