

**MYSORE HIGH COURT**

Hanamangouda Venkanagouda

Vs

Hanamanagouda

Second Appeal No. 204 of 1966

(D.M. Chandrasekhar and S.R. Range Gowda, JJ.)

29.10.1971

**JUDGMENT**

**Chandrasekhar, J.**

1. This Second Appeal has come up before us on a reference made under the proviso to Section 6 of the Mysore High Court Act, 1961.
2. The principal question that arises in this appeal is whether a female Hindu who was in possession of any property in lieu of her maintenance under an instrument or settlement before the commencement of the Hindu Succession Act, 1956 (hereinafter referred to as the Act), becomes the full owner of such property under Section 14 of the Act.
3. The suit is for declaration of the plaintiffs' title to the suit land for restraining defendant 1 from alienating it in favor of defendant 2.
4. It is common ground that plaintiff 1's father, defendant 1's husband and a plaintiff 2's father were brothers and that defendant 1's husband died earlier to the other two.
5. Both the courts below have held that defendant 1 had executed in the year 1335 Fasli the Ekararnama, Exhibit P-1, in favour of plaintiff 1 and the father of plaintiff 2. It is stated therein, inter alia, that she had obtained a decree against them for her maintenance at the rate of ₹ 50/- per annum, that as they were unable to pay her the maintenance, as per the settlement of respectable persons they put her in possession of the suit land, for her maintenance till her death, that they would be reversionary owners of that land, that it would not be sold or mortgaged by her, that registration of that document was not possible then and that she would get it registered whenever required by them.
6. Both the courts below held that the Ekrarnama, Ex.P-1, did not require registration, that as defendant 1 got possession of the suit land under an instrument which provided that she should have no more than a life interest in that land, sub-section (2) and not sub-section (1) of Section

14 of the Act was applicable to the case and that her interest in such property was not transformed into an absolute estate. In that view, both the courts decreed the suit and granted a permanent injunction restraining defendant 1 from alienating the suit land in favor of defendant 2.

7. Defendant 2 has appealed, Defendant 1 has been impleaded as respondent 3.

8. Mr. K.R.D. Karanth, learned counsel for the appellant, urged the following contentions:

- (i) The Ekarinama, Ex.P-1 which had not been registered, was inadmissible in evidence; and
- (ii) Sub-section (1) and not sub-section (2) of Section 14 of the Act was applicable to the case and defendant 1 had become the absolute owner of the suit land.

9. Elaborating the first contention, Mr. Karanth argued that the Ekarinama, Ex.P-1, limited the interest of defendant 1 in the joint family properties to the suit land only and also limited her right to and interest in the suit land to her lifetime only, that as its value was more than ₹ 100/- that instrument was required to be registered and that as it was not so registered, it was not admissible in evidence.

10. The suit land is situate in the Hyderabad Area of the new State of Mysore. But Mr. Karanth has not been able to show what the law in force in the then princely State of Hyderabad, was in regard to registration of documents at the time when Ex.P-1 was executed. Without knowing what such law was at the time when Ex.P-1 was executed it cannot be decided what category of instruments were compulsorily registrable and whether Ex.P-1 was compulsorily registrable, even assuming for the sake of argument that it (Ekarinama) created, extinguished or limited rights to, or interest in, immovable properties of the value of over ₹ 100/-.

11. Hence, we reject the contention of Mr. Karanth that the Ekarinama, Ex.P-1, was inadmissible in evidence on the ground of its not being registered.

12. We shall deal with the second contention of Mr. Karanth. On the question whether a female in possession of a property in lieu of maintenance under an instrument, award or decree, on the date of commencement of the Act, gets ownership of such property under sub-section (1) of Section 14 of the Act, there is divergence of views among different High Courts and even within one of the High Courts. There is no decision of the Supreme Court or of this court on this very point.

13. No doubt, there is a decision of a Bench of this Court in *Mallawwa v. Kallappa*<sup>1</sup>, in which a Hindu widow to whom a land had been given for her maintenance prior to the Act coming into force, was held to have become the full owner thereof under sub-section (1) of Section 14 of the Act. But from the facts narrated in the judgment in that case, it does not appear that she got possession of that property under any instrument, decree or award. Nor was it contended there that sub-section (2) of Section 14 was applicable to that case. There is also no discussion in that judgment as to why sub-

<sup>1</sup>(1966) 2 Mys LJ 633

section(2) of Section 14 was not applicable to that case. Hence that decision has no application to the present case in which defendant 1 was given the suit land under the instrument, Ex.P-1, which mentions of a settlement by the intervention of panchayatdars.

