2024 INSC 883

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5389 OF 2012

KALLAKURI PATTABHIRAMASWAMY
(DEAD) THROUGH LRS. … APPELLANTS

VERSUS

KALLAKURI KAMARAJU & ORS. …RESPONDENTS

J U D G M E N T

SANJAY KAROL J.,

1. Under challenge in this appeal is a judgment dated 26th March 2009, rendered by the High Court of Judicature, Andhra Pradesh at Hyderabad, in Appeal Suit No.1278 of 1990 filed under Section 96 of the Civil Procedure Code, 1908[1] and Cross Objections filed under Order XLI Rule 22 respectively, which was directed against a judgment and decree dated 19th March 1990 passed in O.S. No.50 of 1984 on the file of the Subordinate Judge, Ramachandrapuram.

[1] Hereinafter "C.P.C."

2. The Suit was filed by the respondents herein and was decreed in their favour. The appeal filed by the appellants herein before the High Court was dismissed, thereby the findings of the Trial Court were confirmed. In other words, the present is a case of the concurrent conclusions.

THE FACTUAL PRISM & LEGAL BACKGROUND

3. In a nutshell, the dispute pertains to the succession of property between two branches of the same family. At odds here are step-brothers. The appellant-defendant (now represented through LRs.) was the son of one Kallakuri Swamy from his union with one Smt. Veerabhadraamma, his second wife, and the respondent-plaintiffs are his sons through his marriage to his first wife.

3.1 The scheduled property, of which the respondent-plaintiffs sought an equal share in Ac. 3.55 cents of land comprising Ac. 0.54 cents in S. No.304/2, Ac. 0.92 cents in S.No.143/3, Ac. 0.24 cents in S.No.143/6, Ac. 1.80 cents in S.No.224/2 and Ac. 0.05 cents in S.No.244/6 situated in Teki, West Khandrika and Angara villages.

3.2 By way of partition deed dated 25th August 1933, Smt. Veerabhadramma was given the right to enjoy the above-said property, and it was stipulated therein that after her death, the respondent-plaintiffs and appellant-defendant would be entitled to half share each, i.e., 1.77½ Cents of land.

3.3 Smt. Veerabhadramma passed away on 6th February, 1973. In accordance with the partition deed described above, the property was divided amongst the two branches of successors of Kallakuri Swamy. A dispute, however, arose leading to Original Suit No.50 of 1984 being filed.

3.4 In the plaint, it has been alleged that the respondent-plaintiffs demanded partition. However, the same was repeatedly put off and evaded by the appellant-defendants. The latter has contended that Smt. Veerabhadramma by registered Will dated 30th December, 1968 bequeathed the scheduled properties to one of them (2nd defendant in the Original Suit). Such contention was denied, stating that her rights did not augment into absolute rights and that she had the right to enjoy the scheduled properties for life, as given under the registered partition deed.

3.5 The prayers made in the plaint are to the following effect :

a) For the partition of the Plaint A and B schedule properties after declaring the plaintiff's right to partition by passing a Preliminary Decree and for separation of the plaintiff's half share in the Plaint A schedule land and Plaint B schedule house property; and to pass a final decree accordingly and plaintiffs be put in separate possession of one such half share both in the plaint A schedule lands and B schedule house property;

b) For costs of the Suit; and

c) For all such other or further reliefs that his Honourable Court deems fit and proper under the circumstances of the case.

3.6 In the written statement, it has been submitted that the properties were given to Smt. Veerabhadramma taking into consideration her right of maintenance. She was in possession and enjoyment of the said property till her death in 1973. The rights so vested in Smt. Veerabhadramma were enlarged into absolute rights by application of Section 14(1) of the Hindu Succession Act, 1956[2]. She then executed a Will granting enjoyment to the 2nd defendant, namely, Kallakuri Veera Raghavamma, for her life and vested the same in defendant Nos.3 to 7 and the husband of defendant No.8.

3.7 In the above facts, it was submitted that the respondent-plaintiffs cannot claim any right according to the partition deed.

3.8 The Trial Court in its judgment dated 19th March 1990, framed two primary issues for consideration, i.e., (i) whether Kallakuri Veera Raghavamma, upon her death, was the absolute owner of the plaint scheduled property; and (ii) whether the respondent-plaintiffs are entitled to claim partition? Further issues, pertaining to the Suit being barred by limitation, sufficiency of court fees, and the relief to which the parties may be entitled, were also framed.

