

S. Sai reddy

Vs

S Narayana Reddy and Others

Civil Appeal No. 409 of 1991

(K. N. Singh, P. B. Sawant JJ)

18.01.1991

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated February 2, 1990 of the Andhra Pradesh High Court allowing the revision petition filed by respondents 2 to 5 and setting aside the order of the trial court rejecting the respondents' claim for a share in the property in dispute.

3. The appellant filed a suit in the Court of the Subordinate Judge at Mahabubnagar against his father and brother for partition of the ancestral joint family property claiming one-third share in it. The suit was contested by the father and the brother, but the Subordinate Judge accepted the appellant's claim and passed a preliminary decree by his order dated December 26, 1973 declaring that the appellant as well as his father and brother each were entitled to one-third share in the property. The defendants preferred appeal before the High Court against the preliminary decree. The High Court by its judgment dated October 15, 1984 confirmed the findings of the trial court with the direction that an appropriate provision should be made for the maintenance and marriage expenses of respondents 2 to 5 who were unmarried sisters of the appellant. The High Court directed that the expenses incurred for the maintenance and marriage of respondents 2 to 5 shall be borne equally by the appellant, the father and the brother.

4. During the pendency of the proceedings before the trial court and prior to the passing of the final decree, the Hindu Succession Act (hereinafter referred to as the "Act") was amended by the State legislature as a result of which unmarried daughters became entitled to a share in the joint family property. Respondents 2 to 5 filed an application before the trial court claiming their share in the property. The trial court by its judgment and order dated August 24, 1989 rejected their application on the ground that since the preliminary decree had already been passed and specific shares of the parties had been declared, it was not open to the unmarried daughters to claim share in the property by virtue of the amended provisions of the Act. The unmarried daughters preferred revision against the order of the trial court before the High Court. The High Court by an elaborate judgment dated February 2, 1990 allowed the revision petition, set aside the order of the trial court and declared that in view of the newly added Section 29-A of the Act the daughters were entitled to share in the joint family property. The High Court further directed the trial court to determine the shares of the unmarried daughters accordingly. The appellant has challenged the order of the High Court in this appeal.

5. Learned counsel for the appellant urged that since the preliminary decree had already been passed prior to the amended provision, the High Court committed an error in directing the trial court to

allot shares to the unmarried daughters. Admittedly, under the unamended Act, women and unmarried daughters of a Hindu Mitakshara family were not entitled to any share in the joint family property. The State of Andhra Pradesh removed the injustice to the daughters so far as that State was covered by introducing the concerned amendment in the Act. The newly introducing Section 29-A reads as under :

"29-A. Equal rights to daughter in coparcenary property. - Notwithstanding anything contained in Section 6 of this Act -

(i) in a Joint Hindu Family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son; inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotted to a son :

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such predeceased son or of such predeceased daughter :

Provided further that the share allottable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of the predeceased daughter as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986."

6. It is obvious that under the aforesaid provision, the difference between daughter and son of the Mitakshara Hindu family is removed and the daughter is conferred the coparcenary rights in the joint family property by birth in the same manner and to the same extent as the son. She is, therefore, now entitled to claim partition and her share in the family property. The amending provision is a beneficial legislation which, among other things, is also directed towards eradicating social evils such as dowry and dowry deaths. It also achieves the constitutional mandate of equality between sexes.

7. The question that falls for our consideration is whether the preliminary decree has the effect of depriving respondents 2 to 5 of the benefits of the amendment. The learned counsel placed reliance on clause (iv) of Section 29-A to support his contention that it does. Clause (ii) of the section provides that a daughter shall be allotted share like a son in the same manner treating her to be a son

at the partition of the joint family property. However, the legislature was conscious that prior to the enforcement of the amending Act, partitions will already have taken place in some families and arrangements with regard to the disposition of the properties would have been made and marriage expenses would have been incurred etc. The legislature, therefore, did not want to unsettle the settled positions. Hence, it enacted clause (iv) providing that clause (ii) would not apply to a daughter married prior to the partition or to a partition which had already been effected before the commencement of the amending Act. Thus if prior to the partition of family property a daughter had been married, she was disentitled to any share in the property. Similarly, if the partition had been effected before September 5, 1985 the date on which the amending Act came into force, the daughter even though unmarried was not given a share in the family property. The crucial question, however, is as to when a partition can be said to have been effected for the purposes of the amended provision. A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefiting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits.

8. Hence, in our opinion, the High Court has rightly held that since the final decree had not been passed and the property had not been divided by metes and bounds, clause (iv) to Section 29-A was not attracted in the present case and the respondent-daughters were entitled to their share in the family property.

9. The appeal fails and is accordingly dismissed. There will, however, be no order as to costs.

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