

BOMBAY HIGH COURT

Nagappa Narayan Shetti

Vs.

Mukambe Venkatraman Shetti

Second Appeal No. 1210 of 1949

(Bhagwati and Dixit, JJ.)

17.10.1950

JUDGMENT

Bhagwati, J.

1. This is a second appeal from a judgment of the learned Dist. J. Kanara, who confirmed the decree passed by the learned Civil Judge, Honavar, in favor of the pltf. The facts which led up to this litigation may be shortly stated as under.

2. One Narayan had three sons Vithal, Venkatraman and Nagappa. Vithal died first and long before 1937, leaving his widow Ganga. Venkatraman died on 18-6-1938, leaving him surviving his widow Mukambe and his son Manjanath. Manjanath died on 18-2-1939. Nagappa was thereafter the sole surviving coparcener of the family and the present suit was filed by Mukambe, the widow of Venkatraman, against Nagappa for a partition of the joint family properties and possession of her half share therein. The pltf. alleged that after the death of Manjanath on 18-2-1939, she had a half share in the family properties and that she was entitled to the same on partition. She also claimed, in the alternative maintenance at the rate of Rs. 150 per year. The deft. contested her claim. He contended that Ganga had adopted a son by name Dattatarya about five years before the institution of the suit and that, therefore, Ganga and her son Dattatraya were necessary parties to the suit. He further contended that the pltf's husband had 1/6th share in the family properties at the time of his death and that the pltf. was not entitled to anything more than that. He lastly contended that the position of the family did not allow separate maintenance been given to the pltf. The learned trial Judge held that the deft. had failed to prove the adoption of Dattatraya by Ganga. He further held that the pltf's husband would have had a half share in the joint family properties if he had been alive at the date of the institution of the suit that the pltf. and the deft. had each a half share in the suit properties, and passed a decree in favor of the pltf. for partition on that basis. The deft. appealed against this decision of the learned Judge and the learned Dist. J. who heard the appeal confirmed the decree passed by the lower Ct. subject to a

variation in the costs which had been awarded to the pltf. The deft. filed this second appeal against that judgment of the learned Dist. J.

3. Mr. Murdeshwar for the deft. applt. contended before us, (1) that the pltf. is not entitled to any share in the joint family properties, the deft. being the sole surviving coparcener and (2) that on a true construction of the relevant provisions of the Hindu Women's Rights to Property Act, 1937, the pltf. is entitled only to a quarter share in the joint family properties.

4. In regard to his first contention the only thing which Mr. Murdeshwar has relied upon is that on the death of Manjanath whatever right, title and interest Manjanath had in the joint family properties survived over to the deft. and that, therefore, the pltf. had no interest therein. This argument, however, ignores the provisions of the Hindu Women's Rights to Property Act, 1937, which specifically creates rights in favor of Hindu widows to property in which their deceased husbands had an interest whether by virtue of their being members of joint Hindu families governed by the Dayabhaga School of Hindu law or by any other school of Hindu law or by virtue of the properties being their self-acquired properties. If the pltf. had an interest in the joint family properties by virtue of the provisions of the Hindu Women's Rights to Property Act, the same could not be affected by the death of Manjanath. She did not claim any properties in the suit by virtue of her being the mother of Manjanath and as such entitled to succeed to his estate as his mother. The only claim of hers in the suit was to have a partition of the joint family properties by virtue of her being the widow of Venkatraman, and from that point of view it did not make the slightest difference to her position whether Nagappa was one of the coparceners or the sole surviving coparcener of the joint family. The only difference of course would be in regard to the share which the pltf. would be entitled to on a partition of the joint family properties, which, however, we shall advert to hereafter. This contention of Mr. Murdeshwar, therefore, fails.

5. The next contention, viz., that the pltf. is only entitled to a quarter share in the joint family properties has been the subject-matter of an elaborate argument before us. Before we proceed to discuss the true legal position, it is necessary to set out the relevant sections of the Hindu Women's Rights to Property Act which fall to be construed by us. The Act has been enacted with a view to amend the Hindu law to give better rights to women in respect of property. Before the enactment of the Act women who belonged to the joint Hindu families had no right to property belonging to the joint family except that they were entitled to be maintained thereout by the male members of the joint family in whom the property vested. Even in regard to properties which were left as self-acquired properties by their deceased husbands, those properties devolved on their sons and the widows had only the right to be maintained thereout. They did not get any other rights in respect of those properties. This Act was enacted, therefore, in order to give women better rights in respect of property. Section 2 provided that notwithstanding any rule of Hindu law or custom to the contrary the provisions of Section 3 should apply where a Hindu died intestate. Even though this section was worded in such a wide manner, one must remember that

there was no power which a member of a joint Hindu family as such possessed to dispose of by a testamentary writing his undivided share, right, title and interest in the joint family property. Section 2, therefore, contemplated those cases where a Hindu who had a right to make a testamentary disposition of his property died intestate in regard to the same. Section 3, Sub-Section (1), provided for those cases where the deceased Hindu was governed by the Dayabhaga school of Hindu law or died leaving separate property which could be the subject-matter of inheritance. Section 3, Sub-Section (2), provided for those cases where the deceased Hindu was governed by any school of Hindu law other than the Dayabhaga school or by customary law. If he had at the time of his death an interest in joint family property, it was enacted that his widow should, subject to the provisions of Sub-Section (3), have in the property the same interest as he himself had. It is significant to note that the words used in this connection are that the widow would have in the joint family property the same interest as her deceased husband had. The deceased husband in such a case would have at the time of his death an undivided share, right, title and interest in the joint family property and that was the interest which the widow was to have in the property after his death. While thus enacting that the widow was to have in the joint family property the same interest as her deceased husband had, the Legislature defined the nature of that interest by Section 3, Sub-Section (3). It laid down that any interest devolving on a Hindu widow under the provisions of this section should be the limited interest known as a Hindu woman's estate, provided, however, that she should have the same right of claiming partition as a male owner. Even though under Section 3, Sub-Section (2), it was enacted that the widow was to have in the property the same interest as the deceased husband had, that interest was to be the limited interest known as a Hindu woman's estate subject to all the limitations known to Hindu law in regard to alienations, etc. To this was superadded a right to claim partition, which right otherwise she would not have had in enjoyment of a Hindu woman's estate but which right would be enjoyed by a male owner. This was, therefore, a specific right given to her when she was to have in the property the same interest as her deceased husband had. Her deceased husband, if he had been alive would have the right of claiming partition as a male owner. This was the right which was reserved to her under the terms of Section 3, Sub-Section (3). Even though she would claim a partition in this manner and get property as falling to her share, she would continue to enjoy therein the limited interest known as" a Hindu woman's estate, so that after her death the property which she had thus obtained on partition would go to her husband's reversionary heirs, as a necessary corollary of her interest being a limited interest known as a Hindu woman's estate. But unless and until she claimed such partition, she would only continue to enjoy the undivided share, right, title and interest of her husband in the property which was given to her by virtue of the provisions of Section 3, Sub-Section (2) of the Act. This is really the scheme of the Act and it would fall to be considered by us as to what was the nature and extent of the interest which the pltf. got in the properties belonging to the joint family under the circumstances obtaining in the present case.

