

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.1666 of 1997

1.Sarojini (died)
2.Rani
3.Govindarajan
4.Rangaraj

.. Appellants/Respondents/
Plaintiffs

vs.

1.Nanjakkal
2.Nanjundappan
3.Doraisami
(4th appellant and 3rd respondent are brought
on record as legal heirs of the deceased
first appellant vide order dated 28.07.2011
made in CMP.No.788 of 2008)

.. Respondents/Appellants/
Defendants

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.03.1997 made in A.S.No.52/1994 on the file of the I Additional District Judge-cum-Chief Judicial Magistrate, Coimbatore reversing the judgment and decree dated 13.1.1994 made in O.S.No.62/1991 on the file of the Third Additional District Munsif Court, Coimbatore.

For Appellants : Mr.T.K.S.Gandhi

For Respondents : Mr.S.Kasirajan- R1 & R2
Mr.S.Prabhakar -R3

JUDGMENT

The plaintiffs, who are the appellants in A.S.No.52 of 1994, filed this Second Appeal against the reversing judgment of the lower appellate court. During the pendency of this appeal the first appellant died and her legal heirs were impleaded as the fourth appellant and third respondent.

2.The dispute raised in the suit is between the grand children through daughter and the daughter-in-law Nanjakkal through son of one Veerabathra Gounder, who was admittedly the original owner of the suit property. Veerabathra Gounder had two wives by names Karimari and Samakkal and one son by name Subbaiyan through his first wife Karimari and one daughter by name Nanjakkal through second wife Samakkal and the first wife predeceased Veerabathra Gounder and he married the second wife after the death of the first wife. While the

son married one Nanjakkal, the daughter having the same name, married one Erianna Gounder and gave birth to the plaintiffs by names Sarojini, Rani and Govindarajan. Veerabathra Gounder died on 26.6.1937, leaving behind him, his second wife, son and daughter. The son Subbaiyan died on 30.5.1940 leaving behind his widow Nanjakkal Step mother Samakkal and Step sister Nanjakkal. As the suit property is agricultural land, on the date of death of the original owner Veerabathra Gounder in 1937 and his son in 1940, either of the female heirs i.e., second wife/Samakkal, daughter-in-law/Nanjakkal and daughter/Nanjakkal got no preexisting right over the same. However, dispute arose between Veerabathra Gounder's second wife Samakkal and daughter-in-law Nanjakkal regarding the enjoyment of the same and both of them entered into a settlement in the presence of panchayathars and the same was reduced into writing by way of Muchalika under Ex.A6 agreement dated 5.8.1953. As per the terms of the same, the second wife Samakkal and the daughter-in-law Nanjakkal were allotted 'A' and 'B' schedule respectively for enjoyment through personal cultivation without any right of alienation or without any right to create any encumbrance. In pursuance of the same, the parties had been in possession and enjoyment of the specific extent allotted to them.

3.The second wife Samakkal died on 11.2.1957, leaving behind her only daughter Nanjakkal, who died on 6.3.1979 leaving behind the plaintiffs. The suit came to be filed by the LRs of daughter Nanjakkal alleging an attempt on the part of the first defendant daughter-in-law Nanjakkal to convey the property to the second defendant and the suit reliefs claimed are suit for declaration that the plaintiffs are absolutely entitled to the property, after the life time of the first defendant and for consequential relief of permanent injunction restraining the first defendant from alienating the suit property or otherwise encumbering it in any manner. It is the case of the plaintiffs that the first defendant has no pre-existing right de hors the family arrangement and she is conferred the right to enjoy the property only under Ex.A6 family arrangement and the right so conferred on her is restricted one without any right for alienation or encumbrance and on her death the property shall revert back to the legal heirs/grand children.