3.9 The reasoning of the Trial Court can be summarised as follows :

[2] For short, 'HSA, 1956'

a) When the partition deed was executed in 1933, there existed no legal right in favour of Smt. Veerabhadramma. The Hindu Women's Right to Property Act, 1937 and the Hindu Women's Right to Maintenance and Separate Residence Act, 1947 are both subsequent legislations. Prior thereto, it was only a moral and personal obligation of a husband or the male member of the family to maintain the females.

b) The principles laid down in ***V. Tulsamma v. V. Sesha Reddy***[3]were referred to, and it was concluded that if a Hindu female acquires property at the first instance without a pre-existing right under the partition deed, then only Section 14(2) would be attracted. But if the same was given to her as a restricted estate in recognition of her pre-existing right in joint family property, then 14(1) will be attracted.

c) The property was not given to her in recognition of any pre-existing right. The recitals of the deed show that the property given in Schedules D and E was only enjoyed by her in her lifetime. Schedules D and E were also included in the Schedules A and B.

[3] (1977) 3 SCC 99

d) It was thus concluded that Smt. Veerabhadramma had no right to execute a Will in favour of her daughter-in-law (2nd defendant in the Original Suit). She did not acquire absolute rights under the Hindu Succession Act, 1956, and as such the property would still vest with the respondent-plaintiffs as per the partition deed of 1933.

4. The appellant-defendants, aggrieved by the findings of the learned Civil Court, carried the matter in an appeal under Section 96 C.P.C. The findings of the High Court can be summarised as follows:-

a. Two principles laid down with regards to Sections 14(1) and 14(2) of the Hindu Succession Act, 1956 (hereinafter HSA, 1956) and property given to female Hindus in lieu of maintenance or arrears of maintenance:

b. If the property is given to a widow under a deed/instrument/partition deed/settlement deed/Will or Award in recognition of her Sastric right to maintenance or arrears of maintenance then that would be her absolute property after HSA, 1956 came into force because that is in recognition of her right to maintenance. [This right to maintenance was held to be a pre-existing right and a personal obligation of the husband in ***V. Tulasamma*** (supra)]

c. If the deed (or any of the instruments mentioned before) creates an independent or new right or claim in favour of a female for the first time

in addition to her pre-existing right under Shastric law and Section 14(1) has no application and Section 14(2) would apply.

d. In a family partition between father and sons, where the mother, wife or daughter or widow of predeceased son of Karta/manager of the family had been given property towards maintenance - without anything else - then it shall be considered in the light of the language of document conferring such right.

e. Under schedules “A” and “B”, Pattabhi Ramaswamy and Kallakuri Kamaraju (two sons of Kallakuri Ramaswamy) were given separate properties and equal shares in properties "C", "D", and "E" except Acs. 2.09 cents where Smt. Veerabhadramma had absolute right**.**

f. Ramaswamy would have been of the opinion that Acs. 2.09 cents with absolute right would meet the maintenance needs of Smt. Veerabhadramma after his death.

g. A new right was created in her favour with respect to Acs. 3.55 cents giving life interest, leaving the remainder to two sons.

h. Smt. Veerabhadramma had the right to bequeath property under Ex. A1 - Will, that property over which she had the absolute right under Section 14(1), HSA, 1956, i.e., Acs. 2.09 cents and under Section 14(2) of HSA, 1956, she did not have absolute rights with respect to Acs. 3.55 cents.

i. Smt. Veerabhadramma was given absolute rights to Acs. 2.09 cents, and, therefore, her pre-existing right to maintenance out of the joint family was

satisfied. The life interest with respect to plaint "A" schedule was created in addition to her recognized right to restrictive enjoyment of that property, which was distributed equally between two sons after her death. The above conclusion was reached in the light of the categorical difference in rights between the two properties.

5. Having lost as above, the appellant-defendants are before this Court. We have heard the learned counsel for the parties and perused the written submissions.

6. The simple question in this appeal is whether the appellant-defendants are entitled to the entire property, in line with the position that Smt. Veerabhadramma, by virtue of the Hindu Succession Act of 1956, would have absolute rights over the subject property and, therefore, be able to bequeath the same by way of Will to her successors.

RELEVANT STATUTORY PROVISION & CASES

7. Section 14 of the HSA, 1956 reads thus:-

> "**14. 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."

8. For ample clarity, it may be stated here that the appellant-defendants favour the application of Section 14(1), while the plaintiff-respondents favour the application of Section 14(2).

9. Let us now consider judicial pronouncements on the nature, scope and applicability of Section 14 HSA, 1956, relevant to the instant dispute.

9.1 Any discussion on this section has to necessarily begin with the landmark judgment in ***V. Tulsamma*** (supra), which crystalised the law as follows:

Fazal Ali, J. observed that

> "This being the position after marriage, it is manifest that the law enjoins a corresponding duty on the husband to maintain his wife and look after her comforts and to provide her food and raiments. It is well settled that under the Hindu law the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled as of right to be maintained out of such properties. The claim of a Hindu widow to be maintained is not an empty formality which is to be exercised as a matter of concession or indulgence, grace or gratis or generosity but is a valuable spiritual and moral right which flows from the spiritual and temporal relationship of the husband and wife.. Thus the position is that the right of maintenance may amount to a legal charge if such a charge is created either by an agreement between the parties or by a decree."

