State of Maharashtra

Vs

Narayan Rao Sham Rao Deshmukh and Others

Civil Appeal No. 1441 of 1971

(O. Chinnappa Reddy, E. S. Venkataramiah, R. B. Misra JJ)

19.03.1985

JUDGMENT

E. S. VENKATARAMIAH, J. -

1. Sham Rao Bhagwant Rao Deshmukh and his son, Narayan Rao were members of a joint Hindu family governed by the Mitakshara School of law. His wife Sulochanabai and his mother Gangabai alias Taibai were also the members of that family. The said family owned extensive properties which included agricultural lands situated in fourteen villages. Sham Rao dies on June 15, 1957 after the coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') and on his death his interest in the coparcenary property devolved on his son, wife and mother in equal shares under Section 6 of the Act, such interest being the share that would have been allotted to him if a partition of the family property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not. According to the law governing the above family which was governed by the Bombay School under which the mother also was entitled to a share at a partition between her husband and her son equal to that of her son one-third share in the family property could have been allotted to the share of Sham Rao immediately before his death had a partition taken place. That one-third share devolved in equal shares on Narayan Rao, Sulochanabai and Gangabai alias Taibai each inheriting one-ninth share of the family property. They, however, continued to live together enjoying the family properties as before. On January 26, 1962 the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as 'the Ceiling Act') came into force. As required by the Ceiling Act, Narayan Rao filed a declaration on behalf of himself, his mother Sulochanabai and his grandmother Gangabai alias Taibai before the Sub-Divisional Officer, Saoner stating that they held in all 305.49 acres of agricultural land and that under a family arrangement entered into on March 30, 1957 they were holding the lands in distinct and separate shares, Narayan Rao holding one-half share and the other two holding one-fourth share each and that each of them was entitled to retain 96 acres which was the maximum extent of land which a person in that area could hold after the Ceiling Act came into force. The Sub-Divisional Officer after enquiry held that the alleged family settlement was not true. Narayan Rao, his mother and his grandmother were joint in estate and constituted a family within the meaning of that expression as defined in Section 2(11) of the Ceiling Act and the family could not hold agricultural land in excess of one unit of the ceiling area. The Sub-Divisional Officer came to the conclusion that the total area held by the said family on the appointed day was 313.57 acres, and as the said lands were situated in different villages and the ceiling area in all the villages except in Chanakpur village was 96 acres and in Chanakpur village the ceiling area was 108 acres, the total land held by the family was to be converted into 304.57 acres for purposes of the Ceiling Act. He further held that the family was entitled to 96 acres of land out of the said 304.57 acres on appointed day and as the family had alienated after August 4, 1959 about 44 acres of land in contravention of Section

10(1) of Ceiling Act, it could retain only 51.16 acres. The remaining extent of land measuring in all 222.32 acres was declared as surplus land which had to be surrendered under the Ceiling Act. Aggrieved by the decision of the Sub-Divisional Officer, Narayan Rao, his mother and grandmother filed an appeal before the Maharashtra Revenue Tribunal questioning the correctness of the said decision and that appeal was dismissed. Against the decision of the Tribunal, they filed a petition before the High Court of Bombay under Article 227 of the Constitution. Before the High Court the case of family settlement was not pressed but it was contented that since the one-third interest in the family property which could have been allotted to the share of Sham Rao had he demanded a partition immediately before his death and devolved in equal shares on his heirs, i.e. his wife, mother and son, the surviving members of the family ceased to hold the family property as members of a family and, therefore, each of them was entitled to be allowed to retain one unit of the ceiling area under the Ceiling Act. The High Court upheld the above plea. It held that since the one-ninth share of Gangabai alias Taibai, the mother of Sham Rao did not exceed the ceiling area, she could retain all the land belonging to her. It further held that Narayan Rao and Sulochanabai were each entitled to four-ninth share of the property and each of them was entitled to retain for himself or herself, as the case may be, one unit of ceiling area out of his or her four-ninth share in the family property and only the surplus was liable to be surrendered. The High Court directed the Sub-Divisional Officer to pass fresh orders accordingly in the light of its decision. The State Government has filed this appeal by special leave against the decision of the High Court.

2. In order to examine the correctness of the contentions urged in this appeal, it is necessary to refer briefly first to the relevant provisions of the Ceiling Act, as they stood on the appointed day, i.e. the date on which the said Act came into force. The Ceiling Act came into force on January 26, 1962 as per notification issued by the State Government under Section 1(3) thereof. The Ceiling Act as its long title indicates was enacted for the purpose of imposing a maximum limit (or ceiling) on the holding of agricultural land in the State of Maharashtra to provide for the acquisition and distribution of land held in excess of such ceiling and for making provisions regarding matters connected with the purposes aforesaid. The imposition of ceiling on the holding of agricultural land was found to be necessary in the interests of the agrarian economy of the State. The Ceiling Act also made provisions for the distribution of surplus land acquired from persons who were holding in excess of the ceiling amongst the landless and other persons. Section 3 and 4 of the Ceiling Act provided as follows :

3. In order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra (and in particular, to provide that landless persons are given land for personal cultivation) on the commencement of this Act, there shall be imposed to the extent, and in the manner hereinafter provided, a maximum limit (or ceiling) on the holding of agricultural land throughout the State.