6. On a plain reading of the sections of the Act, which we have set out hereinabove it is clear that on the death of Venkatraman the pltf. his widow, got the same interest in the joint family

properties which he himself had. The interest which he had at that time was an undivided share, right, title and interest in the joint family properties. The members of the joint family at that time were Venkatraman, his wife the pltf., his son Manjanath, Ganga the widow of his predeceased brother Vithal and Nagappa. Vithal, the husband of Ganga, had died before 1937 and therefore, the right, title and interest of Vithal had survived over to Venkatraman and Nagappa, subject to the right of maintenance of Ganga out of the joint family properties. Venkatraman, however, died after 1937 and by virtue of the provisions of the Hindu Women's Rights to Property Act, his widow Mukambe, the pltf., got an interest in the joint family properties commensurate with his own interest therein. At the time of the death of Venkatraman, the male members of the family were only two, Manjanath his son, and Nagappa his brother. The interest of Venkatraman, however, continued by virtue of the provisions of Section 3 Sub-Section (3), of the Act in his widow the pltf. and for all practical purposes the position was as if there were three members of the joint family entitled to the properties belonging to the joint family, Mukambe (the pltf.) the widow of Venkatraman stepping into the shoes of Venkatraman and having in the properties the same interest as Venkatraman had, Manjanath her son, and Nagappa the brother of Venkatraman. These were the three persons interested in the joint family properties, and by virtue of the provisions of Section 3, Sub-Section (3), Mukambe the pltf., had the same right of claiming partition as a male owner. According to the strict position in law, it could not be predicated at any time prior to the severance of joint status between the members of the joint family that any particular member of the joint family had any definite share in the joint family properties. The law in that behalf has been laid down as early as 1866 in *Appovier v. Rama Subba Aiyan*¹, where Lord Westbury in delivering the judgment of the P. C. said that according to the true constitution of an undivided Hindu family, no individual member of the family, whilst it remains undivided, can predicate of the joint and undivided property that he has a certain definite share therein. Neither Venkatraman at the time of his death nor his widow Mukambe, the pltf. after his death when she had by virtue of the provisions of Section 3, Sub-Section (2), of the Act, the same interest as her deceased husband Venkatraman had in the properties belonging to the joint family could predicate of the joint and undivided properties that either of them had a certain definite share therein. That share was a fluctuating share liable to be increased by deaths and decreased by births in the family and it would only be when the stage of partition was reached that it could be predicated by a particular member that he had a certain definite share in the properties belonging to the joint family. If this was the correct position in law, the death of Manjanath on 18-2-1939, had only the effect of enlarging the share, if that terminology be used, which would be allotted to a particular member of the joint family on a partition of the joint family properties. After the death of Manjanath only two persons were entitled to the joint family properties having an undivided share, right, title and interest therein, and those two were Mukambe, the pltf. who had under the provisions of Section 3, Sub-Section (2), of the Act, stepped into the shoes of her deceased husband Venkatraman, and Nagappa. She had, by virtue of having the same interest in the joint family properties as her deceased husband had and by virtue of having the same right of claiming partition as a male owner, the right at any time thereafter to claim a partition of the joint family properties from Nagappa. It would be at the date when she claimed the partition that the

undivided share, right, title and interest which she had in the joint family properties could be fixed or defined. When this severance of joint status was brought about, it would have to be determined as to who were the persons entitled to a share in the joint family properties on partition. At that time there were certainly only two members, Mukambe, the pltf., who had the same interest in the joint family properties as her deceased husband had by virtue of the provisions of Section 3, Sub-Section (2), of the Act, and Nagappa. She was, therefore, entitled on the suit for partition being filed by her to a half share in the joint family properties.

7. This is the conclusion which we have reached on a plain reading of the terms of the relevant sections of the Act. Our attention was, however, drawn by Mr. Murdeshwar to a certain decided case and a passage from Mayne's Hindu Law, 11th Edn. based on those cases which appeared to support his contention that the pltf. had no more than one-quarter share in the joint family properties. He relied upon the passage at p. 708 of Mayne's Hindu Law, 11th Edn., where it is stated :

¹¹¹ m. i. a. 75 :(2 Sar. 218 P.C)

"When a widow succeeds to her deceased husband's interest in a joint family, she takes it only by inheritance and not by survivorship; for, she had no right by birth and she was not a co-owner prior to his death. There are no words in the Act by which she can be deemed to be a coparcener. The interest which devolves upon her is declared to be a Hindu Woman's estate. That means that on her death it will go to her husband's heirs which cannot mean all his coparceners. In other words, on her death whether before or after partition, her interest will go to her husband's male issue who will take it as ancestral property. Whether they will take it as tenants in common or as coparcenary property is a different question. In the absence of her husband's male issue, her interest will pass to the daughter, daughter's son, or other heirs of her husband."

