

NAGPUR HIGH COURT

Gurudayal Ramprashad Kurmi

Vs

Sarju

Second Appeal No. 553 of 1945

(Bose, Ag. C.J. and J. Sen, J.)

10.09.1948

JUDGMENT

J. Sen, J.

1. This is a defendants' appeal arising out of a suit for partition. The only question is whether the plaintiff is to get one-third or one-fourth. The law to be applied is the Hindu Women's Rights to Property Act of 1937. It will be necessary to have a family tree.

RAMPRASAD (D. 1926)

Lakhmichand Gurudayal Tulsiram (d. 1919) (Def. 1) (Def. 2).

Badriprasad = Mst. Sarjubai. (d. 1939) (Plaintiff)

2. The head of the family, Ramprasad, died in the year 1926, leaving a widow whose name we do not know; also two sons, Gurudayal and Tulsiram, who are the 1st and 2nd defendants. He also had a predeceased son Lakhmichand, who died in 1919. Lakhmichand left a son Badriprasad, who died in 1939, and the plaintiff Mt. Sarjubai is Badriprasad's widow. She brought the present suit for partition in the year 1943.

3. The plaintiff's contention is that at the date of severance, which was 1943, the family consisted of her husband's uncles Gurudayal and Tulsiram and herself. She is entitled to the same interest as her husband would have had. Therefore she is entitled to one-third.

4. The defendants' contention is that under the Hindu Women's Rights to Property Act the plaintiff's interests vested in her in the year 1939 and accordingly the plaintiff's share must be calculated as it existed on that date. She is, for these purposes, an outsider to the coparcenary and is in the same position as a transferee from Badriprasad in the year 1939 would have been. Her interests must be calculated as they existed in 1939. On that date the persons entitled to a share would be the plaintiff, the two defendants Gurudayal and Tulsiram, and Ramprasad's widow. Accordingly the plaintiff's share is one quarter.

5. As regards the devolution of the interests of Ramprasad's widow, it was argued, on

the strength of '*Bhagwantrao v. Punjaram*¹', that the widow inherited, or would have inherited, the share to which she was entitled, and accordingly that share does not revert to the general estate but descends to Ramprasad's heirs. As against this the plaintiff relies on a recent decision of this Division Bench in '*Mt. Bhiwra v. Mt. Renuka*²', where it was held that in such cases the share which the widow gets is given to her in lieu of maintenance and accordingly on her death falls into the general estate.

6. We need not, in this case, examine whether there is any conflict between those two decisions. One of us (Bose, J.) was a party to both. It is enough, so far as this case is concerned, to follow the view taken in '*Mt. Bhiwra v. Mt. Renuka*', F.A. No. 90 of 1941, D/-31-3-1948 (Nag)(SUPRA), which is that the widow does not get a right to a share until the share is actually divided by metes and bounds and she is placed in possession of it. If she dies before this is done then she gets no rights before her death over and beyond her ordinary rights in the family to maintenance, residence and so forth. Therefore on her death there is nothing which can devolve on her husband's heirs and the family estate is treated, for these purposes, as if she had never been there. This was based on the Privy Council decisions of '*Debi Mangal Prasad Singh v. Mahadeo Prasad Singh*³', and '*Pratapmull Agarwalla v. Dhanbati*⁴', : As Ramprasad's widow died before the family was divided and the estate partitioned by metes and bounds, she got no share and had no right to a share and accordingly can be ignored.

7. Once that is accepted then we reach the position that Sarjubai's interests would be those conferred by Section 3 (2) of the Hindu Women's Rights to Property Act, which is in these terms. We reproduce only the portions relevant to this case :

"When a Hindu.....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."

It is to be observed that the Act does not say that she shall have the same share as he had at the date of his death, and of course it could not say so because until partition a coparcener has no share but only an interest, and the Act confers on the widow this interest.

8. This is to be contrasted with Section 3 (1) of the Act which deals with the case of a Hindu leaving self-acquired property. That Sub-section is in these terms :

"When a Hindu dies intestate leaving separate property, his widow shall, subject to the provisions of Sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same 'share' as a son."

It is clear then that the word "interest" in Sub-section (2) has been used in a different sense from the word "share" in Sub-section (1).

9. Reading these two Sub-sections together and contrasting the difference between the

¹ I.L.R (1938) Nag 255

³34 All 234 at pp. 242, 243

² F. A. No. 90 of 1941, D/-31-3-1948

⁴63 Cal 691 at pp. 700, 701

word "share" in Sub-section (1) and the word "interest" in Sub-section (2), we are of opinion that

the interest which the plaintiff obtains is the interest which Badriprasad had at the time of his death.

10. Now what was the husband's "interest" at that time? It included, among other things, the right to claim a partition but not an obligation to claim it at any particular point of time. It is to be observed that Sub-section (3) emphasises that the widow gets the same right to claim a partition 'as a male owner.' It does not state that she gets the share which the husband would have had at the date of his death if there had then been a partition. She must, therefore, be treated as a male owner with his right to claim a partition when he pleases, with its concomitant, the right to have the shares ascertained as they exist at the date of partition. Accordingly Sarjubai's share is to be calculated as it stands on the date of severance. That date, in this case, is 1943. On that date she was entitled to one-third.

11. Reliance was, however, placed for the defendants on '*Jadaobai v. Puranmal*⁵', where a Division Bench of this Court held that the interest of the husband devolves on the widow by inheritance and not by survivorship. We have no quarrel with that. It does not matter for the purposes of this case how the interest which the Hindu Women's Rights to Property Act gives Sarjubai devolved on her. The question is of what does that interest consist. Even if it devolves on her by inheritance the interest is, according to the Act, "the same interest as the husband had", and "the same right of claiming a partition as a male owner." Whether this right devolved on Sarjubai by way of inheritance, or by succession, or whether, because of the Act, as a statutory right, would make no difference. The right is the same as that of a male owner and the interest is the same as her husband had. 'For these limited purposes' she merely steps into his shoes and can be regarded as a continuation of himself. The extent of that right, in our judgment, is the same as Badriprasad would have had had he been alive in 1943. Therefore Sarjubai gets one-third, and the decision of the lower Courts, which gives her that, is right.

12. The appeal fails and is dismissed with costs.

Appeal dismissed.

⁵ I.L.R (1944) Nag 832