> 4(1) Subject to the provisions of this Act, no person shall hold land in excess of the ceiling area, as determined in the manner hereinafter provided.

Explanation. - A person may hold exempted land to any extent.

> (2) Subject to the provisions of this Act, all land held by a person in excess of the ceiling area, shall be deemed to be surplus land, and shall be dealt with in the manner hereinafter provided for surplus land.

3. The ceiling area was prescribed by Section 5 of the Ceiling Act. Section 2(22) of

the Ceiling Act defined the expression 'person' as including a family. Section 2(11) of the Ceiling Act read as follows :

> 2(11) 'family' includes, a Hindu undivided family, and in the case of other persons, a group or unit the members of which by custom or usage, are joint in estate or possession or residence.

4. Section 2(20) of the Ceiling Act stated :

> 2(20) "member of a family" means a father, mother, spouse, brother, son, grandson, or dependent sister or daughter, and in the case of a Hindu undivided family a member thereof and also a divorced and dependent daughter.

5. The Ceiling Act was applicable not only to Hindus governed by the Mitakshara Hindu Law which recognised an undivided Hindu family but to all other communities amongst whom the concept of and undivided family owning joint property in which the members of the undivided family had community of interest was unknown. The Ceiling Act intended that even amongst such non-Hindu communities, a family should not be permitted to hold agricultural land in excess of the ceiling. It is with this object a wider definition of the expression 'family' was given in Section 2(11) of the Ceiling Act as including not only a Hindu undivided family but other families too whose members could belong to any of the classes mentioned in Section 2(20) of the Ceiling Act. In the case of families other than a Hindu undivided family, a father, mother, spouse, brother, son, grandson or dependent or daughter constituted a family and by virtue of Section 2(22) were treated together as a person and in the case of a Hindu undivided family every member thereof was treated as a member of the family. A divorced and dependent daughter also could be a member of the family.

6. The contention urged before us is that by reason of the death of Sham Rao, the family became disrupted or divided and that Narayan Rao, his mother and his grandmother ceased to be members of a Joint Hindu family. Elaborating the said contention the learned counsel for the respondents herein argued that by virtue of the proviso to Section 6 of the Act read with Explanation I thereto which for purposes of quantifying the interest in the joint family property that devolved on the heirs of a deceased male Hindu required that it should be assumed that a notional partition had taken place in the family immediately prior to the death of the deceased, the female heirs of such deceased Hindu became divided or separated from the family on the death of the deceased. In order to examine the validity of this submission it is necessary to refer to some of the relevant features of a Hindu undivided family and to consider the effect of the provisions of Section 6 of the Act on such family.

7. As observed in Mayne on Hindu Law and Usage (1953 Edn.) the joint and undivided family is the normal condition of a Hindu society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship but it is not necessary that a joint family should own joint family property. There can be a joint family without a joint family property. At para 264 of the above treatise it is observed thus :

> 264. It is evident that there can be no limit to the number of persons of whom a Hindu joint family consists, or to the remoteness of their descent from the common ancestor, and consequently to the distance of their relationship from each other. But the Hindu coparcenary is a much narrower body .... For, coparcenary in the Mitakshara law is not identical with coparcenary as understood in English law : when

> a member of a joint family dies, "his right accresces to the other members by survivorship, but if a coparceners dies, his or her right does not accresce to the other coparceners, but goes to his or her own heirs". When we speak of a Hindu joint family as constituting a coparcenary, we refer not to the entire number of persons who can trace descent from a common ancestor, and amongst whom no partition has ever taken place; we include only those persons who, by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. Outside this body, there is a fringe of persons possessing only inferior rights such that of maintenance, which however tend to diminish as the result of reforms in Hindu law by legislation.

8. A Hindu coparcenary is, however, narrower body than the joint family. Only males who acquire the birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of the joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating. It increased by the death of a coparcener and decreases on the birth of a coparcener. A joint family, however, may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a sing male member in the family. (See Gowli Buddanna v. C.I.T. ((1966) 3 SCR 224 : AIR 1966 SC 1523 : (1966) 60 ITR 293) and Sitabai v. Ram Chandra ((1970) 2 SCR 1 : (1969) 2 SCC 544 : AIR 1970 SC 343).) A joint family may consist of a single male member and his wife and daughters. It is not necessary that there should be two male members to constitute a joint family. (See N. V. Narendranath v. C.W.T. ((1969) 3 SCR 882 : (1969) 1 SCC 748 : AIR 1970 SC 14 : (1969) 74 ITR 190)). While under the Mitakshara Hindu Law there is community ownership and unity of possession of Joint family property with all the members of the coparcenary, in a coparcenary governed by the Dayabhaga law, there is no unity of ownership of coparcenary property with the members thereof. Every coparcener takes a defined share in the property and he is the owner of that share. But there is, however, unity of possession. The share does not fluctuate by births and deaths. Thus it is seen that the recognition of the right to a definite share does not militate against the owners of the property being treated as belonging to a family in the Dayabhaga law.