8. Mr. Murdeshwar argued before us that this latest edition of Mayne's Hindu Law had the imprimature of the late Mr. S. Srinivasa Iyengar, sometime Advocate-General of Madras and Chandrasekhara Aiyar J. who occupies the position of a Judge of the S.C. to-day, and therefore, the observations contained in this passage which he quoted were entitled to the greatest respect. We agree with him there, but with utmost respect we think that the observations which are contained in this passage are not warranted by the true position in Hindu law. The distinction which is made here is between survivorship on the one hand and inheritance on the other and it is argued that if there is no survivorship the only other alternative is inheritance. By no stretch of imagination could it be urged that the interest which the Hindu widow gets in the joint family property by reason of the enactment of the Hindu Women's Right to Property Act is an interest by survivorship. "Survivorship" is a well-known technical term and an interest according to the strict notions of Hindu law cannot survive over in favor of anybody except a male member of a joint family. It cannot certainly survive over in favor of a female member of a joint family who is otherwise entitled only to maintenance out of the property belonging to the joint family. She cannot become even by stepping into the shoes of her deceased husband by way of being given

the same interest which the deceased husband had in the joint family property a coparcener or a manager of a joint Hindu family. That, however, does not mean that if she does not get an interest by survivorship, the only other alternative is that she gets it by inheritance. Survivorship and inheritance are taken by the learned authors as the only two modes of devolution of property and therefore, it has been observed that if it is not survivorship, it can only be inheritance. The learned authors have, however, failed to appreciate what the consequences of holding this devolution to be a devolution by way of inheritance would be. If the interest which the widow takes under Section 3, Sub-Section (3) of the Act were taken to be an estate of inheritance, it would involve us into the absurd consequence that the widow would inherit an undivided share, right, title and interest in the joint family property. It would be an inheritance of something which is not demarcated, or defined, but is by its very nature fluctuating. It is contrary to the very conception of inheritance of property in Hindu law. A Hindu does not inherit an undivided interest in joint family property. That is not an estate of inheritance. If it were an estate of inheritance, it would involve disruption of the joint family, a severance of joint status and fixing up or defining the share of the deceased husband in the joint family property at the time when the widow steps into the shoes of her deceased husband. No such thing is ever contemplated by the Act. The right of claiming partition as a male owner which is given to her under Section 3, Sub-Section (3) of the Act itself shows that until partition it remains the property belonging to the joint family. The interest which she has got is the same interest which the deceased husband had in the joint family property and that interest was the undivided share, right, title and interest in the joint family property capable of increasing by deaths and decreasing by births in the joint family, until the partition was claimed and severance of joint status was effected. If that is the true nature of the interest which the widow gets under Section 3, Sub-Section (2) of the Act, it cannot be urged that it is an estate of inheritance. She only gets the same interest as her deceased husband had in the joint family property which is not got by her by survivorship because she was not a coparcener or a male member of the joint and undivided family capable of taking any interest in the property by survivorship. It can also not be an estate of inheritance because there is no disruption of the joint family. There is no severance of joint status. There is no fixing or defining of a share which she gets in the property belonging to the joint family. It is, therefore, neither survivorship nor inheritance but is a special property which is created for her benefit which she gets by reason of her being the widow of a deceased member of a joint and undivided Hindu family. The whole fallacy lies in trying to put a label on the mode of devolution of property in her favor. 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. In our opinion, it may not be survivorship; it may not be inheritance; it can be a mode of devolution which is specially created under the terms of the Act. If the matter is looked at from this way, it is clear that the observations which have been made by the learned authors at p. 708 in Mayne's Hindu Law

above quoted are not justified and do not represent the correct position in law.

9. Mr. Murdeshwar drew our attention to a decision of the Madras H.C. in *Saradambal v. Subbarama Ayyar*², In that case the pltf. had obtained a decree for money against deft. 1 who died subsequent to the date of the decree. His wife, deft. 3 was brought on the record as his legal representative. The question that arose for determination was whether the properties which were in the hands of deft. 3 were liable to be attached in execution of the decree. The relevant provisions of the Hindu Women's Right to Property Act were considered by the learned Judge in the second appeal which came before him and he observed that under Section 3 (2) of the Act the interest taken by the widow was the same interest as the husband, himself had, that is, the interest of an undivided member of a joint family in the joint family property. The learned Judge, however, proceeded to say that the said interest was capable of definition, and so far as the Madras Presidency was concerned, it was liable to separation by partition and alienable inter vivos for valuable consideration and liable to be seized in execution of a decree for the personal debts of the member, and that giving the language its plain meaning, the widow took that interest subject to the rights and obligations attached to that interest and subject to the restrictions placed on her powers by clause (3) of the Act. It was conceded that if the Act had not been passed, as the husband died without leaving a male issue, the property would have gone by survivorship to his undivided brother and his brother's son and the doctrine of survivorship would prevent the creditor from attaching that property. But it was stated that the Act had taken away that rule of survivorship and allowed the property to descend

² I. I. R. (1942) Mad. 630 : (AIR 1942 Mad 212)

to his wife and that once the rule of survivorship no longer operated, there was nothing to preclude a creditor from attaching the property. It was further observed that the fact that a right of partition was conferred upon the widow went to show that the property was taken by her subject to all the rights and liabilities which the husband would have had because it was the same interest that was conferred upon her and therefore, giving the language its plain meaning, the property taken by her must be held to be liable for the payment of her husband's debts and was liable to be attached by the pltf. It was, however, assumed here by the learned Judge that the Act had taken away the rule of survivorship and allowed the property to descend to his wife. We need not repeat what we have stated above while discussing the passage from Mayne's Hindu Law, but exception can legitimately be taken to the use of the word "descend," if that is understood to mean an estate of inheritance. The interest which the widow takes on the death of her deceased husband is not an estate of inheritance. She merely steps into the shoes of her deceased husband. It is a devolution of an interest in her favor, but it is not an estate of inheritance which devolves upon her. No doubt she steps into the shoes of her husband and the consequences of that position would be that the creditor would, contrary to the position which obtained before the enactment of this Act, be able to attach the undivided share, right, title and interest of her husband in execution of a decree which he had obtained against the husband prior to his death. The undivided share, right, title and interest of the deceased husband, not having gone over to any other member of the joint family by survivorship but having devolved upon her in the manner contemplated by the

Act, would be liable to attachment at the instance of the judgment-creditor who had obtained a decree against the deceased husband. From that point of view, the decision of the learned Judge in *Saradambal v. Subharama Ayyar*³, would be correct, but it cannot be justified on the principle that the widow had got that interest as and by way of inheritance. As we have stated before, the contradistinction is not necessarily between survivorship on the one hand and inheritance on the other, and it is not legitimate to say that if it is not survivorship, it can only be inheritance. This decision of the Madras H. C. which is cited by Mr. Murdeshwar, is no authority for the position which has been urged by him before us.

