

SUPREME COURT OF INDIA

Sri Ramakrishna Mutt Rep.By Manager.

Vs.

M.Maheswaran

C.A.No.8864 of 2010

(V.S.Sirpurkar and Cyriac Joseph JJ.)

08.10.2010

JUDGEMENT

V.S.Sirpurkar, J.

1. Leave granted.

2. A unanimous verdict of the three Courts below dismissing the suit filed by Sri Ramakrishna Mutt (appellant herein) is in challenge in this appeal.

3. The conspectus of the facts would be necessary before we approach further. One Kannabiran Pillai had two wives. The name of his second wife was Kumudammal with whom he had got married before the advent of The Hindu Marriage Act, 1955. As such, she was a legitimate wife. She had no children. The respondents herein are the children, or as the case may be, the legal heirs of the children of the first wife of Kannabiran Pillai. Kannabiran died on 31.12.1956, while Kumudammal died on 18.3.1989. During his lifetime, Kannabiran had executed settlement deeds being Exhibits A-2, A-3 and A-4, wherein, he had created a life interest in favour of Kumudammal. The initial settlement deed was dated 20.10.1938. He created a supplementary deed on 4.3.1939 and a rectification deed dated 23.7.1943. Kumudammal remained in possession of the properties and enjoyed the same during her lifetime, inasmuch as, it was Kumudammal who used to recover the rents. Thus, she was in constructive possession of the property. In those settlement deeds, it was provided that after the demise of Kumudammal, the property would go in favour of the appellant/plaintiff Sri Ramakrishna Mutt.

4. A civil suit, therefore, came to be filed against the respondents herein by the appellant/plaintiff for claiming the property and it was pleaded that since Kumudammal had only the life interest, after her death, the property would revert back to the appellant/plaintiff Sri Ramakrishna Mutt in terms of the settlement deeds.

5. This claim was contested by the defendants including the tenants and the children from the first wife of Kannabiran on the ground that the property could not have gone back as per the settlement deeds, as Kumudammal had become full owner of the property on account of Section 14(1) of The Hindu Succession Act, 1956. Issues were framed and as has been stated earlier, all the three Courts below held that Kumudammal had become absolute owner of the property under Section 14(1) of the Hindu Succession Act as she was in possession of those properties on the date when the Hindu Succession Act came on the anvil. The Hindu Succession Act came on the anvil on 17.6.1956. It is this unanimous verdict which is in challenge in the present appeal.

6. Shri A.K. Sanghi, learned Senior Counsel appearing on behalf of the appellant had taken us through the judgments of the Courts below, as also the record. The mainstay of his contention was that Kumudammal was not in possession of the suit property on the date when the Hindu Succession Act came into force because the possession was that of Kannabiran Pillai himself, since on that date he was alive. The learned Senior Counsel pointed out that the date of his death i.e. 31.12.1956 was subsequent to the date on which the Hindu Succession Act came into force and, therefore, it should be presumed that it was only Kannabiran Pillai who was in possession of the property on the date when the said Act came into force. The learned Senior Counsel pointed out that in order that the possession of a Hindu widow to be ripened into the full rights of ownership, it is essential that the Hindu widow having limited right or life interest should be in possession of the properties on the date on which the Hindu Succession Act came into force i.e. 17.6.1956. For his contentions, Shri Sanghi relied on the decision of this.

7. Shri V. Giri, learned Senior Counsel, appearing on behalf of the respondents, urged that the law laid down *Narikel & Ors.*¹ will not apply to the facts herein. The learned Senior Counsel pointed out that all the three Courts below have held, as a matter of fact, that on the day when the Hindu Succession Act came into force, it was Kumudammal who was in possession of the property and not Kannabiran Pillai. The learned Senior Counsel further argued that there is a specific recital in the three settlement deeds and more particularly, on the settlement deed dated 4.3.1939 that Kumudammal was put in possession of the property on the date when the said settlement deed, to put in more rightly, the supplementary deed, came into existence on 4.3.1939. He, therefore, pointed out that at least from that date, Kumudammal was in constructive possession of the properties. Once Kumudammal is held to be in possession or constructive possession of the property, the law laid in the decision in *V. Tulasamma* would apply. It will, therefore, be our endeavour to see as to whether Kumudammal was in possession or constructive possession of the property on 17.6.1956, the date on which the Hindu Succession Act came into force.

8. Apart from the fact that there is a unanimous finding of all the three Courts below on this point, the issue would be clinched by the recitals in the said settlement deeds.

9. The first such settlement deed is date 20.10.1938. Under that deed, the property is described in Schedules A and B and the relevant recital are as under:-

“1. This instrument witnesseth that in consideration of the premises above said, the settlor doth hereby convey transfer and assign in favour of the Mission, the properties described in the Schedules A and B hereto subject to the life interest created hereinafter below and the Mission shall be entitled to enjoy subject as aforesaid the properties.

2. The settlor shall be entitled during the period of his life to enjoy the income from the properties set out in Schedules A and B hereto. The settlor's second wife Kumudammal after the settlor's lifetime be entitled to utilize for herself the income only from the properties described in Schedule A hereto and shall have no right to the properties set out in Schedule B hereto on the death of the settlor. On the death of the settlor, the Mission shall take possession of the property set out in Schedule B hereto and enjoy the same with full powers of ownership after the lifetime of both the settlor and his second wife aforesaid. The Mission shall take possession of the property set out in Schedule A hereto and enjoy the same with full right of ownership.

