SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Manche Gowda Vs. Basamma

Manche Gowda Vs. Basamma

SooperKanoon Citation : sooperkanoon.com/372494

Court : Karnataka

Decided On : Jan-21-1953

Reported in : AIR1954Kant88; AIR1954Mys88; ILR1953KAR604

Judge : Vasudevamurthy, J.

Acts : Mysore Hindu Law Women's Rights Act, 1933 - Sections 8, 8(2) and 10(2)

Appeal No. : Second Appeal No. 443 of 1951-52

Appellant : Manche Gowda

Respondent : Basamma

Advocate for Def. : K.S. Puttaswamy, Adv.

Advocate for Pet/Ap. : D.M. Chandrasekhar, Adv.

Judgement :

1. This second appeal arises out of a suit filed by the plaintiff for partition and possession of her snare in the plaint schedule properties. The plaintiff is the step-mother of the defendant who has become the sole surviving coparcener of the family after his father's death. The plaintiff claimed in the plaint as originally filed a 1/4th share in the properties and later by an amendment she claimed 1/3rd. Both the lower Courts have awarded a l/3rd share to her and the defendant has appealed

2. The only point that arises in. this appeal is the share to which the plaintiff is entitled. The appellant contends that it is only 1/4th while the respondent urges that the lower Courts have rightly decreed a third share in her favour. The lower Courts have assumed that she is entitled to a l/3rd share and there is no discussion in this matter at all. There are also no reported decisions of this Court directly bearing on this matter and there can of course be no precedents in Courts outside the State as the question arises under the Hindu Law Women's Rights Act which is peculiar to Mysore. Section 8 of that Act declares who are all the females entitled to claim a share at a partition and the mother-which expression includes a step-mother-is of course entitled to claim a share; and where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the rights to shares of the classes of females enumerated earlier in that section.

Under Section 8(2) such share shall be fixed as follows:

(a) in the case of the widow, one-half of what her husband, if he were alive, would receive as his share;

(b) in the case of the mother, one-half of the share of a son if she has a son alive, and, 111 any other case, one-half of what her husband, if he were alive, would receive as his share.

We are not concerned in this case with Sub-clause (c). Clause (3) provides that the term 'widow' includes a step-mother, and the term 'son' includes a step-son as also a grandson and a great grand-son. Clause (4) provides that fractional shares of the females as fixed above shall relate to the share of the husband, son, father or brother as the case may be and their value shall be ascertained by treating one share as allotted to the male & assigning therefrom the proper fractional shares to the female relatives.

3. It is contended by Mr. K.S. Puttaswamy learned counsel for the respondent, that Section 8, Clause (2)(b) applies to this ease and that the plaintiff as the mother is entitled to one-half of the share of the son, the defendant, and consequently she would be entitled to a third of the properties while the defendant would be entitled to 2/3rds. For the appellant Mr. D.M. Chandrasekhar, his learned counsel, has

contended that it is Clause (3)(a) that applies as it is a case of a widow who is claiming a share and that she is entitled to get only one-half of what her husband, if he were alive, would receive as his share. It must be observed that nowhere in that section have any female relatives been awarded more than one-half or one-fourth of the shares of a husband or a son or a brother or a father and it is not clear why if a mother is claiming a share from her only son, as in this case, she should be given a larger share than what she would have been entitled to, had she been claiming, say from others like her daughter-in-law or a brother of her Husband or his widow or her father-in-law. The son has obviously a, better and stronger claim for consideration than those others as he would have to perform the ceremonies of his father and mother and other religious rites and perpetuate the family line and maintain the family's prestige.

