SUPREME COURT OF INDIA

M.Arumugam

Vs.

Ammaniammal

C.A.No.8642 of 2009

(S.Abdul Nazeer and Deepak Gupta,JJ.,)

08.01.2020

JUDGMENT

Deepak Gupta,J.,

1. One Moola Gounder along with his two sons Palanisamy (defendant no. 1) and Arumugam (defendant no. 2) formed a coparcenary which owned the suit property. Moola Gounder died intestate on 28.12.1971 leaving behind no Will. On his death, 1/3 of the property went to each son and remaining one third which was the share of Moola Gounder in the coparcenary was to be inherited by his wife (defendant no.5), two sons, (defendant nos. 1 and 2) and three daughters viz., the plaintiff and defendant nos. 3 and 4.

2. On 06.12.1989, his youngest daughter filed a suit claiming that the property falling to the share of Moola Gounder which was to be inherited by his six legal heirs had never been partitioned and therefore, it be partitioned in accordance with law. Written statement was filed by the two sons in which it was mentioned that after the death of Moola Gounder, the daughters i.e., the plaintiff and defendant nos. 3 and 4 and the mother (defendant no. 5) had jointly executed a registered release deed relinquishing their rights in the property in favour of the two sons, defendant nos. 1 and 2. It was also urged that in the said release deed the plaintiff who was a minor at that time was represented by her mother, who was her natural guardian, and the mother had executed the release deed on behalf of the plaintiff. Similarly, defendant no. 1 had acted as the guardian of defendant no. 2 who was also a minor at that time and signed the release deed on behalf of both of the sons. After defendant no. 2 attained majority, a registered partition deed was executed between the two brothers, defendant nos. 1 and 2, on 24.04.1980 and thereafter, it is only defendant nos. 1 and 2 who are in possession of the said property. It was also averred that the partition deed was witnessed by the husband of the plaintiff and she could not feign ignorance of the same. It was also alleged that the amount mentioned in the release deed had been given to the sisters.

3. A reply written statement or replication was filed by the plaintiff in which it was urged that the release deed was void under law since the mother had no right to relinquish the

share of the plaintiff without sanction of the court.

4. The trial court dismissed the suit holding that the mother acted as the natural guardian of the minor daughter and no steps were taken by the plaintiff on attaining majority to get the release deed set aside within the period of limitation of three years.

5. Aggrieved by the aforesaid judgment, the plaintiff filed an appeal before the High Court which came to the conclusion that the property in the hands of the legal heirs of Moola Gounder, after his death, was Joint Hindu Family property and the mother could not have acted as guardian of the minor. It was, therefore, held that the release deed was void ab initio and, as such, was not required to be challenged. The court further held that the property remained joint property of all the legal heirs of Moola Gounder and decreed the suit of the plaintiff. Hence, this appeal by one of the brothers who was defendant no.2 in the trial court.

6. We have heard Mr. Jayanth Muth Raj, learned senior counsel for the appellant and Mr. V. Prabhakar, learned counsel for the respondents-plaintiff. The facts are not disputed. The only issue is whether the mother could act as the natural guardian of the minor daughters in respect of the property inherited from Moola Gounder.

7. Before dealing with the issues, it would be appropriate to make reference to Section 6 of the Hindu Minority & Guardianship Act, 1956, (the Act for short), relevant portion of which reads as follows:

> "6. Natural guardians of a Hindu minor.- The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—
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> (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; Reference may also be made to Section 8 of the Act, relevant portion of which reads as follows:
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> "8. Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.
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> (2) The natural guardian shall not, without the previous permission of the court,—
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> (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or
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> (b) lease any part of such property for a term exceeding five years or for a term

extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. Section 4(b), Section 6, Section 19 and Section 30 of the Hindu Succession Act, 1956 (the Succession Act for short), as it stood at the relevant time read as follows:-

"4(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

"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 the 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 1 - 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."