9.2 This Court ***Raghubar Singh v. Gulab Singh***[4] held thus**:**

> **17.** The obligations, under the *Shastric Hindu law*, to maintain a Hindu widow out of the properties of her deceased husband received a statutory recognition with the coming into force of the Hindu Women's

[4] (1998) 6 SCC 314

Rights to Property Act, 1937. The law on the subject was, thereafter, consolidated and codified by the Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946 which came into force on 23-4-1946. The right to maintenance of the Hindu widow, as a pre-existing right, was thus *recognised* by the two statutes referred to above but it was *not created* for the first time by any of those statutes. Her right to maintenance existed under the *Shastric Hindu law* long before statutory enactments came into force. After the attainment of independence, the need for emancipation of women from feudal bondage became even more imperative. There was growing agitation by Hindu women for enlargement of their rights as provided by the *Shastric Hindu law* in various spheres. It was at this juncture that Parliament stepped in and enacted various statutes like the Hindu Marriage Act, 1956, the Hindu Adoption and Maintenance Act, 1956, and the Hindu Succession Act, 1956 providing for intestate succession."

(Emphasis Supplied)

9.3 Maintenance in its appropriate form has been discussed in ***Mangat Mal v. Punni Devi***[5] by Bharucha J. (as his Lordship then was) as follows:-

"**19.** Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1)."

(Emphasis Supplied)

9.4 The right of maintenance is sufficient for the property given in lieu thereof to transform into absolute ownership, by way of Section 14(1) of the HSA, 1956. In ***Jaswant Kaur v. Harpal Singh***[6] a bench of three learned

[5] (1995) 6 SCC 88
[6] (1989) 3 SCC 572

Judges affirmed the view taken in ***Gulwant Kaur v. Mohinder Singh***[7], in the following terms:-

> "**2.** The question raised in this appeal has been considered in detail and is concluded by the judgment of this Court in *Gulwant Kaur* v. *Mohinder Singh* [(1987) 3 SCC 674] wherein it is observed: (SCC p. 679, para 4)
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> > "It is obvious that Section 14 is aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Sub-section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of Court and not where such acquisition is traceable to any antecedent right."
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> **3.** After this decision there are number of other decisions taking the same view and it is now settled law that if a female Hindu acquires property under a written instrument or a decree of the Court and where such acquisition is not traceable to any antecedent right then sub-section (2) of Section 14 alone would be attracted and where an antecedent right is traceable, a document in the nature of will is of no consequence and the case will be covered by provisions contained in Section 14 sub-section (1)..."
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> (Emphasis Supplied)

10. What flows from the above is that the Hindu Women's right to maintenance is not by virtue of statute, but is found in Shastric Hindu law;

[7] (1987) 3 SCC 674

maintenance has to be proper, appropriate and adequate, giving the woman so maintained the ability to continue to live the life, similar to what she once lived; and that the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance.

11. Let us now turn back to the instant facts –

Smt. Veerabhadramma was given absolute right to her property, *qua* 2.09 Cents of land and a life interest in respect of 3.55 Cents of land. This has been consistently held by the Courts below. The appellant-defendants, however, want this Court to interfere with the said concurrent findings and hold that by virtue of Section 14(1) of the HSA, 1956, Smt. Veerabhadramma became the full and absolute owner of all properties, which would necessarily include the disputed land of 3.55 Cents.

The findings of the Courts below, as facts are clear that absolute rights extended only to 2.09 Cents. The record does not bring forth any reason for this Court to take a different view. The Shastric right of maintenance given statutory recognition by two pre-constitutional legislations, as noted by ***V. Tulsamma*** (supra) and ***Raghubar Singh*** (supra), stands satisfied thereby. There have been no averments suggesting that the maintenance given to Smt. Veerabhadramma was insufficient to warrant interference in line with ***Punni Devi*** (supra), which states that it has to be sufficient to grant the lady so awarded maintenance to be able to continue a lifestyle, which she has been used to thus far.

12. The law, as laid down by ***Gulwant Kaur*** (supra) and confirmed by ***Jaswant Kaur*** (supra), is clear. Property given in lieu of maintenance would solidify into absolute ownership by action of Section 14(1) of HSA, 1956. In other words, the right of maintenance on its own is apposite for such property to transfer into her sole, unquestionable, and absolute right. The partition deed of 1933, it has been held, is clear that 3.55 Cents of land would be enjoyed by Smt. Veerabhadramma as a life interest and thereafter would devolve upon the two lines of succession, i.e., the sons of late Kallakuri Swami through his first wife and also his second wife.

13. In that view of the matter, the appeal fails and is, accordingly, dismissed. Pending application, if any, shall stand disposed of.

……..…… J.
[C.T. RAVIKUMAR]

……..…… J.
[SANJAY KAROL]

New Delhi;
November 21, 2024.