

Chinnamma Vs. Srinivas and ors.

Chinnamma Vs. Srinivas and ors.

SooperKanoon Citation : sooperkanoon.com/372721

Court : Karnataka

Decided On : Aug-06-1970

Reported in : AIR1971Kant28; AIR1971Mys28; (1970)2MysLJ306

Judge : C. Honniah and ;E.S. Venkataramiah, JJ.

Acts : Hindu Law; Mysore Hindu Law Women's Rights Act, 1933 - Sections 8(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11

Appeal No. : Second Appeal No. 732 of 1965

Appellant : Chinnamma

Respondent : Srinivas and ors.

Advocate for Def. : N. Keshava, Adv.

Advocate for Pet/Ap. : M.A. Gopalaswamy Iyengar, Adv.

Disposition : Appeal dismissed

Judgement :

1. This second appeal has been referred to a Division Bench by an order made under the proviso to Section 6 of the Mysore High Court Act. 1961 by Govinda Bhat J. on 29-8-1969 in view of the fact that the appeal raises a substantial question of law regarding the applicability of the Mysore Hindu Law Women's Rights Act (Mysore Act X of 1933) (hereinafter referred to as the Mysore Act of

1933) to Hindus who are permanent residents of erstwhile Madras State and who had acquired properties in the area of the old Mysore State.

2. This second appeal arises out of a suit, O. S. No. 539 of 1962 on the file of the Munsiff, Mysore, filed by the appellant for partition and separate possession of one-third share in the plaint schedule properties with mesne profits from date of suit. In the schedule attached to the plaint, there are eight items of properties. Items 1, 5 and 6 are houses and Items 2, 3, 4, 7 and 8 are agricultural lands. Item 1 is situated in Mysore City. Items 2 to 8 are situated in Kollegal Taluk. The plaintiff filed the suit against three defendants. The first defendant is the son of one M. P. Venkataswamy who happened to be the stepson of the plaintiff; the second defendant is the widow of the said M. P. Venkataswamy; and the third defendant is an alienee of Item 4.

3. The case of the plaintiff as disclosed in the plaint is that she was the widow of one M. S. Puttanniah who died on 3-5-1937 leaving behind him the plaintiff, her married daughter Rathn-amma, an unmarried daughter Sakun-tamma, and a son M. P. Venkataswamy, as the only sole surviving coparcener in the family. The properties described in Items 2 to 8 in the schedule attached to the plaint were joint family properties in the hands of M. S. Puttanniah and his son M. P. Venkataswamy. Item 1 of the plaint schedule is stated to have been acquired in or about the year 1950 out of the joint family income, and, therefore, Item 1 also was part of the joint family estate. The first defendant who was aged about eight years in the year 1962 when the suit was filed, was born in or about the year 1954. It is alleged that M. P. Venkataswamy lived mostly in Mysore City till his death which took place on 6-10-1955 at Mysore.

On his death the surviving members of the family were the plaintiff i. e, step-mother of Venkataswamy; the second defendant who was the widow of Venkataswamy, and the first defendant, an only son. According to the plaintiff, on 6-10-1955 the joint family properties which are described in the schedule attached to the plaint passed on by survivorship to the sole surviving coparcener, namely, the first defendant and hence under the provisions of Section 8 (1) (d) of the Mysore Act of 1933, she became entitled to one-third share in the family properties

including Item 1, namely the house which was situated in Mysore City. On the basis of the said cause of action which is alleged to have accrued on 8-10-1955, the plaintiff claims the relief as set out above for a decree for partition and separate possession in the schedule properties with mesne profits.

Defendants 1 and 2 who contested the suit pleaded that since the plaintiff was leading an immoral and unchaste life even during the lifetime of her husband, she was not entitled to any share in the suit properties and that Item 1 of the plaint schedule was a self-acquired property of Venkataswamy and hence it was not one of the joint family properties. It was further pleaded by defendants 1 and 2 that since Puttan-naiah, the husband of the plaintiff and his son Venkataswamy were natives of Mudigunda village in Kollegal Taluk which was formerly part of Madras State and which became part of Mysore on 1-11-1956 under the provisions of the States Reorganization Act, the Mysore Act of 1933 was not applicable to the parties to the suit. In any event, it was pleaded, the plaintiff had no right to a share in Item 1 of the plaint schedule. They also pleaded that Item 4 of the plaint schedule was sold to the third defendant for family necessity and that the third defendant was in possession of the said property.

4. On the above pleadings, the trial Court framed six issues. It held that Item 1 of the plaint schedule was the joint family property in the hands of Venkataswamy, that the plaintiff was leading an unchaste life even during the lifetime of her husband; that the Mysore Act of 1933 was not applicable to the parties to the suit; and that Item 4 had not been sold for family necessities. On the plea of limitation which had been taken in the suit, the trial court held that the suit was not barred by time. In view of the above findings, the trial court dismissed the suit. Aggrieved by the said decision, the plaintiff filed an appeal in the Court of the Civil Judge, Mysore in Regular Appeal No. 224 of 1964.

