

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 05.10.2018

JUDGMENT PRONOUNCED ON : 26.10.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1582 of 2011
and
M.P.No.01 of 2011

1.Lakshmi

2.Natarajan

3.Ravichandran

4.Kirubanandam

5.Sarasu

6.Radha ..Appellants/Defendants 2 to 7

Vs.

1.K.Selvaraj

2.K.Saravana Udayar ..Respondents /Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.10.2011 made in AS.No.48 of 2010 on the file of the Principal Subordinate Court, Thiruvannamalai, confirming the Judgment and decree of the Court of Principal District Munsif, Thiruvannamalai made in O.S.No.915 of 1996 dated 29.09.2010.

For Appellants : Mr.T.V.Ramanujam,
Senior Counsel for
Mr.T.V.Krishnamachari

For Respondent : No appearance

J U D G M E N T

The defendants 2 to 7 in O.S.No.915 of 1996 on the file of the Principal District Munsif Court, Thiruvannamalai are the appellants. The said suit was filed by the respondents/plaintiffs herein seeking declaration of their title

to the suit property, for delivery of possession and for mesne profits from the date of plaint till the date of delivery of possession and for costs of this suit.

2. According to the plaintiffs, the suit property originally belong to the joint family of one Arumuga Udayar. The said Arumuga Udayar had two brothers namely Anaikutti Udayar and Abbu Vedyappa Udayar. It is claimed that the said Arumuga Udayar had two wives. He had married one Amirthammal as his second wife, after his first wife had died. Later on, the second wife Amirthammal died on 26.11.1993. The said Arumuga Udayar had no issues and Abbu Vedyappa Udayar had only daughters. The plaintiffs are the grand sons of Anaikutti Udayar through his only son Kannan Udayar.

3. It is the further case of the plaintiffs that Arumuga Udayar, before his marriage with Amirthammal, had executed a settlement deed dated 05.08.1922 settling the suit properties in favour of Amirthammal granting her a life estate and on her death, the suit properties were to devolve among his son through the first wife and the male issues of Arumuga Udayar and Amirthammal, if any. The plaintiffs would contend that the said settlement deed of the year 1922, being a gift of ancestral property by a coparcener, will not confer any title of Amirthammal.

4. It is claimed that Arumuga Udayar died sometime before 1935. His only son through his first wife predeceased him. After his death Amirthammal, the widow and her husband's brothers namely Anaikutty Udayar and Abbu Vedyappa Udayar entered into a family partition on 24.08.1935. Under the said partition, a life estate was reserved for Amirthammal and the properties were to revert to the brothers and their legal representatives after the death of Amirthammal. It is the contention of the plaintiffs that since Arumuga Udayar died prior to the advent of Hindu Women's Right to Property Act, 1937, Amirthammal had no right over the property as on the date of the said partition deed dated 24.08.1935. Therefore, according to the plaintiffs, Amirthammal had no right over the property. Claiming that the property continued in possession of the brothers of Arumuga Udayar, the plaintiffs would seek a declaration of their title to the suit properties.

5. The plaintiffs would further claim that they had filed a suit in O.S.No.1215 of 1980 on the file of the District Munsif Court, Thiruvannamalai seeking a declaration of their title over the property. It is claimed that the said suit was decreed in part and the appeal, therefrom was allowed and the matter was remanded to the District Munsif Court. After remand, the suit came to be dismissed by the learned District Munsif and the

plaintiffs' appeal in A.S.No.30 of 1992 was allowed and the plaint was directed to be returned for presentation in the proper Court. Subsequent to the disposal of the appeal, the life estate holder Amirthammal had died and therefore, according to the plaintiffs they had become owners of the property as Legal heirs of Anaikutti Udayar and Abbu VEDIYAPPA Udayar.

6.The suit was resisted by the sole defendant contending that the claim of the plaintiffs that the suit properties are joint family properties of Arumuga Udayar is incorrect. The defendant would claim that the properties were separate properties of Arumuga Udayar since Arumuga Udayar had become a divided brother long before the settlement deeds of the year 1922 and 1935. The said Arumuga Udayar had a son by name Kuttiyappa Udayar who died in or about 1934. The geneology claimed by the plaintiffs was admitted.