4.The suit relief was seriously resisted by the defendants by denying any panchayat and execution of any document in the form of settlement between the parties on 5.8.1953. According to the first defendant, after the death of Veerabathra Gounder, her husband Subbayan became the owner of entire extent and on his death, she became the absolute owner of the same and she has every right to deal with the same as absolute owner.

5.The trial court on the basis of the evidence of Erianna Gounder, who is the husband of daughter Nanjakkal, found Ex.A6 agreement to be genuine and voluntary in nature and decided the right of the parties ie., both the second wife and daughter-in-law, in the light of Sections 14(1) and 14(2) of the Hindu Succession Act and arrived at the conclusion that the first defendant Nanjakkal had no pre-existing right over the suit property and the right acquired by her under Ex.A6 was not in lieu of her maintenance right or arrears of maintenance and the same does not hence fall under section 14(1)

so as to enlarge her restricted right into full right, but it falls under section 14(2) and the right acquired by her is restricted one and after her death, the plaintiffs alone, who are the legal heirs of Veerabathra Gounder, are entitled to the same and accordingly the trial Court decided the suit in favour of the plaintiffs.

6. Aggrieved against the same, the defendants 1 and 2 filed AS.52/1994. Whereas, the lower appellate court has without interfering with the findings of the trial court on factual aspects, disagreed with the findings of the trial court regarding non applicability of the Hindu Women Rights to Property Act XXX of 1937 in respect of the suit property which is agricultural in nature and scope of applicability of section 14(1) or 14(2) of the Hindu Succession Act. The lower appellate court was of the view that the first defendant has been enjoying the suit property right from 5.8.1953 notwithstanding the restriction contained in the document and such preexisting right acquired under the document under Section 14(1) of the Act got transformed into an absolute estate and the first defendant is thus entitled to deal with the same in any manner as its absolute owner and the plaintiffs are dis-entitled to get any relief and accordingly allowed the appeal thereby reversing the judgment and decree of the trial court. Hence, this second appeal by the plaintiffs before this court.

7. The second appeal is admitted on the following substantial questions of law:

"1. Whether the first respondent had any prior right or interest in the suit properties capable of enlargement under Section 14(1) of the Hindu Succession Act?

2. Whether Section 14(1) of the Hindu Succession Act would operate when the first respondent has voluntarily agreed to restrict her right if any in the suit properties?

3. Whether the family arrangement under which the first respondent has voluntarily agreed to restrict her rights will be upset by Section 14(1) of the Hindu Succession Act which applies only to cases where rights in property are in fact granted to a female Hindu under a document device, or other arrangement?"

8. Heard the rival submissions made on both sides and perused the records.

9. The courts below have concurrently found that the suit property and other property belonged to Veerabathra Gounder and after his death in 1937 and after the death of his only son in 1940, the surviving female heirs i.e., the second wife and the daughter-in-law through deceased son through first wife of Veerabathra Gounder came to an understanding regarding the manner of enjoyment of the property in question and the same was reduced into writing under Ex.A6 family arrangement dated 5.8.1953 under which the parties were allotted specific extent for their enjoyment without any right of alienation or encumbrance. The core issue involved herein is as to whether the right acquired under Ex.A6 falls under section 14(1) or Section 14(2) of the Hindu Succession Act. It cannot be disputed that if it falls under section 14(1), the limited right of the first defendant got

blossomed into full and absolute right and if it falls under Section 14(2) it remains to be restricted one and will revert back to the plaintiffs/legal heirs after the death of the first defendant. While the trial Court found that the right acquired by the female heirs without any pre-existing right falls under Section 14(2) and is thus restricted in nature and such finding was reversed by the lower appellate Court, according to the lower appellate Court the female heirs had pre-existing right and the same under Section 14(1) enlarged into absolute one.

10. For better appreciation of the issue involved herein, it is but necessary to extract Sections 14(1) and 14(2) of Hindu Succession Act, which read as follows :

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.

