

Jayamma (Smt) and Another

Vs

Thimmamma (Dead) By Lrs. and Another.

Civil Appeal No. 10212 of 1995

(K. Ramaswamy, B. N. Kirpal JJ)

01.11.1995

ORDER

1. Delay condoned.

2. Leave granted.

3. Though notices were served on both the respondents as early as in March 1991, till date none has appeared in person or through counsel. Notices served on them as sufficient. The respondents are daughters of one Doddahanumegowda. Doddahanumegowda died on 21-5-1972 leaving behind him Chikhanumegowda, Ningamma (first defendant), Mariyamma (Plaintiff 2), Javamma (Defendant 2), and Boramma (Defendant 3) both through their predeceased son Chikhanumegowda. On his demise Mariyamma and Thimmamma, the daughters of Doddahanumegowda filed the suit for a declaration that they became owners pursuant to a settlement deed dated 23-5-1970 and succeeded to the entire property. Therefore, they were entitled to the exclusive possession of the plaintiff's property. Thereon, the appellants and their mother had contended that they being the heirs of predeceased son Chikhanumegowda, they are also entitled to half share in the coparcenary property left by Doddahanumegowda. The trial court dismissed OS No. 216 of 1972 by its judgment and decree dated 20-6-1977. But on appeal, the appellate court reversed the decree holding that the appellants had not proved as to when Chikhanumegowda died and that Doddahanumegowda being the sole surviving coparcener, he became the absolute owner and thereby he was entitled to bequeath the property in favour of his daughter, which was upheld by the High Court in SA No. 34 of 1979 by judgment and decree dated 24-1-1989.

4. It is seen that in the plaint the respondents had admitted that Chikhanumegowda died 33 years prior to the suit. Suit was filed in 1972. Thus, the death of Chikhanumegowda, the father of the appellants, admittedly occurred in 1938 or 1939 by which time the Hindu Law Women's Rights Act, 1933 had come into force. Section 8(1)(d) of the Act envisages that where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to the share of the classes of females enumerated in the sub-sections. Classes of females consist of widows and the daughter of the pre-deceased son of the sole surviving coparcener. Consequently, the appellants and their mother became entitled to the share in the coparcenary property. Since Chikhanumegowda and the father of the respondents being the only coparceners they are entitled to equal share in the property by operation of Section 14 of Hindu Succession Act, 1956. Therefore, the appellants are entitled to half share in the plaint schedule property. The High Court and the appellant court had committed error in refusing to grant relief. The judgment and decree of the trial court and the appellate court are set aside. However, there shall be preliminary decree to the extent of half share in the property in favour of the appellants. It would be open to the appellants to make an application to

pass the final decree in the trial court.

5. The appeal is accordingly allowed. No costs.