SUPREME COURT OF INDIA

Smt.Palchuri Hanumayamma

Vs.

Tadikamalla Kotlingam (D) By Lrs.

C.A.No.967 of 1987

(N.S. Hegde and S.N. Variava JJ.)

09.10.2001

JUDGMENT

Santosh Hegde, J.

1. This appeal has had a chequered career. Still it may not be necessary for us to trace the entire history of this litigation. Suffice it to say that the appellant herein filed the present original suit for partition of the suit schedule properties as a pauper in O.P. No.91/78 on the file of the Principal Subordinate Judge, Narasaraopet. Her application to sue in forma pauperis having been dismissed, she paid the court fee and the suit came to be re-registered as O.S. No.221/79.

2. The claim of the appellant in the suit was that the suit schedule property belonged to her grandfather by name V.Subbaiah. He and his wife Ramamma had only 3 daughters. He bequeathed the suit property by a registered Will dated 19.3.1929 followed by a codicil dated 9.4.1929. According to the appellant, in the said Will he made provisions for maintenance of said Ramamma and after so providing he divided the property in favour of the 3 daughters which included the appellants mother. Further the appellant states as per this Will, the said Ramamma was to manage the property allotted to her daughters during her life-time and after her life- time the properties identified as individual shares of the 3 daughters were to be inherited by the said daughters. It is stated that when the appellant was an infant, she lost her mother sometime in the year 1944 and thereafter her grandmother Ramamma brought her up till she was married. It is the further case of the appellant that though Ramamma had only a right to manage the suit property during her life-time, she in collusion with the other two daughters of hers entered into a Settlement dated 14.3.1952 and followed by a Partition Deed dated 24.9.1955 whereby she, in accordance with the terms of the Will, transferred the property in favour of the 2 daughters, keeping the share belonging to the appellants mother with herself with an intention of transferring the same in favour of the appellant later. But, as things would have it, at the instigation of the third daughter of Ramamma, the grandmother transferred appellants mothers share by way of a gift deed dated 11.1.1966 thereby depriving the appellant of all her rights in her mothers share of the property. It is also stated that Ramamma died on 9.10.1977.

3. The contesting defendants opposed the suit on the ground that by the Will and the Codicil referred to hereinabove, V. Subbaiah had put his wife Ramamma in possession of his entire property in lieu of her maintenance and the said Ramamma was all along in enjoyment of all the properties so gifted to her. Though it is true that by the said Will the testator had conferred only a life interest in the said property on Ramamma, in view of certain prevailing circumstances, the said Ramamma decided to execute settlement and partition deeds (reference to which has already been made), and by virtue of the said deeds, she partitioned certain properties between her two surviving daughters in equal shares and she had kept one-third share for herself. It is further contended that by virtue of the provisions of Section 14(1) of the *Hindu Succession Act, 1955* (for short the Act), the right of Ramamma over the share retained by her became her absolute property and being the absolute owner of the said share she was entitled to deal with it in any manner she liked and it is in this view of the matter that Ramamma decided to gift the property retained by her to the third daughter, her husband and two sons. It was further contended that the appellant having lost her mother during the life-time of Ramamma, was not entitled to a share in the property of Subbaiah as also the appellant had no right to maintenance from the estate of V. Subbaiah since it was the obligation of her father to maintain her.

4. The said suit came to be tried by the Principal Subordinate Judge, Narasaraopet, along with another connected suit being O.S. No.233/81 and by a judgment dated 31.12.1984 the said suit of the appellant came to be dismissed holding that by the Will the testator had bequeathed the suit properties in lieu of maintenance to Ramamma with a life-interest in the same and which right of maintenance got enlarged into an absolute estate under Section 14(1) of the Act. In view of the same, in the year 1956 she having become the absolute owner, she was entitled to gift the suit properties, therefore, the appellant could not claim any right over the said property. An appeal against the said judgment and decree of the trial court having failed before a learned Single Judge of the High Court of Judicature at Andhra Pradesh in A.S. No.711/85, the appellant preferred LPA No.57/86 before a Division Bench of the said High Court which agreed with the judgments of the courts below and dismissed the appeal. While so dismissing the appeal, however, the High Court granted a certificate of fitness to appeal to this Court solely on the ground that another connected matter filed by the very same appellant was pending in a civil appeal before this Court, hence, this appeal came to be entertained by this Court. It is relevant to mention here that the connected C.A. No.2055/1981 came to be dismissed as withdrawn as having been settled out of court, reserving liberty to the appellant to pursue this appeal without being affected by the dismissal of the said civil appeal.