10. Mr. Murdeshwar then relied upon the decision of the Nagpur H. C. in *Jadaobai v. Puranmal*⁴, where the question that arose was in regard to the necessity of obtaining a succession certificate. In that case one Bhikamchand Marwadi had obtained a money decree against one Puranmal Marwadi. Bhikamchand died on 29-9-1941, leaving a widow Jadaobai and a son Narnarain. The son applied for execution of the decree. Later on the widow also applied for being joined as a party to the execution, on an objection being taken by the judgment-debtor that she was a necessary party to the execution appln. under the Hindu Women's Rights to Property Act. Then the judgment-debtor contended that she could not execute the decree without obtaining a succession certificate. It was contended on behalf of the widow that a succession certificate was not necessary in her case. On a consideration of Section 3 (2) and (3), Hindu Women's Rights to Property Act the Ct. held that the interest of a deceased husband devolved on his widow by succession and hence Section 214, Succession Act, was applicable. The learned Judges of the Appeal Ct. there observed that the use of words indicating devolution of interest on the death of the husband left no room for doubt that what was intended was succession on the death of the husband. They referred to the passage from Mayne's Hindu Law which we have above

³ I. L. R. (1942) Mad. 630 : (AIR 1942 Mad 212)

⁴ I.L.R. (1944) Nag. 832 : (AIR 1944 Nag 243)

quoted but from the 19th Edn. edited by Srinivasa Iyengar and observed that no doubt the Act altered the order of succession and involved far reaching consequences, it was true that it might lead to certain anomalies as was argued before them, but they observed that if she did not claim it by inheritance they failed to understand how she was claiming it in the face of the clear wording of the Act. They disagreed with the observations of Horwill J. in *Natarajan Chettiar v. Perumal Ammal*⁵, and observed that survivorship having been ruled out, the only other mode by which she would be clothed with the rights of her husband in the property, though to a limited extent, would be by succession or inheritance if she claimed under the Hindu Women's Rights to Property Act, and held that a succession certificate was necessary to the extent of her interest in the property. This decision also suffers from the same disability which we have pointed out in the case of the decision in *Saradambal v. Subbarama Ayyar*⁶, It does not contemplate any devolution of the estate except either by survivorship or by inheritance, and even though the devolution indicated in the Act is neither the one nor the other it seeks to relegate the devolution to the category of inheritance because it cannot be relegated to the category of survivorship. If it is not survivorship, it can only be inheritance. Therein lies the fallacy of the whole argument.

11. Mr. Murdeshwar drew our attention to a decision of the Patna H. C. in *Siveshwar Prasad v. Har Narain*⁷, where the Appeal Ct. consisting of Fazl Ali C. J., now a Judge of the S. C. and Reuben J. held that the interest which is acquired by a widow under the Hindu Women's Rights to Property Act, 1937, is not as a survivor but as an heir of her husband. The interest, therefore, is an asset of her husband in her hands and can be proceeded against by a creditor even though it may be an undivided interest in a joint family property. To the extent that the interest which the widow gets under Section 3, sub section (2), of the Act can be said to be such as can be proceeded against by a creditor even though it may be an undivided interest in joint family property, we have no quarrel with the decision. But in so far as this decision goes to lay down that the interest which is acquired by the widow under the Hindu Women's Rights to Property Act is as an heir of her husband because it is not acquired by her as a survivor, we do not agree with the same. The learned Judges observed (p. 761):

"Now, it is quite clear that Mt. Kalawati did not acquire her interest as a survivor. She had acquired it under a statute and although the statute does not say expressly that she will acquire the interest of her husband as his heir, yet it seems to me that if she does not get the interest by survivorship then she must be held to have acquired it as an heir."

This is the same fallacy which was pointed out by us as the one in which the learned Judges of the Madras H. C. in *Saradambal v. Subbarama Ayyar*⁸, fell along with the learned Judges of the Nagpur H. C. This decision in terms supported the conclusion by reference thereto. It was pointed out to the learned Judges of the Patna H. C. in the course of the argument on behalf of the Appellants . that according to the Mitakshara law as applied in all the provinces, the undivided interest of a coparcener might be attached in his lifetime in execution of a decree against him for his personal debt. If it was attached in his life-time, it might be sold after his death whether the order for sale was made in his

⁵ AIR 1943 Mad 246 : (206 I. C. 356)

⁷ 23 Pat. 760 : (AIR 1945 Pat 116)

⁶(I.L.R. (1942) Mad. 630 : AIR 1942 Mad 212)

⁸ I.L.R. (1942) Mad. 630 : AIR 1942 Mad 212)

life-time, or after his death. But it could not be attached after his death (except where the coparcener was the father), for it then ceased to be his interest and passed to the other coparceners by survivorship. It was only an attachment effected during the life-time of the debtor that would prevent the accrual of his interest to his coparceners by survivorship. The learned Judges, however, did not see the implication of this passage which was cited before them and they brushed it aside by saying that the widow did not acquire the interest of her deceased husband by survivorship and therefore this passage had no application. They preferred to follow the view which had been taken by Venkatramana Rao J. in *Sasadambal v. Subarama Ayyar*⁹, and holding it to be an estate of inheritance in her hands decided that it could be proceeded against by a creditor even though it might be an undivided interest in a joint family property. This decision also is on a par with the two decisions of the Madras and Nagpur High Courts which we have commented upon above and do not help the applt.

