

ANDHRA PRADESH HIGH COURT

Indian Leaf Tobacco Development Ltd

Vs.

K. Kotayya

Civil Revn. Petn. No. 1723 of 1952

(Umamaheswaram, J.)

24.03.1952. 18.11.1954

ORDER

Umamaheswaram, J.

1. This Civil Revision Petition raises an interesting question of law, as to whether a widow is bound to obtain a succession certificate under the terms of Section 214, Succession Act in respect of monies due to her husband and in which she has a right under Section 3, clause (2), Hindu Women's Right to Property Act (Act 18 of 1937). The suit was filed by the three respondents against the petitioner company in respect of tobacco supplied by the father of respondents 1 and 2 and the husband of the 3rd respondent. Late Sreeramulu, the father of plaintiffs 1 and 2 and the husband of the 3rd plaintiff, died as a member of an undivided family consisting of himself and his two sons, plaintiffs 1 and 2, and the tobacco supplied by him to the petitioner company was admittedly joint family property. The 3rd plaintiff, the widow is entitled to an interest in this amount which is joint family property only by reason of the terms of Section 3(2) of Act 18 of 1937.

2. The short question that arises for consideration in the Civil Revision Petition is, whether the terms of Section 214, Indian Succession Act apply to this case.

3. Section 214 clause (i)(a) is in the following terms:

"No Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof".

4. Is the suit amount claimed by the 3rd plaintiff on behalf on her two minor sons and on her own behalf, a debt due to a person claiming on succession to be entitled to the effects of the deceased person? It is not contended that the minor sons who constitute members of an undivided family with their deceased father, Sreeramulu, are bound to obtain a succession certificate as admittedly their rights have accrued by survivorship and not by succession. The only point that was

strenuously contended by Sri P.S.T. Sayee, on behalf of the petitioner, is that under Act 18 of 1937 the widow has succeeded to a 1/3 share in the suit amount and is bound to obtain a succession certificate in respect of that amount.

5. To appreciate the correctness of this contention, it is necessary to examine the provisions of Act 18 of 1937 and the terms of Section 214, Succession Act already set out. Under the Hindu Women's Rights to Property Act as stated in the preamble the Hindu Law was amended to give better rights to women in respect of property. Section 2 specifically enacts that notwithstanding any rule of Hindu Law or custom to the contrary, the provisions of Section 3 shall apply where a Hindu dies intestate. Section 3, clause 1 deals with the separate property left by a Hindu governed by any other school of Hindu Law other than Dayabaga School of Hindu Law or customary law and provides that his widow would be entitled to the same share as a son. Rights are also conferred under the proviso in favour of the widow of a predeceased son. The use of the expression 'inherited' in clause (1) does not really throw any light on the question that arises for consideration in the present case as the separate property of a Hindu always devolves by inheritance. Clause (2) deals with the interest of the deceased in a Hindu joint family. It provides that the widow shall have in the property the same interest as the deceased himself had and clause (3) enacts that the interest so devolving on the Hindu widow shall be the limited interest known as a Hindu Woman's Estate. It further provides that the widow shall have the same right of claiming partition as a male owner. A reading of clauses (2) and (3) make it clear that, until the widow claims partition, the family continues joint and she is entitled only to the interest which her deceased husband had. The widow is, therefore, not the owner of any specified or defined share in the property left by her husband. But the interest which is conferred on her under the Act may, under clause (3) be separated and worked out by filing a suit for partition. So, it is not right to state that she owns a 1/3 share in the suit amount and that she is bound to obtain a succession certificate under Section 214, clause (1), of Succession Act in respect of that amount.

6. Section 214(1), Succession Act makes it obligatory to obtain a Succession Certificate, only on a person claiming on succession to be entitled to the effects of the deceased person. It is not right to regard the interest of Sreeramulu in the joint family property as being "the effects of a deceased person", which have passed to the widow on succession. In the Matter of the Hindu Women's Right to Property Act, 1937, AIR 1941 FC 72, Sir Maurice Gwyer dealt with the meaning of the expressions "devolution", "succession" and "inheritance". At page 78, the learned Chief Justice held that succession also includes survivorship.

