SUPREME COURT OF INDIA

Sheela Devi and Others

Vs

Lal Chand and Another

Civil Appeal No. 4326 of 2006, Arising Out of S.L.P. (C) No. 4031 of 2006

(S. B. Sinha and Dalveer Bhandari, JJ)

29.09.2006

JUDGMENT

S. B. SINHA, J.

1. Leave granted.

2. Interpretation of some of the provisions of The Hindu Succession Act, 1956 (for short "the Act") and, in particular, Sections 6 and 8 thereof arises for consideration in this appeal which arises out of a judgment and order dated 10th October, 2005 passed by the High Court of Punjab and Haryana in RSA No. 1627 of 1994 dismissing an appeal from a judgment and order dated 23rd May, 1994 passed by the Additional District Judge, Patiala affirming a judgment and decree dated 17th May, 1990 passed by the Subordinate Judge 1st Class Samana decreeing the suit filed by the plaintiffs-respondents herein.

3. The relationship between the parties is not in dispute. Tulsi Ram was the owner of the property. He died in the year 1889 leaving behind five sons, viz., Waliati, Babu Ram, Charanji Lal, Hukam Chand and Uggar Sain. The aforementioned five sons of Tulsi Ram were members of a Mitakshara Coparcenary. We are concerned with the estate of one of the sons of Tulsi Ram, viz., Babu Ram, whose children are parties before us. It is not in dispute that Uggar Sain died issueless in 1931. The names of all the brothers were mutated in the year 1927 in respect of the properties left by Tulsi

Ram. Babu Ram died in the year 1989 leaving behind two sons, viz., Lal Chand and Sohan Lal (Plaintiffs-Respondents) and three daughters (Appellants herein). Lal Chand was born in 1938 whereas Sohan Lal was born in 1956.

4. A finding of fact has been arrived at that the parties are governed by the Mitakshara School of Hindu Law. The sons of Tulsi Ram were, thus, coparceners. Upon the death of Tulsi Ram, Babu Ram inherited 1/5th share in the property. However, on the death of Uggar Sain, 1/20th share of Tulsi Ram's property was also devolved on him. Indisputably, the names of the parties were shown in the revenue records having 1/5th share each. The said order of the revenue authorities came to be challenged by plaintiffs-respondents herein, inter alia, on the premise that defendants had not acquired any right, title and interest in the property.

The learned Trial Judge in his judgment recorded the following:

9. As a result keeping in view the evidence on record I hold that the plaintiffs and Babu Ram had constituted a Joint Hindu Family and out of the land in suit 1/5th share was separate property of Babu Ram and 4/5th share was ancestral property in the hands of Babu Ram qua the plaintiffs. The issue is decided accordingly.

5. The suit of the plaintiffs was decreed on the basis thereof. The Appellate Court also affirmed the decree passed by the learned Trial Judge. On a Second Appeal having been filed by Appellants herein, according to the High Court, the only question which required determination was as to whether the provisions of Section 8 of the Act would apply to the facts of the present case or the law as applicable prior to the enforcement of the 1956 Act would apply. The High Court opined that for the purpose of determination of the said question it was necessary to determine the nature of the property. Having held that the nature of the property must be recorded as Hindu Coparcenary and ancestral property, it was stated that the law applicable before the Act came into force would govern the rights of the parties and not the provisions of the Act.

6. Mr. Nidesh Gupta, learned Counsel appearing on behalf of Appellants submitted that the High Court committed a manifest error in arriving at the aforementioned findings in total disregard of the provisions of the 1956 Act. The learned Counsel would contend that keeping in view the fact that the succession opened only in the year 1989 when Babu Ram died, the question of applying the law as was obtaining prior to coming into force of the Act did not arise. It was urged that the provisions contained in Section 8 of the Act are clear and explicit and in that view of the matter the succession of the parties would be governed in terms of the Scheduled appended thereto. Mr. Manoj Swamp, learned Counsel appearing on behalf of Respondents, however, would submit that having regard to the provisions contained in Section 6 of the Act, the concept of Mitakshara coparcenary having been saved, the parties would be governed thereby.