7. The defendant would contend that the settlement deed executed by Arumuga Udayar on 05.08.1922 is valid. It was also claimed that the partition deed dated 24.08.1935 is also true and valid. The claim of the plaintiffs that the said Amirthammal, widow of Arumuga Udayar did not have any right over the property as on 24.08.1935 was denied. The defendant would further contend that on the date of coming into force of the Hindu Succession Act, 1956, the limited right that vested in Amirthammal enlarged into an absolute estate and the said Amirthammal had executed a settlement deed dated 25.03.1980 in favour of the defendant. Therefore, according to the defendant, he is the absolute owner of the property in view of the settlement deed dated 25.03.1980. It was also contended that the plaintiffs will have to establish their title since the earlier suit filed by the plaintiffs in O.S.No.1215 of 1980 did not reach finality. It is also the contention of the defendant that whatever limited right that Amirthammal had in the suit property as the widow of Arumuga Udayar had enlarged into an absolute estate on the enactment of the Hindu Succession Act, 1956. On the above pleadings, the defendant sought for dismissal of the suit.

8.At trial, the first plaintiff examined himself as PW1 and Ex.A1 to A6 were marked. The first defendant examined himself as DW1 and Ex.B1 to B8 were marked on the side of the defendant. Pending suit, the sole defendant died and defendants 2 to 7 were impleaded as his legal representatives.

9.The learned District Munsif who tried the suit on an appreciation of the evidence on record came to the conclusion that the settlement deed dated 05.08.1922 did not confer any right on Amirthammal. The learned District Munsif also concluded that the partition deed dated 24.08.1935 restricts the

right of Amirthammal only till her lifetime and therefore, the limited right for Amirthammal did not blossom into an absolute interest. The learned District Munsif concluded that on the facts and circumstances, it is only section 14 (2) that would apply and not 14 (1) of the Hindu Succession Act. On such finding, the learned District Munsif concluded that the Ex.B1 settlement deed executed by Amirthammal in favour of the defendant would not confer any title on him. On the above conclusions, the learned District Munsif found that the plaintiffs are entitled to a decree as prayed for in the suit.

10. Aggrieved, the defendants 2 to 7 filed an appeal in A.S.No.48 of 2010 before the Principal Sub Court, Thiruvannamalai. The learned appellate Judge who heard the appeal framed the relevant issues for consideration and concluded that the settlement deed of the year 1922 will not confer any right on Amirthammal. The learned Appellate Judge also concurred that the conclusion of the trial Court that the partition deed dated 24.08.1935 which was marked as Ex.A.3 prescribes a limited estate in favour of Amirthammal and she having been a party to it, she cannot contend that the said limited right would blossom into an absolute right in view of section 14 (1) of Hindu Succession Act, 1956. On the said conclusion, the learned Subordinate Judge dismissed the appeal.

11. Aggrieved, the defendants have come forward in the above second appeal. At the time of admission, the following questions of law were framed by this Court for determination in the above second appeal:

"1. Whether the Courts below have properly considered the material evidence in this case, namely Ex.A.2 = Ex.B.1 and Ex.A.3, while applying the provisions of Section 14 (1) and 14 (2) of Hindu Succession Act, 1956?

2. Whether the Courts below have properly appreciated the scope and effect of Section 14 (1) of Hindu Succession Act while considering the material evidence in this case, namely Ex.A.1=Ex.B.1 and Ex.A.3?

3. Whether the Courts below have properly appreciated the bar contained in Order II Rule 2 CPC to the facts and circumstances of the case when admittedly the earlier suit O.S.No.1215 of 1980 has been dismissed in Appeal and when the plaint was returned to be represented before the proper Courts and it was not represented?

4. Whether the Courts below have properly considered the principles of constructive resjudicata and principles of estoppel to the facts and circumstances of the case?"

12.Heard Mr.T.V.Ramanujam, learned Senior Counsel appearing for the appellants. The respondents though served have not chosen to appear either in person or through their Counsel.