12. Mr. Murdeshwar lastly drew our attention to a passage from the judgment of Viswanatha Sastri J. in *Radha Ammal v. I. T. Commr., Madras*¹⁰, The question in dispute in that suit was whether a widow who stepped into the shoes of her deceased husband under Section 3, subs. (2), Hindu Women's Rights to Property Act, could become a manager of the joint Hindu family. This was an extreme case where by virtue of the Hindu Women's Rights to Property Act which was enacted for giving better rights to women in respect of property the widow was advised to claim not merely a right in respect of property but also a right to become a manager or karta of a joint Hindu family. It was certainly the right which only a male owner of a joint family property had. This legal ingenuity, however, did not find favor with the Ct. and when the matter went to the Appeal Ct. in Madras this claim of the widow was negatived, as it rightly should have been. Viswanatha Sastri J. while discussing the position as it obtained under the Hindu Women's Rights to Property Act observed as under (p. 540) :

"A widow who takes her husband's estate under Act (XVIII [18] of 1937) gets it only by inheritance according to the rule prescribed by statute and not by survivorship. She had no right by birth and she was not a coparcener prior to the death of her husband. She does not, in my opinion, become a coparcener by the death of her husband and the Act does not use apt language to convert the interest which devolves upon her into an interest of a coparcener... It will be revolutionary of all accepted principles of Hindu law to suppose that the senior most female member of a joint Hindu family even though she has adult sons who are entitled as coparceners to the absolute ownership of the property could be the manager of the family. The Act does not effect a statutory severance or disruption of the joint family, nor does it create a new type of managership of the joint family unknown to Hindu law and unwarranted by judicial decisions." I have quoted these observations of Vishwanatha Sastri J. in detail in order to bring out the two particular aspects of the question which we have got to consider. There is no doubt that under the terms of Section 3 (2) and (3) of the Act there is no right of survivorship created in the Hindu widow. But that does not necessarily lead to the inference that what she has got is an estate of inheritance. The very words of the learned Judge which follow, viz., that "the Act does not effect a statutory

⁹ I.L.R. (1942) Mad. 630 : AIR 1942 Mad 212

¹⁰ AIR 1950 Mad 538 : (I.L.R. (1951) Mad. 56)

severance or disruption of the joint family" are very significant in this behalf. If there is no statutory severance or disruption of the joint family, it is impossible to come to the conclusion that the widow gets the interest in the joint family property by way of inheritance. It is neither survivorship nor inheritance. Herein lies the fallacy of the argument as we have pointed out above. These observations also, therefore, do not help the applt.

13. It was further contended by Mr. Murdeshwar that we must take the analogy of an alienee of an undivided interest of a coparcener in considering the right of a widow under Section 3 (2) and (3) of the Act. He urged that when a coparcener alienates his undivided share, right, title and

interest in the joint family property in favor of an alienee, the alienee gets a share in the joint family property capable of definition as at the date of the alienation; even though the alienee may have to file a suit for general partition against the other coparceners of his alienor, the share of the alienor which the alienee is deemed to have taken under the alienation would be the share which his alienor would have obtained on a partition between himself and the other members of the family as at the date of the alienation. He urged that the case of the widow who gets an interest commensurate with that of her deceased husband in the joint family property under Section 3 (2) and (3) of the Act should be taken on a par with the interest which the alienee obtains as above, and therefore, it should be taken as capable of being defined as at the date when she gets the same, viz., the date of her husband's death. If this argument were correct, it would mean a statutory severance or disruption of the joint family because she would be able to predicate as of that date that she had a definite share in the joint family property. There is also a further argument which can be advanced against this contention and that is contained in Mayne's Hindu Law, Edn. 11, at p. 710, where it has been stated:

"There is, however, one question which presents a greater difficulty: is the interest which she takes on her husband's death under Section 3 (2) to be the share to which he was entitled at his death or is it the share to which she would be entitled if she, standing in the shoes of her husband, were treated as the holder of an undivided coparcener's interest at the time of partition? Having regard to her position as a member of a joint family, and to the object of the Act and to the words 'the same interest as he himself had,' she cannot be deemed to be in a better position than her husband if he had lived. The analogy of an alienee for value whose special equity is worked out by assigning to him the share of his alienor as ascertained on the date of the alienation, will not be applicable."

The alienee gets the interest in the property by virtue of the transaction which he the stranger enters into with the alienor. He is a purchaser at equity and the equitable considerations operate in his favor in the matter of awarding to him the share of the alienor in the joint family property as at the date of the alienation. The equities which obtain between the alienor on the one hand and the other coparceners of his in the joint Hindu family are not affected thereby and it is well known that where those equities do conflict the equities in favor of the other coparceners do prevail. This position does not furnish any analogy when we come to consider the position of the widow who steps into the shoes of her deceased husband under the provisions of Section 3 (2) and (3) of the Act. This argument of Mr. Murdeshwar therefore is of no avail.

14. The true position in law is, however, as we have discussed above and we are fortified in that by the observations of Horwill J. in *Natarajan Chettiar v. Perumal Ammal*¹¹, In that case, a promissory note was executed in favor of a payee, whose widow and two sons endorsed it in favor of the pltf. The maker of the promissory note also died leaving behind him his widow and a son. The pltf. filed the suit against the widow and the son of the maker of the promissory note and a contention was raised that the pltf. could not succeed without a succession certificate. The decision of this question turned upon Section 3 (2) and (3), Hindu Women's Rights to Property

Act and the learned Judge observed that the widow did not obtain the right given under Section 3 by survivorship. She was not a coparcener before her husband's death and she was not one afterwards. But it did not, however, follow that because the widow did not obtain her right by survivorship that she must obtain it by inheritance. The learned Judge held that the effect of Section 3 (2) and (3) might 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 could alienate property only under certain circumstances and that, as the widow did not inherit her right, no succession certificate would be deemed to be necessary. This, in our opinion, represents the true position in law. The widow does not get the interest of her deceased husband by survivorship, but merely because she does not get it by survivorship, it does not necessarily follow that she gets the interest by inheritance. The position which obtains is that there is a survival of the husband's persona in the wife, giving her the same rights as her husband had except that she could alienate property only under certain circumstances.