"19.Mode of succession of two or more heirs.- If two or more heirs succeed together to the property of an intestate, they shall take the property,-

(a) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(b) as tenants-in-common and not as joint tenants."

"30. Testamentary succession.- Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by

him or her, in accordance with the provisions of the Indian succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.- The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad., tavazhi, illom, kutumba or kavaru in the property of the tarwad., tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section."

8. Mr. V. Prabhakar, learned counsel for the plaintiff submits that after the death of Moola Gounder, the property in question was not inherited by his legal heirs in their individual rights but only as the property of a Hindu Undivided Family. Mr. Prabhakar strenuously urged that the property was a joint Hindu family property and only the Karta i.e., defendant no. 1 could have represented the minor. The Karta was the guardian of the minor members of the joint Hindu family and, therefore, the High Court rightly held that the document which is termed to be the release deed was a void document.

9. On the other hand, Mr. Jayanth Muth Raj, learned counsel for the appellant submits that when the death of Moola Gounder took place, a notional partition is deemed to have taken place immediately before his death wherein two surviving members of the coparcenary i.e., defendant nos. 1 and 2, got 1/3 share each in the property and the remaining 1/3 belonging to Moola Gounder was to be inherited in terms of Section 8 of the Succession Act.

10.When we read Section 6 of the Succession Act the opening portion indicates that on the death of a male Hindu, his interest in the coparcenary property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act. That would mean that only the brothers would get the property. However, the Proviso makes it clear that if the deceased leaves behind a female heir specified in Class-I of the Schedule, the interest of the deceased in the coparcenary property shall devolve either by testamentary or by intestate succession under the Succession Act and not by survivorship. The opening portion of Section 6, as it stood at the relevant time, clearly indicates that if male descendants were the only survivors then they would automatically have the rights or interest in the coparcenary property. Females had no right in the coparcenary property at that time. It was to protect the rights of the women that the proviso clearly stated that if there is a Class-I female heir, the interest of the deceased would devolve as per the provisions of the Act and not by survivorship. The first Explanation to Section 6 makes it absolutely clear that the interest of the Hindu coparcener shall be deemed to be his share in the property which would have been allotted to him if partition had taken place immediately before his death. In the present case, if partition had taken place immediately before the death of Moola Gounder then he and defendant nos. 1 and 2 would have been entitled to 1/3 share each in the property. Nothing would have gone to the female heirs as per the law as it stood at that time. However, since partition had not actually taken place, and there were Class-I female heirs, 1/3 share of Moola Gounder was to devolve on the Class-I legal heirs in accordance with Section 8 of the Succession Act.

11. In *Gurupad Khandappa Magdum vs. Hirabai Khandappa Magdum and Ors*[1]. , the main issue was as to what share a Hindu widow would get in terms of Sections 6 and 8 of the Succession Act. This Court held that the partition which was a deemed partition cannot be limited to the time immediately prior to the death of the deceased coparcenary but "all the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased." The Court further held that the partition has to be treated and accepted as a concrete reality, something that cannot be recalled at a later stage.

12. In *Commissioner of Wealth Tax, Kanpur and Ors. vs. Chander Sen and Ors*[2]. , the dispute related to a joint family business between a father and son. This business was divided and thereafter, carried by a partnership firm of which both were partners. The father died leaving behind his son, two grandsons and a credit balance in the account of the firm. The issue that arose was whether the credit balance in the account left behind by the deceased was to be treated as joint family property or the property was to be distributed to Class-I legal heirs in accordance with Section 8 of the Succession Act. This Court held that Succession Act supersedes all Mitakshara law. The relevant portion of the judgment reads as follows:-

> "22.... 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 vis-a-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."

Accordingly, it was directed that the credit balance would be inherited in terms of Section 8 of the Succession Act.