13.Mr.T.V.Ramanujam, learned Senior Counsel for the appellants would fairly submit that the questions of law in No.3 and 4 framed at the time of admission of the above appeal may not strictly arise in as much as there was no final determination of the rights of the parties in the earlier suit namely O.S.No.1215 of 1980 in order to enable him to argue the pleas of a bar under Order II Rule 2 or constructive resjudicata. It is also seen from the records that the said Amirthammal died on 26.11.1993, that is, after the disposal of the appeal in A.S.No.30 of 1992 by the first appellate Court. The death of Amirthammal would constitute a fresh cause of action for the reversioners to file a suit for recovery of the property in the hands of the defendants who claim under the life estate holder. In view of the settled legal position that the right of the reversioners accrues only after the death of the life estate holder, the disposal of the earlier suit named in O.S.No.1215 of 1980 cannot either bar the present suit or the findings therein would operate as a resjudicata in the subsequent suit.

14.This leaves us only with the questions of law in No.1 and 2 which basically relate to the validity of the settlement deeds dated 05.08.1922, executed by Arumuga Udayar in favour of the Amirthammal in contemplation of a marriage (Ex.A.2) and the partition deed dated 24.08.1935 (Ex.A.3) executed by the brothers of Arumuga Udayar namely Anaikutti Udayar and Abbu VEDIYAPPA Udayar and his widow, Amirthammal.

15.Mr.T.V.Ramanujam, learned Senior Counsel appearing for the appellants would contend that section 14 (1) of the Hindu Succession Act, 1956 would validate the settlement deed dated 05.08.1922 namely Ex.A.2. He would further contend that even though Amirthammal had reserved herself the life estate under the partition deed dated 24.08.1935, since she was in possession of the property on the date of coming into force of the Hindu Succession Act, 1956, section 14 (1) would apply and her limited right would blossom into an absolute estate. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the appellants would further contend that even the Shastric Hindu Law allowed a coparcener to execute a settlement deed in respect of the certain properties belonging to the family in favour of

his would be wife in anticipation of a marriage. Therefore, according to Mr.T.V.Ramanujam, the settlement deed dated 05.08.1922 executed by Arumuga Udayar in favour of Amirthammal in contemplation of a marriage would be valid and the partition deed dated 24.08.1935 is only a confirmation of the earlier settlement deed dated 05.08.1922.

16. Drawing my attention to the contents of both the documents, Mr.T.V.Ramanujam, learned senior counsel would submit that when the documents confer a limited right on Amirthammal, the fact that she was in possession of the properties till the year 1993, even after the coming into force of the Hindu Succession Act, 1956, her limited right would enlarge into an absolute estate by operation of Section 14 (1) of the Act. He would further submit that Section 14 (2) of the Hindu Succession Act would not apply to the case on hand, in as much as the document in question namely the partition deed dated 24.08.1935 (Ex.A.3) came to be executed at a time when a Hindu Widow, had only a limited right over her husband's property and it should be taken as a document which was executed as per the then existing law. He would also rely upon the Judgment of the Honourable Supreme Court in "Vaddeboyina Tulasimma & Others Vs. Vaddeboyina Sesha Reddi" reported in AIR 1977 Supreme Court 1944.

17. Mr.T.V.Ramanujam, learned senior counsel would also invite my attention to the Judgment of the Honourable Supreme Court in "Raghuvir Singh and others Vs. Gulab Singh and others" reported in 1998 (II) CTC 253 to contend that the right of a Hindu Widow to be maintained out of the property of her deceased husband was a spiritual and moral right which flows from the spiritual and temporal relationship of the husband and wife. He would further submit that it is the said right which got statutory recognition under Hindu Women's Right to Property Act, 1937. Therefore, according to the learned senior Counsel, the Hindu Women's Right to Property Act, 1937 is not a source of the right to be maintained but it is only a recognition of a Pre-existing right. He would also point out that the Honourable Supreme Court in the said decision after referring extensively to Tulasimma's case referred to supra had concluded that section 14 (1) of the said Act should be interpreted liberally to advance the object of the enactment namely enlargement of limited interest possessed by a Hindu widow.

