

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.10.2018	Delivered on: 21.03.2019
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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.1791 of 2002

Kamalammal ... Appellant/ Defendant
Vs.

Mani ...Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned III Additional District Judge, Pondicherry in A.S.No.33 of 1984 and dated 16.11.2001 in reversing the judgment and decree of the learned Additional District Munsif, Pondicherry in O.S.No.33 of 1976 dated 28.02.1978 and thereby decreeing the suit for partition.

For Appellant : Mr.V.Raghavachari

For Respondent : set exparte

JUDGMENT

This Second Appeal has been filed by the defendant against the judgment and decree passed by the III Additional District Judge, Pondicherry, in A.S.No.33 of 1984 dated 16.11.2001 reversing the judgment and decree passed by the Additional District Munsif, Pondicherry in O.S.No.33 of 1976 dated 28.02.1978.

2. The respondent herein had filed a suit in O.S.No.33 of 1976 on the file of the Additional District Munsif, Pondicherry to declare that he is the absolute owner of the suit property and for recovery of possession of the portion of the suit property. The learned Additional District Munsif, Pondicherry, by the judgment and decree dated 28.02.1978 had dismissed the said suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.33 of 1984 on the file of the I Additional District Judge, Pondicherry. The learned I Additional District Judge, Pondicherry, by the judgment dated 03.04.1989 had allowed the said appeal and decreed the suit, as against which, the second appeal in S.A.No.753 of 1989 was filed before this Court.

3. In the said second appeal, this Court has passed an order remanding the appeal to the first Appellate Court with liberty to the parties to amend the pleadings and adduce additional evidence in the light of Section 14 of the Hindu Succession Act. It appears that after remand the matter was transferred to the III Additional District Judge, Pondicherry. The plaintiff got the plaint amended and the defendant filed additional written statement. Thereupon additional issues were framed and additional evidence was also adduced. Thereafter, the learned III Additional District Judge, Pondicherry by the judgment dated 16.11.2001 had allowed the appeal in A.S.No.33 of 1984 and set aside the judgment and decree passed by the trial Court and the suit in O.S.No.33 of 1976 was partly decreed by holding that the plaintiff and the defendant are entitled to half share each in the suit property and it was further held that it is open for either of the parties to file a suit for partition with appropriate consequential prayers. Feeling aggrieved, the defendant had filed the present Second Appeal. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:-

The plaintiff is the absolute owner of the suit property by virtue of a sale deed dated 09.06.1973, executed by one Thayarammal. The defendant is residing in a portion of the suit property originally under the plaintiff's vendor as a lessee for a monthly rent of Rs.5/-. Subsequently, before entering into the sale transaction the plaintiff's wife got a deed of lease in her favour for the entire property. Based on it, the plaintiff's wife caused a notice dated 28.09.1972 to the defendant's husband Govindasamy Naicker to vacate the premises and also to pay arrears of rent but of no avail. Even after the said sale in favour of the plaintiff repeated demands were made for vacant possession. The defendant claiming right over the suit property under a sale deed dated 11.08.1972, filed a suit in O.S.No.314 of 1973 for eviction of the plaintiff. The said suit was dismissed on 04.10.1975. On the ground of unchastity and desertion, the vendor of the defendant namely, Rukmani had no right, title or interest to convey the property as heir of late Ramanujam. Thus the plaintiff is the absolute owner of the property and the defendant is merely in the possession of an illegal trespasser. Hence, the plaintiff was constrained to file the above suit for declaration and for recovery of possession.

