SUPREME COURT OF INDIA

G. Rama

Vs.

T.G. Seshagiri Rao (D) by Lrs.

C.A.No.4215 of 2008

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

07.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court allowing the appeal filed in terms of Section 96 read with Order XLI of the *Code of Civil Procedure, 1908* (in short the `C.P.C').

3. Background facts in a nutshell are as follows:

> "The respondent T.G. Seshagiri Rao, who after his death has been substituted by his legal heirs, had filed a suit with inter alia prayer to declare him as an absolute owner of the plaint schedule property and to direct the defendant (appellant herein) to deliver vacant possession of the suit schedule property. The suit property is a residential house bearing No.257/1, 5th Cross, Kempegowda Nagar, Bangalore measuring East West 15' x 5' and north south 35'."

4. The case set out by the parties is as follows:

> "The schedule premises were purchased by Kate T.G. Seshagiri Rao along with his uncle one T.K. Vasudeva Murthy under a registered sale deed dated 5.6.1963 for a valuable sale consideration of Rs.20,000/- and that his uncle T.K. Vasudeva Murthy relinquished his right, title and interest which he had over the suit schedule property in favour of the plaintiff under a registered release deed dated 17.4.1989 and by virtue of the release deed, the plaintiff became the absolute owner of the suit schedule property. The defendant is the daughter in law of T.K. Vasudeva Murthy who lost her husband in an accident and that she was permitted to reside in the house as a licensee."

5. The suit was filed seeking possession, as the defendant refused to vacate the premises in spite of repeated requests and a legal notice.

6. The defendant contested the case. According to her written statement, Sri T.K. Vasudeva Murthy has no right to execute the sale deed and that Vasudeva Murthy purchased the suit schedule property along with the plaintiff out of the joint family nucleus and that joint family had consisted of Vasudeva Murthy and his son Venkata Krishna, the deceased husband of the defendant. According to her, after the death of her husband, she and her daughter Soumya were also having equal rights along with Vasudeva Murthy. It is her further case that she has been residing in the schedule premises not as a licensee but in her own right as a daughter-in-law and that the property was given to her by her in-laws till the marriage of her daughter Soumya and to enjoy the same for life with an independent title. She also contended that she was put in possession of the suit schedule property by Vasudeva Murthy with an understanding that she would remain in possession in lieu of maintenance and that she has acquired ownership as per the provisions of Section 14 of the *Hindu Succession Act, 1956 (in short the `Act').*

7. Based on the above pleadings, the following issues were framed:

> "1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property as on the date of filing of the suit?
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> 2. Whether the plaintiff further proves that he is entitled to the delivery of vacant possession of the schedule property from the defendant?
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> 3. Whether the plaintiff is entitled to past and future mesne profits as claimed?
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> 4. Whether the defendant proves that she has perfected her title to the suit schedule property by way of adverse possession?
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> 5. Whether the court fee paid is insufficient?
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> 6. Whether the defendant proves that she has got a legal right to the extent of her share in the suit schedule property?
>
> 7. To what order and decree?"

8. The plaintiff examined himself as PW-1. He relied upon Exs.P1 to P9. The defendant examined himself as DW 1. She did not produce any documents before the trial court. The trial Court on appreciation of the evidence adduced by the parties, held issues 1 and 2 in the negative and further held that the plaintiff is entitled for undivided half share in the suit schedule property and entitled for partition and separate possession of his half share. In respect of issue No. 3, it was held that "entitled for future mesne profits from the date of the suit till the date of possession in respect of his half share". Issue No. 4 was answered in the negative. Issue No. 5 was held in the affirmative. Issue No. 6 in affirmative holding that the

defendant is entitled to claim half share. Ultimately, the suit of the plaintiff was decreed in part declaring that he ha become the absolute owner of the undivided half share and entitled for partition and separate possession of his half share. The said judgment and decree was called in question before the High Court.

9. The High Court found that the basic question related to Section 14(1) of the Act. It was noted that a suit OS No. 4949 of 1991 for partition was filed by the defendant, appellant herein. It was held that without any material, the trial court held that defendant had become absolute owner pursuant to Section 14(1) of the Act.

