

Thabagouda and Others Vs. Satteppa

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Court : Karnataka Dharwad

Decided On : Sep-02-2014

Judge : The Honourable Mr Justice Huluvadi G. Ramesh

Appeal No. : Review Petition No.1633 of 2012 in R.S.A.No.5985 of 2010

Appellant : Thabagouda and Others

Respondent : Satteppa

Judgement :

(Prayer: This Review Petition is filed under Order 47 Rule 1 r/w. Section 114 of CPC. praying to review the judgment dated 7.9.2012, passed in RSA No.5985/2010 and modify the said judgment suitably, by allowing this review petition, etc.,)

1. Heard the learned counsel for the respective parties.
2. This review petition is filed against the judgment of the lower appellate Court fixing 1 /4th share in respect of the share of wife and her husband. Being aggrieved by the said judgment, second appeal has been preferred before this Court. The second appeal has been disposed of by this Court reversing the order of the lower appellate Court.
3. Before the trial Court, it appears among the children and the mother 1 /8th share was given. Being aggrieved by that order when the appellants viz., the

respondents have preferred an appeal challenging granting 1/8th share to the mother on the ground that the mother cannot have separate share other than the property available to the father. However, the lower appellate Court confirmed the said order, against which the second appeal is by the 1st defendant. In that, this Court in para 10 of the judgment referring to the legal position held that the finding of the Courts below appears to be erroneous and also held that husband and wife can get one share and remaining co-parceners can get one equal share i.e., 1/7th share each. As against this, the review petition is filed.

4. During the pendency of the review petition father of the plaintiff died and wife remained and how she has been substituted as legal representative.

5. The argument of the learned counsel appearing for the review petitioners is that as per Mitakshara Law and also the decision of the Bombay High Court and the commentary on Mulia's Hindu Law 21st Edition para 314, the mother cannot independently file a suit for partition. But during the partition mother gets equal share of that of her husband and also submitted that already partition has taken place and the mother has to be given a share equal to that of her sons and also apart from the share of her husband, she is also entitled for 1/4th share, totally it is 1/8th share as held by the Courts below.

6. Contrary to the said submission learned counsel for the respondent submitted that there is no apparent error on the face of the record committed by this Court so as to entertain this review. Secondly, as per the Mitakshara Law, the mother cannot be independently given a share but share could be determined as on the basis of the share made available to the co-parcener namely the sons and there is no question of separate share in the husband's share and submitted that question of share among the father and his wife is impermissible but both father and mother are entitled for one share and not separately.

7. Even relying on the decision of the Apex Court on the point, reported in AIR 1968 SC1299 in the case of Shiromani and others vs. Hem Kumar and others the learned counsel for the review petitioner contended that the position of law that the mother cannot demand a partition but, in the suit filed for partition among the co-parceners, she is entitled for one share independent of her husband.

8. In the said decision rendered by the Apex Court in the case of Shiromani and others, it was a case wherein as per the Benaras School of Hindu Law appellant is entitled to share in the joint family properties and also in the said case there is a demand by the elder son for partition and for major share as per the custom of Jethansi and moreover, the document sought to be produced therein was not a registered document as such, it was not having any evidentiary value. To show that still the Jethansi custom was in existence, holding that oral evidence was inadmissible, relying upon Section 91 of the Evidence Act it was held that the claimants are entitled for 1 /4th share in the joint family property and also what are the joint family properties which are to be the subject matter of partition would be determined by the trial Court in the final decree proceedings.

9. In the case on hand what was given was 1 /8th share by both the Courts below.

10. At the outset the learned counsel appearing for the respondent relied upon the judgment of the Apex Court reported in (2014) SCCR 164 in the case of N. Anantha Reddy vs. Anshu Kathuria and others, as to the scope and ambit of review is concerned which is extremely limited and unless there is a mistake apparent on the face of the record, order/judgment does not call for review and also to contend that review jurisdiction is not an appeal in disguise and review does not permit rehearing of matter on merits.

11. As it transpires, in the case on hand similar share was given to the mother equal to that of the children and there is a decree for holding equal share along with the son. This Court in second appeal while answering the question of law raised, held that as per the legal-position no independent share is available to the mother during the life time of the father and father and mother are together entitled for one share and thereby reduced it to 1 /4th share. After disposal of the case by this Court, this review petition is filed.

12. This review, as submitted, cannot be treated as an appeal or reopening the case for hearing on merits. With this limited scope of review, the contention put forth by the petitioners deserves consideration or not has to be seen.

13. The co-sharer namely the husband/father, mother and wife have sought for 1 / 8th share as held by both the Courts below. So far as the Bombay School of Mitakshara Law, in similar circumstances, it is enunciated referring to provision of Hindu Law and recently upon amendment of 2005j by the Bombay High Court in a judgment reported in AIR 2014 Bombay 119, in the case of Jayamati Narendra Shah (deceased by L.Rs.) and others vs. Narendra Amritlal Shah, that wife cannot demand partition of joint family property, she would get a share only if partition is demanded by her husband or sons and property is actually partitioned. However, as an exception it has been said that widow can demand for a partition which her deceased husband was entitled to. Further what has been explained in para 11, 12, 13, 14 and 19 of the judgment is, in a Hindu undivided family only sons and brothers laterally would constitute a coparcenary in a joint Hindu Family; their wives may be members of the joint Hindu family but are not co-parceners. The proprietary rights are of a co-parcener if the joint Hindu family owns any property. The wives of co-parceners do not get any interest in the joint property owned and held by co-parceners who are co-owners.

14. To clarify this position here it is to be noted that co-parcener refers to a male issue i.e., may be a father or a son. The wives of co-owners do not get any interest by virtue of their marriage. It is only a Hindu widow who gets the interest of her husband in the co-parcenary or in the joint family property upon the death of her husband. That interest enables her to claim maintenance and residence. Only a widow can demand partition of the interest which her deceased husband would have been entitled to. Consequently, a wife has no share, right title or interest in the Hindu Undivided Family in which her husband is a co-parcener with his brothers, father or sons and after the amendment of Section 6 of the Hindu - Succession Act 2005 with his sisters and daughters also. The wife, may be a member of a joint Hindu Family, but by virtue of being a member in the joint Hindu Family she cannot get any share, right, title or interest in the joint Hindu Family property which that family owns. A wife cannot demand for partition unlike a daughter. She would get a share only if partition is demanded by her husband or sons and the property is actually partitioned. The claim by a wife during lifetime of the husband in the share and interest which has as a co-parcener in his Hindu Undivided Family is wholly premature and completely misconceived.

15. This position clarifies that though the wife is entitled for interest i.e., share, it is to be along with her husband. Any such decision being taken by both the Courts below earmarking separate share for herself and one share in the share of her husband cannot in any way is recognized. Even the decision of the Apex Court in the noted decision in Shiromani and others is also not enabling the wife to have an independent share.

16. No grounds for interference with the order passed by this Court earlier. Review is dismissed.

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