5. We have heard the learned counsel for the parties as also have perused the written submission filed by them. On behalf of the appellant, it is strenuously contended by Mr. K.R. Nagaraja, learned counsel, that by the Will of Subbaiah, his wife Ramamma was separately provided with sufficient means for her maintenance and in regard to other properties in the said Will, the testator had intended that the same should be divided equally between the three daughters of his, with a rider that during the life-time of Ramamma she should administer that estate for and on behalf of the three daughters. Therefore, he contended that the property

including the suit properties allotted to the daughters in the Will was not property contemplated under Section 14(1) of the Act but was property left with the appellant to administer the same during her life-time. He contended that the judgments relied by the courts below are not applicable to the facts of this case, hence, the suit of the appellant ought to have been decreed since she was entitled to inherit the share allotted to her mother. Elaborating the said stand, he contended that by the settlement deed Ramamma had retained one-third of the property which was originally earmarked in the Will to be allotted to the appellants mother, therefore, Ramamma could not have gifted the said property to anybody else since the appellant was legitimately entitled to that share after the death of Ramamma as per the terms of the Will. He also contended that in view of the findings given in certain earlier proceedings to the effect that the property allotted by Subbaiah under the Will was not property allotted to Ramamma in lieu of maintenance and this finding having attained finality, same would operate as res judicata in the present proceedings. Therefore, the courts below could not have given a finding contrary to the one given in the earlier suits.

6. Per contra, Mr. G. Prabhakar, learned counsel representing the contesting respondents, argued that it is clear from the recitals in the Will that the property in question was given to Ramamma for her maintenance and though an arrangement was made to allot particular shares in the said property in favour of particular daughters the same was intended to be after the life-time of Ramamma and during the life-time of Ramamma she was to enjoy the properties in lieu of her maintenance. He contended that the testator did not intend to appoint Ramamma either as a trustee of her daughters shares or as an administrator of the estate of the daughters. In support of this contention, he pointed out that all the daughters of testator were living jointly at the time when the Will was executed and the first daughter was married though other two daughters were only minors and if, as a matter of fact, Ramamma was only a care-taker of the property then the testator would have certainly given one-third share earmarked for the first daughter who was major and a married, without allowing Ramamma to enjoy the said share during her life-time. He further contended that it is evidenced from the record that Ramamma in accordance with the terms of the Will enjoyed the entire property as having given to her for maintenance and from the conduct of the parties at all relevant time it is indicated that Ramamma was entitled to possess the said property as given to her for maintenance. He pointedly referred to the various recitals in the Will of the Codicil to support his contention that Ramamma was allotted the suit property for enjoyment during her life-time. He also contended that after coming into force of the Act she became the full owner of whatever property left with her, hence, she was free to deal with such property held by her in any manner she desired which she did by gifting the same in favour of her third daughter, her husband and children. He opposed the argument of Mr. Nagaraja in regard to the application of the principle of res judicata by pointing out that no issues have been framed in regard to this contention of Mr. Nagaraja by the courts below nor was any required material like the judgment and pleadings on which the principle of res judicata was based, ever produced, therefore, the said contention of res judicata is not available to the appellant.

7. We have heard the parties in extenso and, in our opinion, the entire issue involved in this case depends upon the nature of bequeath made by the testator, to be gathered from the recitals of the Will dated 19.3.1929 as also the Codicil referred to hereinabove. A perusal of