14. Sub-section (1) of Section 14 of the Act provides that any property possessed by a female Hindu, whether before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner.

15. The explanation to that sub-section states, inter alia, that in that sub-section, "property", includes both movable and immovable property acquired by a female Hindu by inheritance or device, 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, or after her marriage.

16. Sub-section (2) of Section 14 of the Act reads:

"(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."

17. In *Badri Pershad v. Kanso Devi*<sup>2</sup>, while construing Section 14 of the Act. Grover, J. who spoke for the Court, said thus: The Section has to be read as a whole. Sub-section (2) of that Section is more in the nature of a proviso or an exception to sub-section (1). Whether a particular case is covered by sub-section (1) or sub-section (2) would depend upon the facts of that case. Sub-section (2) of Section 34 comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female in possession of the property. The object of Section 14 is only to remove the disability on women imposed by law and not to interfere with contracts, grants or decrees, etc., by virtue of which women's right was restricted.

18. In *Sukh Ram v. Gauri Shankar*<sup>3</sup>, the Supreme Court held that where before the Act came into force, a widow had acquired by virtue of Section 3(2) of the Hindu Women's Right to Property Act, 1937, the same interest in the joint family property which her husband had, she became the full owner of such interest by virtue of the provisions of Section 14(1) of the Act. and that she was competent to sell that interest for her own purpose without the consent of the male coparceners of her husband.

19. But the decision in AIR 1968 SC 365 has no application to the present case because defendant's husband died long prior to the coming into force of the Hindu Women's Right to Property Act, 1937, and that Act did not apply to then princely State of Hyderabad in which the suit property is situate and in which defendant 1 has been residing and her husband also resided.

<sup>2</sup> AIR 1970 SC 1963

<sup>3</sup> AIR 1968 SC 365

20. In view of the elucidation by the Supreme Court in AIR 1970 SC 1963 as to when sub-section (2) of Section 14 comes into operation, we have to examine whether in the present case defendant 1 acquired right to the suit land for the first time under the Ekrnama, Ex.P-1 without

there being any preexisting right in her in that land.

21. The decisions which have taken the view that sub-section (2) of Section 14 of the Act is applicable to the case of the widow of a coparcener being in possession of any property of the joint family in lieu of her maintenance under an instrument, decree or award, have proceeded on the premise that she had no right in such property prior to such instrument, decree or award and that she acquires right to such property for the first time under such instrument, decree or award. On the other hand, the decisions that have taken the view that sub-section (1) of Section 14 applies to such case, have proceeded on the premise that she had some right in the joint family property, which right gets crystallized, declared and recognized in the instrument, decree or award.

22. The former view has been propounded by Natesan, J. in *Gurunadham v. Navaneethamma*<sup>4</sup>, This is what his Lordship said at pages 430 and 431.

"The widow's right to be maintained out of her husband's property or out of joint family property is an indefinite right which no doubt can be made certain and charged on specific properties by agreement, decree of court or panchayat, award or otherwise. Section 39 of the Transfer of Property Act provides for the enforcement of the right of maintenance from the profits of immovable property even against a transferee of the property if he has notice thereof or where the transfer is gratuitous; but it is manifest that neither Section 39 of the Transfer of Property Act nor the personal law make the bare right of maintenance out of the profits of a property a proprietary right in the property. Even when a charge is created over a specified property it is well known there is no transfer of the property or of any right in the property, only there is creation of a right of payment out of the property. In the discharge of the obligation to maintain out of the estate of the husband or of the property of the family, particular property may be transferred to the female and placed in her possession. Thus no doubt she acquires the property in lieu of maintenance, but the instrument where there is one which transfers the property to her is then the source of her title to the property. She acquires the property only under the instrument, true in lieu of her right to maintenance."

23. In that view his Lordship held that where in a partition of joint family properties in the year 1932, between 4 brothers, certain properties were allotted to their widowed mother for her maintenance on the condition that she should enjoy them during her lifetime only and should have no power of alienating them, the estate given to her under the instrument of partition, fell under sub-section (2) of Section 14 of the Act and sub-section (1) of that section did not operate.