10. Learned counsel for the appellant submitted that the true scope and ambit of Section 14 of Act were lost sight of by the High Court.

11. It is pointed out that the property in question was given to her in lieu of maintenance and therefore she had to shift from the main portion of the building to the out house. It is pointed out that the claim is against the husband and not qua recovering lost property. Strong reliance is placed on a decision of this Court in *V. Tulasamma and Ors. v. Sesha Reddy (d) by Lrs.*[1].

12. It is pointed out that after the death of her husband, attempt of her father-in-law and the original plaintiff was to deprive her of the property over which she had legitimate ownership.

13. It is pointed out that she was married toT.V. Venkatakrishna on 4.7.1979 and her husband died on 11.7.1980 and the child was born to her on 9.2.1981. The release deed was purportedly executed by her father-in-law in 1989. The admitted position is that her father-in-law wanted to deprive her of the legitimate rights and for that purpose release deed was executed.

14. In response, learned counsel for the respondent submitted that the factual scenario needs to be noted. On 5.6.1963 the original plaintiff Seshagiri and Vasudeva Murthy who was his uncle and the father-in-law of the defendant/ appellant purchased the property jointly. They were partners in a partnership firm which was dissolved on 16.8.1971. On 8.3.1981, portion of the land purchased jointly by Sheshagiri and Vasudeva Murthy was sold to one Puttann. There was no challenge to it. On 17.4.1989 Vasudeva executed the release deed for consideration of 20,000/- in favour of Sheshagiri. On 4.1.1990 the suit relating to the present dispute i.e. OS No. 188 of 1990 was filed. Initially in the written statement filed, defendant took the stand that the property in question was joint family property and claimed half share. Subsequently, the written statement was amended. Plea was taken that she was permitted to stay in lieu of maintenance and so the property was of absolute property and in terms of Section 14 (1) of the Act. On 19.8.1991 O.S. No. 4949 of 1991 i.e. suit for partition was filed claiming the partition. There is no challenge to the release deed dated 17.4.1989 in the suit for partition. Appellant took the stand that it was a joint family property and, therefore, he had half share. No specific issue regarding the nature of the property was framed. There was no issue relating to Section 14(1) of the Act and there was also no evidence led in that regard. Strangely the trial court treated the suit as one for partition though the suit was for declaration. There was no counter-claim filed by defendant- Rama. It is pointed out that

Vasudeva Murthy was alive when the trial of the suit proceeded. Before the High Court an undertaking was given to vacant the premises which was accepted subject to filing of an undertaking which was in fact filed on 21.5.2004 after delivery of the judgment on 7.1.2004. Two years after a review petition was filed on 10.8.2006 and the same was withdrawn on 30.8.2006.

15. As rightly contended by learned counsel for the respondent there was no issue framed regarding Section 14 of the Act. Even no evidence was led specifically to show that in lieu of maintenance she was permitted to possess the property.

16. It is relevant to note that the trial court made a reference to Section 19 of Hindu Adoption and Maintenance Act, 1956 (in short the `Maintenance Act'). Unfortunately the High Court did not take note of sub section (2) of Section 19 of the Maintenance Act.

17. Section 14(1) of the Act reads as follows:

> "14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
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> Explanation. - In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
>
> (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

18. Section 19 of the Maintenance Act reads as follows:

> “Maintenance of widowed daughter-in-law.- (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law.
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> Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance- from the estate of her husband or her father or mother, or from her son or daughter, if any, or his or her estate.
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> (2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of

which the daughter-in-law has not obtained any share, and any such obligation shall case on the re- marriage of the daughter-in-law."

19. In *Sadhu Singh v. Gurdwara Sahib Narike and Ors.*[2] it was inter alia observed as follows:

"5. In the case on hand, since the properties admittedly were the separate properties of Ralla Singh, all that Isher Kaur could claim de hors the will, is a right to maintenance and could possibly proceed against the property even in the hands of a transferee from her husband who had notice of her right to maintenance under the Hindu Adoptions and Maintenance Act. No doubt, but for the devise, she would have obtained the property absolutely as an heir, being a Class I heir. But, since the devise has intervened, the question that arises has to be considered in the light of this position.