15. This position was again emphasized by the Madras H. C. itself in *Chinniah v. Sivagami Achi*¹², In that case the widow of a predeceased son of a Hindu claimed partition under the provisions of Section 3 (3), Hindu Women's Rights to Property Act against her father-in-law and a son who had been adopted by him subsequent to the death of her husband. At the date of the death of the pltf.'s husband, she got the same interest in the property belonging to the joint family as her deceased husband had under Section 3 (2) of the Act, which interest though it was a limited interest known as a Hindu woman's estate, carried with it the right to claim partition as a male owner. By the time she came to claim partition, however, the father-in-law had adopted a son unto himself and the joint family had thus increased by the addition of that adopted son. The question that arose was whether she was entitled to a half share in the joint family property or to a one-third share therein and it was held that she was entitled to a one-third and not to a half share in the estate. The Ct. held that having regard to the words used in subs. (2) of Section 3 of the Act and to the nature of the interest of a coparcener in a joint family governed by the Mitakshara law, the widow got no greater rights than those possessed by her husband, and when she sought partition, the joint family had been increased by the adoption of a son by the head of it. The word "interest" in Sub-Section (2) did not mean the same thing as the word "share" used in Sub-Section (1) of the section, and the interest which the husband had in the family estate was a fluctuating interest. The widow could not be in a better position than her husband if he had lived. This was the ratio of the judgment and we are in perfect accord with the same. The interest which the deceased husband enjoyed at the time of his death and which came to be enjoyed by the widow after his death by virtue of Section 3 (2) of the Act was the undivided share, right, title and interest in the family properties fluctuating by its

¹¹ AIR 1943 Madras 245 : (206 I. C. 356)

¹² I.L.R. (1945) Mad. 402 : (AIR 1945 Mad 21)

nature, capable of being increased by deaths and decreased by births in the family and capable of being defined or fixed only at the time when a severance of joint status was effected or a partition was claimed. The widow could be in no better position under those provisions than what her

husband would have been and she could not claim a larger share in the joint family properties than what her husband would have been entitled to at the date of the partition. The date of the partition was the crucial date and it is at this date that the share would come to be fixed or defined. That share would be obtained by the widow by reason of her having stepped into the shoes of her deceased husband and acquired the interest in the joint family properties or to put it in other words by reason of the devolution of that interest of her deceased husband upon her by virtue of the provisions of Section 3, Sub-Section (2), of the Act. This is the true legal position as has been laid down in *Chinniah v. Sivagami Achi*¹³, and that represents the correct position in law according to us.

16. Even if we were confronted with the conflict of decisions between the High Courts as we have mentioned above, we would follow the reasoning in *Natarajan Chettiar v. Perumal Ammal*¹⁴, and *Chinniah v. Sivagami Achi*¹⁵, in preference to the reasoning in *Jadaobai v. Puranmal*¹⁶, *Saradambal v. Subbarama Ayyar*¹⁷, and *Siveshwar Prasad v. Lala Har Narain*¹⁸, as it is in perfect consonance with our reading of the relevant sections of the Hindu Women's Rights to Property Act.

17. The position in law being as we have laid down above, the pltf. would be entitled to a one-half share in the properties belonging to the joint family and which are the subject-matter of the suit for partition, the appeal will be dismissed and the decree passed by the lower appellate Ct. in favor of the pltf. will be confirmed subject to this variation that before arriving at an equitable partition between the pltf. and the deft. due provision will be made for the maintenance and residence of Ganga, the widow of Vithal. The applt. will, of course, pay the resp'ts. costs of the appeal.

Dixit, J.

18. The appeal raises an important question under the Hindu Women's Rights to Property Act, 1937. The facts of the case in which the question arises are simple.

19. There were three brothers Vithal, Venkatraman and Nagappa who were members of a Hindu undivided family. Vithal died some time prior to 1937 leaving a widow by name Ganga. Venkatraman died on 18-6-1938, leaving him surviving a widow by name Mukambe and a son by name Manjanath. Manjanath died on 18-2-1939. Vithal and Venkatraman have a brother by name Nagappa who is deft. 1 in the suit. Mukambe is the pltf. in the suit.

20. In 1945 Mukambe filed the present suit for partition and to recover possession of a half share in the suit property and she relied in support of her claim upon the provisions

¹³(i. L. R. (1945) Mad. 402 : AIR 1945 Mad 21)

¹⁵I. L. R. (1945) Mad. 402 : (AIR 1945 Mad 21)

¹⁴AIR 1943 Mad 246 : (206 i. C. 356)

¹⁶I. L. R. (1944) Nag. 832 : (AIR 1944 Nag 243)

¹⁷I. L. R. (1942) Mad. 630 : (AIR 1942 Mad 212)

¹⁸23 Pat. 760 : (AIR 1945 Pat 116)

of the Act. The pltf's. claim was opposed by the deft. and various defences were raised to the suit, two of which need be mentioned in this place. It was contended that the pltf. cannot claim a share by partition of the suit property and that in any event the pltf's. share would be one-sixth and not one-half. The trial Ct. rejected the defence contentions and awarded the pltf's. claim, and this decree was confirmed in appeal by the learned Dist. J. The original deft. has come up in appeal.

21. Upon this appeal two contentions have been taken on behalf of the applt. It is argued, firstly, that the pltf. cannot claim a share in the suit property by partition and that if the pltf. was entitled to claim by partition a share in the family property, it would not be a half share but would be a one-fourth share in the property. In the trial Ct. the deft. contended that the pltf's. share was one-sixth and not one-half. This was upon the basis of an allegation made by the deft. that Ganga as well as the pltf. had taken in adoption his sons Narayan and Dattatraya. That defence failed in the trial Ct. In appeal the deft. contended that the pltf. cannot claim by partition any share in the suit property. It was not argued in the lower appellate Ct. that the pltf's. share was only one-fourth. The result, therefore, is that so far as this appeal is concerned, we have to deal with two contentions just mentioned and the question has to be decided by reference to the provisions of the Hindu Women's Rights to Property Act, 1937. The material provisions are contained in Section 3, sub-ss. (2) and (3). So far as material, the section is as follows :

"(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-Section (3), have in the property the same interest as the himself had.

(3) 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, provided however that she shall have the same right of claiming partition as a male owner."