24. The above decision was followed by a Bench of the Orissa High Court in *Narayan Patra v. Tara Patrani*<sup>5</sup>, in which the following conclusions were stated to follow on a

<sup>4</sup> AIR 1967 Mad 429

<sup>5</sup> AIR 1970 Ori 131

consideration of the general principles of Hindu Law:

"(a) The right of a Hindu widow to be maintained out of the family properties, by itself,

does not confer on her any possessory lien or proprietary right or title in the property of the family.

(b) If any rights in the property of her husband or joint family property are acquired by a Hindu widow in lieu of her maintenance, she would obtain the property for the first time under the instrument notwithstanding the fact that the property is transferred to her in lieu of her pre-existing right of maintenance."

25. In that view their Lordships held that where under an award certain immovable properties of a joint family were allotted in the year 1915 to four widows of deceased coparceners to be enjoyed by them during their lives with no power of alienation, sub-section (2) of Section 14 of the Act applied to that case and that the rights of widows were not enlarged into absolute estate on the coming into force of the Act.

26. The opposite view has been enunciated by Deshnannde, J. in *Yamunabai Gangadhar v. Parappa*<sup>6</sup>, His Lordship quoted the observations in *Secy. of State v. Ahalyabai*<sup>7</sup>, to the effect that if a coparcener takes the property of another deceased coparcener by survivorship, he takes it with the burden of maintaining the widow and unmarried daughters of the deceased coparcener, that in that sense the property which he takes by survivorship is burdened with the obligation to maintain the widow and that such right of maintenance attaches to the property itself which is taken by survivorship. His Lordship next referred to the above Quoted passage in the judgment of Natesan, J., in AIR 1967 Madras 429 and said thus at pages 614 and 615:

"It is true that this right of the widow for her maintenance out of the joint family property did suffer from these and several other infirmities. Even so. it was potential right capable of being ascertained and being a subject-matter of the charge on the joint family property. Once it is found that a widow did possess such rights in the joint family property, it cannot be said that such rights or interests, attached to the property given in her possession in lieu of her maintenance at some stage, are created for the first time when the property is put in her possession under some arrangement or instrument or under a decree of some court or under some award. The instrument of decree, still, cannot be said to be a source of foundation of her rights, in the property so assigned. What she gets under the instrument or the decree in such cases, is only in recognition of the rights she possessed in the property by virtue of her being a widow of the said joint family ..... This right of the maintenance of the widow could be given effect to in various ways. She could have been content by staying with the coparcener or content with getting some amount periodically from the surviving coparcener. In yet another case, her claim could have been satisfied by putting her in possession of a part of the joint family estate under oral arrangements. She might have enforced her claim by obtaining award or decree or received some property in satisfaction of this

<sup>6</sup>(1968) 70 Bom LR 611

<sup>7</sup> AIR 1938 Bom 321

claim, under some instrument. What is of essence is that all these devices were meant to satisfy and recognize her legal claim which exists independently of the arrangement,

instrument or award. In this view of the matter, it is not correct to say that where as here a Hindu widow was put in possession of some property in lieu of her maintenance, under some instrument, she can be said to have acquired the right in the property for the first time, only under the instrument. Her right to be maintained out of the property already existed by virtue of being a widow of the joint family and this right was antecedent to the date when the instrument came into existence. The instrument only recognizes her right to a certain ascertained and definite property though she had possessed such rights even before the date of instrument without reference to this particular property. In view of this, it is impossible to hold that any such instrument, decree or award and private arrangement is the source or foundation of her rights."

27. The above decision of Deshpande, J. was followed by Palekar, J. in *Anna Saheb v. Ganga*<sup>8</sup>. His Lordship pointed out that if a widow entitled to maintenance is in possession of the joint family property, she cannot be ousted therefrom even by a coparcener unless an arrangement is made for providing her with maintenance. His Lordship said that this and other characteristics of the right of a Hindu widow to be maintained out of the joint family properties, may not amount to any proprietary right to any portion of the joint family properties, and that nevertheless a right to maintenance is a right attached to the family properties. His Lordship added that the emphasis on the nature of the antecedent right of the widow in the joint family properties is not as important as the question whether the instrument, decree or award referred to in sub-section (2) of Section 14 is the real source or originator of the restricted estate granted thereunder. His Lordship opined that when a widow is given certain properties in lieu of her maintenance, her antecedent right for maintenance attached to the joint family properties, is translated into another form through the medium of the instrument, decree or award which is not the source or the foundation of the right to the property put in her possession.