5. The averments made in the written statement filed by the defendant are in brief as follows:-

The Court fee paid by the plaintiff for declaration and possession is not correct. The plaintiff has not produced any title deed to show, how he is the owner of the property or his vendor has got title over the suit property. The alleged sale deed dated 09.06.1973 executed by one Thayarammal in favour of the plaintiff, even if it is true is not valid. Because, the plaintiff's vendor has no legal title or interest over the suit property. The suit property is admeasuring 60 feet north-south and 30 feet east-west and it was originally belonged to one Angammal, who was the owner of the said property by virtue of the sale deed dated 24.02.1910. The said Angammal expired leaving behind her three sons namely, Ramanujam, Venkattarajalu, and Govindarajalu. The said Ramanujam expired leaving behind his daughter Rukmani as his legal heir and the said Venkattarajalu and Govindarajalu also expired leaving behind their wives Rankanayagi and Navaneetham respectively, as their legal heirs. The said Rukmani who is the daughter of Ramanujam had sold 1/3rd share of the suit property in favour of the defendant on the western side of the suit property as per the registered sale deed dated 11.08.1972 and the defendant has been in possession and enjoyment of the same. The vendor of the plaintiff is only the mother of the defendant's vendor. Therefore, she has no right to dispose of 1/3rd share of the suit property in favour of the plaintiff. After the defendant has purchased 1/3rd share and since the plaintiff's wife namely, Dhanammal has occupied a portion of the property purchased by the defendant, the defendant has filed a suit against the wife of the plaintiff and other persons in O.S.No.314 of 1973 on the file of the II Additional District Munsif, Pondicherry for recovery of possession and the same is still pending. The allegation that the defendant was a tenant under the plaintiff's vendor Thayarammal is false. Therefore, the defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned Additional District Munsif, Pondicherry had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and examined one more witness as PW2. He has marked Exs.A1 to Ex.A4 as exhibits. On the side of the defendant, the defendant examined herself as DW1 and examined one more witness as DW2. She has marked Exs.B1 to Ex.B7 as exhibits.

7. The learned Additional District Munsif, Pondicherry after considering the materials placed before him found that the vendor of the plaintiff namely, Thayarammal (PW2) had only the right of enjoyment of the suit property and she had no right to sell the suit property. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed an Appeal in A.S.No.33 of 1984 on the file of the I Additional District Judge, Pondicherry. The learned I Additional District Judge, Pondicherry by the judgment dated 03.04.1989 had allowed the said appeal and decreed the suit, as against which the second appeal in S.A.No.753 of 1989 was filed. This Court in the said second appeal passed an order remanding the appeal to the first Appellate Court with liberty to the parties to amend the pleadings and to adduce additional evidence in the light of Section 14 of the Hindu Succession Act. After remand, it appears that the matter was transferred to the III Additional District Judge, Pondicherry, the plaintiff had amended the plaint and the defendant had filed additional written statement.

8. The amendment made in the plaint is in brief as follows:-

By virtue of Section 14 of the Hindu Succession Act, which came into force in the year 1963 in the Union Territory of Pondicherry, the limited estate of Thayarammal enlarged into absolute right. Hence she is entitled to sell the suit property. The plaintiff had purchased the property from Thayarammal and hence he is absolute owner of the suit property. The defendant had already vacated the suit property and as such he is in actual possession and enjoyment of the suit property.

9. The averments made in the additional written statement filed by the defendant are in brief as follows:-

The said Ramanujam, was the original owner of the suit property and he died intestate on 20.04.1946 leaving behind his wife Thayarammal and a daughter Renuka. Before 01.10.1963 in the Pondicherry, Customary Hindu Law was in vogue and as per the Customary Hindu Law, Thayarammal, who is the widow of Ramanujam had only life interest in the suit property and his daughter Renuka was the absolute owner of the suit property. The Hindu Succession Act, was extended to Pondicherry with effect from 01.10.1963. Section 14 of the said Act would come into operation if at all Thayarammal was in exclusive possession of the suit

property. But in this case, it was not so. Ramanujam's daughter also was in the suit property. As such Renuka who is the daughter of Ramanujam became absolute owner of the suit property and the sale effected by her in favour of the defendant is valid in all respects. Therefore, the defendant prayed to dismiss the suit.

