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Court : Kerala

Decided On : Jan-07-2016

Judge : P.B. Suresh Kumar

Appeal No. : SA. No. 357 of 2003

Appellant : Vasudevan

Respondent : Devakay and Others

Judgement :

1. The defeated first defendant in a suit for partition is the appellant.
2. The suit property belonged to one Kalavan. The plaintiff and defendants 1 to 3 are the children of Kalavan. Defendants 4 and 5 are the children of the deceased daughter of Kalavan. The property sought to be partitioned was a property purchased by Kalavan in the year 1920. According to the plaintiff, Kalavan died intestate after the Hindu Succession Act and as such, on his death, the suit property devolved on the plaintiff and defendants and that she is entitled to 1/5 share over the same. The first defendant resisted the suit, while defendants 2 to 5 supported the plaintiff. According to the first defendant, Kalavan died on 14.4.1946, prior to the Hindu Succession Act and as such, since the parties were governed by Hindu Mitakshara Law, the suit property devolved exclusively on him, being the only son of Kalavan. The trial court accepted the case of the first defendant and dismissed the suit. The plaintiff took up the matter in appeal. Since

the plaintiff was not able to assail the finding of the trial court that Kalavan died prior to the Hindu Succession Act, the contention raised by her before the appellate court was that on the death of Kalavan, the suit property devolved on his wife Kalikutty and the first defendant and since Kalikutty died after the Hindu Succession Act, the plaintiff, at any rate, is entitled to 1/10 share in the suit property as one of the legal representatives of Kalikutty. According to the plaintiff, Kalikutty was entitled to one half right in the suit property on the death of Kalavan as per the provisions of the Hindu Women's Rights to Property Act, 1937. The first defendant resisted the said contention of the plaintiff pointing out that being an agricultural property, the suit property is not covered by Hindu Women's Rights to Property Act, 1937. According to the first defendant, agricultural properties were brought under the purview of the said Act in the Province of Madras where the property was situated at the relevant time, only with effect from 18.12.1947 by virtue of the Madras Hindu Women's Rights to Property (Extension to Agricultural Land) Act, 1947 and since the succession opened up on the death of Kalavan on 14.4.1946 itself, Kalikutty had not acquired any right over the suit property which is admittedly an agricultural property. On an appraisal of the materials on record, the appellate court took the view that Kalikutty was entitled to maintenance out of the profits of the suit property and since she was also in possession of the suit property, the said right of maintenance blossomed into an absolute right by virtue of Section 14 of the Hindu Succession Act. Consequently, the appellate court reversed the decision of the trial court and passed a preliminary decree declaring the 1/10 share of the plaintiff over the suit property. The first defendant who is aggrieved by the said decision of the appellate court has thus come up in this second appeal.

3. After hearing the learned counsel on either side, the following question is formulated for decision in the second appeal :

Whether the right of Kalikutty for maintenance out of the proceeds of the suit property has become an absolute right in her favour by virtue of Section 14 of the Hindu Succession Act?

4. The right of maintenance of a Hindu widow is not a right to property, but only a right against the property [See *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi* (AIR 1977 SC 1944)]. In *Suraj Mal v. Babu Lal* (AIR 1985 Delhi 95), the Delhi High Court held that the provisions contained in Section 14 of the Hindu Succession Act would apply to property possessed by a Hindu female and to which she had some kind of title, however restricted the nature of her interest may be. It was clarified by the Delhi High Court in the said case that Section 14 of the Hindu Succession Act will not have any application to a case where a widow had no rights whatsoever in the properties except a right of maintenance out of the proceeds of the property. Later, in *Ram Vishal v. Jagan Nath* [(2004)9 SCC 302], the Apex Court reiterated the aforesaid propositions holding that to come within the scope of the said Section of the Hindu Succession Act, the Hindu female must not only be possessed of the property but she must have acquired the property either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or her own skill or exertion or by purchase or by prescription and a mere right of maintenance without acquisition of some right in the property is not sufficient to attract the said Section. Paragraph 16 of the said judgment of the Apex Court reads thus :

"16. In our view, the authority in *Raghubar Singh* case³ can be of no assistance to the respondent. As has been held by this Court, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property. Such acquisition must be either by way of 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. In the present matter, it is nobody's case that Manki had got possession of the 1/4th share in lieu of maintenance or in arrears of maintenance. It was also not their case that there was a partition of the property and that in such partition, she had been given the property. A mere right of maintenance without actual acquisition in any manner is not sufficient to attract Section 14."

As far as the present case is concerned, the plaintiff has no case that Kalikutty had acquired any right in the property by way of inheritance or devise, or at a partition

or "in lieu of maintenance or arrears of maintenance" or by gift or her own skill or exertion or by purchase or by prescription. As such, it cannot be held that Kalikutty had limited interest in the property within the meaning of Section 14 of the Hindu Succession Act.

5. The learned counsel for the plaintiff, relying on the decision of the Apex Court in *Subhan Rao v. Parvathi Bai* (JT 2010 (9) SC 553), contended that if a Hindu female is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired a limited right or interest in the property and once that position is accepted, it follows that the rights get enlarged to full ownership under Section 14(1) of the Hindu Succession Act.

Subhan Rao v. Parvathi Bai (supra) is a case where a Hindu widow was conferred a right to possession of an item of property by its owner in recognition of her right to maintenance by virtue of a document executed in that behalf. The said case, unlike the instant one, is a case where the Hindu female had acquired an interest in the property in lieu of her right of maintenance and would therefore, fall within the ambit of Section 14(1) of the Hindu Succession Act.

6. The question formulated for decision is thus answered in favour of the appellant.

7. In the result, the second appeal is allowed, the impugned decision is set aside and the decision of the trial court is restored.

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