the Will shows that the testator had desired that after his death, Ramamma should take possession of all his movable and immovable properties and she should be the guardian of her minor daughters till they attain majority. It is relevant to note at this stage that the testator has not desired that the share in his property should be conveyed or transferred to his daughters on their attaining majority. On the contrary, the recital proceeds to say that Ramamma shall enjoy all the movables and immovable properties till her death without making alienations, and after her death his eldest daughter shall take two shares in Item No.1 of the schedule to the Will; her husband would take one share therein and second item in the schedule should be taken by the second daughter (appellants mother) and, similarly, the third daughter was also provided for. The Will also provided for the family expenses to be incurred in the marriages of the daughters and the amounts to be paid to them at the time of their marriage. The recitals in the said Will also show at more than one place that the testator had desired that Ramamma should enjoy the property during her life-time and it is only after her death that he had desired that the property be divided and handed over to the three daughters in the manner stated therein. Thus, it is clear from the recitals that though the testator has not used the words in lieu of maintenance, he has certainly intended that the properties settled under the Will were left for the enjoyment of Ramamma during her life-time towards her maintenance. The fact that Ramamma was made a guardian of the minors would not in any manner deviate from the fact that the property under the Will was given to Ramamma for her enjoyment in lieu of her maintenance. The wording My wife, Ramamma shall enjoy all my moveable and immoveable properties till her death clearly shows that no arrangement was made by the testator for vesting of the properties in his daughters. It is only after the death of said Ramamma that he had desired that the property should be divided equally amongst his three daughters but then, as things would have it, before the property could be said to have vested in the mother of the appellant, two circumstances intervened. Firstly, in the year 1944 itself, the appellants mother died, and secondly by virtue of enactment of Section 14(1) of the Act in the year 1956, the estate of Ramamma got enlarged making her as the absolute owner of the property. The fact that Ramamma settled the properties almost in similar terms as those stated in the Will by the Settlement Deed of 1952 also, will not in any manner affect the operation of Section 14(1) of the Act and that part of the share retained by Ramamma which having continued to be in her possession as the property given to her in lieu of maintenance enlarged into her absolute estate on the coming into force of the 1956 Act.

8. Mr. Nagaraja next contended that from the conduct of Ramamma it is clear that she herself understood the intention of her husband to be that he wanted his properties to be divided amongst his 3 daughters and she was only to manage the said property for and on behalf of the said daughters till her life time. In support of this contention, he relied on certain circumstances which, according to him, show the intention of the testator as well as how Ramamma herself understood the Will. Firstly, he submitted that the Will in question had demarcated specific shares to be allotted to the three daughters after the death of Ramamma. It is pursuant to this desire of the testator that Ramamma entered into a settlement in the year 1952 and thereafter a Partition Deed in the year 1955 according to which Ramamma allotted the very same properties to two of her daughters as was earmarked for them in the Will while retaining the share earmarked for appellants mother with herself. He also relied upon an

averment made by Ramamma in her written statement filed in an earlier proceeding marked in the present suit as Ex. A-6 wherein she had stated: This defendant retained with her at the request of the plaintiff all the items as per the Will and the partitioned joint properties as per the deed dated 24.9.1955 to which the plaintiff is entitled to 1/3rd share after the death of this defendant as per the above document. From the above circumstances, it is contended that even Ramamma understood the Will to mean that she was only to manage the property for and on behalf of her daughters. Therefore, since the appellants mothers share was specifically earmarked by the testator, on the death of Ramamma the same would have reverted to the appellants mother if she were to be alive and since she is not alive, the appellant being the sole heir she is entitled to the said share.

9. We are unable to accept this argument of Mr. Nagaraja. If the intention of the testator was to divide the property amongst his three daughters then nothing prevented him from doing so at the time the Will become operative. He need not have postponed that date till after the death of Ramamma. It is to be noted that the first daughter of the testator was major at the time the Will was executed and was married. If really the testator intended to give shares to the beneficiaries, he would have done so without creating a life-interest for Ramamma to enjoy the entire property. The very fact that the Will specifically stated that Ramamma is entitled to enjoy the entire property during her life-time, in itself, is sufficient to hold that the property in question was given to Ramamma in lieu of maintenance during her life-time. It is only after the death of Ramamma that right, if any, would devolve on the daughters under the Will.

10. The next circumstance relied upon by Mr. Nagaraja also does not support his case i.e. the manner in which Ramamma dealt with the property during her life-time. It is to be noted that till the year 1956, Ramamma had no absolute right over the property in question because the same was given to her in lieu of maintenance during her life-time only. In that situation, if Ramamma had entered into a settlement and a partition with two of her daughters this act would not lead to the conclusion that Ramamma was acting in accordance with the intention of the testator. It is possible knowing that she had no absolute right over the property and to buy peace in the family, she might have decided to divide the property and give the shares to two of her daughters and retain with her one share with an intention of subsequently transferring the same to the appellant. But then on coming into force of the 1956 Act, having realised that she had become the absolute owner of the property at least to the extent of the share retained by her, she decided to act in a manner she wanted and in this process she gifted the property to her third daughter, her husband and their children. By the time in law, there was no prohibition on her to gift the said property, therefore, even this circumstance does not help the stand taken by Mr. Nagaraja on behalf of the appellant.