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11. On the wording of the section and in the context of these decisions, it is clear that the ratio in V. Tulasamma v. V. Shesha Reddi (supra) has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. The Tulasamma ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in *Raghubar Singh v. Gulab Singh*[3] wherein the testamentary succession was before the Act. The widow had obtained possession under a Will. A suit was filed challenging the Will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In *Mst. Karmi v. Amru and Ors.*[4] the owner of the property executed a Will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the Will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre- existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in *Bhura and Ors. v. Kashi Ram*[5] after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14 (1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In *Sharad Subramanyan v. Soumi Mazumdar*

and Ors.[6] this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14 (1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section14 (2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in Tulasamma. Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether Sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14 (1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14 (2) of the Act.

12. When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, his heirs as per the schedule, take it in terms of Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17.6.1956 leaving his widow as his sole heir, she gets the property as class I heir and there is no limit to her estate or limitation on her title. In such circumstances, Section 14 (1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14 (1) of the Act, she gets an absolute estate."

20. In *Sharad Subramanyan v. Soumi Mazumdar & Ors.*[7] this court observed as follows:

"Mr. Bhaskar P. Gupta, learned Senior Counsel for the respondents, rightly distinguished all these cases, as it was clearly proved therein, that the properties had been given to a female Hindu, either in recognition of or in lieu of her right to maintenance under the Shastric Hindu Law or under the Hindu Adoption and Maintenance Act, 1956. Consequently, these were instances where the dispositions of property, albeit as a limited estate, would blossom into a full interest by reason of Sub-section (1) of Section 14 of the Act.

Learned Counsel further contended that there is no absolute rule that all properties demised to a female Hindu were necessarily in recognition of or in lieu of her right to maintenance. It was possible, even after the Act came into force, to create a limited estate by reason of a gift or will. Such a situation would fall within the ambit of Sub-section (2) of Section 14 of the Act as long as it was not in recognition of or in lieu of a right to maintenance under the Shastric Hindu Law or under a statute. Learned Senior Counsel relied on Section 30 of the Act, which recognises the right of a Hindu to dispose of self-acquired property by Will. Mr. Gupta relied on the judgment of this Court in *Bhura and Ors. v. Kashi Ram*[8] which was also a case of limited estate

conferred on a female Hindu by a Will. This Court held that, upon a proper construction of the Will, the bequeathal in favour of the female Hindu was clearly indicative of: the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of ...(the female Hindu)... only for her lifetime and not an absolute estate. [(1994)2 SCC 111]

Thus, in view of the fact that there were no indications, either in the Will or externally, to indicate that the property had been given to the female Hindu in recognition of or in lieu of her right to maintenance, it was held that the situation fall within the ambit of Sub-section (2) of Section 14 of the Act and that the restricted life estate granted to the female Hindu could not be enlarged into an absolute estate. Learned Counsel for the respondents relied strongly on this judgment and contended that there was no proposition of law that all dispositions of property made to a female Hindu were necessarily in recognition of her right to maintenance whether under the Shastric Hindu Law or under the statutory law. Unless the said fact was independently established to the satisfaction of the court, the grant of the property would be subject to the restrictions contained therein, either by way of a transfer, gift or testamentary disposition. Learned Counsel also distinguished the three cases cited by the learned Counsel for the appellant that in each, the circumstances clearly indicated that the testamentary disposition was in lieu of the right of maintenance of the female Hindu. We think that this contention is well merited and needs to be upheld."

21. In *Eramma v. Verrupanna and Ors.*[9] it was observed by this Court that mere possession does not automatically attract Section 14 of the Act.

22. As noted above, no issue was framed and also no evidence was led to substantiate the plea that the appellant was occupying the premises in lieu of maintenance. In view of this factual position and the proposition of law referred to above, inevitable conclusion is that the appeal is without merit, deserves dismissal, which we direct. No costs.

[1]*(1977 (3) SCC 99)*
[2]*[2006(8) SCC 75]*
[3]*[1998 (6) SCC 314]*
[4]*(1972 (4) SCC 86)*
[5]*[(1994) 2 SCC 111]*
[6]*(JT 2006 (11) SC 535)*
[7]*[2006(8) SCC 91]*
[8]*(1994 (2) SCC 111)*
[9]*[1966 (2) SCR 626]*