

MYSORE HIGH COURT

Kempiah

Vs

Girigamma

Second Appeal No. 420 of 1960

(A.R. Somnath Iyer and K.R. Gopivallabha Iyengar, JJ.)

03.06.1964

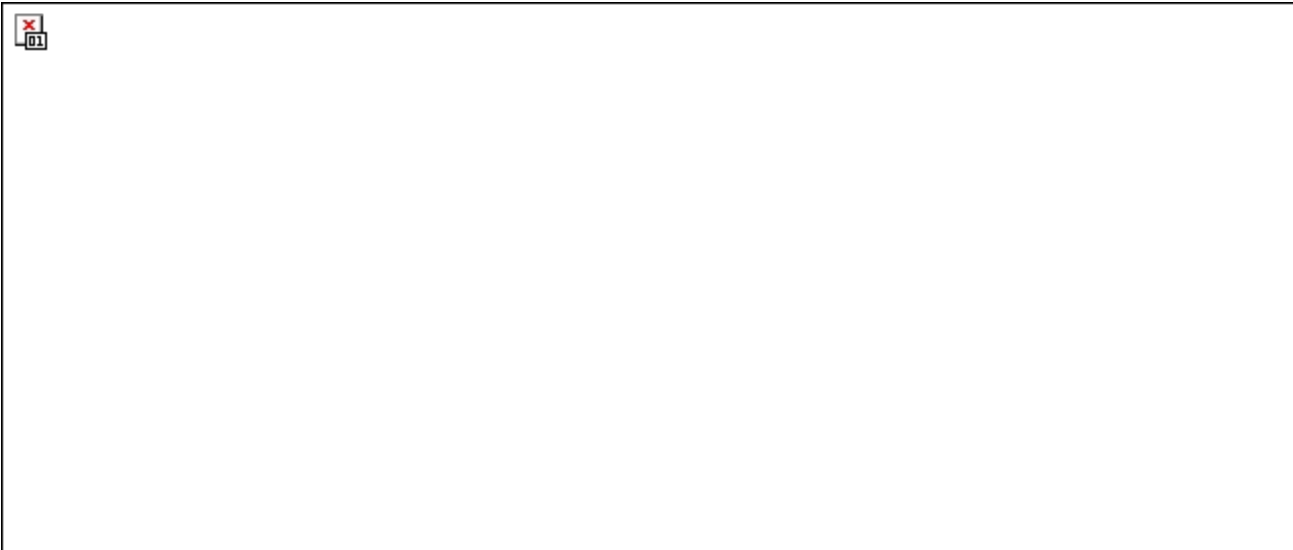
JUDGMENT

K.R. Gopivallabha Iyengar, J.

1. This Second Appeal arises out of O. S. No. 412/58 in the file of the Munsiff, Srirangapatna, seeking declaration of title to and possession of the plaint schedule properties. The suit was dismissed by the trial Court. On appeal to the Civil Judge, Mysore, the suit has been decreed. The defendants have preferred this second Appeal.

2. It is necessary to set out the genealogical tree denoting the relationship of parties to understand the plaintiffs' claim. Sidde Gowda and Kempegowda were the divided sons of Kale Gowda. Sidde Gowda had a son Manche Gowda alias Kotre Gowda. The Second defendant is the grandson of the aforesaid Manche Gowda by his son Vogu. The first defendant Kempiah is the son of the aforesaid Manchegowda.

3. Kempegowda had two sons Dodda Huchamari and Chikka Huchamari. Dodda Huchamari's wife is Giri and his son is one Manchiga. This Manchiga is the last male-holder. Chikka Huchamari had a son Thimmiah whose widow is the first plaintiff Pinnamma. The second plaintiff is the daughter of the aforesaid Pinnamma. The Genealogical tree is also annexed below.



Manchiga referred to as the last male holder died in 1918. After his death his mother Girgi succeeded to his estate as his mother holding a widow's estate. Girgi died on 12th February, 1958. The widow's estate then ended and the question now is who succeeds as the reversioner, whether it is the plaintiffs or the defendants.

4. I may also mention that the limited owner Girgi had executed a settlement deed in favour of defendant 2 on 12-5-1919 and as she was not in possession on 17-6-1956 when the Hindu Succession Act came into force, the widow Girgi did not have the benefit of Section 14 of the Hindu Succession Act and her limited estate did not get enlarged. The plaintiffs claiming to be the reversioners to the estate of Manchiga the last male holder have filed this suit. This claim is resisted by Defendants 1 and 2 mainly on the ground that they are the reversioners who are entitled to the estate. The defendants' contention is that succession to the deceased last male holder Manchiga is regulated by the provisions of the Hindu Law in force on the date of the actual death of the last male holder and not by the provisions of the Hindu Succession Act, 1956 which came into force on 17-6-