7. The following extract from the Judgment makes the position clear.

"It is equally important to remember that neither in their ordinary grammatical significance nor by a long continued use in a technical sense have the words "devolution" and "succession" acquired a connotation that would preclude their application to describe the operation of the rule of survivorship as above explained. Eminent text-writers and Judges have used one or the other of those terms to include the accession of right which takes place on the death of one of the members of a Mithakshara joint family. Many enactments of Parliament and of the Indian Legislature have used the words "inheritance" and "Succession" in juxtaposition, justifying the inference that succession is either another category from, or a wider category than "inheritance" (See some of these enactments

referred to in Ilbert's Government of India, Chapter IV, and in Mulla's Hindu Law, p.4). If in these enactments "succession" should be held not to include the principle of survivorship, it would be difficult to say what else that word is meant to refer to and in any other view, the continued administration of that part of the Hindu Law by the British Indian Courts could not have been provided for, because there are no other appropriate words in those provisions. Such being the position as to the meaning of those words, it is permissible to add that it is difficult to conceive of any reason why in framing lists II and III Parliament should have thought fit to take away the law of survivorship from the jurisdiction of the Indian Legislature, and there is no justification for attributing oversight either when, as above explained, the language employed may properly be held to comprehend the law of survivorship as well".

8. Next dealing with the contention based on the restricted interpretation of the word 'succession' in the Succession Act, the learned Chief Justice proceeds to observe as follows:

"A line of cases in the High Courts dispensing with the production of a succession certificate when title to a "debt" is claimed by survivorship may seem to support the restricted interpretation of the word "succession" Ref: - '*Sheetal Chandra Datta v. Lakshimane Dasee*¹', But taking this class of decisions as a whole they must be understood to rest not so much on the connotation of the word "succession" as on the meaning of the expression "effects of the deceased person" and on the reason of the rule relating to the production of a succession certificate in support of the claim to a "debt" prima facie due to a deceased person: (See *Vairavan Chettiar v. Srinivasachariar*² "

9. Dealing with the meaning of the expression "devolution, at page 79, he stated as follows:

"In one or two instances, eminent writers have employed language suggesting that 'devolution' may comprehend cases of survivorship, but not the word "succession" (See Mayne's Hindu Law para 270), but it is difficult to find any basis for this distinction. "Devolution" may be wider in scope than "succession" in the sense that the former is not restricted to the result of a "death", (See Order 22, Rule 10, Civil Procedure Code,) but that is immaterial for the present purpose and, as already stated, eminent Judges have used both the terms in a sense that will include the operation of the principle of survivorship".

So, according to the learned Chief Justice, the words "succession" and "devolution" are wide enough to include the operation of the principle of survivorship and are not confined to "inheritance" simpliciter. I may, however, mention that in dealing with the

¹63 Cal 15

² AIR 1921 Mad 168

restricted meaning of "succession" in the Succession Act, emphasis is also laid by the learned Chief Justice on the use of the words "effects of the deceased person" in Section 214.

10. Turning now to the decisions bearing on this question, the decision of Mr. Justice Horwill in - *'Natarajan Chettiar v. Perumal Ammal*³', is directly in point. He held that it was not necessary to obtain a Succession Certificate. Having held that the widow does not obtain the right under clauses (2) and (3) by survivorship, he summed up the legal position thus:

"I do not, however, think that it follows that because the widow does not obtain her right by survivorship that she must obtain it by inheritance. The effect of Section 3 clauses (2) and (3) may be regarded as a survival of the husband's persona' in the wife, giving her the same rights as her husband had except that she can alienate property only under certain circumstances. As the widow did not inherit her right, no succession certificate is necessary".

