KERALA HIGH COURT

Kunji Thomman

Vs

Meenakshi

A.S. No. 421 of 1964, Parur in O.S. No. 45 of 1960

(Madhavan Nair and Krishnamoorthy Iyer, JJ.)

26.02.1970

JUDGMENT

Madhavan Nair

1. Defendants 5, 8 and 9 in O. Section 45 of 1960 on the file of the Additional District Court,of Parur are the appellants.

2. The suit was instituted by the plaintiff for partition and recovery of one-half share in plaint items 1 to 9 after declaring that the alienations made by defendants 1 and 2 in respect of plaint items 6 to 9 in favor of defendants 5 to 9 are not binding on her share therein. The trial Judge granted a preliminary decree allowing the plaintiff to recover after partition by metes and bounds l/3rd share in plaint items 1, 2, 4 and 5 and declared that the alienations in respect of plaint items 6 to 9 are not binding on her interest in those items.

3. The plaint items which are nine in number belonged to Vattu Govindan who was a member of the Kudumbi community following Hindu Mitakshara Law modified by custom. Krishnan, Parvathi and Lakshmi are the children of Vattu Govindan through his wife Gouri Bai (referred to in this judgment as senior Gouri Bai). Krishnan's wife is Gouri Bai who is the second defendant. Lakshmi's husband is Krishnan and their children are Raman, Lakshmanan who is the first defendant and Meenakshi who is the plaintiff. The suit proceeded in the court below on the basis that Krishnan predeceased his father Vattu Govindan. After the death of Vattu Govindan and his daughter Lakshmi, there was a Bhaga Udampady Ext. P1 on 14-10-1108 among senior Gouri Bai, second defendant, Parvathi, Raman, 1st defendant and plaintiff. The latter three who were minors were represented by their father Krishnan in Ext. P1.

4. It was not made clear in the trial court whether Krishnan predeceased his father Vattu Govindan. It is gatherable from Ext. P1 that Krishnan predeceased Vattu Govindan and both sides argued the appeal on that basis.

5. A schedule items in Ex. P1 were allotted to senior Gouri Bai to be enjoyed by her for her life with a vested remainder in favor of Parvathi; B Schedule items therein were allotted to the

second defendant to be enjoyed by her during her life-time with a vested remainder in favor of Raman, 1st defendant and plaintiff; C Schedule items therein were allotted absolutely to Parvathi; and D schedule items therein were allotted to Raman, 1st defendant and plaintiff. Raman died unmarried after the date of Ext. P1. Plaint items 1 to 5 are those comprised in D schedule while items 6 to 9 are those comprised in B schedule in Ext. P1. The alienations challenged by the plaintiff are Exts. D2 dated 31-3-1953, D9 dated 11-7-1957, D11 dated 16-7-1122 and D12 dated 11-7-1957. Ext. D2 is in favor of the 6th defendant in respect of item 8; Ext. D9 is in favor of the 5th defendant in respect of item 6; Ext. D11 is in favor of defendant 7 and 8 in respect of item 7 and Ext. D12 is in favor of the 9 defendant in respect of item 9. Defendants 5, 8 and 9 who are the appellants contended that the plaintiff has no right to impeach the alienations. In the lower court their plea was that on the terms of Ext. P1 the properties given to the first, defendant,plaintiff and Raman are to be enjoyed as joint family property and since the plaintiff has been married she ceased to be a member of the joint family of the first defendant and Raman and therefore she is not entitled to claim any interest in the plaint items. This plea which was overruled by the trial Judge was not pressed in this Court. By the terms of Ext. P1, the plaintiff is entitled to one-third share in plaint items 1 to 5 and to a similar share in plaint items 6 to 9 subject to life interest in favor of the second defendant. The plaintiff claimed one-half share on the ground that the interest of Raman after his death devolved on her and the first defendant. But the learned Judge allowed her only l/3rd share in plaint items 1, 2 and 4 to 9 and she has not challenged the decree.

