

NAGPUR HIGH COURT

Hanuman Narayan

Vs

Tulsabai Narayan

First Appeal No. 31 of 1948

(Mudholkar and Choudhuri, JJ.)

22.12.1954

JUDGMENT

Choudhuri, JJ.

1. This appeal arises out of a suit for partition. The respondent Tulsabai, widow of Narayan, instituted a suit against her step-son, Hanuman for partition and possession of her share of the property after her husband's death. Hanuman is still a minor under the guardianship of Shri B.G. Gandhe, Advocate of Nagpur, who was practising at Basim at the time of his appointment as guardian. Shri Gandhe was also joined as defendant 2 to the suit.

2. On the contentions raised by the parties five issues were framed out of which the first issue which was "Whether the plaintiff was entitled to one-half share in the property left by the deceased Narayan, her husband" was tried first. It was decided in favor of the plaintiff on 2-9-1937 on which date the Court below passed a preliminary decree declaring that the plaintiff was entitled to separate possession of the half share in the property left by her husband. The decree did not mention the property but it provided that the property should be ascertained hereafter. Why this decree was drawn up before the other issues were decided, it is difficult to understand.

3. On 3-11-1947 the Court gave its findings on the remaining issues and drew up a second preliminary decree in favor of the plaintiff. In that decree the Court declared that the plaintiff had a half share in the property left by the deceased Narayan. It further ordered that the plaintiff be put in possession of the half share of the property specified in the decree and directed that a Commissioner be appointed for partitioning the property. The property specified in the decree consisted of a residential house, 'kotha' and a 'baithak'.

4. Schedule A to the plaint mentioned several fields, certain movables and cattle but no mention was made of them either in the first or the second preliminary decree. A final decree was drawn up on the same date on which the preliminary decree was drawn up and the fields as well as certain movables were set out therein. This decree however did not make any mention, of the house property, which was dealt with in the second preliminary decree.

Thus, this is an extraordinary case where, in the first instance, there are two preliminary decrees

and, in the second, there is a final decree which does not wholly correspond with the preliminary decrees. However, apart from pointing out these strange features there is nothing which we propose to do about them because neither party has made any complaint before us about them.

5. In appeal on behalf of the minor Hanuman seven grounds were originally raised of which the first has been abandoned and the sixth was deleted on 1-4-1948. No argument was advanced before us on grounds 2, 5 and 7. We are therefore left with grounds 3 and 4. The third ground urged is that 29 tolas of gold which was admittedly with the plaintiff ought to have been held as joint family property and not her 'stridhana'. The fourth ground is that even assuming that it is her 'stridhana' property, its value should be deducted from her share.

6. On the question whether the property is 'stridhana' or not there is, no doubt, only the word of the plaintiff who says that the gold ornaments were given to her by her husband at the time of her marriage. The property consists of ornaments and therefore it is urged on her behalf that it must be regarded as her 'stridhana'. There is no evidence to counter that of the plaintiff and therefore we hold, agreeing with the Court below, that these ornaments were given to the plaintiff by her husband at the time of the marriage.

7. The question then is whether the ornaments can be regarded as the plaintiff's 'stridhana'. On behalf of the defendants it is contended, that since the plaintiff had not given any particulars as to the precise occasion or the precise ceremony at which they were given it is difficult to say where they have become her 'stridhana'. In our 'opinion, when the gift is by the husband these matters are not relevant at all. (See section 126 of Mulla's Hindu Law where it is stated that gifts from the husband (bhartridatta) constitute 'technical' stridhana of a woman). In the circumstances, therefore, it must be held that these ornaments are the separate property of Tulsabai.

8. The question then is whether their value is to be deducted from her share in the property. In this connection reliance is placed on the following decisions: - '*Jodoonath Dey Sircar v. Brojonath Dey Sircar*¹,' - '*Kishori Mohan Ghose v. Moni Mohan Ghose*²,' - '*Jairam v. Nathu*³,' - '*Hushensab Rajesab v. Basappa*⁴,' and - '*Jogobotidhu Pal v. Rajendra Nath*⁵, as also on the passages in Mayne's Hindu Law (11th Edn.) p. 532, Mulla's Hindu Law (11th Edn.) p. 413 and Gupte's Hindu Law (2nd Edn.) p. 278. No doubt it is laid down in all these cases as well as in the three text-books that where a wife has received 'stridhana' from her husband or father-in-law, its value is to be deducted from her share. But that was the position under the Hindu Law as it was before its amendment by Act 18 of 1937. Under Section 3(2), Hindu Women's Rights to Property Act, 1937, when a Hindu governed by any school of Hindu law other than the Dayaohaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall have the same interest in the property as he himself had, subject however to this limitation that her estate shall be known as a Hindu woman's estate.

¹12 Beng LR 385

³31 Bom 54

⁵AIR 1921 Cal 351

²12 Cal 165

⁴34 Bom LR 1325

The law also gives to a Hindu widow the same right of claiming partition as a male owner has. Inasmuch as the law gives to a Hindu widow the same right in the property as her husband, no question can arise of reducing her share by deducting therefrom the value of the 'stridhana' property which she had obtained from her husband and which is her 'stridhana'. A similar view was also taken in - '*Baburao Sukhdeo v. Savitribai*⁶' and we are in respectful agreement with it.

9. On behalf of the defendants it is however urged that the quantum of the widow's, share is not determined by the Act of 1937. It is difficult to see how this argument can at all be raised in view of the express language of Sub-Section (2) of section 3 of the Act that the interest which a Hindu widow would take would be that of her deceased husband though subject to certain limitations.

10. The learned counsel sought support for his view on the following passage in the middle of p. 710 of Mayne's Hindu Law :

"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 ?"

The question is answered thus at the end of the passage on the authority of - '*Chinniah Chettiar v. Sivagami Achi*'⁷,

"It has accordingly been held.....that her right should be determined as on the date of her demand for partition and that where the widow of a deceased adopted son sues her father-in-law for partition after the latter has made a second adoption, she is entitled to a third share only, and not a half, in the family properties."

It is difficult to understand how all this helps the appellants. No doubt the interest which a widow takes would be a fluctuating interest till there is a partition. But it does not mean that that interest is anything other than that of her husband.

11. No other question was argued before us. The appeal is accordingly dismissed with costs.

Appeal dismissed.

⁶ AIR 1952 Nag 270

⁷ AIR 1945 Mad 21 at p. 22