1956. It is not disputed that on the death of the widow Girgi, if the succession is traced to the last male holder under Section 8 of the Hindu Succession Act, 1956 as on 12-2-1958 the plaintiffs would be the reversioners entitled to succeed. Otherwise if succession is traced according to the Hindu Law as it was in force on the date of death of the last male holder, the defendants would be the nearer reversioners than the plaintiffs. The trial Court took the view that the succession to the estate of Manchiga was governed by the law in force on the date of death of the last male holder i.e. 1918 and not according to the Hindu Succession Act, 1956 and dismissed the suit. On appeal by the plaintiffs, the Civil Judge, Mysore took a contrary view and decreed the plaintiffs' suit on the ground that Succession to the estate of the last male holder should be traced according to the provisions of Section 3 of the Hindu Succession Act, 1956. The defendants preferred the above Second Appeal against the decision of the Civil Judge.

5. When this Second Appeal came up for hearing before his Lordship Justice K.S. Hegde on 2nd of April, 1963, the appellants-defendants relied on a Bench decision of this High Court in *Sadashiv Rama Patole v. Balakrishn*

a1, in support of their

11959-37 Mys LJ 332

contention. That decision lays down that the provisions of Section 8 of the Hindu Succession Act do not apply to the property of a person who died intestate before the Hindu Succession Act came into force, and that under the Act devolution is provided only in respect of the property of the person who dies after the commencement of the Hindu Succession Act, 1956. The same view was expressed by his Lordship the learned Chief Justice Das Gupta in *Ramappa Gudadappa v. Chandangouda Keelangouda*², and Justice Malimath also in *Appa Saheb v. Gurubsawwa*³, took the same view. His Lordship Justice Hegde felt disinclined to agree with the Bench decision aforesaid and he expressed a doubt whether the said Bench decision takes a correct view of the law. He felt that there is need to consider the decision of this Hon'ble Court in 1959-

37 Mys LJ 332. As an important question of law arose for consideration, the learned Judge decided to refer the case to a Division Bench and that is how this Second Appeal comes up before us for hearing.

6. The respondents' counsel relied on a series of decisions of the Punjab High Court in *Mst. Tara v. Darshan Singh*⁴, *Gurmit Singh v. Tara Singh*⁵, *Smt. Banso v. Charan Singh*⁶, and *Kuldip Singh v. Karnail Singh*⁷, which take the view that where the last male holder dies before the Hindu Succession Act coming into force and the widow's estate came to an end after the Hindu Succession Act came into force the reversioners are to be treated according to the law in force on the date when the widow's estate came to an end, and not according to the law as it existed before. These decisions are mainly based on the decision of the Privy Council in *Duni Chand v. Anar Kali*⁸, This decision has not been referred to in 1959-

37 Mys LJ 332 or in the other decisions of this Court referred to above. In AIR 1946 PC 173 which deals with the provisions of the Hindu Law of Inheritance (Amendment) Act (1929), the import of the words "A Hindu Male dying intestate" occurring, in the preamble of the said Act was considered. This decision no doubt supports the contention that the words "Dying intestate" do not indicate a future tense about the application of the Act and that the words should be read as meaning "in, the case of intestacy of a Hindu male". The Privy Council took the view that the succession to the last male holder must be reckoned according to the law in force on the date of the death of the succeeding limited owner. As pointed out in *Renuka Bala v. Aswini Kumar*⁹, the effect of the use of the words "shall be entitled to rank" in the said Act does not appear to have been considered by their Lordships. Further, in the contest of the decision of the Privy Council in AIR 1946 PC 173 the following dictum laid down by Lord Herschell in *Bank of England v. Vagliano Bros*¹⁰, in the following terms should be borne in mind.

"I think, the proper course is in the first instance to examine the language of the Statute and to ask what is its natural meaning uninfluenced by any consideration derived from the previous state of the law and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute intended to embody in a code a particular branch of the law is to be treated in this fashion,

21960-38 Mys LJ 476 : AIR 1960 Mys 260

4 AIR 1960 Pun 145

6 AIR 1961 Pun 45

31959-37, Mys LJ 735 : AIR 1960 Mys 79

5 AIR 1960 Pun 6

7 AIR 1961 Pun 573

8 AIR 1946 PC 173

101891 AC 107

9 AIR 1961 Pat 498

it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before roaming over a vast number of authorities an order to discover what the law was, extracting it by a minute critical examination of the prior decisions."

Applying this dictum the provisions of Hindu Succession Act have to be considered for the purpose of determining whether the contention of the respondents-plaintiffs in this case is correct or not.