22. The Act in question has, if I may say so, introduced revolutionary changes in Hindu law. The Act has affected the law of coparcenary, the law of partition and the law of alienation. It has also, to some extent, affected the topics of inheritance and adoption. The present appeal is concerned with the question in so far as this Act affects the law of partition. It is, therefore, necessary to closely examine the language of Section 3, sub-ss. (2) and (3). Prior to the passing of the Act a widow in a joint Hindu family was entitled only to maintenance and residence. But upon the passing of the Act, better rights have been conferred upon a widow in a joint Hindu family and, as the Act shows, the object of the Act is to give better rights to women in respect of property. There are certain expressions in the two sub-sections which require careful examination. Thus, in Sub-Section (2) of Section 3 a widow gets an interest in a Hindu joint family property which her deceased husband had in the property. A reference to Sub-Section (3) shows that the interest which the widow gets is known as a Hindu woman's estate, and under Sub-Section (3) the widow gets a further right of claiming partition as a male owner. It is in that way that this Act has introduced a revolutionary change in Hindu law. Although a widow gets an interest in a Hindu

joint family property, that does not mean that she gets the share of her husband. It is noteworthy that whereas Sub-Section (2) refers to the expression "interest" acquired by a widow, Section 3, Sub-Section (1) refers to a "share" and, in my opinion, the use of two different expressions was deliberate, because in the case of a Hindu governed by the Dayabhaga school of Hindu law, it can be predicated of a Hindu that he has a definite share. In the case of a Hindu governed by the Mitakshara law, a member of a joint Hindu family cannot say that he has a particular share in the family property. His share is to be ascertained when a suit for partition is filed and not before because the share which a member of a joint Hindu family has in the family property is liable to fluctuations. It may, for instance, be increased or decreased. It may be increased if there are deaths in the family, and it may be decreased if there are births in the family. It is for that reason that the Legislature has chosen to use the expression "interest" in Sub-Section (2) of Section 3. A female cannot be a coparcener. The expression "coparcenary" has a much narrower connotation than a Hindu undivided family. A coparcenary consists of males only, while a joint Hindu family may consist of males as well as females. In the case of coparcenary property the two main incidents are the right to acquire property by survivorship and the right to acquire an interest in the family property by birth and reading Sub-Section (2) and Sub-Section (3) of Section 3, it is, to my mind, clear that a widow of a deceased Hindu continues to be a member of a joint Hindu family which she was as his wife before, but upon the death of her husband she gets an interest in the family property exactly the same as was her husband's. Then reference has to be made to the expression "devolving." Mr. Murdeshwar for the applt. argues that the expression means that the Hindu widow gets the interest of her husband as and by way of inheritance. It seems to me that is not the correct interpretation of the expression "devolving." What the expression "devolving" means is really acquiring. Again Sub-Section (2) of Section 3 says that the widow has an interest in the family property which her husband had at his death. This is made clear by describing the interest taken by the widow which is said to be a Hindu woman's estate. On the footing that she is a member of a joint Hindu family exactly in the same way as she was before her husband's death, the Act has further provided that the widow has a right to claim partition as a male owner. The Act, therefore, does not merely confer upon a widow a Hindu woman's estate but gives the widow a right to claim partition from the other members of the family. Before the passing of the Act, 1937, the widow would be entitled to maintenance and residence and she would have no rights of ownership in the property, and under this Act she is not given full proprietary interest in the family property but only an interest which is equal to the interest of a Hindu woman's estate. When the section is analysed as above, it will now be convenient to deal with the two contentions urged in support of the appeal.

23. Mr. Murdeshwar argued that a widow such as the pltf. in this case cannot claim by partition a share in the suit property. It is difficult to accept this contention in the face of the plain language of Sub-Section (2) of Section 3. But the point made was that inasmuch as the last person who died in the branch of Venkatraman was his son Manjanath, the pltf. Mukambe would not be entitled to claim a share in the family property. It seems to me that this argument is wholly unconvincing. The question whether she gets an interest in the family property because of her

being a widow of her deceased husband or by reason of her being a widowed mother of her deceased son is irrelevant. Section 3, sub-s (2), speaks of a Hindu governed by any school of Hindu law other than the Dayabhaga school who dies leaving a widow, and when he so dies leaving a widow, then his widow takes an interest in the family property exactly the same interest which he had at the time of his death. It seems to me, therefore, that upon a plain reading of Section 3, Sub-Section (2). this argument must clearly fail. Apart from this aspect of the case, it seems to me that there is support for the view which I am taking and that is to be found in the decision of the Madras H. C. in *Chinniah v. Sivagami Achi*¹⁹, In my opinion, therefore, the first contention must fail.

24. It is next argued that the pltf's. share is only a one-fourth share and not a one-half share in the suit property. This argument proceeds upon the basis that pltf. Mukambe would be entitled to a one-fourth share, while Manjanath would be entitled to the other one-fourth share thus making the total a half share. Again, deft. Nagappa would be entitled to claim a half share. This argument can succeed only if it is held that pltf. Mukambe took a share in the family property at the time of the death of her husband. The argument is that pltf. Mukambe would get the share of her husband and that share at the time of his death was one-fourth, the other one-fourth going to his son Manjanath. This argument is, in my opinion, not correct. The position of the pltf. in the joint family consisting of Ganga, Mukambe and deft. Nagappa is that the pltf. Mukambe is the widow of the deceased Venkatraman. At the time of the suit, there is no other male member in the family surviving. Although a widow gets an interest in the family property which the deceased husband had at the time of his death, the widow does not become a coparcener in the family. There is no question of taking the interest by survivorship because the pltf. being a widow and, therefore, a female cannot be coparcener in the family. Even if she cannot be a coparcener, she is a member of a joint Hindu family and she continues to be a member of a joint Hindu family exactly in the same way as she was a member of the family prior to the date of the death of her husband. One of the important incidents of coparcenary is, as I have already stated, the incident of acquiring property by survivorship. This right, of course, is not available to a female member and that is why the Legislature has in Section 3, Sub-Section (2), defined the interest taken by a widow, as an interest known to Hindu law as a Hindu woman's estate. The, result, therefore, is that she takes an interest known to Hindu law as the Hindu woman's estate, and the question is whether she has acquired the interest as a result of inheritance. Now, in this case we are concerned with joint family property and so far as male members in the family are concerned, they take the property by right of survivorship. It is impossible to conceive of a case in a joint Hindu family where you can acquire any property by inheritance and in the present case the pltf. acquired the interest of her deceased husband in the family property, and the question is what is the quantum of interest which she got in the family property. Did she get a share as at the date of the death of her husband or did she get a share as at the date of the suit for partition? In support of his contention Mr. Murdeshwar relied upon an analogy, the analogy being that the case of a widow contemplated by Section 3, Sub-Section (2), is analogous to the case of a purchaser of an undivided interest in the family property from a member of the family. It seems to me that such