18. Mr.T.V.Ramanujam, learned senior counsel would also draw my attention to the Judgment of the Honourable Supreme Court in "Smt. Beni Bai Vs. Raghubir Prasad" reported in 1999 (II) CTC 64, wherein the Honourable Supreme Court reiterated the law to the effect that the right of the wife to be maintained out of her husband estate is a right conferred on her in the Shastric Hindu

Law and the Statutory enactments namely Hindu Women's Right to Property Act, 1937 and Hindu Succession Act, 1956, would only be taken as enactments recognizing the said pre-existing right. He would also rely upon the Judgment of the Honourable Supreme court in "V.Muthusami (Dead) By L.R.s Vs.Angammal and Others" reported in (2002) 3 Supreme Court Cases 316 which also reiterates the same position of law.

19.Recently in "Jupudy Pardha Sarathy Vs.Pentapati Rama Krishna and Others" reported in (2016) 2 Supreme Court Cases 56, the Honourable Supreme Court again pointed out that the property given to a Hindu woman in lieu of her pre-existing right of maintenance, even if by will creating only life interest would get transformed into an absolute estate by operation of Section 14 (1) of Hindu Succession Act, 1956. While stating the law as above, the Honourable Supreme Court observed as follows:

'14.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 to a right to be maintained out of such properties. It is equally well settled that the claim of the Hindu widow to be maintained is not a mere formality which is to be exercised as a matter of concession, grace or gratis but is a valuable, spiritual and moral right. From the judicial pronouncements,

2 V.Tulasamma V.Sesha Reddy, (1977) 3 SCC 99 : AIR 1977 SC 1944

8 (2006) 8 SCC 75

9 (2006) 8 SCC 91

10 (2013) 4 SCC 636 : (2013) 2 SCC (Civ) 683

11 (2008) 12 SCC 392

the right of a widow to be maintained although does not create a charge on the property of her husband but certainly the widow can enforce her right by moving the Court and for passing a decree for maintenance by creating a charge.

15.The Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 was enacted giving statutory recognition of such right and, therefore, there can be no doubt that the right to maintainance is a pre-existing right."

The Honourable Supreme Court also extensively referred to the Judgment in Tulasimma's Case cited supra in support of its conclusions.

20.We have to examine the factual position in this appeal in the light of the law laid down by the Honourable Supreme Court in the above Judgments. Section 14 of the Hindu Succession Act reads 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 the 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"

21.Section 14 (1) provides that a property possessed by a female Hindu at the time of commencement of Hindu Succession Act, 1956 shall be held by her as a full owner and not as a limited owner. The date of the acquisition of property is immaterial as the section specifically says "Whether acquired before or after the commencement of this Act".

The Explanation of Section 14 (1) gives a special definition to the word property. It is an inclusive definition which takes within its ambit, a movable or 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 the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever. [emphasis supplied]

The above inclusive definition is wide enough to take within its ambit, a property received by a female hindu as a gift from any person before her marriage.

22.Both the Courts below have concluded that the settlement deed dated 05.08.1922 (Ex.A.2) would not confer any right on the said Amirthammal in as much as she was not the wife of the Arumuga Udayar on the date of the execution of the document and therefore, she has no pre-existing right on the properties of

the Arumuga Udayar. Both the Courts below, in my considered opinion, had overlooked the explanation to section 14 (1) of the Hindu Succession Act which very clearly includes the property received by a female Hindu by way of gift from any person before her marriage. Therefore, the gift dated 05.08.1922 would undoubtedly confer a right on Amirthammal. May be, it cannot be said that the said gift was in recognition of the pre-existing right of maintenance. In order to apply Section 14 (1), de hors, section 14 (2), if the partition deed dated 24.08.1935 is not in existence, it could be safely concluded that the settlement deed dated 05.08.1922 having been executed in anticipation of a marriage, is not in recognition of a pre-existing right. Therefore, the right conferred on Amirthammal under the said document would not blossom into an absolute right after the enactment of the Hindu Succession Act, 1956. But in the case on hand, we have a further document namely the partition deed dated 24.08.1935 wherein, Amirthammal had consciously entered into a partition agreement with her brothers in law (husband's brothers) limiting her right to a life interest and providing for reversion of the property to Arumuga Udayar's brothers or their Legal Heirs. Admittedly, both the documents namely (Ex.A.2 and Ex.A.3) came into existence prior to the advent of the Hindu Women's Right to property Act, 1937.