7. The Act was enacted to amend and codify the law relating to intestate succession amongst Hindus. Section 4 of the Act provides for an overriding effect of the Act. Sub-section (2) of Section 4 of the Act reads as under:

For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

Section 6 of the Act deals with devolution of interest in coparcenary property and is in the following terms:

6. Devolution of interest in coparcenary property. - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I.--For the purposes of this section, 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 the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.-- Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

A bare perusal of the said provisions would clearly show that where the deceased had left him surviving a female relative specified in class I of the Schedule, his interest in the Mitakshara coparcenary property shall devolve by intestate succession and not by survivorship.

8. We have noticed hereinbefore that a finding of fact has been arrived at that the properties in the hands of Babu Lal and his brothers were joint family property. The principle of law applicable in this case is that so long a property remains in the hands of a single person, the same was to be treated as a separate property and thus, would be entitled to dispose of the coparcenary property as the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations so made by his father before he was born or begotten. But once a son is born, it becomes a coparcenary property and he would acquire an interest therein.

9. In N.R. Raghavachariar's Hindu Law Principles and Precedents, 8th Edn. 1987, Section 244, it is

stated:

Besides, it is absolutely immaterial whether the sons were born to the inheritor before or after the inheritance fell in. But if the property is inherited from a paternal ancestor beyond the third degree then the property is not ancestral as against the inheritor's sons, and the inheritor has absolute powers of disposal over it. So also, if the inheritor has neither a son, son's son nor son's son's son, the property is absolute in the inheritor's hands even though he may have other relations, for instance, a great-great-grandson or a paternal uncle, in the case of inheritance from father [Janki v. Nand Ram 11A. 194]. But property which comes to an inheritor from one of his three immediate paternal ancestors as absolute property owing to the absence of sons, grandsons or great-grandsons, becomes ancestral property with the birth of any of them, though an alienation made by the inheritor before such birth, cannot be impeached. The character of ancestral property is not taken away by there being a partition of the property in the family of the inheritor, and though a share of ancestral property allotted to a coparcener on partition will be his separate property as regards others [Bejai Bahadur v. Bhupindar 17A. 456 : 221.A. 139 (P.C.) it will be ancestral property as against the allottee's sons, grandsons, and great-grandsons whether born before or after the partition. [Chatturbhooj v. Dharamsi 9B. 438; Lal Bahadur v. Kanhaia Lal 34 I.A. 65 : 29 A. 244 : 4 A.L.J. 227 : 9 Born. L.R. : 597 : 11 C.W.N. 417 : 17 M.L.J. 228; Visalatchi v. Annasamy 5 M.H.C.R. 150 : Adurmoni v. Chowdhry 3 C.1; Allah Diyo v. Soha 1942 A.L.J. 443 : 1942 A. 331]

10. In Law of Joint Family System, Debts, Gifts, Maintenance, Damdupat, Benami Transaction and Pre-emption, First Edition 1993, by Dr. Paras Diwan, at page 51, it is stated: They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issues. As regards other relations, it is a separate property, and if the coparcener dies without leaving male issues, it passes to his heirs by succession. A person who for the time being is the sole surviving coparcener is entitled to dispose of the coparcenary property as if it were his separate property. He may sell or mortgage the property without legal necessity or he may make a gift of it. If a son is subsequently born to him or adopted by him, the alienation, whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations made by his father before he was born or begotten.

11. In M.T. Pankajammal and Anr. v. M.T. Parthasarthy Aiyangar A1R (33) 1946 Madras 99, it was held:

...If it were necessary I would on the circumstances above adverted be prepared to hold that there was no intention on the part of the executant that the son to be adopted had to share the property with any son that may be born to him subsequently. But as I have already held on a construction of the settlement deed, the plaintiff became entitled to the property only on the death of his father and as an adopted son, according to Hindu Law, he had to share it along with the after born brother and his step-mother.