9. We have earlier seen that females can be the members of a Hindu joint family. The question now is whether a female who inherits a share in joint family property by reason of the death of a male member of the family ceases to be a member of the family. It was very forcefully pressed upon us by the learned counsel for the respondents relying upon the decision of this Court in Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum ((1978) 3 SCR 761 : (1978) 3 SCC 383 : AIR 1978 SC 1239 : (1981) 129 ITR 440) that there was a disruption of the family in question of the death of Sham Rao as for the purpose of determining the interest inherited by Gangabai alias Taibai and Sulochanabai it was necessary to assume that a notional partition had taken place immediately before the death of Sham Rao and carried to its logical end as observed in the above decision, Gangabai alias Taibai and Sulochanabai should be deemed to have become separated from the family. The fact of the above-said case were these. One Khandappa died leaving behind his wife Hirabai, two sons and three daughters after the coming into force of the Act. Hirabai filed a suit for partition and separate possession of 7/24th share in the joint family property on the basis of Section 6 of the Act. She claimed that if a partition had taken place between her husband and her two sons

immediately before the death of her husband Khandappa, she, her husband and two sons would have each been allotted a one-fourth share in the family property and on the death of her husband the one-fourth share which would have been allotted in his favour had devolved in equal shares on her, her two sons and three daughters. Thus she claimed the one-fourth share which had to be allotted in her favour on the notional partition and 1/24th share (which was one-sixth of the one-fourth share of her husband) i.e. in all 7/24th share. It was contended on behalf of the contesting defendant that she should not get the one-fourth share since actually no partition had taken place. Chandrachud, C.J. rejected the said contention with the following observations at p. 768 : (SCC pp. 389-90, para 13)

In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone can one determine the extent of the claimant's share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener "shall be deemed to be" the share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

10. We have carefully considered the above decision and we feel that this case has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property under Section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and share which would have been notionally allotted to her, as stated in Explanation I to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under Section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her violation as otherwise it will lead to strange results which could not have been in contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. To illustrate, if what is being asserted is accepted as correct it may result in the wife automatically being separated from her

husband when one of her sons dies leaving her behind as his heir. Such a result does not follow the language of the statute. In such an event she should have the option to separate herself or to continue in the family as long as she wishes as its member though she acquired an indefeasible interest in a specific share of the family property which would remain undiminished whatever may be subsequent changes in the composition of the membership of the family. As already observed the ownership of a definite share in the family property by a person need not be treated as a factor which would militate against his being a member of a family. We have already noticed that in the case of a Dayabhaga family, which recognises unity of possession but not community of interest in the family properties amongst its members, the members thereof do constitute a family. That might also be the case of families of persons who are not Hindus. In the instant case the theory that there was a family settlement is not pressed before us. There was no action taken by either of the two females concerned in the case to become divided from the remaining members of the family. It should, therefore, be held that notwithstanding the death of Sham Rao the remaining members of the family continued to hold the family properties together though the individual interest of the female members thereof in the family properties had become fixed.

11. We have already seen that a 'person' includes a 'family' for purposes of the Ceiling Act and the members of a family cannot hold more than one unit of ceiling area. The respondents cannot derive any assistance from the proviso to Section 6 of the Ceiling Act. Section 6 of the Ceiling Act provided that where a family consisted of members which exceeded five in number, the family would be entitled to hold land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each member in excess of five, subject to the condition that the total holding did not exceed twice the ceiling area. The proviso to Section 6 of the Ceiling Act provided that for the purposes of increasing the holding of the family in excess of the ceiling area as stated above if any member thereof held any land separately he would not be regarded as a member of the family for that purpose. This proviso was intended to qualify what was stated in Section 6 and was limited in its operation. It was confined to the purpose of increasing the ceiling area as provided in Section 6 of the Ceiling Act. It cannot be construed as laying down that whenever a member of a family had his separate property he or she should be regarded as not a member of a family and that he or she would be entitled to a separate unit of ceiling area.

12. The High Court having held that after the death of Sham Rao the joint family of Narayan Rao, Sulochanabai and Gangabai continued and that there was nothing to show that Narayan Rao, Sulochanabai and Gangabai separated in residence after the death of Sham Rao erred in holding that each of them was entitled to a separate unit of ceiling area in the circumstances of this case. Its construction of the proviso to Section 6 of the Ceiling Act is also erroneous. Its conclusion that "even though, therefore, ordinarily a person may be a member of a Hindu Joint family for the purposes of the Ceiling Act, he would not be held to be a member if he holds land separately" for all purposes is again erroneous for the reasons already given above.

13. In the circumstances of the case, we are of the view that Narayan Rao, Sulochanabai and Gangabai alias Taibai were together entitled to retain only one unit of ceiling area. In the result the judgment of the High Court is set aside and the order passed by the Sub-Divisional Officer which was affirmed by the Tribunal is restored.

14. For the foregoing reasons the appeal is accordingly allowed. There shall be no order as to costs.

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