6. The main plea of the learned counsel for the appellants was that in view of Section 14 (1) of the Hindu Succession Act, 1956 the life interest created under the terms of Ext. P1 in favor of the second defendant in respect of plaint items 6 to 9 has become enlarged into absolute right. His submission was since Vattu Govindan had separate properties he was under a moral obligation to maintain the second defendant after the death of her husband Krishnan and senior Gouri Bai who inherited the properties. Vattu Govindan was under a legal obligation to maintain the second defendant and since the properties obtained by her in Ext. P1 were in lieu of maintenance they became her absolute properties after the coming into force of Section 14 (1) of the Hindu Succession Act,1956. This plea was neither raised in the pleadings nor argued before the trial Judge. The question is, was Vattu Govindan morally bound to maintain the second defendant after the death of her husband. The right of a Hindu wife to claim maintenance after the death of her husband from her father-in-law is _ now provided by Section 19 read with Section 21, Clause (vii) of the Hindu Adoptions and Maintenance Act, 1956. The Act was not in force during the relevant time and the question has to be decided on the basis of the Hindu Law. The principle of Hindu Law settled by judicial decisions is that a father-in-law who had separate properties was under a moral obligation to maintain his widowed daughter-in-law as a dependent during his lifetime and upon his death it became a legal liability in the hands of his heirs to the extent of the estate inherited. In considering the liability of the father-in-law governed by the Dayabhaga law to maintain the widow of his son their Lordships of the Judicial Committee in *Rajani Kanta v. Sajani Sundari*[1], observed:

> "The liability of Madan Mohan towards the widow of his son was no doubt on

[1] AIR 1934 PC 29

> the authorities a moral liability, but that liability, when transmitted to his sons on his death, became, in their persons, a legal liability, the measure of which however was

restricted to the amount of the estate to which they succeeded from their father. These principles of law have been established by authoritative judgments and are applicable to a family governed, as was this family, by the Dayabhaga law. The matter is not one which can be re-opened before their Lordships."

7. The same principle was also applied to Mitakshara families: *Janki v. Nand Ram*[2], *Ambu Bai v. Soni Bai*[3], and *Mt. Laxmi Bai v. Sambha*[4], N. R. Raghavachariar in his book on Hindu Law sums up the legal principles based on judicial decisions at page 239, paragraph 223 thus:

> "An heir is legally bound to maintain out of the estate inherited all the persons whom the late proprietor was morally or legally bound to maintain, the reason being that the heir takes it for the spiritual benefit of the deceased achievable by the discharge of such obligations, both moral and legal, and that the estate is inherited only subject to the obligation to provide for such maintenance. Such a moral obligation exists towards an indigent daughter, daughter of a predeceased son, grandparents, daughter-in-law, sister and other persons who can be reasonably considered to have a claim by virtue of close relationship to a person's affection and kindness, and when he dies and his estate is under the law taken by another, that person is legally bound to maintain all those whom the late proprietor was morally bound to maintain. There is no distinction in this respect whether the person succeeding to the property is a male or a female, or it is the king taking by escheat. Thus though a father-in-law having only separate properties is only under a moral obligation to maintain the widow of a predeceased son who has left no estate or has left an estate which is insufficient to meet her maintenance, this moral obligation becomes a legal obligation in the hands of his sons or other heirs who inherit his separate property, the measure of that liability being restricted to the extent of the estate to which they have succeeded."

8. Mahmood, J., after a discussion of the original Hindu Law texts and several decided cases stated the following six propositions in (1889) ILR 11 All 194 (FB):

> "(1) A Hindu father is under a moral, if not a legal obligation to give his daughter in marriage.
> (2) By marriage a Hindu woman ceases to belong to her parental family and becomes a member of her husband's family.
> (3) The head of a Hindu family is bound morally, if not legally, to provide for the maintenance of all the members of the family according to the various rules applicable to the claims of each class of members.
> (4) Although a father-in-law in possession only of self-acquired property is not legally compellable to maintain his son's widow, yet the Hindu Law imposes a moral obligation on him to provide for her maintenance.