7. Section 8 of the Hindu Succession Act reads as follows :

"The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter"

The words "dying intestate" merely mean dying in a state of intestacy. It does not connote any particular point of time. As mentioned in 1946 PC 173, it merely refers to the status of the deceased. But the death referred to in Section 8 is the actual death of the Hindu male and not the fictional death which happens on the termination of the life estate. Section 15 of the Hindu Succession Act reads :

"15. (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,
(a) Firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

The words "dying intestate" occurring in this Section cannot but be construed as having reference to the death of the female Hindu occurring subsequent to the enactment. Otherwise, if the Section is to be construed as being retrospective on the basis of the words "dying intestate" the devolution of property which has taken place before the Hindu Succession Act came into force would be reopened. Fresh rights would be created in favor of the persons in whose favor the property would devolve under the provisions of Section 15 involving divestment of property which has vested in the heirs, according to the Hindu Law in force at the time of demise of the last owner. This could not be the intention of the Act.

8. A construction of Section 8 of the Hindu Succession Act as being effective with reference to the death of the last male holder would defeat the very object and import of Section 14 of the Hindu Succession Act. Section 14 of the Hindu Succession Act was meant to convert the estate of a limited owner to absolute ownership. Under Section 8 of the Hindu Succession Act the widow, the daughters and others would succeed simultaneously. Taking the instance of a widow with daughters who survive the deceased last male holder, if the widow was possessed of the property, by virtue of Section 14 she would become the absolute owner. This is the plain import of Section 14. If Section 8 should operate as contended by the learned counsel for the respondents the position would be that the daughters would be entitled to claim a share in the estate of the deceased father in

which event the widow's estate will be reduced and it is only a fraction of the estate that would be converted into an absolute estate. This certainly is not intended by the legislature.

9. On similar facts the Madras High Court in *Sampathkumari v. Lakshmi Ammal*¹¹, has taken the view that such an interpretation of Section 8 cannot be correct. The learned Judges of the Madras High Court took the view that the enlargement of the widow's estate under Section 14(1) of the Hindu Succession Act was not in any way curtailed by Section 8 which would not be the result if Section 8 was intended to be retrospective in the sense that it should have operation even with reference to persons who died prior to the Act coming into force. To interpret Section 8 as being retrospective in the sense that the provisions of the said Section apply to the case of persons whose death occurred prior to the Act coming into force would lead to a divestment of property which has devolved already by inheritance. The illustration set out in AIR 1963 Madras 50 makes the matter further clear. A father is under the Hindu Succession Act an heir in Class II. The daughter of a pre-deceased son of a pre-deceased son who was not an heir prior to the Hindu Succession Act is an heir now under the Act in Class I. Therefore, under the present Act she is a preferential heir to the father. In a case where the death of a propositus occurred prior to 17-6-1956 when the Hindu Succession Act came into force, the father would have inherited the property under the law as it stood before the Act. If the provisions of Section 8 were so construed as to apply to successions opening on the death of the previous owner prior to 17-6-1956 the daughter of a predeceased son of a pre-deceased son would divest the father. Several instances of this kind may arise and it is inconceivable that such a disturbance of titles which have vested long prior to the Hindu Succession Act of 1956 coming into force could ever have been intended.

10. Section 4 of the Hindu Succession Act reads as follows :-

"4. Overriding effect of Act. - (1) Save as otherwise expressly provided in this act, (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (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. (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation or agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

The Hindu Law as in force immediately before commencement of the Act will cease to have effect with respect to any matter for which provision is made in this Act. No provision is made in the Act for the devolution of property on the termination of a widow's estate. It should also be remembered that the widow's estate cannot squarely

¹¹ AIR 1963 Mad 50

be equated with that of a limited owner. The widow's estate is something more than

that of a limited owner. She can alienate the property subject to certain conditions. Under some circumstances she can also put an end to her estate by surrender. She can create a valid charge against the property. Therefore, the succession of a Hindu widow is different from that of a limited owner. Quite apart from this aspect of the matter, in the absence of any provision made in Hindu Succession Act, 1956 for the devolution of the last male holder on the termination of the widow's estate the law in force immediately before the commencement of the Hindu Succession Act should apply. The Hindu Succession Act does not make any provision for devolution of the property on the basis of a fictional death. It only deals with the devolution on actual death.

11. On the basis of the words "after the commencement of this Act" used in Section 6 (after), Section 14 (before or after) Section 22 (after) and Section 20, (before or after) it is contended that the other Sections should be construed to have reference to a point of time anterior to the commencement of the Hindu Succession Act. I cannot agree with this contention and this is opposed to the intention and the wordings of the other parts of the enactment. In Sections 6 and 22 the word "after" has been used making it specific that it cannot be retrospective at all. In Sections 14 and 20 the words "before or after" are used making it specifically retrospective, it can therefore be inferred that wherever the Act intended it to be retrospective it made it clear. The other Sections must be construed as prospective in the absence of any definite provision making them retrospective. The provisions of Section 8 therefore (Sic.) be construed so as to be in consonance with the other parts of the Act.

