

T.K. Chandraiah Vs. Chandraiah and Others

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Court : Karnataka

Decided On : Jun-28-1991

Reported in : AIR1992Kant153

Judge : R. Ramakrishna, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3

Appeal No. : Second Appeal No. 485 of 1980

Appellant : T.K. Chandraiah

Respondent : Chandraiah and Others

Advocate for Def. : O. Mahesh, Adv.

Advocate for Pet/Ap. : G.S. Visweswara, Adv.

Judgement :

1. This appeal is directed against the Judgment and Decree of the learned District Judge, Hassan, in R. A. No. 44 of 1978 reversing the Judgment and Decree of Addl. Munsiff, Arsikere, in O. S. No. 13 of 1972 filed for a declaration, possession and mesne profits.

2. At the time of Admission, this Court formulated the following questions of law as arising for determination :

'(i) Whether the Court below has committed an error of law in holding that Marulamma who had a limited estate got converted into an absolute estate by the operation of Sec. 14(1) of the Hindu Succession Act.

(ii) Whether the Court below has properly construed the provisions of Sec. 14 of the Act?'

3. The brief facts of the case are as follows :

The father of the Appellant Late Kotturaiah was the plaintiff before the trial Court. He has filed a Suit in O.S. No. 13 of 1972 against defendants 1 and 2, who are respondents 1 and 2 in this Appeal, for declaration of title and for possession of the Suit land in Sy. No. 246/ B situated at Talaur Village of Arsikere Taluk. The trial Court decreed the Suit. Respondents 1 and 2 preferred an Appeal in R.A. No. 44 of 1978. The learned District Judge, Hassan, allowed the appeal and dismissed the suit of the plaintiffs. During the pendency of the Appeal, Sri. Kotturaiah, the plaintiff died. The appellant was brought as first L. R. of Kotturaiah. Respondents 3 and 4 herein were brought as 2nd and 3rd L.Rs. of Kotturaiah.

4. The averments that are placed before the Courts below are that, the Suit land was owned by the husband of Smt. Marulamma by name Chennaiah who died prior to 1928. After his death, Marulamma became the owner. She sold the suit land to her brother Kotturaiah under a registered Sale Deed on 2-7-1928 (Ex.P. 1) as she was in need of funds, as there was nobody to take care of her and she was also issueless. Under these circumstances, Kotturaiah allowed her to be in permissive possession of the suit land and make use of the usufruct for her maintenance during her life time. Smt. Marulamma died about 6 months prior to filing of the Suit. After her death, it was found that respondents 1 and 2 were in possession of the land by virtue of a Gift Deed dated 20-3-1968 alleged to have been executed by Smt. Marulamma. Smt. Marulamma died on 15-12-1971. The respondents 1 and 2 refused to give possession of the land. According to them, Smt. Marulamma became the full owner of the suit property by virtue of Section 14(1) of the [Hindu Succession Act, 1956](#).

5. The trial Court framed several issues on the basis of the pleadings touching several contentions raised by the parties including an issue regarding Smt. Marulamma acquiring full rights in the property after passing of the [Hindu Succession Act, 1956](#).

6. The learned Munsiff negated the claim of the defendants and decreed the plaintiffs suit as prayed.

7. The first Appellate Court agreed to the findings of the trial Court on all the issues except the issue raised under Section 14(1) of the [Hindu Succession Act, 1956](#) (in short 'the Act'). It held that since the plaintiff gave the property to Marulamma for her maintenance, she has acquired ownership in view of Section 14(1) of the Act.

8. The learned Advocate Sri G. S. Visweswara, appearing for the Appellant assailed the order of the learned District Judge, Hassan, on the question of interpretation of Section 14(1) as applicable to the deceased Marulamma. Section 14 of the Act states :

'14(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.

9. Deceased Marulamma, admittedly, sold the suit property in favour of Appellant's father on 2-7-1928 (Ex.P. 1) for valuable consideration. At the time of sale, she was holding the property as an heir to her husband Chennaiah. After extinguishing her right in the property, the possession of the same was handed over back by her

brother/purchaser to make use of the land for cultivation and utilize the usufructs till her life time. Smt. Marulamma at the time of her death, i.e., on 15-12-1971, does not have any right as a limited owner except the right to make use of the land for cultivation and utilize the usufructs till her life time. Smt. Marulamma at the time of her death, i.e., 15-12-1971, does not have any right as a limited owner except the right to make use of the benefits as long as her brother wishes. She cannot also say that the sale made on 2-7-1928 was only nominal as she has not raised her little finger during her life time.

10. A similar question arose for consideration before this Court in *Veerupanna v. Eramma*, reported in AIR 1966 Mysore 130, wherein, it was held by the learned Judges :

'The property possessed by the female Hindu referred to in S. 14 is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. Section 14 does not purport to create rights out of nothing, but only to enlarge the scope of rights acquired by her.'

11. While confirming this findings the Supreme Court has discussed exhaustively the scope of Section 14 of the Act in *Eramma v. Veerupana*, : [1966]2SCR626 , and held at para 7 as follows :

'It is true that the appellant was in possession of Eran Godwa's properties but that fact alone is not sufficient to attract the operation of S. 14. The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to S. 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words 'as full owner thereof and not as a limited owner' as given in the last portion of sub-section (1) of S. 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, S. 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the

same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of S. 14 defines the word 'property' as including

'both movable and immovable property acquired by a female Hindu by inheritance or devise.....' Sub-section (2) of S. 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word 'property' but the word 'acquired' used in the Explanation and also in sub-s.(2) of S. 14 clearly indicates that the object of the Section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of S. 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.'

12. Hence the legal question formulated at Sl. No. 1 is to be held in the affirmative and question formulated at Sl. No. 2 in the negative.

13. Sri. O. Mahesh, learned counsel appearing for respondents 1 and 2 has submitted that, while deciding this Appeal, I. A. II filed by respondents 1 and 2 requires consideration.

14. I.A. II is an application under Order 23 Rule 3 of the Code of Civil Procedure where the respondents 3 and 4 who are the legal representatives of the deceased Kotturaiah have entered into a compromise in respect of the suit property agreeing that, their share of the property by virtue of the Judgment and Decree passed in O.S. No. 13 of 1972 shall continue to be in possession of present respondents 1 and 2. The 3rd and the 4th respondents have admittedly remained absent in this

appeal who are the brothers of the present appellant T. K. Chandraiah. Since they are absent in this appeal and the compromise inter se between the respondents is in respect of the suit land and the said compromise is always subject to the decision of this Appeal, this Court is declined to pass any order on I. A. II and the same is hereby dismissed as not considered.

In the result, this Appeal is allowed. The Judgment and Decree of the learned District Judge, Hassan, in R. A. No. 44 of 1978 passed on 4-3-1980 is hereby set aside. The Judgment and Decree passed in O. S. No. 13 of 1972 on 24-9-1975 by the learned Addl. Munsiff, Arsikere, is hereby restored. In view of the peculiar circumstances, the parties shall bear their own costs.

15. Appeal allowed.

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