

Bindumati Bai

Vs

Narbada Prasad

Civil Appeal No. 878 of 1968

(H.R. Khanna, V.R. Krishna Iyer JJ)

28.10.1976

JUDGMENT

KHANNA, J. -

1. This appeal by special leave is against the judgement of the Madhya Pradesh High Court affirming on second appeal the decision of the trial Court and the first appellate Court whereby suit for possession of the land in dispute had been decreed in favour of the plaintiff-respondent against the defendant-appellant.

2. Laxmi Dayal died in 1952 leaving the lands in dispute and some other properties. He was succeeded by his two widows, Shantibai and Bindumati. In 1954 Chandanbai, widow of brother of Laxmi Dayal, filed Civil Suit 34A of 1954 against Shantibai and Bindumati in respect of the property left by Laxmi Dayal. During the pendency of that suit, a deed of partition was executed by Shantibai, Bindumati and Chandanbai, as a result of which each one of them was stated to have become full owner of the property which fell to her share. The partition deed was got registered and necessary mutation entries were made in accordance with that deed. On September 8, 1955, Shantibai made a will of the property which fell to her share as a result of partition, in favour of the plaintiff-respondent. The suit filed by Chandanbai was disposed of on February 18, 1956 in terms of partition deed dated January 13, 1955. Shantibai died on May 29, 1956. The respondent filed the present suit against Bindumati defendant-appellant for possession of the land in dispute on the allegation that he (the respondent) had taken possession of land in dispute in pursuance of the will executed in his favour by Shantibai. The appellant was stated to have relinquished her right of survivorship in the land which fell to the share of Shantibai. The appellant, it was further pleaded, had taken forcible possession of the land in dispute.

3. The suit was resisted by the appellant on the ground that she had not relinquished her right of survivorship in the land which fell to the share of Shantibai. Shantibai, it was further averred, had no right to dispose of the said land by will. The trial Court accepted the contention of the respondent and decreed his suit. The decision of the trial Court was affirmed on appeal by the first appellate Court and by the High Court in Second appeal.

4. The first question which arises for consideration in this appeal is whether the appellant relinquished her right of survivorship in the property which fell to the share of Shantibai as a result of the deed of partition dated January 13, 1955. In this respect we find that each of the three executants stated in that deed that none of them would have any right or claim over the property that fell to the share of other share holders in partition. It was further stated in the deed :

Every shareholder may get the property fallen to her share, mutated and may take possession thereof and thus may become absolute owner thereof. Every shareholder may get her name separately mutated in patwari's papers. She may sell it. If other shareholder claim it, it will be contrary to law ... By taking our respective share from the entire property in the partition we become separate from the entire property.

When she came into the witness box, the appellant admitted that their object in making the partition was that they would be able to dispose of their separate lands in any way they liked. The appellant also stated that as a result of partition, each one of the executants of the deed of partition became exclusive owner of the property that fell to her share. In the face of recitals in the deed of partition and the admissions made by the appellant in the witness box, we find no reason whatsoever to disturb the finding of the courts below that the appellant had relinquished her right of survivorship in the property which fell to the share of Shantibai.

5. Mr. Sanghi on behalf of the appellant, however, contends that it is not permissible in Hindu law for a widow to give up her right of survivorship in the property which falls to the share of the co-widow even as a result of an agreement. This contention, our opinion, is devoid of force and runs counter to the decision of this Court in the case of *Karpagathachi v. Nagarathinathachi* ((1965) 3 SCR 335 : AIR 1965 SC 1752). As observed in that case, under Hindu law as it stood in 1924, two widows inheriting their husbands' properties took together one estate as joint tenants with rights of survivorship and equal beneficial enjoyment. They were entitled to enforce a partition of those properties so that each could separately possess and enjoy the portion allotted to her, see *Bhugwan Deen Doobey v. Myna Bae* ((1867) 11 MIA 487), *Gauri Nath Kakjhi v. Gaya Kuar* (1928 LR 55 IA 299 : AIR 1928 PC 200). Neither of them could without the consent of the other enforce an absolute partition of the estate so as to destroy the right of survivorship, see *C. I. T. v. Smt. Indira Balkrishna* ((1960) 3 SCR 513, 517 : AIR 1960 SC 1172 : 39 ITR 546). But by mutual consent they could enter into any arrangement regarding their respective rights in the properties during the continuance of the widow's estate, and could absolutely divide the properties, so as to preclude the right of survivorship of each of the portion allotted to the other, see *Ramakal v. Ramasami Naichan* (1899 ILR 22 Mad 522 : 9 MLJ 101), *Sudalai Ammal v. Gomathi Ammal* ((1912) 23 MLJ 355). Likewise, two daughters succeeding to their father's estate as joint tenants with rights of survivorship could enter into a similar arrangement, see *Kailash Chandra Chuckerbutty v. Kashi Chandra Chuckerbutty* (1897 ILR 24 Cal 339), *Subbammal v. Lakshmana Iyer* ((1914) 26 MLJ 479), *Ammani Ammal v. Periasami Udayan* ((1923) 45 MLJ 1). Such an arrangement was not repugnant to Section 6(a) of the Transfer of Property Act, 1882. The interest of each widow in the properties inherited by her was property, and this property together with the incidental right of survivorship could be lawfully transferred. Section 6(a) of the Transfer of Property Act prohibits the transfer of the bare chance of the surviving widow taking the entire estate as the next heir of her husband on the death of the co-widow, but it does not prohibit the transfer by the widow of her present interest in the properties inherited by her together with the incidental right of survivorship. The widows were competent to partition the properties and allot separate portions to each, and incidental to such an allotment, each could agree to relinquish her right of survivorship in the portion allotted to the other.

6. There is nothing in the decision of *Smt. Indira Balakrishna* which stands in the way of any mutual arrangement between the co-widows, the effect of which would be to preclude the right of survivorship of each to the portion allotted to the other. The question which actually arose for decision in the case was whether the three widows of a deceased person could have the status of an association of persons within the meaning of Section 3 of the Indian Income-Tax Act, 1922. This question was answered in the negative. While discussing this question, this Court observed that

though the widows take as joint tenants, none of them has a right to enforce an absolute partition of the estate against the other so as to destroy the right of survivorship. The question as to whether the right of survivorship could be relinquished as a result of mutual agreement did not arise for consideration in that case. This question was dealt with in the case of Karpagathachi and it was held after noticing the decision in Smt. Indira Balakrishna's case that such relinquishment of the right of survivorship was permissible as a result of mutual arrangement.

7. Lastly, it has been argued by Mr. Sanghi that even though Shantibai became entitled to dispose of during her lifetime the property which fell to her share as a result of the deed of partition, she could not bequeath the same by means of a will. This submission too is devoid of force, and we agree with Mr. Parekh who argued the case *amicus curiae* that the power of Shantibai to make a will in respect of the property in dispute was coextensive with her power to transfer it *inter vivos*. The question as to what effect the will would have on the right of the male reversioner, if any, of Laxmi Dayal need not be gone into in this case. So far as Bindumati appellant is concerned, we have no doubt that in the light of the arrangement contained in the deed of partition dated January 13, 1955 she cannot resist the claim of the plaintiff-respondent who is a legatee under the will of Shantibai. To hold otherwise would be tantamount to permitting the appellant to assert her right of survivorship in the property which fell as result of partition to the share of Shantibai even though the appellant has relinquished such right of survivorship.

8. The appeal consequently fails and is dismissed. As no one appeared on behalf of the respondent, we make no order as to the costs of the appeal.

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