12. I may also refer to Section 30 of the Hindu Succession Act which enables a Hindu to dispose of by will or other testamentary disposition any property which is capable of being so disposed of by him. The interest of a male Hindu in Mitakshara coparcenary property is to be deemed to be property capable of being disposed of by him by will within the meaning of the aforesaid Section. According to the law in force prior to the Succession Act coming into force no coparcener, not even a father, could dispose of by will the undivided coparcenary interest. A will made by a coparcener which was invalid prior to the coming into force of the Hindu Succession Act cannot be rendered valid by virtue of the provisions of Section 30 of the Hindu Succession Act interpreting it as governing the interests of a coparcener who dies prior to the commencement of the Hindu Succession Act. If the capacity to make a will is to be determined it must be subsequent to the enactment and not with reference to a date anterior to the enactment. The Succession Act is only prospective unless made definitely retrospective. Hence Section 8 of the Succession Act should have reference only to the actual death occurring subsequent to the enactment coming into force.

13. The Hindu Succession Act is not a declaratory Act. It creates rights in favor of persons who could have no rights under the law in force prior to it. It is observed as follows at page 388 of "Crimes on Statute Law" (Sixth Edition).

"And perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." From this point of view also Section 8 of the Hindu Succession Act, 1956 should apply only in cases of death occurring subsequent to the enactment.

14. I am fortified in this view by the decisions of several High Courts. In *Sankara Rao v. Rajyala kshamma*¹², a suit was instituted by the adopted son against his adoptive mother claiming 3/4th share in the family estate. The father died on 7-6-

1956. By virtue of Section 3 of the Hindu Women's Right to Property Act, (Act 18 of 1937) the adoptive mother became entitled to a half share. The plaintiff challenged the effect of Section 14 of the Hindu Succession Act on this devolution and disputed that the mother could become the absolute owner of the entire 1/2 share by virtue of Section 14 of the Hindu Succession Act. Relying upon Section 8 of the Hindu Succession Act and treating it as retrospective the plaintiff claimed 3/4th share in the estate against the mother contending that her share should be reckoned only under Section 8 as on the date of the suit for partition. The Andhra Pradesh High Court negated the claim of the plaintiff holding that the provisions of Section 8 did not apply and that the plaintiff could not proceed upon the footing that his father must be deemed to have died subsequent to his passing of the Hindu Succession Act. The Patna High Court has consistently taken the view that Section 8 of the Hindu Succession Act is not retrospective and would not apply to cases of intestacy of a Hindu male without having any reference to the time of death of such a male Hindu. The property of such a deceased male Hindu would devolve on his heirs mentioned in the schedule of the Hindu Succession Act of 1956 only in cases of death occurring subsequently. Mahapatra, J. in AIR 1961 Patna 498 has drawn a distinction between the Hindu Succession Act, 1956 and the Hindu Law of Inheritance Act, 1929. This decision has been followed by another Bench of the same High Court in *Nathuni Missir v. Mt. Ratna Kuer*¹³, wherein it has been observed that the opening words of Section 8 of the Hindu Succession Act, viz., "The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter" indicate that the rules contained in Chapter II of the Hindu Succession Act, 1956, will apply and regulate the succession of the property of a male Hindu dying intestate after the commencement of the said Act. The respondents' counsel also relied upon the decision reported in *Hiralal Roy v. Kumud Behari*¹⁴, for his contention that the provisions of Section 8 of the Hindu Succession Act, 1956 are retrospective. This decision relies upon the decision of the Privy Council reported in AIR 1946 PC 173 which has already been noticed earlier in this judgment. In view of the analysis of the Hindu Succession Act, 1956 as set out above, there is no doubt that the provisions can only be retrospective.

15. For the reasons set out above, I respectfully agree with the view taken by this Court in three decisions referred to above.

16. In the present appeal succession to the estate of Manchiga should be traced in accordance with the Hindu Law in force in 1918 when he died. It is admitted that if this mode of succession is adopted defendants 1 and 2 would be the nearer heirs to the

¹² AIR 1961 And Pra 241 ¹⁴ AIR 1957 Cal 571
¹³ AIR 1963 Pat 337

last male holder and entitled to his estate, and the plaintiffs would have no claim to the estate of the last male holder. This is only question of law that has been pressed before us in this Second Appeal. The defendants being the nearer heirs, the plaintiffs' suit is liable to be dismissed.

17. The decision of the Civil Judge decreeing the suit of the plaintiffs is hereby reversed and the decree of the trial court dismissing the suit is hereby restored. The appeal is allowed. In the circumstances of the case each party will bear his own costs throughout.

A.R. Somnath Iyer, J.

18. I agree.

Appeal allowed.