10. After amendment of the plaint and filing of the additional written statement additional issues were framed by the first Appellate Court. Both sides adduced additional evidence also. Thereafter the first Appellate Court by the judgment dated 16.11.2001 had allowed the appeal and set aside the judgment and decree passed by the trial Court and the suit in O.S.No.33 of 1976 was partly decreed by holding that the plaintiff and the defendant are entitled to half share each in the suit property and it was further held that it is open for either of the parties to file a suit for partition with appropriate consequential prayers. Feeling aggrieved, the defendant has filed the present Second Appeal.

11. This Court, at the time of admitting the second appeal, has formulated the following substantial question of law:-

" Whether the interpretation given to Section 14 of the Hindu Succession Act is not erroneous in the light of the explanation appended to the Section?"

12. Heard, Mr.V.Raghavachari, the learned counsel for the appellant. In spite of repeated adjournments the respondent did not come forward to argue the matter. Hence, he was called absent and set exparte. After hearing the arguments of the learned counsel for the appellant and perusing the records, judgment is being passed in this second appeal.

13. Substantial question of law :

The learned counsel for the appellant/defendant has submitted that the first Appellate Court failed to see that it was not the case of the plaintiff that his vendor was in possession of the property in lieu of any maintenance and

therefore, to proceed to grant a decree on the foot of maintenance is patently erroneous. He further submitted that the first Appellate Court ought not to have proceeded on facts neither pleaded nor proved before the trial Court or before the first Appellate Court. The first Appellate Court failed to see that the appellant had purchased the property from the person who had the title to the suit property on the date of sale and the appellant was in possession of the property from the date of Ex.B3 i.e., from 11.08.1972 and before her, her vendor from the date of death of her father. He further submitted that the first Appellate Court ought to have seen that the plaintiff's case was that of lease and in failure to prove the same, the suit ought to have been dismissed. He further submitted that the first Appellate Court ought to have seen the test for succession is who the absolute owner of the property on the date of death of Ramanujam. He further submitted that the property once vested with certain person is not divested because of subsequent legislations. He further submitted that the first Appellate Court erred in coming to a conclusion that the full right given to Rukmani would become a half share in the entire property by virtue of Section 14 of the Hindu Succession Act, and the said interpretation does not take into consideration the explanation appended to that Section. Therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first Appellate Court and restore the trial Court's judgment and decree.

14. As per the plaint schedule, the property under dispute is situated at Mudaliarpatt Commune, Kuyavarpalayam, Pudukkottai Village, Pondicherry bearing No.1535 (vacant land) measuring 60 feet in north-south and 30 feet in east-west. The plaintiff is claiming 1/3rd share in the said property which is situated on the western side measuring 60 feet in north-south and 10 feet in east-west.

15. Admittedly, the entire extent of the property bearing No.1535 is measuring 60 feet in north-south and 30 feet in east-west originally belonged to one Angammal by virtue of sale deed dated 24.02.1910. The said Angammal died leaving behind, her three sons namely, 1) Ramanujam, 2) Venkatarajalu and 3) Govindarajalu. It is not disputed that 1/3rd portion on the west out of the aforesaid extent was allotted to Ramanujam and that he had been enjoying it as owner. Both the parties claiming the said 1/3rd portion of the property. It is also an admitted fact that the said Ramajanum died on 20.04.1946 intestate leaving behind his

wife Thayarammal and his minor daughter Rukmani. Since the said Ramanujam died as native Hindu of Pondicherry, on the date of his death, the Coramandal Hindu Law was applicable in respect of the succession to his property. After the death of the said Ramanujam, his wife Thayarammal and daughter Rukmani were in possession and enjoyment of the suit property. They were also in possession and enjoyment of the suit property on 01.10.1963 the date on which, the Hindu Succession Act, has been extended to Pondicherry. So, it has to be adjudicated as to what were the rights of Thayarammal and Rukmani as on the date of death of Ramanujam on 20.04.1946 under the Coramandal Hindu Law and what were their rights as on 01.10.1963, the date of extension of the Hindu Succession Act, 1956 to Pondicherry.

