MYSORE HIGH COURT

Basavant Gouda

Vs

Channabasawwa

First Appeal No. 67 of 1967

(C. Honniah and E.S. Venkataramiah, JJ.)

01.09.1970

JUDGMENT

Honniah, J.

1. This appeal is by the plaintiff from the decision of the Civil Judge, Hubli, in Special Suit No. 18 of 1965.

2. The facts leading to this litigation may briefly be stated as under :- One Nagangouda Patil was the owner of the schedule properties. It appears he married three wives one after another, but did not get any male issue. His last wife is Channabasavva the 1st defendant in the suit. He owned considerable landed and house property in Hulgur and Basanal villages. He was the holder of hereditary watan lands, he being the descendant of Patil's family. He died on 21-1-1937 leaving the 1st defendant behind him. A few days prior to his death, he executed a deed of authority to defendant 1 to adopt any son to be born of one Sekhargouda Patil. who, it is stated belonged to Nagangouda's (Watandar) family. The plaintiff is the 'dasi putra' of Nagangouda. Shortly after the death of Nagangouda, disputes arose between the plaintiff and defendant 1. Plaintiff brought Special Suit No. 50 of 1945 in the Court of the Civil Judge, Senior Division, Hubli, for partition and possession of half share in the estate of Nagangouda against the 1st defendant alleging that he was a legitimate son of Nagangouda Patil or in the alternative his 'dasi putra'. The 1st defendant resisted the suit and contended that the plaintiff was neither a legitimate son, nor a 'dasi putra' of Nagangouda Patil. In that suit the 1st defendant got produced into court the deed of authority to adopt executed by her husband and relied upon that document for the purpose of proving her contention that Nagangouda Patil died issueless. The trial court held that the plaintiff was a 'dasi putra' of deceased Nagangouda Patil and was entitled to half share in the estate of his father and granted a decree for partition and possession. That decree was confirmed in First Appeal No. 250 of 1947 in the High Court of Bombay preferred by defendant 1. In the final decree proceedings, the plaintiff and defendant 1 arrived at a compromise on 17-11-1950 by which defendant 1 retained the suit schedule properties while the plaintiff was given some other properties. After this compromise, on 5-2-1952 defendant 1 adopted defendant 2 who was her brother. On 8-6-1953, defendant 2 brought Special Suit No. 22 of 1953 alleging that he had been validly adopted by defendant 1 as a son of Nagangouda Patil for recovery of possession of the

properties delivered to the possession of the plaintiff pursuant to the decree in Special Suit No. 50 of 1945. The suit was dismissed and the judgment and decree in the suit were confirmed by this Court in R. A. (B) No. 304 of 1956. After the dismissal of the suit filed by Dyapangouda (defendant 2), the plaintiff in this case brought the present suit for declaration that he was the nearest heir to defendant 1 in whom patelki rights and properties were vested after the death of her husband and for an injunction against defendant 1 not to do any act which would jeopardise the rights and properties which would vest in him after the death of defendant 1. According to the plaintiff both the defendants were attempting to alienate the suit properties with a view to defeat his claim.

3. Defendants 1 and 2 filed written statement contending inter alia, that defendant 1 had been in possession of the suit properties from 17-11-1950 and that she had not committed any acts of waste, nor had she attempted to dispose of the suit properties. They further contended that the suit properties were not given to the husband of the 1st defendant as service inam lands. According to them, the plaintiff being a 'dasi putra'. would not be a reversioner, and in any event, the 1st defendant had become the full owner of the suit properties by virtue of Section 14(1) of the Hindu Succession Act, 1956 which came into force in June 1956. The 1st defendant also contended that restrictions on her rights as a female watandar which were imposed on watan lands under the Bombay Hereditary Offices Act, stood removed by reason of Article 15 read with Article 13 of the Constitution.

4. On these pleadings, the trial court raised 11 issues. The plaintiff did not examine himself or any other person on his behalf. On behalf of the defendants, only defendant 1 has been examined. The 1st defendant in her evidence has stated that she has been in possession of the suit lands from 1950. That statement of defendant 1 has not been challenged by the plaintiff. However in order to show that defendant 1 after she adopted defendant 2, lost possession of the properties, the plaintiff has relied upon a 'wardi' Exhibit 61 dated 8-4-1952. This 'wardi' is by both defendants 1 and 2. Defendant 1 in the said 'Wardi' has stated that she adopted defendant 2 and therefore the properties that fell to her share in the earlier suit between her and the plaintiff may be entered in the name of defendant 2. As stated earlier, the adoption of defendant 2 has been held to be invalid. Defendant 1 has also stated in her evidence that sometime prior to her giving evidence in court at her instance the entries in the record-of-rights were again made out in her name. On the basis of the evidence in the case, the trial court came to the conclusion that defendant 1 was possessed of the suit properties and by virtue of the provisions of Section 14(1) of the Hindu Succession Act she had become the absolute owner and in that view the plaintiff had no reversionary right in respect of the suit properties. It therefore, held that there was no substance in the suit filed by the plaintiff and accordingly, dismissed the suit with costs. Aggrieved by the judgment and decree of the trial court, the plaintiff has preferred this appeal.