4. It is argued for the respondent that the expression 'in the case of the mother, one-half of the share of a son if she has a son alive' in Section 8, Clause 2(b) must be read literally as meaning one-half of the share of the defendant; as he is a son within the meaning of Sub-section (3), although he is a step-son, who is alive at the date of the partition and that Clause (2)(a) does not apply. The word 'mother' appears in Section 8, Clause (1)(a) as well as in Clause (1)(b). In Section 8, Clause (1)(a) the case of a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of the pre-deceased undivided sons and brothers who have left no male issue has been provided for. In Section 8, Clause (1)(b) a case of partition of joint family property among brothers, their mother, their unmarried daughters and the widows and unmarried daughters of their pre-deceased undivided brothers who have left no male issue has been similarly provided for. Clauses (2)(b) and (c) of that section, I think, were meant to apply to the case of a partition between persons or classes of persons envisaged in Clauses (1)(a) and (b) while Clause (2) (a) is more appropriate to apply where, as in this case, the widow is claiming a share as against a sole surviving coparcener like her son who is entitled to the rest.

5. If the words 'if she has a son alive' in Section 8(2)(b) are meant to include the case of a living son like the defendant, the defendant's existence would operate to

cut down his own share and that could not be the intention of the legislature or a proper construction to put. Sir D'Arcy Reilly. C. J. found a similar difficulty in interpreting Clause (g) of Sub-section (2) of Section 10 in -- 'Govinda Rao v. Chandra Bai', 15 Mys L J 85 (A). Ho observed that that clause was not easy to interpret. That sub-clause reads:

Section 10(2) Stridhana includes-

x x x x (2)(g) 'Property taken by inheritance by a female.....except when there is daughter or daughter's son of the propositus alive at the time the property is inherited.'

It was urged before him that the daughter who was claiming an absolute estate based upon that section could not validly do so as there had been another daughter of the propositus alive when he died and who had since passed away. Sir D'Arcy Reilly pointed out how a literal interpretation of that sub-section would lead to an absurdity as a daughter would be prevented from taking her share of her father's property as stridhana because of her own existence, and if the legislature really meant such a result to follow he expected they would have made their intention clear by more appropriate language.

A construction which is sought to be put upon Section 8, Clause 2 would lead to a somewhat similar result. One would have expected if a son was to be specifically chosen for being treated less generously vis a vis his mother as compared with the other more distant agnate or cognate relations', the legislature would have made it clear. I do not think the legislature would not have taken into consideration the usual and universally accepted notion among Hindus that the son occupies a very important position in the family and has onerous duties and responsibilities both religious and secular according to Hindu Law. Manu has emphasised the Vedic injunction regarding the necessity of a son thus:

'Through a son, he conquers the worlds; through a son's son, he obtains immortality but through his son's grand-son, he gains the world of the Sun. Because a son delivers his father from the hell 'put', he was therefore called 'putra' (a deliverer from 'Put').'

See Mayne on Hindu Law and Usage, 11th edition, para 66, p. 105.

6. In my opinion, therefore what that sub-section means is that in the case of the mother she gets one-half of the share which a son would have got if, a son of hers was alive on the date of the partition, if she is claiming the share as a mother as against several sons and grand-sons; while in any other case or where she is claiming as a widow of her deceased husband, she would be entitled to one-half of what her husband, if he were alive, would receive as his share. In the illustration given to that section the shares at a partition of a father, his son, his mother and two daughters are given as 1, 1, 1/2 and 1/4 respectively, and that I think is more in favour of the construction which would justify awarding half a share to the mother.

In -- '50 Mys H C R 171 (B)', Sub-clauses (a) and (c) of Clause 2 of Section 8 were applied in order to determine the shares at a partition between a mother and her two sons, i.e. two brothers, and the sons and daughters of another predeceased brother. While interpreting the expression 'shall relate to the share of' the deceased and treating one share as allotted end 'assigning therefrom' the share due to a female which are found in Section 8, Clause 4 has been specifically noticed and relied upon.

7. In the result, this appeal is allowed, the decisions of the Courts below are modified and theplaintiff is held entitled to a fourth share insteadof one-third. The parties will bear their owncosts in this second appeal.

8. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com