11. The third circumstance relied upon by Mr. Nagaraja was an admission supposed to have been made by Ramamma in written statement Ex. A-6 filed in an earlier suit to which we have made reference hereinabove. It is true that if we read this part of the written statement in isolation, it gives an impression that Ramamma had retained one share in the Settlement and Partition Deed with herself as a share belonging to her deceased daughter but then on coming into force of the 1956 Act, as stated above, she having become an absolute owner of

this share, had decided to exert her absolute right against the claim of the appellant which is evident from the latter part of her statement in Ex. A-6 which reads thus : It is true late Subbaiah, husband of this defendant executed his will on 19.3.1929. Even under this Will the late Subbaiah created a widows estate in favour of this defendant. After his death this defendant took possession of the willed properties and she acquired rights under 1956 Act. A reading of this part of the written statement clearly shows that Ramamma was aware of her legal right over the property in question and was also contending that the property in question was bequeathed to her by her late husband by creating a widows estate in her favour. From this it is clear that none of the above circumstances relied upon on behalf of the appellant supports her case.

12. Mr. Nagaraja has also relied on Section 19 of the Transfer of Property Act and Section 119 of the Indian Succession Act. According to him, under Section 19 of the T.P. Act, the interest in the suit property created in favour of the appellants mother is a vested interest and merely because the time of handing over of possession is postponed till the death of the widow or the right to manage and enjoy the fruits of the property are conferred on the widow till her death, the right which is a vested interest in the property in favour of the mother of the appellant, does not cease to be a vested interest. This would have been so if, as a matter of fact, under the Will, a right had vested in the appellants mother. While discussing the other contentions advanced on behalf of the appellant, we have come to the conclusion that under the Will no right had vested in any of the daughters and the property in question was given to Ramamma in lieu of her maintenance during her life-time and it is only after the death of Ramamma that the surviving right, if any, would have vested in the daughters. But befroe the death of Ramamma in view of the intervening factor, namely, enactment of Section 14 of the 1956 Act, deprived the daughters of their legal right to claim a share in the property because by virtue of the said enactment, Ramammas right got enlarged into an absolute estate and she became an absolute owner of the property, therefore, reliance on Section 19 of the T.P. Act is misplaced.

13. Similarly, Section 119 of the Succession Act provides where in a bequest a legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall unless a contrary intention appears by Will, become vested in the legatee on the testators death. By this, Mr. Nagaraja wanted us to come to the conclusion that on the death of the testator the right in the property bequeathed vested in the three daughters. We are unable to accept this argument for the very same reason based on which we have turned down his contention based on Section 19 of the T.P. Act.

14. We will now consider one other argument of Mr. Nagaraja i.e. based on Section 11 of the *Hindu Minority & Guardianship Act, 1956* which puts an embargo on the de facto guardian dealing with a minors property. Here again we must point out that first of all the property in question cannot be considered as a property belonging to the minor because by the time appellants mother died, the property had not vested in the appellants mother. Since she pre-deceased Ramamma and by the 1956 Act, Ramamma became the absolute owner, the question of appellants mother getting any vested right which would become a minors property does not arise. That apart, we have serious doubts whether Ramamma could be

treated as a de facto guardian of the appellant because when the appellants mother died, her natural father was alive and there was no material on record to show that he had abdicated his legal responsibility as a natural guardian of the minor. Therefore, the above contention of Mr. Nagaraja must also fail.

15. The last argument which was originally sought to be raised in this appeal, namely, the applicability of the principle of res judicata was not rightly pressed into service by Mr. Nagaraja for want of necessary material on record in support of that contention, hence, the same is liable to be rejected.

16. For the reasons stated above, we are in agreement with the conclusion arrived at by the courts below and we find no reason to differ from the same. Therefore, this appeal has to fail. Accordingly, the same is dismissed. No costs.