28. In *Chellammal v. Nallammal*<sup>9</sup>, Rama Murthy, J., dissented from the view taken by Natesan, J. in AIR 1967 Madras 429, and said that the claim of a widow of a deceased coparcener, for maintenance is not a personal claim but is founded upon property right and is based on the fact that the surviving coparcener has taken the share of the deceased coparcener by survivorship. His Lordship added that such claim is a real enforceable subsisting claim against the family properties and the allotment of properties to her is a substitution or a satisfaction of that claim and not a satisfaction of a mere personal claim against the surviving coparcener. His Lordship concluded that it was impossible to take the view that allotment of properties for maintenance, should be treated as totally unconnected with and having no semblance of right to properties.

29. On the question whether a widow of a deceased coparcener who had been given certain properties in lieu of her maintenance, acquired those properties for the first

<sup>8</sup>73 Bom LB 407 - AIR 1972 Bom 16

<sup>9</sup>(1971) 1 Mad LJ 439

time without there being any pre-existing right, the view taken by Deshpande, Palekar and Rama Murthy, JJ. is in our opinion, to be preferred to the view taken by Natesan, J., and the Bench of the Orissa High Court in AIR 1970 Orissa 131, if we may say so with respect. If it is held that the widow had pre-existing right in the joint family properties given to her in lieu of her maintenance, it follows that sub-section (1) and not sub-section (2) of Section 14 of the Act

applies to such case and that she becomes the full owner of such properties even if they were given to her under an instrument, decree or award.

30. There is one more reason for holding that sub-section (1) and not sub-section (2) of Section 14 applies to the case of a widow who had been given certain joint family properties in lieu of her maintenance. As stated by the Supreme Court in AIR 1970 SC 1963, the word "acquired" in sub-section (1) of Section 14 has to be given the widest possible meaning because the explanation makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance of arrears of maintenance or in any other manner whatsoever. So property got by a widow in lieu of her maintenance comes within the ambit of sub-section(1). Generally, allotment of immovable property to her in lieu of her maintenance, would have been under an instrument, decree or award rather than under an oral agreement or arrangement. As pointed out by P.C. Mallick, J., who spoke for the Bench in *Sasadhar Chandra v. Tara Sundari*<sup>10</sup>. if the Legislature intended that the property given to the widow of a deceased coparcener for her maintenance, should be treated on the same footing as a gift or devise in sub-section (2) of Section 14 then the whole effect of sub-section (1) would be destroyed in respect of properties which were given to a female Hindu for her maintenance, prior to the Act except where such properties are given under an oral agreement or arrangement. But such oral agreement or arrangements would have been very rare in regard to immovable properties. As pointed out by Deshpande, J. in (1968) 70 Bom LR 611 the intention of the Parliament in enacting Section 14 of the Act, was to enlarge the rights of female Hindus under the terms of Hindu Law as it existed before the commencement of the Act, and to bring their rights on par with the rights of men. That is why sub-section (1) of Section 14 in terms says that the property possessed by a female Hindu shall be held by her as full owner thereof and not as limited owner. Hence, an interpretation which promotes that object should be preferred to one which defeats that object or narrowly limits the remedial effect of that beneficial legislation, should be preferred.

31. For the reasons stated above, our conclusion is that if the widow of a coparcener was in possession of a joint family property in lieu of her maintenance even under an instrument, decree or award, prior to the commencement of the Act, she becomes the full owner thereof by virtue of sub-section (1) of Section 14 of the Act and that sub-section (2) of that section has no application to such case.

32. In that view, the conclusion of the courts below that defendant 1 had only a life estate in the suit land, is unsustainable.

33. In the result, we allow this appeal, reverse the judgments and decrees of the courts below and dismiss the suit.

<sup>10</sup> AIR 1962 Cal 438

34. As there is divergence of judicial opinion on the main question arising in this appeal and as there was no earlier decision of this court on that question, we direct the parties to bear their own costs, both in this court, and in the courts below.

Appeal allowed.