16. As per the Coramandal Hindu Law as obtaining in Pondicherry, if a male dies leaving behind his property, his sons would inherit the property as forced heirs and if a female dies leaving behind her property, her daughters would inherit her property as forced heirs. Further, it is a settled view that under the Coramandal Hindu Law that on the death of a male, his wife would be entitled for maintenance and in that connection she could exercise charge over the property left behind by her husband.

17. In this case, on the date of death of Ramanujam, in addition to his widow, his daughter was also there. Admittedly the said Ramanujam had no son. Hence, the first Appellate Court has held that even though under the Coramandal Hindu Law, the property of the male would devolve on his sons, and female properties would devolve on her daughters, in the absence of sons, the daughter would be a forced heir. It was further held that the widow of the said Ramanujam cannot claim right in the property left by her husband as forced heir. However, she is entitled for maintenance and for that she would have charge over her husband's property.

18. At this juncture, it would be relevant to refer to the decision in Velamuri Venkata Sivaprasad Vs. Kothuri Venkateswarlu & others, 2000-1L.W.96, wherein three Judges bench of the Hon'ble Supreme Court in para Nos.10 to 14 has observed as follows:-

"10. Re-first Issue: Conversion of limited ownership into an absolute one under Section 14 (1) of the Hindu Succession Act did come up for

judicial scrutiny intermittently before this Court and the law in regard thereto stands settled by the decision in Tulasamma's case V. Tulasamma &Ors. v. Sesha Reddy (d) by LRs., [1977] 3 SCC 99.

11. Admittedly the decision in Tulasamma's case (supra) is holding the field till date without even any semblance of dissent in all subsequent decisions. We also do not wish to sound any different note in that regard. In paragraph 20 of the Report Fazal Ali, J. laid down certain propositions as regards Hindu women's rights to maintenance and we cannot resist but to quote the same herein below in extenso as useful refresher:

"(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow.

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

12. Undisputably the Hindu Succession Act, 1956 in particular Section 14 has introduced far reaching changes having due regard to the role and place of womanhood in the country on the basis of the prevailing socio-economic perspective. It is now a well-settled principle of law that legislations having socio-economic perspective ought to be interpreted with widest possible connotation as otherwise, the intent of the legislature would stand frustrated. Recognition of Rights and protection thereof thus ought to be given its full play for which the particular legislation has been introduced in the Statute Book. Gender bias is being debated throughout the globe and the basic structure of the Constitution permeates equality of status and thus negates gender bias. Gender equality is one of the basic principles of our Constitution. The endeavour of the law court should thus be to give due weightage to the requirement of the Constitution in the matter of interpretation of statutes wherein specially the women folk would otherwise be

involved. The legislation of 1956 therefore, ought to receive an interpretation which would be in consonance with the wishes and desires of framers of our Constitution. We ourselves have given this Constitution to us and as such it is a bounden duty and an obligation to honour the mandate of the Constitution in every sphere and interpretation which would go in consonance therewith ought to be had without any departure therefrom. Tulasamma's case obviously having this in mind decided the issue and attributed the widest possible connotation to the words used in Section 14(1) of the Act of 1956. The decision in Tulasamma's case from time to time came up for consideration before this Court and the same stands accepted without any variation as noted herein before. One of the latest decisions where Tulasamma's case has been considered, is the decision of this Court in the case of Raghbir Singh v. Gulab Singh, [1998] 6 SCC 324, wherein Dr. Justice A.S. Anand, Chief Justice speaking for the Bench in paragraphs 24 and 26 of the Report observed:-

"24. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow is "a pre-existing right", which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a "statutory" backing. Where a Hindu widow is in possession of the property of her husband she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

26. It is by force of Section 14 (1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction

placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her "pre-existing right to maintenance" out of that property. As held in Tulasamma case sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with the operation of Section 14(1) of the Act."

13. It would be convenient, however, at this juncture to note the exact language of Section 14. Section 14 reads as below: "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 order 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."