23.Both the Courts below have concluded that the document in the year 1935 namely, the partition deed cannot be treated as a document executed in recognition of a pre-existing right of any women as much as it had emanated prior to the advent of Hindu Women's Right to Property Act, 1937. The Honourable Supreme Court had pointed out that the right of the wife to be maintained out of her husband's estate is a Shastric Right which was statutorily recognized by the Hindu Women's Right to Property Act, 1937 and Hindu married women's right to separate maintenance and Residence Act, 1946.

24.From the discussions as found in the Judgment of the Courts below, I find that both the Courts below had only gone on the footing that since Ex.A.3, Partition deed dated 24.08.1935 came into existence prior to the Hindu Women's Right to Property Act, 1937, it cannot be taken to be a document executed in recognition of a pre-existing right of maintenance. I have already referred to the Judgment of the Honourable Supreme Court in "Vaddeboyina Tulasimma & Others Vs.Vaddeboyina Sesha Reddi" reported in AIR 1977 Supreme Court 1944, wherein the Honourable Supreme Court had pointed out that the right to maintenance of a Hindu wife over the properties of her husband was not created by any statute. The said right is a right recognized even under the Shastric Hindu law.

25. In view of the above pronouncement of the Honourable Supreme Court, I find that the partition deed dated 24.08.1935 is a document executed in recognition of the right of Amirthammal for maintenance over her husband's properties. In so far as the settlement deed dated 05.08.1922 (Ex.A.2) is concerned, the Courts below have concluded that the said document is invalid in as much as Arumaga Udayar who was a coparcener in a joint family was not entitled to a settlement deed. A right of Hindu Coparcener to execute a settlement deed, in anticipation of a marriage, is a larger question and the same need not be gone into as far as the present case is concerned, since, it is the claim of the deceased, first defendant that the properties were separate properties of Arumaga Udayar and there was a partition between him and his brothers. I do not find in discussion regarding the said plea by the Courts below. However, a reading of the settlement deed dated 05.08.1922 would show that what has been settled is not an undivided share, but a specific property within certain boundaries. The boundary description in the schedule would show that the properties on the west and the south of the properties settled, belonged to the brothers of Arumaga Udayar namely Anaikutty Udayar and Abbu VEDIYAPPA Udayar. This description, by itself, would prove that there was in fact a partition between the brothers prior to the execution of the settlement deed.

26. Even otherwise, the document executed in the year 1935 between the brothers of the Arumaga Udayar and the widow, Amirthammal would confer a limited right on Amirthammal over the suit properties. I have already concluded that the said document namely partition deed dated 24.08.1935 marked as Ex.A.3 is a document executed in recognition of the pre-existing right of Amirthammal. Therefore, Section 14 (2) of the Act would not apply and it is only section 14(1) that would apply to the case on hand. If 14 (1) is to apply, the property would become the absolute property of Amirthammal on the enactment of the Hindu Succession Act, 1956. The reversionary right contemplated under the said document would fade into insignificance. Once the property becomes the absolute property of Amirthammal, she is entitled to deal with it as her own property and therefore, the settlement deed executed by her on 26.03.1980 would be a valid document, more particularly, when the plaintiffs have not denied its execution.

27.I am, therefore, of the considered opinion that both the questions of law will have to be answered in favour of the appellants. It is the misconception on the part of the Courts below, regarding the existence of the right of the wife to be maintained out of her husband's property prior to Hindu Women's Right to Property Act, 1937, that has led to the erroneous finding regarding the scope of the right of Amirthammal over the suit properties.

28.Therefore, I have no hesitation in concluding that the Second Appeal has to be allowed, setting aside the Judgments of the Courts below. In fine, the second appeal is allowed, the suit in Judgments and decrees of the Courts below are set aside. The suit in O.S.No.915 of 1996 will stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Tiruvannamalai.

2.The Principal District Munsif,
Tiruvannamalai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+5cc to Mr.T.V.Kishnamachari, Advocate Sr.73783

S.A.No.1582 of 2011

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srg 26/11/2018