11. The learned counsel for the contesting respondents have in support of the findings rendered by the lower appellate court, contended that the daughter-in-law acquired right over the property under Act 1937 and Ex.A6 family arrangement entered into between the parties is only in re-cognition of her pre-existing right and as she possessed of the property within the terms of explanation to section 14(1), at the time the Act came into force, she became full owner thereof. The learned counsel for the contesting respondents in support of such contention, would place greater reliance on the following decisions of the Hon'ble Apex Court and our High court reported in: (i) (1977) 3 SCR p.261 (V.Tulsamma and others v. V.Sesha Reddi (Dead) by LRs.) (ii) AIR 1970 SC 1963 (Badri Pershad v. Smt.Kanso Devi) (iii) (1996) 8 SCC p.525 (C.Masilamani Mudaliar and others v. Idol of Sri Swaminathaswami Thirukoil and others), (iv) AIR 1996 SC 928 (Smt.Naresh Kumari (dead) by LRs. v. Shakshi Lal (dead) by Lrs.) (v) (1974) 2 MLJ 275 (Hussain Uduman v. Venkatachala Mudaliar and others); and (vi) CDJ 2000 MHC 227 (Kuthalakannu Ammal and another v. Lakshmana Nadar and others).

12. It may be true that the argument so advanced on the side of the contesting respondents regarding the full ownership of the first defendant is based on the principles laid down in the decisions of the Apex Court and our High Court cited above, wherein, the Apex Court and our High Court have categorically held that "when a female

Hindu is put in possession of any property, pursuant to her right to maintenance, her limited right or interest in the property thus far, by virtue of Section 14(1) blossoms into full ownership and the proviso to sub section (1) makes a widow, who had a limited interest, to be full owner regardless whether acquisition was prior to or after the coming into force of 1956 Act and the language in sub section (1) of Section 14 makes it clear that all what has to be shown by a female Hindu is that she had a right in the property in question and she is possessed of that property and such possession may be physical, constructive or formal in a legal sense on the date of the coming into operation of the Act". It is observed so by the Supreme Court in the judgment reported in AIR 1996 SC 928 (Naresh Kumari (dead) by LRs v. Shakshi Lal (dead) by LRs) which was referred to in para 12 of the judgment of our High court reported in CDJ 2000 MHC 227 (Kuthalakannu Ammal and another v. Lakshmana Nadar and others).

13. The Hon'ble Supreme Court has in Nareshkumari case has further found that sub-section (2) excludes a woman's right from the field of sub-section (1), under this, where property is acquired by a female Hindu by way of gift or under a Will or any other instrument or under an order or decree of a civil court or under an award and where there is a term in such gift, will or instrument including the order or decree or an award prescribing a restricted enjoyment in such property, it will not mature into any full right in such property. But where there is no such restriction in such property received by the transferee or beneficiary under such document or decree, it would not fall into the field of sub-section (2) but would fall under sub-section (1). The same principle is also laid down by the Hon'ble Supreme Court in the decision reported in (1996) 8 SCC 525 - C.Masilamani Mudaliar and others V. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and others.

14. This Court has no quarrel with the legal principles laid down in the decisions cited above regarding distinction between Section 14 (1) and sub-section 2 and Section 14(1) applies in case where Hindu female acquires possession of property in recognition of her preexisting right whereas Section 14(2) applied to case where she gets the right for the first time under the instrument or order and such right is restricted one.

15. That being the legal position, before going into the issue to the applicability of Section 14(1) or 14(2), the first aspect to be considered is as to whether the first defendant widow acquired any right in the property under Hindu Women Rights to Property Act, 1937 which came into force on 14.04.1937.

