

PATNA HIGH COURT

Rajendrabati

Vs

Mungalal

Civil Revn. No. 13 of 1951

(Narayan and Rai, JJ.)

30.04.1952

JUDGMENT

Narayan, J.

1. This is an application under Section 25, Small Cause Courts Act and the plaintiff is the petitioner.
2. The plaintiff had sued to recover Rs.400 as principal and Rs.100 as interest on the basis of a handnote dated 1st Chait 1354 Fasli said to have been executed by defendant 1 in favor of her deceased husband.
3. The defendants resisted the claim on various grounds and one of the contentions urged by them was that the plaintiff could not maintain the suit. This contention found favor with the learned Small Cause Court Judge who accordingly dismissed the claim. The view taken by the Small Cause Court Judge is that the plaintiff being the widow of the person in whose favor the handnote had been executed could not maintain the suit for the recovery of her share of the money because of Section 214, Succession Act. Admittedly, the lady has not obtained a succession certificate and according to the view taken by the learned Small Cause Court Judge she could not sue to recover the amount due on the handnote without obtaining a succession certificate. Section 214 lays down, amongst other things, that no Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof. In my opinion, the view taken by the learned Small Cause Court Judge is correct.
4. The Counsel for the applicant, relying on the provisions of the Hindu Women's Rights to Property Act, 1937 (India Act 18 of 1937 as amended by Act 11 of 1938), contended that the widow having contained within herself the persona of her husband was in the position of a karta or manager of the family and was, therefore, entitled to recover the entire amount due on the handnote. Sub-section (2) of Section 3 of the Act lays down that 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 he himself had. Because

of this provision the learned Counsel was of the opinion that inasmuch as the deceased husband of the lady was the karta of the family the lady who has stepped into his shoes would also be entitled to act as karta after his death and in the capacity as a karta she was entitled to recover the entire amount due on the handnote. But both sub-Sections(1) and (2) are subject to the provisions of sub-section (3) which lays down 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, provided however that she shall have the same right of claiming partition as a male owner. The Act thus gives the lady the right to have her interest partitioned. The question which is important for our purpose is whether the lady can be regarded as a survivor or as an heir and whether the property has descended to her in the capacity of a survivor or in the capacity of an heir. This question directly came up for consideration by a Bench of this Court in the case of - '*Siveshwar Prasad v. Har Narain*'¹, and their Lordships held that as the widow acquires the interest under a statute she will acquire the interest of her husband as the heir and their Lordships observed as follows:

"It is quite clear that Musammat (one 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."

Their Lordships also quoted with approval the decision of the Madras High Court in the case of - '*Saradambal v. Subbarama Ayyar*'², in which Venkatararnana Rao, J., had observed that the interest was capable of definition and that the Act had taken away the rule of survivorship and allowed the property to descend to the widow. The question in the Madras case was whether a creditor could attach the interest which had descended to the widow and the learned Judge held that if the rule of survivorship no longer operates, there is nothing to preclude a creditor from attaching the property. At any rate, we are bound by the Bench decision of this Court where it has been distinctly held that she acquires the interest of her deceased husband as his heir. This question was again raised in the case of - '*Kedarnath Am- basta v. Radhashyam*'³, and the view taken in this case also was that the widow takes the property, that is the share of her deceased husband, by inheritance. Sinha J. observed that

"the better opinion, in my view, is that the widow takes the property, the share of her deceased husband, by inheritance, with the result that, on her death the property goes not by survivorship to the plaintiff but by inheritance to her husband's heirs."

Reuben, J., agree with Sinha, J., and observed that

"the weight of judicial opinion appears to be that under the Act the widow succeeds not by survivorship but by inheritance or something akin thereto."

These decisions appear to me to be conclusive of the point raised by the applicant's learned Counsel and I think on the strength of these decisions we must hold that the interest which the lady has acquired is an interest which she has acquired by inheritance and not by survivorship. If that be the position, then the obvious result is that no decree can be passed in her favor unless she produces a succession certificate. Another Bench of this Court in the case of -

*'Kamal Kishore v. Harihar Prasad'*⁴, observed as follows:

"As I apprehend the effect of the Act, it amounts to interposing the interest of Hindu Women's estate in a joint Hindu coparcenary, that is to say, so far as the coparceners themselves are concerned, the coparcenary continues as before the death of one of the coparceners; there is no disruption of the joint family. Hence, those members still continue to enjoy as amongst themselves the benefits of survivorships. But, so far as the widow of deceased coparcener is concerned, she acquires in the interest of her deceased husband in the coparcenary property a Hindu woman's estates, which she can get separated from the rest of the family by a suit for partition."

5. The learned Counsel for the applicant relied on two decisions of the Madras High Court reported in - *'Natarajan Chettiar v. Perumal Ammal'*⁵, and - *'Satyanarayana v. Narasamma'*⁶, Both are decisions of a Single Judge of that Court. In the first case, no doubt, his Lordship held that as the widow does not inherit, it was not necessary for her to produce a succession certificate. In the second case it was held that the widow of the deceased coparcener in a joint Hindu family becomes entitled to her rights under Section 3 Hindu Women's Rights to Property Act, 1937, not as an heir but by statute and that the widow stands in the shoes of the deceased husband and continues to be a member of the joint family. With the greatest respect, I cannot accept this proposition, specially in view of the principles which have been so definitely laid down in two Bench decisions of this Court referred to above. The lady may be regarded as a member of the joint family but as has been pointed out by this Court the interest which devolves upon her after the death of the last male holder, must be regarded as an interest descending to her as an heir, and as soon as it is held that she acquires her interest as an heir Section 214, Succession Act would come into play and no decree can be passed in her favour unless she produces a succession certificate. In a very recent decision of the Madras High Court in the case of - *'Seethamma v. Veerana Chetty'*⁷, it has been laid down that under the provisions of the Hindu Women's Rights to Property Act the status of a Hindu widow of a deceased member of a joint family, governed by the Mitakshara, is not that of a coparcener, but that of a member of the joint family with certain special statutory rights, and that so long as a partition has not been made at the instance of the widow in exercise of the right conferred on her under sub-section (3) to Section 3 of the Act, the widow cannot be regarded in any sense as the widow of a divided member or as a tenant-in-common with the surviving coparceners. This, in my opinion, supports, to some extent, the view that has been taken by their Lordships of this Court in the cases referred to above. My conclusion, therefore, is that this suit is not fit to succeed.

6. In the result I would dismiss the application, but, in the circumstances of the case, without costs.

Rai, J.

7. I agree. The learned counsel for the petitioner has failed to point out any passage either in the pleadings or in the evidence described as karta of a joint family. Nor does it appear from the plaint or the evidence of the witnesses who the other members of the family are. In that view of the matter, the suit of the plaintiff cannot be said to be a suit by a karta of a joint family

representing the other members of that family.
Application dismissed.

Cases Referred.

¹ AIR 1945 Pat 116

² AIR 1942 Mad 212

³ AIR 1953, Pat 31

⁴ AIR 1951 Pat 645

⁵ AIR 1943 Mad 246(E)

⁶ AIR 1943 Mad 708

⁷ AIR 1950 Mad 785