[2] (1889) ILR 11 All 194 (FB)
[3] AIR 1940 Mad 804 (FB)
[4] AIR 1932 Nag11

> (5) An essential element of the sons's right of inheritance from his father is the spiritual benefit which in the contemplation of the Hindu law the son confers upon the soul of his deceased father.
> (6) Therefore the son inheriting the self-acquired property of his father takes that property subject to such moral obligations as are conducive to the spiritual benefit of his father, and that such moral obligations become legal obligations as against the son who holds his father's property by inheritance."

9. In the course of the same decision Edge, C. J. and Tyrrell, J., said at page 202:

> "The case under consideration appeares to us to be analogous to that in which a son who has inherited property from his father is bound to carry out what his father has promised for religious purposes (Katyayana, 1 Dig. 229, Mayne on Hindu Law and Usage para. 276, 3rd ed.) and to the liability of a brother who has assets from his father in his hands to provide for the marriage expense of his sister."

10. It is therefore clear that the legal obligation arises out of the right of inheritance based on the doctrine of spiritual benefit. The son is under a pious obligation to rescue his father from the consequence arising out of his failure to fulfil even his father's moral obligations. This can be justified in view of the original text of Hindu Law which deals with the dire consequences to the family which may follow if the females are left unprovided. The counsel for the first respondent submitted that even if the principles are applicable to the instant case the existence of moral obligation should depend upon other sources of income available to the second defendant which could not be proved because of absence of pleading. The counsel for the appellants relying on the decisions in *Siddessury Dassee v. Janardan Sarkar*[5], and *Appavu Udayan v. Nallammal*[6], contended that the moral obligation of the father-in-law and the legal obligation of his heir do not depend on the means of the widowed daugter-in-law. The point decided in (1902) ILR 20 Cal 557 was only that a Hindu widow did not forfeit her right to separate maintenance out of the property inherited from her father-in-law by reason of non-residence with the family of her deceased husband unless the non-residence was for inchoate or immoral purposes. Their Lordships said that the term 'dependent member' of a family did not necessarily mean 'resident member'. In AIR 1949 Madras 24 Gentle, C. J., observed:

> "In all the decisions cited, the two obligations, moral and legal, are not expressed to be confined to the instance when a widowed daughter-in-law is penniless but the obligations have general application regarding the moral liability of his heirs to maintain a widowed daughter-in-law. In argument, reference was made to the penniless state of the daughter-in-law and it was contended, that indigence must exist and is an essential factor before liability can be established. There is no warrant for such contention in the authoritative decisions."

11. We do not understand the above decision as laying down that the means of the

[5](1902) ILR 29 Cal 557
[6] AIR 1949 Mad 24

widowed daughter-in-law are absolutely irrelevant to decide the question of moral
obligation of the father-in-law to maintain her. The daughter-in-law must be a dependent of the father-in-law to give rise to the moral obligation. This obviously means that she is unable by herself to maintain her and she has necessarily to depend upon the father-in-law for her maintenance. This does not mean that the daughter-in-law should be penniless. Inadequacy of her own assets to maintain herself is quite sufficient to make her a dependent of the father-in-law. But if a daughter-in-law has got properties from out of which she could have maintained herself very comfortably we do not think it right to hold that still there would be a moral obligation on the part of the father-in-law. In the absence of "any moral obligation, no legal obligation against the heirs inheriting the estate can arise. Because of the absence of pleading the plaintiff was unable to meet the case now pleaded which is essentially a question of fact. We therefore hold that the plea of the appellants cannot be entertained in this Court. If so the argument based on Section 14 (1) of the Hindu Succession Act need not be considered.

12. Assuming that there was a legal obligation on the part of senior Gouri Bai to maintain the second defendant out of the estate inherited by the former we do not think that the second defendant can take advantage of Section 14 (1) of the Hindu Succession Act, 1956. The said provision reads:

> "Property of a female. Hindu to be her absolute property. - (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.
> 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.
> (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.