16. It is true that Hindu Women Right to Property Act 1937 confers right to property on Hindu women, but Full Bench of our High Court while testing the validity of such Act in Umayal Achi Case 1945 (1) MLJ 108, held therein that the Act would not apply to agricultural lands. The issue relating to non applicability of Act 26/1947 to agricultural land was resolved only by Amendment Act 26/1947 and by virtue of such amendment Act, the Act 1937 was made applicable to agricultural lands with effect from 26.11.1946 i.e, the effective date of Amendment Act. As rightly pointed out by the learned counsel for the appellant, as Veerabadra Gounder died in 1937 and his only

son died in 1940 much prior to Amendment Act 26/1947, neither the 2nd wife Samakkal nor daughter-in-law/Nanjakkal acquired any right of succession over the property by virtue of Act 1937. In that event, the right acquired by the first defendant is for the first time under Ex.A6 settlement and such right acquired by her is restricted one only to enjoy the property without any right of alienation and encumbrance. As on the date of Ex.A6, the widow had no pre-existing right of maintenance either under Hindu Adoptions and Maintenance Act, 1956 or otherwise. The right acquired under Ex.A6 is hence not in recognition of any pre-existing right and the right vested upon the parties is also such in nature only for the convenient enjoyment of the property by parties with restriction and limitation against alienation and encumbrance. If that is the actual position and nature of the possession of the property by the party concerned, by applying the principles laid down by the Hon'ble Supreme Court and our High Court in the decisions cited on the respondent side above referred to, the correct provision of law attracted to the present case is Section 14(2) and not Section 14(1).

17.The learned counsel for the appellant has in support of his claim regarding non applicability of Section 14(1) and applicability of Section 14(2) to the facts of the present case cited the following judgments

- 1.(2006) 8 SCC 91 - Sharad Subramanyan V. Soumi Mazumdar and others
- 2.(2010) 9 SCC 602 : AIR 2011 SC 179 - Gaddam Ramakrishnareddy and others V. Gaddam Ramireddy and another and
- 3.AIR 2011 Kerala 120 - Lalitha Karthikeyan and others V. G.S.Leela and others.

18.In the first judgment that the wife was given life estate under the will executed by her husband and she was enjoying the property as a whole. The Apex Court found that there was no material on record to show that when her husband executed the will his wife was entitled to enforce her right of maintenance either under the provisions of Hindu Adoptions and Maintenance Act or otherwise. The Apex Court agreed with the findings of the trial court that the right conferred on her was only limited right i.e, life interest in the suit property and she could not create a long term lease as she has purportedly done.

19.In the second case also, the life estate was created by the husband in favour of his wife and she was already managing the properties in question. Both the Courts below found that the wife was not having any preexisting maintenance. Hence, the Hon'ble Supreme Court is of the view that the wife's right in the properties came to be governed by sub-section (2) of Section 14 of the Hindu Succession Act, 1956 and her right does not blossom into an absolute estate as contemplated under sub-section(1). The same view was also expressed by the Kerala High Court in the third judgment cited above.

20.Thus, if the legal principles laid down in the judgments above cited are applied to the facts of the present case, the same would undoubtedly go to show that here is the case wherein the right acquired by the first defendant for the first time under Ex.A6

settlement and is governed by Section 14(2) and the same does not enlarge into full right by virtue of 1956 Act, as such the first defendant cannot claim any right to exclusively deal with the property as absolute owner thereof. When the trial court has rightly held so, the lower appellate Court on misconception of law and facts erroneously held that the restricted right possessed of by the first defendant over the suit properties falls under Section 14(1) and blossomed into full right under 1956 Act and the same is legally erroneous and perverse and warrants interference and the substantial questions of law are accordingly answered in favour of the plaintiffs.

21. In the result, the Second Appeal is allowed by setting aside the judgment and decree of the lower appellate Court and by restoring the judgment and decree of the trial Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rk/tsh

To

1. The I Additional District Judge-cum-Chief
Judicial Magistrate, Coimbatore.

2. The Third Additional District Munsif Court,
Coimbatore.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to MR.T.K.S. Gandhi, Advocate SR.31588

+ 1 cc to Mr.S. Kasirajan, Advocate SR.31591

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