

**SUPREME COURT OF INDIA**

Gullapalli Krishna Das

Vs.

Vishumolakala Venkayya

C.A.No.1876 of 1972

(S. Murtaza Fazl Ali and P. S. Kailasam, JJ.)

15.11.1977

**JUDGEMENT**

**KAILASAM, J.:-**

1. This appeal arises by special leave granted by this Court against the judgment and decree dated December 29, 1971 by the High Court of Andhra Pradesh in L.P.A. No. 9 of 1971. The appellant in this Court is the plaintiff. He filed the Suit No. O.S. 3 of 1963 against the respondents for recovery of possession of the plaint schedule properties with past and future mesne profits.

2. One Dhara Suryanarayana and Nageswarudu were brothers and were members of a joint Hindu family. Suryanarayana died in 1896 leaving behind his widow Kutumbamma. The joint family owned 80 acres of wet land at the time of his death. Subsequently, Nageswarudu put Kutumbamma in possession of the suit schedule properties in lieu of her maintenance, in 1897. On September 29, 1956 Kutumbamma registered a will in favour of the appellant bequeathing him the suit lands and died in 1959. Nageswarudu's son Venkata Subrahmanya Sastry issued a registered notice dated November 12, 1958 asserting that Kutumbamma was not entitled to the suit property absolutely.

Kutumbamma replied denying the allegation. After the death of Kutumbamma, Venkata Subrahmanya Sastry issued a notice to the appellant. The appellant replied on December 12, 1959. The second respondent is the tenant who expressed his preparedness to pay the rent and the possession to the true owner. The appellant preferred a claim before the Tenancy Tribunal for eviction of the tenant. Venkata Subrahmanya Sastry transferred the suit property in favour of his two sons on December 30, 1959 and they sold it to the first respondent. The first respondent in collusion with the tenant, the second respondent, obtained a decree against the latter restraining him from interfering with first respondent's possession. The appellant was not made a party to these proceedings. The present suit was filed by the appellant against the respondents for recovery of possession. The respondents contested the suit contending that Kutumbamma was given only a life interest in the suit property and the allegation of execution of settlement deed without her knowledge was denied. The second respondent also supported the first respondent and contended that the will executed by Kutumbamma was not true and that the maintenance deed gave only a life interest and that Kutumbamma could not assert any absolute title to the property.

3. The trial court held that the will executed by Kutumbamma was true and valid and that Kutumbamma had a right to be maintained out of the family properties and the deed of maintenance was executed in recognition of that right. It also held that the right of the widow became enlarged into an absolute estate under S. 14 (1) of the Hindu Succession Act, 1956. The respondent took up the matter in appeal to the High Court of Andhra Pradesh. The only contention raised by the respondents was that the maintenance deed fell within the ambit of S. 14 (2) and not under S. 14 (1) of the Hindu Succession Act and therefore Kutumbamma's estate was not enlarged. The learned single Judge held that the deed fell within the ambit of sub-sec. (2) of S. 14 and Kutumbamma's estate was not enlarged.

4. The appellant took up the matter of Letters Patent Appeal and the Division Bench confirmed the judgment of the single Judge and dismissed the appeal. The petition for the grant of a certificate was rejected by the High Court and thereupon the appellant preferred a petition for special leave to this Court which was granted.

5. The only point that arises for consideration is whether the maintenance deed by which Kutumbamma was given life interests became enlarged conferring on her absolute title under S. 14 (2) of the Hindu Succession Act, 1956. When the property was in the possession of Kutumbamma the Hindu Succession Act, 1956, came into force. The question that has been raised is fully covered by a recent decision of this Court in *V. Tulasamma v. Sesha Reddy (Dead)* by L. Rs. (1977) 3 SCC 99 : (AIR 1977 SC 1944) Mr. Lalit, the learned counsel for the respondent, submitted that the question is of great importance and the decision needed reconsideration by a larger Bench. We heard the learned counsel at some length but we do not find any reason for directing the matter to be posted before a larger Bench. The question of law has been fully considered and with respect following the decision we allow the appeal. We set aside the judgment of the High Court to restore the judgment and decree of the trial Court. In view of the fact that the question was finally settled only after this appeal had been filed there will be no order as to costs.

Appeal allowed.