14. Having due regard to the language as above introduced by Section 14 question of attributing a different interpretation, apart from what has been given in Tulasamma's case, does not arise but needless however to note that in order to have the provision applicable there shall have to be some right existing and not de hors the same. In Raghubir's case (supra) the Shastric law has been taken recourse to in order to ascribe a pre-existing right so far as the widow is concerned by reason of the social and temporal relationship between the husband and the wife during the life time of the husband and the solemn obligation of the husband towards the wife. Hindu marriage is not a mere formality or a contract but has its due religious sanctity even in the present day society. Homam i.e. oblation to fire and Saptapadi (seven steps together) are being observed in order to have a holy union between the husband and the wife. In this context, the observations in the decision of Raghubir Singh's case seem to be apposite and in paragraph 14 of the Report, Dr. Anand, CJ observed:-

"According to the old Shastric Hindu law, marriage between two Hindus is a sacrament-a religious ceremony which results in a sacred and a holy union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain his wife and where he dies possessed of properties, then his widow was

entitled as of right, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her deceased husband is, thus a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry."

19. From the aforesaid decision, it is clear that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property. It is also clear that though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property. It is also clear that where a Hindu widow is in possession of the property of her husband she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance. It is also clear that by force of Section 14(1) of the Hindu Succession Act, 1956, that the widow's limited interest gets automatically enlarged into an absolute right.

20. As per the Customary Hindu Law, the husband is bound to maintain his wife. On the death of husband, the widow is entitled for maintenance from and out of the property left by her husband. As already pointed out that after the death of the said Ramanujam, his wife and daughter continues to be in possession and enjoyment of the suit property. The wife was in possession of the property as maintenance holder and the daughter in possession of the property as forced heir and the said possession continued till the extension of Hindu Succession Act to Pondicherry with effect from 01.10.1963.

21. According to the plaintiff, as per the Coramandal Hindu Law, the widow of the said Ramanujam namely, Thayarammal got limited estate and after advent of Section 14(1) of the Hindu Succession Act, 1956, the said right enlarged into an absolute right. The defendant also admitted in the additional written statement that before 01.10.1963 in Pondicherry Coromandel Hindu Law, was in

Vogue and as per the same Thayarammal as widow of Ramanujam had only life interest in the suit property. However his contention is that Section 14(1) of the Hindu Succession Act, would come into operation if at all Thayarammal was in exclusive possession of the suit property, but in this case, Ramanujam's daughter was also in possession of the suit property and as such, Thayarammal would not get absolute right over the suit property by virtue of Section 14(1) of the Hindu Succession Act, 1956. The very purpose of giving limited estate was to provide maintenance to the widow. So, the said Thayarammal got the life interest in the suit property only in lieu of maintenance and the said right of maintenance is the pre-existing right. Therefore, by virtue of Section 14(1) of the Hindu Succession Act, 1956, the limited interest enlarged into an absolute property. However, the first Appellate Court with a view to give some relief to the daughter of Ramanujam, has passed an order that the said Thayarammal and her daughter Rukmani are entitled to half share each. Since the plaintiff purchased from Thayarammal and the defendant purchased from her daughter Rukmani, they are entitled to half share each in the suit property.

22. Because of the said findings, the aggrieved person is actually the plaintiff but the plaintiff has not filed any appeal. Under the said circumstances, the defendant cannot have any grievance at all against the judgment and decree of the first Appellate Court. In fact, the defendant benefited by the said judgment and decree. Therefore, the second appeal has to be dismissed. Accordingly, the substantial question of law is answered against the appellant/defendant.

23. In the result, the Second Appeal is dismissed confirming the judgment and decree of the First Appellate Court. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna

To

1.The III Additional District Judge,
Pondicherry.

2.The Additional District Munsif,
Pondicherry.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.V.Raghavachari , Advocate SR.No. 26526
S.A.No.1791 of 2002
A.SK(17/06/2019)



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