13. The appellants contended that items 6 to 9 were acquired by the second defendant under Ext. P1 in lieu of maintenance and therefore Section 14 (1) should govern the case. The first respondent would contend that sub-section (2) of Section 14 alone will apply. Their Lordships of the Supreme Court in interpreting Section 14 (1) of the Hindu Succession Act held in *Mangal Singh v. Rattno*[7],

> "It appears to us that the expression (possessed by) 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

[7] AIR 1967 SC 1786

> 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."

14. In *Seth Badri Pershad v. Smt. Kanso Devi*[8], by their Lordships of the Supreme Court the impact of sub-section (2) on sub-section (1) of Section 14 of the Hindu Succession Act, 1956 was considered and explained in the following manner:

> "The section (Section 14) has to be read as a whole and it would depend on the facts of each case whether the same is covered by the first sub-section or sub-section (2). The critical words in sub-section (1) are 'possessed' and 'acquired'. The word 'possessed' has been used in its widest connotation and it may either be actual or constructive or in any form recognised by law. In the context in Which it has been used in Section 14 it means the state of owning or having in one's hand orpower (see *Gummalapura Taggina Matada Kotturuswami v. Setra Veerayya*[9],) - In *S.S. Munna Lal v. S. S. Rajkumar*[10], it was held that l/4th share of a female which had been declared by the preliminary decree passed before the enactment of the Act was possessed by her within the meaning of Section 14 and she became the full owner so that on her death the said property descended to her grandsons in accordance with the provisions of Sections 15 and 16 of the Act. The word 'acquired' in sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.

Sub-section (2) of Section 15 is more in the nature of a proviso or an exception to sub-section (1). It can come 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 Hindu who is in possession of the property."

15. In the above case there was a partition by means of arbitration which resulted in an award and it was held that such a decree would not bring the case within sub-section (2) of Section 14 of the Hindu Succession Act. The decision is therefore distinguished on facts.

16. The submission of the appellants' counsel based on the above decision was that since the allotment of property under Ext. P-1 was in lieu of the second defendant's

[8] Civil Appeal No. 1937 of 1966, D/-26-8-1969 (SC)

[10] AIR 1962 SC 1493

[9] AIR 1959 SC 577

pre-existing right of maintenance Section 14 (1) of the Hindu Succession Act should apply. Though there is no specific reference to partition in Section 14 (2) the expression "any other

instrument" therein must be construed ejusdem generis which means any instrument of the nature whereby the acquisition is made in respect of the property enjoyed by the person who had no interest previously.

17. In order to decide whether the case is governed by sub-section (1) or sub-section (2) of Section 14 we have to examine the circumstances under which Ext. P-1 was brought into existence. The parties to Ext. P-1 are senior Gouri Bai, Parvathi, Raman, defendants 1 and 2 and plaintiff. On the death of Vattu Govindan, senior Gouri Bai succeeded to his estate taking a widow's estate therein. Neither Parvathi nor Lakshmi's children could have claimed any interest in the properties during the lifetime of senior Gouri Bai. The reversion would open only on her death. The allotment of properties therefore to Parvathi, Raman, first defendant and plaintiff was not on the basis of any preexisting right. The object of sub-section (2) of Section 14 is only to remove the disability on Hindu woman imposed by law and not to interfere with contracts, grants etc., by which a restricted right is created in her favour. Sub-section (2) is based upon the principle of sanctity of contracts and grants. What the second defendant consented to take under Ext. P-1 is not a woman's estate but an estate for life with a vested remainder in favor of others. There is nothing on evidence to show that the allotment of properties to the second defendant was in recognition of her legal right for maintenance attached to the properties of Vattu Govindan. Ext. P-l is in the nature of a family arrangement under which properties have been allotted even to persons who are not entitled to the same on the date of Ext. P-l. This is therefore a case where the second defendant alleged to be a maintenance-holder consented to allotment of properties not according to strict legal rights, in a deed which is in the nature of a family settlement and which expressly stated that she had only a life interest in the properties given to her creating a vested remainder in favor of others.

18. In our view, the case is governed by Section 14 (2) of the Hindu Succession Act. The decree and judgment of the court below are right and we dismiss the appeal but in the circumstances of the case we make no order as to costs.
Appeal dismissed.