

SUPREME COURT OF INDIA

Santhanam Kachapalaya Gurukkal

Vs.

V. Subramanya Gurukkal

C.A.No.135 of 1973

(P. N. Bhagwati, A. C. Gupta and S. Murtaza Fazl Ali, JJ.)

17.03.1977

JUDGEMENT

FAZAL ALI, J.:-

1. This appeal is by certificate granted by the High Court.
2. V. Subramania Gurukkal (plaintiff) and Kachapalaya Gurukkal (the second defendant) are the sons of the first defendant Chinna Vaithya Gurukkal. They were members of a joint Hindu family. One Sivakami Ammal, widow of the first defendant's elder brother filed an original suit No. 576 of 1917 in the Court of Munsif, Kancheepuram, claiming maintenance. The plaintiff was not born at that time and Sivakami Ammal's claim had been settled as a result of which the properties mentioned in Sch. 'B' to the plaint were carved out of the larger family estate and allotted to her in lieu of her maintenance subject to the condition that she was to enjoy them for life without any power of alienation and after her death the properties were to revert to the first defendant and his family. Sivakami Ammal, however, continued to be in possession until her death on June 23, 1967. In other words, she was in possession of the properties allotted to her in 1956 when the Act of 1956

came into force. As the properties were to revert to the family of the plaintiff and defendants the plaintiff called upon the defendants to effect a partition and give possession of one third share, but the second defendant denied the claim. The plaintiff submitted that under the settlement arrived at between the joint family and Shivakami, she was to get only life interest and the plaintiff was not bound by it. The plaintiff, therefore, prayed for a declaration that he was entitled to one-third share in Schedule 'B' properties and for partition and allotment of his one-third share. The second defendant resisting the suit denied that the plaintiff and the defendants were members of a joint family, but averred that they had separated 25 years ago. It was also averred that the first defendant was leading a wayward life and sold away all the joint family property in 1957 and the first defendant's reversionary rights were released in favour of second defendant on August 21, 1937. It was also contended that Sivakami had executed a settlement deed in favour of the second defendant on June 3, 1957 and the plaintiff could not succeed in the suit without setting aside the settlement deed. Finally, it was urged that Sivakami had acquired absolute interest in the properties by the Act of 1956 and, therefore, the plaintiff's suit was not maintainable. The trial Court decreed the plaintiff's suit and passed a preliminary decree appointing a Commissioner to go into the question of partition and accounts. This judgment was upheld in appeal by the appellate court and on second appeal to the High Court of Madras the High Court held that the case was clearly covered by S. 14 (2) of the Hindu Succession Act and, therefore, the widow Sivakami was not entitled to claim absolute interest in the properties. It accordingly dismissed the appeal and maintained the decree passed by the Courts below. The High Court on being approached granted a certificate of fitness for appeal to this Court.

3. From the facts narrated above, it is clear that the case of the widow Sivakami clearly fell within Section 14 (1) of the 1956 Act and the High Court was wrongly in holding that the case of Sivakami was governed by Sec. 14 (2) of the 1956 Act.

4. For the reasons that we have given in C. A. No. 1360 of 1968 (SC), *V. Tulasamma v. Sesha Reddi (dead)* by L. rs. - which was heard along with this appeal, we allow this appeal, set aside the judgment and decree of the High Court as also those of the Courts below and dismiss the plaintiff's suit. In the circumstances of the case, we make no order as to costs in this Court.

Appeal allowed.