3. Settlor hereof declares that a part from the right to enjoy the income for himself and his second wife aforesaid the settlor shall have no right whatever to deal with the properties settled on the Mission hereunder as from this date.”

It seems that a supplementary deed was executed by Kannabiran Pillai, which is described as Document No. 413 of 1939. This deed was executed on 4.3.1939. This supplementary deed mentions the earlier settlement deed dated 20.10.1938 and the fact of its registration in respect of the properties in the Schedules thereto. It then goes on to say that:- "whereas without prejudice to the rights of the Ramakrishna Mission detailed therein, I have decided to confer an immediate interest in the Schedule mentioned properties in favour of my second wife Kumudammal at her request and with a view to domestic peace and whereas no other provision has been made for the maintenance and convenient enjoyment of my second wife the said Kumudammal, but suitable provisions have already been made for my first wife and children and whereas these properties are all myself acquisitions and are at my absolute disposal. I hereby declare create and convey present interest in favour of the said Kumudammal my second wife that she shall immediately possess and enjoy the Schedule mentioned properties during her lifetime and utilize the rents and profits for her own benefit without left on hindrance but without any power of alienation and after her lifetime the said properties shall pass to the Ramakrishna Mission in continuance with the settlement deed aforesaid. During my lifetime I shall manage the said properties for her benefit and after my lifetime she will be at liberty to appoint any agent to manage the said properties for her benefit with a view to the proper realization of rents and profits and keeping the premises in good conditions." (Emphasis supplied).

It seems that on 23.7.1943, Kannabiran Pillai executed a rectification deed to rectify the settlement deed dated 20.10.1938, wherein, the only rectification effected was that

in place of "Ramakrishna Mission", the words "Ramakrishna Mutt, Mylapore" were inserted. This was necessitated as the settlor Kannabiran Pillai was under the impression earlier that there was no difference between Ramakrishna Mutt and Ramakrishna Mission; however, he had realized that the work of Mission does not cover the Puja and Seva of Sri Rama Krishna Paramahansa and the Mission was not a religious body, though the workers of the same are Sanyasis of the Ramakrishna Mutt."

10. These three deeds are the documents relied upon by the appellant/plaintiff. The appellant/plaintiff, therefore, cannot travel away from these three settlement deeds. The position thus becomes clear that Kumudammal was given the possession of this property and was also given the right to enjoy the property by collecting rents of the same right from 4.3.1939 even during the lifetime of her husband Kannabiran Pillai who was only managing the properties on her behalf. Thus, these documents will clearly go to prove the possession of Kumudammal right from 4.3.1939 and, therefore, the subsequent death of her husband Kannabiran on 31.12.1956 would be of no consequence. In short, Kumudammal was in possession of the property in pursuance of her pre-existing right of maintenance on 17.6.1956, the date on which the Hindu Succession Act came into force. That would clearly clinch the issue in favour of the original defendants, whose case is that thereby, Kumudammal's right of life interest ripened into full ownership.

11. Shri Sanghi, learned Senior Counsel, appearing on behalf of the appellant, in his usual persuasive style, pointed out that the law laid down in *V. Tulasamma & Sahib Narike & Ors.* (cited supra), where this Court has held to apply the law laid down in *V. Tulasamma & Ors.* shown that the concerned widow or the lady, as the case may be, should be in possession of the property on the date when the Hindu Succession Act came into force without going into the controversy as to whether the L.Rs. (cited supra) depends upon such possession on the date when the said Act came into force. It is clear in this case that Kumudammal was in such possession of the property on the date when the Hindu Succession Act came into force.

12. Shri Sanghi then tried to urge that at least during the lifetime of Kannabiran Pillai upto to 31.12.1956, the actual possession of Kumudammal could not be presumed and, therefore, we should hold that the possession was that of Kannabiran Pillai himself. Even this contention is not available to the appellant in this particular case as even the constructive possession of a female Hindu has been held to be sufficient for the application of Section 14(1) of the Hindu Succession Act, in catena of decisions. Reference may be made to the decision rendered by this *Setra Veeravva*², where this Court expressed as under:- "The opening words in "property possessed by a female Hindu" obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognized by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word "possession" in its widest connotation, when the Act came into

force, the section would not apply." (Emphasis supplied), where the constructive possession of a female Hindu was recognized for the purposes of application of Section 14(1) of the Hindu Succession Act. Therefore, even this contention fails.

13. Shri Sanghi, learned Senior Counsel then pointed out that no such contention was raised by the defendants in their Written Statement. In fact, that is also not correct. From the very beginning, the stand of the defendants was that under no circumstances, could the property go back to Ramakrishna Mutt in view of Section 14(1) of the Hindu Succession Act. This is apart from the fact that the Courts below and more particularly, the first appellate Court and the High Court had gone on the question of applicability of Section 14(1) of the Hindu Succession Act and held that the Section applied to the facts of the case. In fact, the first appellate Court has in details discussed as to why Section 14(2) will not apply and further the application of rule laid down in supra).

14. In view of all this, we do not find any merits in the appeal and dismiss the same confirming the orders passed by the Courts below. However, under the circumstances, there shall be no orders as to the costs.

¹2006 (8) SCC 75

²AIR 1959 SC 577

³1970 (1) SCC 786