Although in 1927 Babu Ram had no son and the property at his hands became a separate property. But, in view of the well-settled principles of Hindu Law, as soon as a son was born to him the concept of the property being a coparcenary property in terms of Mitakshara School of Hindu Law revived. The law in this behalf has succinctly been stated in Mayne's Hindu Law and Usage, 14th

edition, at pages 627-628 and 641, in the following terms:

Where ancestral property has been divided between several joint owners, there can be no doubt that if any of them have male issue living at the time of the partition, the share which falls to him will continue to be ancestral property in his hands, as regards has male issue, for their rights had already attached upon it, and the partition only cuts off the claims of the dividing members. The father and his male issue still remain joint. The same rule would apply even where the partition had been made before the birth of male issue or before a son is adopted, for the share which is taken at a partition, by one of the coparceners is taken by him as representing his branch. It was held by the Andhra Pradesh High Court that where a father divided the family property between him and his sons, the share obtained by him was his self-acquired property which he could bequeath to his wife.

Coparceners may hold property separately - An examination into the property of the joint family would not be complete without pointing out what property may be held by the individual members as their separate property. All property which is not held in coparcenary is separate property and Hindu law recognizes separate property of individual members of a coparcenary as well as of separated members. (1) Property which comes to a man as obstructed heritage (Saprati bandhadaya) is his separate property. It is not self-acquired property within the meaning of Hindu law, though in their incidents, there may be no difference between the two species....

{See also Muttayan Chettiar v. Sangili Vira Pandia Chinnatambiar LR I.A. Vol. IX Page 128.}

12. The question again came up for consideration before a Division Bench of the Allahabad High Court in Pratap Narain v. Commissioner of Income-Tax, U.P. 63 ITR 505 wherein Pathak, J. (as His Lordship then was) opined:

It seems to us that it is now well settled, that when Hindu undivided family property is partitioned between the members of a Hindu undivided family, and a share is obtained on such partition by a coparcener, it is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. We are of the opinion that it is not correct to say that the share of the property, upon partition, constitutes the separate property of the coparcener and that it is only subsequently when a son is born that the property becomes ancestral property or Hindu undivided family property. The birth of the son does not alter the nature of the property. The property all along continues to be coparcenary property. But upon the birth of a son all the rights which belong to a coparcener belong to that son, and the enlarged rights hitherto enjoyed by the sole coparcener are now abridged within their normal compass.

13. We may, however, notice that the same learned. Judge in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors., in a case where father and his son constituted a HUF and had been carrying on business in a partnership firm, stated the law in the following terms:

We have noted the divergent views expressed on this aspect by the Allahabad High Court, Full

Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High Court on the other.

It is necessary to bear in mind the preamble to the Hindu Succession Act, 1956. The preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

In view of the preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to he excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the preexisting Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession

Act would be HUF in his hand visa-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.

In paragraph 15, however, the law was stated as under:

It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. But the question is: is the position affected by Section 8 of the Hindu Succession Act, 1956 and if so, how? The basic argument is that Section 8 indicates the heirs in respect of certain property and Class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. Under Section 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the other hand, the Gujarat High Court has taken the contrary view.

The said decision has been followed by this Court in Commissioner of Income Tax v. P.L. Karuppan

Chettiar and Additional Commissioner of Income Tax v. M. Karthikeyan .

14. In Eramma v. Veerupana and Ors., this Court observed:

It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of Section 8 must be construed in the context of Section 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e. where succession opened before the Act, Section 8 of the Act will have no application.

15. The Act indisputably would prevail over the old Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, proviso appended to Sub-section (1) of Section 6 of the Act creates an exception. First son of Babu Lal, viz., Lal Chand, was, thus, a coparcener. Section 6 is exception to the general rules. It was, therefore, obligatory on the part of the Plaintiffs-Respondents to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the Second son Sohan Lal is concerned, no evidence has been brought on records to show that he was born prior to coming into force of Hindu Succession Act, 1956. Thus, it was the half share in the property of Babu Ram, which would devolve upon all his heirs and legal representatives as at least one of his sons was born prior to coming into force of the Act.

16. Except to the aforementioned extent; in our opinion, the courts below are correct in applying the provisions of Section 6 of the Act and holding that Section 8 thereof will have no application. The appeal is allowed in part and to the aforementioned extent. The decree would be modified accordingly. No costs.