5. Mr. Savanur, the learned counsel for the plaintiff, contended that defendant 1 lost possession of the suit properties when she gave a 'Wardi' as per Exhibit 61 dated 8-4-1952 and she was not in possession of the suit properties to claim the benefit of Section 14 of the Hindu Succession Act. He also contended that by reason of the order passed by the Collector. Dharwar, in WT. PSR. 404 dated 23-6-1954 recognizing the right of the 1st defendant with respect to the suit properties for her lifetime, the plaintiff could get a declaration as a reversioner to the estate. He also contended that in view of the provisions of Section 14(2), the estate continued to be a limited estate of the 1st defendant and that the plaintiff continued to be a reversioner.

6. Except the 'wardi' referred to above in which defendant 1 asked the revenue authorities to enter the name of defendant 2 on the basis that she had adopted him, there is no evidence given by the plaintiff to show that defendant 1 was not in actual possession after 1950. On oath she has given evidence which is not controverted that she has been in continuous possession of the suit properties all along. Even otherwise, after the adoption was held to be invalid, it is not shown that she was dispossessed or lost possession in any manner known to law. Section 14 of the Hindu Succession Act, 1956 reads :

> "14(1). Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
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> Explanation - In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
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> (2) Nothing contained in "sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

Prior to the Act, a female Hindu could own two kinds of property : (1) Stridhana and (2) Hindu woman's estate. Over Stridhana she had full ownership, and, on her death, it devolved on her heirs. As regards property in which she acquired a Hindu woman's estate, her possession was that of an owner, but her power of alienation was limited and on her death, property devolved on the next heir of the last full owner and not on her heirs. This section abolishes Hindu woman's estate and makes a female Hindu full owner of any property possessed by her, whether acquired before or after the commencement of the Act, however acquired by her except in cases provided by sub-section (2). Therefore the property which a female heir inherits by virtue of Sections 6, 8, 15 and 17 of this Act may be disposed of by her inter vivos or by will and if she dies intestate, it shall devolve on her heirs under Sections 15, 16 or 17, so also property which she may have inherited prior to the coming, into force of the Act of which she has been in possession.

7. The expression 'full owner' used in this section denotes that there shall be no restrictions as regards the powers of disposal by acts inter vivos or by will and further the property shall pass to her heirs on her death. The term 'full owner' is equivalent to 'absolute owner'. Before the Act also she could have alienated, but alienation was only binding on the reversioners if it was for legal necessity or benefit of the estate or with the consent of the next reversioners or surrender of the whole of the property in favor of the nearest reversioners.

8. The opening words of sub-section (1) "Any property possessed" by a female acquired before this Act make it clear that the property acquired before the Act must be in her possession at the date of commencement of the Act. If she had alienated the property and therefore was not in

possession before the commencement of the Act, then the section will not directly apply. Her possession may be actual or constructive. The words "possessed by a female" refer to possession on or after the commencement of this Act. In this case the evidence conclusively establishes that she was the owner in possession of the suit schedule properties at all material time. At this stage, we may refer to the decision in *Kotturswami v. Veeravva*[1], In dealing with the meaning of the expression 'any property possessed by a female Hindu' occurring in section 14(1) of the Act, this is what the Supreme Court said :

> "Section 14 refers to property which was either acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu. Reference to property acquired before the commencement of the Act certainly makes the provisions of the Section retrospective, but even in such a case the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. * * * * * * The word "possessed" is used in Section 14 in a broad sense and in the context possession means the state of owning or having in one's hands or power. It includes possession by receipt of rents and profits. ****** It is sufficient to say that "possessed" in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power".

The Supreme Court has approved the view expressed by the Calcutta High Court in the case of *Gostha Behari v. Haridas Samanta*[2], in which it was observed :

> "The opening words "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."

The view taken in Kotturswami's case has been further explained by the Supreme *Court in Mangal Singh v. Smt. Rattno*[3], In the latter case the facts were that one Labhu died in the year 1917 and on his death his widow Smt. Harnam Kaur, who was the plaintiff in the suit out of which that case arose, came into

[1] AIR 1959 SC 577 [3] AIR 1967 SC 1786
[2] AIR 1957 Cal 557

possession of the land belonging to Labhu. She continued in possession of the land until 1954 when on an application made by the collaterals of Labhu, the Naib Tahsildar by his order dated 26-6-1954 effected mutation in favor of those collaterals, who were defendants 1 to 4 in the suit. On the basis of that order they dispossessed Harnam Kaur, who appealed to the Collector. The Collector having dismissed her appeal, she filed the suit on 1-3-1956 for possession of the land on the ground that defendants 1 to 4 were mere trespassers. When the said suit was pending the

Hindu Succession Act came into force in June 1956. The suit continued to be pending till 1958 in which year Harnam Kaur died leaving Smt. Rattno as her heir under Hindu Succession Act. The question for consideration was whether on account of the dispossession of Harnam Kaur in 1954 by the defendants 1 to 4, she could not get the benefit of Section 14(1) of the Hindu Succession Act. On the above facts, the Supreme Court held that Harnam Kaur became the absolute owner of the land on the coming into force of the Act and observed in the course of its decision as follows :-