11. This point was elaborately considered by Bhagwati, J., in delivering the Judgment of Bench of the Bombay High Court in - *'Nagappa Narayan v. Mukambe*⁴', At page 312, dealing with the argument of Mr. Murdeshwar the learned Judge held that, with utmost respect, he did not agree with the observations in Mayne's Hindu Law, 11th Edn. at page 708 and pointed out at page 313 as follows:

"The whole fallacy lies in trying to put a label on the mode of devolution of property in her favour. The Act does not use any such word as either survivorship or inheritance. The Act only says that "any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate". The devolution can be by survivorship or by inheritance or by any other mode which is prescribed by the very terms of the Act itself. It is not necessary to classify this in either of the two categories, viz., survivorship or inheritance, and say that if it is not survivorship, it can only be inheritance."

12. In - *'Subba Rao v. Krishanan Prasad*⁵', a Bench of the Madras High Court approved the decision of Horwill, J., in - *'Natarajan Chettiar v. Perumal Ammal*, and observed as follows:

"We are in entire agreement with his reasoning (of Horwill J.) and with all respect we do not agree with the contrary conclusions reached in - *'Jadaobai v. Puranmal*⁶', "

13. A Full Bench of the Madras High Court in - *'Parappa v. Nagamma*⁷', recently considered this question and accepted the view of Horwill, J. I agree with the view taken by Horwill, J., and follow the decisions aforesaid and hold that the widow of Sreeramulu is not bound to obtain any succession certificate.

³ AIR 1943 Mad 246

⁵ AIR 1954 Mad227 at p.229

⁷ AIR 1954 Mad 576

⁴ AIR 1951 Bom 309

⁶ AIR 1944 Nag 243

14. The learned Advocate for the petitioner relied on the decision of the Nagpur High Court in - *'Jadaobai Puranmal*', and the Patna High Court in - *'Mst. Rajendrabati v. Mungalal*⁸I adopt the reasons stated in *'Subbarao v. Krishna Prasad*, and dissent from the decisions of both the Nagpur and the Patna High Courts. In my view, the correct legal position is that stated

by Horwill J., and approved later by the Bench as also the Full Bench of the Madras High Court in '*Subbarao v. Krishna Prasadam*', and '*Parappa v. Nagamma*', respectively.

15. Before concluding the judgment, it is necessary to refer to the decision in - '*Kallian Rai v. Kashi Nath*⁹', wherein it was held that

"there is no automatic partition of the joint Hindu family by reason of Sub-section (2) to Section 3 Hindu Women's Right to Property Act, but the widow can claim partition like a male owner under Sub-section (3) to that section," and that

"so long as such partition has not been made, the status of a Joint Hindu family continued and the widow is capable of being represented in business transactions and in suits by the Karta of the family."

A similar view was taken in - '*Satyanarayanacharyalu v. Narasamma*¹⁰', by Justice Horwill. The learned Judge held that though under the Hindu Women's Rights to Property Act of 1937 the widow became entitled to a half share of the property, the son was entitled to file the suit for recovery of the entire debt and that the suit was not liable to be defeated on the ground that the mother was not joined as a party. The reasons given by the learned Judge for coming to that conclusion are that the mother and the son did not succeed to the debt as co-heirs, that the debt was due only to the joint family and that the son was the proper person to bring a suit on behalf of the joint family, of which his mother was also a member. I respectfully follow the reasoning contained in those decisions.

16. The expression "devolution" used in sub-section (3) does not, for reasons stated above, lead to the conclusion that the interest taken by the widow in joint family property is by succession to the effects of a deceased person. The undivided interest of the deceased cannot be regarded as "effects of the deceased person" so as to attract the terms of Section 214, Succession Act. I am much obliged to the learned Advocate for the petitioner and to Sri A.V. Krishna Rao, whom I requested to assist me as an amicus curiae in this case for arguing the case fully.

17. In the result, the Civil Revision Petition fails and is dismissed. No costs are awarded, as the respondent is not represented.

Revision dismissed.

⁸ AIR 1953 Pat 129

¹⁰ AIR 1943 Mad 708

⁹ AIR 1943 All 188