

SUPREME COURT OF INDIA

Komalam Amma

Vs.

Kumara Pillai Raghavan Pillai

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

14.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Kerala High Court dismissing the second appeal filed in terms of Section 100 of the *Code of Civil Procedure, 1908* (in short 'the Code'). The second appeal was filed by the appellant, who was defendant No.1 in O.S. No.426 of 1986 on the file of learned first Additional Munsiff's Court, Thiruananthapuram. She and the present respondent Nos. 2 and 3 were the defendants and respondent No.1 was the plaintiff, who is the husband of the appellant and father of respondent Nos. 2 and 3. The Suit was one for declaration of title in respect of Plaint-A Schedule Property where the defendants were residing and for recovery of possession with mesne profits.

3. The Trial Court as well as the first appellate court concurrently decreed the suit finding title over the plaint-A Schedule property with the plaintiff-husband. They held that Plaint-A Schedule property was purchased by him under Exh.A-1 (sale deed) utilising his own funds and the funds for the acquisition of the property were not provided by the present appellant-wife. The concurrent decrees passed by the courts below were assailed before the High Court.

4. Stand of the appellant and the present respondent nos.2 and 3 was that being the wife of the plaintiff, the present appellant is entitled to reside in the matrimonial home situated in the plaint schedule property. It was also pointed out that she had already obtained a charged decree for maintenance over the schedule property as per the decree in OS No.139 of 1977. It was, therefore, her stand that the decree passed in the present case will result in conflicting decrees defeating the statutory charge under Section 39 of the *Transfer of Property Act, 1882* (in short 'the TP Act').

5. The High Court was of the view that even if the appellant had obtained a decree for maintenance against the husband, the decree passed in the case for recovery of possession

does not in any way, defeat the right of the wife to enforce the charge. Section 39 of the T.P. Act will have operation only if the charged property is transferred in which case, the transferee who is not a bona-fide transferee for value without notice will be liable for the charge. The High Court further held that in view of the factual setting in the case when the relationship between the husband and the wife is estranged, the wife cannot still claim a right of residence in the matrimonial home so as to resist a decree for possession. Therefore, the second appeal was dismissed.

6. Learned counsel for the appellant submitted that the view expressed by the High Court runs counter to the decision of this Court in *Mangat Mal (Dead) and Anr. Vs. Punni Devi (Dead) and Ors.*¹.

7. Learned counsel for respondent No.1, on the other hand, supported the judgment of the High Court.

8. In *Mangat Mal's* case (supra), this Court was considering the question whether maintenance encompasses a provision for residence. The case was considered in the light of Section 14(1) of The *Hindu Succession Act, 1956* (in short 'the Act').

9. Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14 (1).

10. Mulla's Hindu Law (Sixteenth Edition) sets out the position in law prior to the Act. The Manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children. On the death of any one of the male members he is bound to maintain his widow and his children. The obligation to maintain these persons arises from the fact that the Manager is in possession of the family property (para 543). An heir is legally bound to provide, out of the estate which descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain (para 544). A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style (para 554). A widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of his separate property as well as out of property in which he was a coparcener at the time of his death (para 559). A Hindu widow is, in the absence of special circumstances, entitled to reside in the family dwelling house in which she lived with her husband (para 562). The maintenance to be allowed to a widow should be such an amount as

will enable her to live consistently with her position as a widow, with the same degree of comfort and reasonable luxury as she had in her husband's house, unless there are circumstances which affect, one way or the other, her mode of living there. In determining the amount of maintenance the Court should have regard, inter alia, to the provision and status of the deceased husband and of the widow and the reasonable wants of the widow, including not only the ordinary expenses of living, but what she might reasonably expend for religious and other duties incidental to her station in life (para 566). Where an undivided family consists of two or more males, related as father and son or otherwise, and one of them dies leaving a widow, she is entitled to reside in the family dwelling house in which she lived with her husband. If the house is sold by the surviving co- parceners without necessity, the sale does not affect her right, and the purchaser cannot evict her until another suitable residence is found for her (para 573). A widow who is entitled to maintenance may sue, inter alia, for a charge on a specific portion of her husband's estate for her maintenance and residence (para 579).

11. The *Hindu Adoption & Maintenance Act, 1959*, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines maintenance in Section 3 (d) to include "(1) In all cases, provision for food, clothing, residence, education and medical attendance and treatment."

12. In *B.P. Achala Anand Vs. S. Appi Reddy and Anr.*² it was observed as follows:

" Having said so generally, we may now deal with the right of a wife to reside in the matrimonial home under personal laws. In the factual context of the present case, we are confining ourselves to dealing with the personal law as applicable to Hindus as the parties are so. A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right. (See: MULLA, Principles of Hindu Law, Vol. I, 18th Ed. 2001, paras 554 and 555) The right has come to be statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoption and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term 'wife' includes a divorced wife."

13. These aspects have not been considered by the High Court. It will be appropriate for the High Court to consider the issues by re-hearing the appeal in the light of what has been stated in *Mangat Mal's* and *B.P. Achala Anand's* cases (supra).

14. We make it clear that we have not expressed any opinion on the merits by remitting the matter to the High Court.

15. The appeal is disposed off accordingly without any order as to costs.

¹(1995 (6) SCC 88)

²(2005 (2) SCALE 105)