> "The dispute in the case has arisen, because this section confers the right of full ownership on a Hindu female only in respect of property possessed by her, whether acquired before or after the commencement of the Act; and, in the present case, admittedly, the plaintiff had been dispossessed in the year 1954 and was not able to recover possession from the defendants-appellants until her death in the year 1958. It was urged on behalf of the appellants that, in order to attract the provisions of Section 14(1) of the Act, it must be shown that the female Hindu was either in actual physical possession, or constructive possession of the disputed property. On the other side, it was urged that even if a female Hindu be, in fact, out of actual possession, the property must be held to be possessed by her, if her ownership rights in that property still exist and, in exercise of those ownership rights, she is capable of obtaining actual possession of it. It appears to us that, on the language used in Section 14(1) of the Act, the latter interpretation must be accepted.

It is significant that the Legislature begins Section 14(1) with the words "any property possessed by a female Hindu" and not "any property in possession of a female Hindu". If the expression used had been "in possession of" instead of "possessed by", the proper interpretation would probably have been to hold that, in order to apply this provision, the property must be such as is either in actual possession of the female Hindu or in her constructive possession. The constructive possession may be through a lessee, mortgagee, licensee, etc. The use of the expression "possessed by" instead of the expression "in possession of" in our opinion, was intended to enlarge the meaning of this expression, x x x x x It appears to us that the expression used in Section 14(1) of the Act was intended to cover cases of possession in law also, where lands may have descended to a female Hindu and she has not actually entered into them. It would of course, cover the other cases of actual or constructive possession. On the language of Section 14(1), therefore, we hold that this provision will become applicable to any property which is owned by a female Hindu, even though she is not in actual, physical or constructive possession of that property."

9. In the present case even though by the '*wardi*' referred to above, defendant 1 requested the revenue authorities to enter the name of defendant 2 in respect of the suit properties and also said that possession was given to him. because till the decision of this Court holding the adoption invalid, the relationship between defendants 1 and 2 was apparently that of adoptive mother and adoptive son respectively, the possession by defendant No. 2 even if true was only in the capacity of an adopted son not having the effect of excluding the adoptive mother, and as soon as this court declared that the adoption was invalid, possession of defendant 2 ceased and defendant 1 continued to remain in possession of the suit properties she being the owner. As a matter of fact, the plaintiff does not say in his plaint that defendant 1 had lost possession at any time or alienated

the properties. Relying on what is stated in para 4 of the plaint, at the time of argument Mr. Savanur contended that defendant 2 was in possession but it could only be with the permission of defendant No. 1 who was the owner of the suit schedule properties. Even then, defendant 1 has been in constructive possession. If that be so, there is no substance in the contention of Mr. Savanur. As stated earlier, the evidence in this case conclusively establishes that at all relevant times even before the Act came into force and thereafter, defendant 1 was possessed of the suit schedule properties and by virtue of Section 14(1) she became the full owner.

10. The second contention of Mr. Savanur which we have already noticed is that the Collector by his order dated 23-1-1954 obviously prior to the coming into force of the Hindu Succession Act, recognised defendant 1 as a limited owner in respect of the suit schedule properties for life, and therefore sub-section (2) of Section 14 was attracted. His argument on the face of it is not tenable for the reason that defendant 1 did not acquire the said properties for the first time under the order of the Collector. She had acquired the properties after the death of her husband i. e., in 1937, and the order of the Collector only declared her existing right. Therefore Section 14(2) is inapplicable to the facts of this case.

11. Mr. Savanur lastly contended that the Hindu Succession Act itself is not applicable to agricultural lands because entry 18 in List II of the Seventh Schedule of the Constitution, confers power on the State Legislature to make legislation in respect of agricultural lands. Hence Hindu Succession Act passed by the Parliament could not apply to succession to agricultural lands. This argument is merely to be stated for being rejected. Entry 5 of List III of the Seventh Schedule of the Constitution deals with the power to legislate in respect of marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law. It may be noticed here that the corresponding Entry 7 in the Government of India Act. 1935. List III read as follows :

> "Wills, intestacy; and succession, save as regards agricultural land."

It is significant that in Entry 5 in the Constitution the words "save as regards agricultural land" have been omitted. The pith and substance of the Hindu Succession Act is to make a law relating to succession and not to deal with agricultural lands as such. That is the reason why the argument of Mr. Savanur requires no further consideration. The provisions of Section 14 of the Hindu Succession Act are matters which come within the ambit of Entry 5 in List III of the Seventh Schedule of the Constitution and their applicability to agricultural lands cannot be excluded. This view of ours finds support in the decision *Amar Singh v. Baldev Singh*[4], and *Shakuntala Devi v. Beni Madhav*[5],

12. For the reasons stated above we find no reason to disturb the decree passed by the trial court and dismiss the appeal with costs.
Appeal dismissed.

[4] AIR 1960 Pun 666 (FB)

[5] AIR 1964 All 165