an analogy is hardly applicable. In the case of a widow such as the pltf. in the present case she is a member of the family, was a member of the family and continues to be a member of the family until she filed this suit for partition. In the case of a purchaser he is a stranger to the family and the only right which the purchaser gets is a right to file a suit for partition. Mr. Murdeshwar apparently realising the weakness of his argument, therefore, pressed into service the analogy referred to above. In the case of a purchaser of an undivided interest in the family property from a member of the family, question often arises as to what is the share which the purchaser gets by reason of his purchase, and upon this question there has been a conflict of judicial opinion. In Madras the view taken was

¹⁹ I. I. R. (1945) Mad. 402 : (AIR 1945 Mad 21)

that the purchaser gets an interest as on the date of the suit for partition. But even in Madras cases have not been uniform. So far as our Ct. is concerned, a recent F. B. decision of this Ct. in *Sakarchand Satidas v. Narayan Savla*²⁰, has taken the view that the share which the purchaser gets in the family property is the share to which his alienor was entitled at the date of the alienation and that is probably the reason which has influenced the argument urged in support of the appeal by Mr. Murdeshwar for the applt. For this argument to succeed Mr. Murdeshwar has to establish that the widow gets the interest of her deceased husband as and by way of inheritance, the question of survivorship being out of the question. But, in my opinion, it is impossible to hold that the interest which the widow gets in the family property is the interest acquired as a result of inheritance. I am well aware of certain decisions of the Madras H. C. in the opposite sense. But, with respect, it seems to me that those decisions do not lay down the correct law. Reference may be made to the decision of the Madras H. C. in *Saradambal v. Subbarama Ayyar*²¹, Reference may also be made to the case in *Jadaobai v. Purnamal*²², and to the case of *Siveshwar Prasad v. Lala Har Narain*²³, and lastly to the case in *Radha Ammal v. I. T. Commr*²⁴. As these cases have been referred to in great detail by my learned brother it is unnecessary to refer to the facts of the cases and to comment upon the decisions. It suffices to say that the interest which the widow gets under Section 3, Sub-Section (2) of the Act is a special kind of interest given to the widow by the Hindu Women's Rights to Property Act. It is acquired by her neither as a result of survivorship nor as a result of inheritance. If that is so and if the widow continues to be a member of the joint Hindu family, it is only reasonable that the interest which she acquires in the property is liable to fluctuation and until a partition is demanded by a suit it is impossible to ascertain the share to which the widow would be entitled under Section 3, sub-ss. (2) and (3) of the Act. It is well settled that it cannot be predicated of a member of a joint Hindu family that he has a particular share in the family property at a particular moment. But the share can be ascertained when he sues for partition of the family property. In my opinion, therefore, the pltf. has acquired the interest of her deceased husband Venkatraman, and if Venkatraman had filed a suit for partition during the life-time of Manjanath, he would have got only a one-fourth share in the family property. It is clear that there being no partition of the family property, the pltf. would get a one-half share in the family property because that is the share to which Venkatraman would be entitled, had he himself sued for partition. It seems to me, therefore, that the Cts. below were right in holding that the pltf's. share upon a partition is a half share in the family property and not

one-fourth. Some stress was laid upon the word "had" occurring in Section 3, Sub-Section (2), and it was suggested that the use of the expression "had" in Sub-Section (2) shows that the pltf's share in the family property is not one-half but one-fourth. It appears to me that it is not correct to read the section in that sense : nor is it correct to read the expression "interest" as meaning a share. The Legislature has deliberately used the word "an interest" in a Hindu joint family property in contradistinction to the expression "share" used in Section 3, Sub-Section (1), and the interest which the widow gets is the interest which devolves upon her, i.e. which she acquires upon the death of her husband.

25. This view is supported by authority and in this connection I need only refer to a Madras ruling reported in *Natarajan Chettiar v. Perumal Ammal*²⁵,

²⁰52 Bom. I. R. 888: AIR 1951 Bom 10 F.B.) ²²(I.L.R. (1944) Nag. 832 : AIR 1944 Nag243)

²¹ I. L. R. (1942) Mad. 630 : (AIR 1942 Mad 212 ²³23 Pat. 760: AIR 1945 Pat 116

²⁴ Mad, AIR 1950 Mad 538: (i.l.r. (1951) Mad. 56)

²⁵ AIR 1943 Madras 24: (206 I. C. 356)

Horwill J. in dealing with this question said as follows (p. 246):

"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."

With respect, that is the correct reading of the section. I am well aware of the observations made by the learned Judges in the opposite sense. But again, with respect, I am not prepared to accept the interpretation given in those cases as sound. This interpretation has received further support by a later decision of the Madras H. C. in *Chinniah v. Sivagami Achi*²⁶, and in my view, this case affords a complete answer to the two contentions urged in support of the appeal. In that case the question was whether the widow of a pre-deceased son of a Hindu had a one-third share or a one-half share in the suit property in a suit filed by her against her father-in-law and a subsequently adopted son. The pltf. claimed a one-half share in the suit property and the deft. contended that she had only a one-third share in the suit property and the learned Chief Justice held that the pltf. could claim only a one-third share in the suit property. In my opinion, therefore, although the widow gets an interest in the joint family property as a result of the death of her husband in a case contemplated by Section 3, sub-ss. (2) and (3), she gets a share in the property of the family as at the date of the suit for partition, and not as at the date of the death of her husband. In my opinion, the second contention must also fail.

26. In the result, therefore, I agree in the conclusions come to by my learned brother and also agree in the order proposed by him.

Order accordingly.

²⁶ I.L.R. (1945) Mad. 402: AIR 1945 Mad 21