13. In *Appropriate Authority (IT Deptt) And Others vs. M. Arifulla And Others*[3] the issue which arose was whether the property inherited in terms of Sections 6 and 8 of the Succession Act was to be treated as the property of co-owners or as joint family property. The Court held as follows:-

> "3. ... This Court has held in CWT vs. Chander Sen that a property devolving under Section 8 of the Hindu Succession Act, is the individual property of the person who inherits the same and not that of the HUF. In fact, in the special leave petition, it is admitted that respondents 2 to 5 inherited the property in question from the said T.M. Doraiswami. Hence, they held it as tenants-in-common and not as joint tenants."

14. Applying the principles laid down in the aforesaid cases, it is apparent that after the death of Moola Goundar, his interest in the coparcenary property would devolve as per the

provisions of Section 8 since he left behind a number of female Class-I heirs.

15. There is another reason to take this view. Section 30 of the Succession Act clearly lays down that any Hindu can dispose of his share of the property by Will or by any other testamentary disposition which is capable of being so disposed of by him. The explanation to Section 30 clearly provides that the interest of a male Hindu in Mitakshara coparcenary shall be deemed to be property capable of being disposed of by him within the meaning of Section 30. This means that the law makers intended that for all intents and purposes the interest of a male Hindu in Mitakshara coparcenary was to be virtually like his self-acquired property. Furthermore, when we conjointly read Section 30 with Section 19, which provides that when two or more heirs succeed together to the property of an intestate, they shall take the property per capita and as tenants in common and not as joint tenants. This also clearly indicates that the property was not to be treated as a joint family property though it may be held jointly by the legal heirs as tenants in common till the property is divided, apportioned or dealt with in a family settlement.

16. Even assuming that the property was a joint family property then also we cannot accept the submission that the Karta i.e., defendant no. 1 was the natural guardian of the minor plaintiff. The Karta is the manager of the Hindu Undivided Family and acts on behalf of the entire family. True it is that Section 6 of the Act is not applicable in respect of undivided interest of a minor in the joint family property but here we are dealing with a situation where all the family members decided to dissolve the Hindu Undivided Family assuming there was one in existence.

17. A Karta is the manager of the joint family property. He is not the guardian of the minor members of the joint family. What Section 6 of the Act provides is that the natural guardian of a minor Hindu shall be his guardian for all intents and purposes except so far as the undivided interest of the minor in the joint family property is concerned. This would mean that the natural guardian cannot dispose of the share of the minor in the joint family property. The reason is that the Karta of the joint family property is the manager of the property. However, this principle would not apply when a family settlement is taking place between the members of the joint family. When such dissolution takes place and some of the members relinquish their share in favour of the Karta, it is obvious that the Karta cannot act as the guardian of that minor whose share is being relinquished in favour of the Karta. There would be a conflict of interest. In such an eventuality it would be the mother alone who would be the natural guardian and, therefore, the document executed by her cannot be said to be a void document. At best, it was a voidable document in terms of Section 8 of the Act and should have been challenged within three years of the plaintiff attaining majority.

18. We may note that there are other reasons to hold that the case set up by the plaintiff was not correct even to her knowledge. Though the plaintiff was a minor when the release deed dated 10.03.1973 was executed, she was not of tender age but was aged about 17 years. On 24.04.1980, a partition took place between defendant nos. 1 and 2 (the two brothers) and this partition included all the properties comprising the property now claimed

by the plaintiff. The partition deed dated 24.04.1980, which was duly registered, was signed by the husband of the plaintiff as an attesting witness. Few days later, on 30.04.1980 the two brothers executed a settlement deed in favour of their mother, defendant no. 5 which was also signed by the plaintiff's husband as witness. After this partition, the two brothers remained in possession of the property and executed various transfers from this property. Therefore, it is difficult to believe that the plaintiff was not aware of the various transfers.

19. In view of the above, we allow the appeal, set aside the judgment of the High Court dated 30.07.2008 and restore the judgment of the trial court dated 29.11.1994. Pending application(s) if any, shall also stand disposed of.

Judgment Referred.

[1]*(1978) 3 SCC 0383*
[2]*(1986) 3 SCC 0567*
[3]*(2002) 10 SCC 0342*