The First Additional Civil Judge who heard the appeal set aside the finding of the Munsiff on the question of unchaste of the plaintiff, but dismissed the suit on the ground that the Mysore Act of 1933 was not applicable to the parties to the suit. The lower appellate court also refused any relief to the plain-till on the basis of the Hindu Women's Rights to Property Act (Central Act 13 of 1937), on the ground that

the said plea had not been put forward by the plaintiff in the trial court and that it was not proper to allow her to make out a 'new case in the course of appeal. Accordingly, the appeal was dismissed.

5. Aggrieved by the said decision, the plaintiff has preferred this second appeal.

6. In the course of arguments, Mr. M. A. Gopalaswamy Iyengar, the learned counsel for the appellant, urged two contentions: (i) that Hindu Law in force in the former Princely State of Mysore would apply in view of the fact that Venkataswamy mostly lived in Mysore City till his death in the year 1955; and, (ii) in the event of the Court coming to the conclusion that the parties were not governed by the Hindu Law in force in the Princely State of Mysore, the plaintiff would at least be entitled to a decree for a share in Item 1 of the plaint schedule on the ground that the Mysore Act of 1933 applied to the said immovable property which was situated in Mysore City.

7. It is admitted on all hands that Puttanniah and Venkataswamy were natives of Mudigunda, a village in Kollegal Taluk, which was formerly a part of Madras State. Kollegal Taluk became a part of the new Mysore State under the provisions of the States Reorganization Act with effect from 1-11-1956. It is admitted that the Hindus who were living in Madras State were governed by the Madras School of Mithakshara Law. So far as people who were residing in the former Princely State of Mysore were concerned, they were governed by Mithakshara Law as it was interpreted by the Courts in the Princely State of Mysore. The personal Law of Hindus who were residents in the former princely State of Mysore was different from the Hindu Law as it was in force in Madras State in some material respects. To illustrate what is stated above, it is enough if we should refer to the law relating to pious obligation of a Hindu son to discharge the debts of his father.

Whereas in British India the view has always been that the pious obligation of a Hindu son to discharge the debt of his father existed even during the lifetime of his father but in the former Princely State of Mysore, the view taken by the Chief Court and the High Court of the former Princely State of Mysore was that such pious obligation of a Hindu son to discharge the debt arose only on the death of the father. This view prevailed until a decision of the Supreme Court in *Panalal v.*

Naraini : [1952]1SCR544 , which was followed by the High Court of Mysore in Hutha Thimmegowda v. Dyavamma AIR 1954 Mys 93. The foregoing shows that the Mithakshara law in force in the former Princely State of Mysore was different from the law which was in force in the State of Madras. It could further be seen that the personal laws of Hindus in Madras as well as in the former Princely State of Mysore were amended by statutes passed by Legislature which were in force in the respective areas.

8. It is well settled law that a Hindu belonging to Mithakshara School continues to be governed by the law in force in the area to which he belongs even though he may migrate to some other area, until it is proved that the family has adopted the Mithakshara law which is in force in the area to which the family has migrated. It is enough to refer in support of what is stated above to a decision of the Privy Council in *Abdurahim v. Halimabai*, AIR 1915 PC 86, in which it is observed as follows;--

'Where a Hindu family migrates from one part of India to another, prima facie, they carry with them their personal law, and, if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted.....'

9. The position would not be different even when a part of one State is taken out of that State and added on to another for administrative reasons. That was the view which was expressed by the Privy Council in *Somashekara Royal v. Sugutur Mahadeva Royal* , in which it was held that the mere transfer of a district to another presidency for administrative purposes was not sufficient to affect the personal law of the residents in that district, unless and until it was shown that in the case of any resident there that he had intended to change and had in fact changed his personal law.

10. The mere fact that Venkataswamy had gone to Mysore in search of an employment cannot, therefore, be considered as sufficient to hold that there was change of his personal law unless it is shown that he intended to do so. Further, in this case it is to be seen that it is not pleaded in the plaint that there was any such change of personal law, applicable to the family of the parties to these

proceedings on account of their intention to do so. This question is a question of law and fact and unless proper pleadings are placed before the court and necessary evidence is led in support of the pleadings, it would not be possible to hold that there was such a change in the personal law governing the family.

It may also be mentioned here that by virtue of the personal law of the parties derived from the texts which constitute the source of the law, the plaintiff would not be entitled to a share in the family properties on the ground that the properties have passed on to the hands of the sole surviving coparcener. Such a right was created for the first time by the Mysore Act of 1933 which came into force on 1-1-1934 in the former princely State of Mysore. So unless it is established that the parties to this suit were governed by the Mysore Act of 1933, the plaintiff would not be entitled to a share on the ground that the joint family properties passed to the hands of a sole surviving coparcener on the death of Venkataswamy. The findings of the two Courts below is that the plaintiff and defendants 1 and 2 did not change their personal law and they continued to be governed by the Madras Law.

We feel that in the state of the pleadings and the evidence in the case, the findings of the Courts below on this point are correct. Sri Gopalaswamy Iyengar has not been able to show from the evidence recorded in the case that the family of Puttanniah and Venkataswamy had in fact migrated to the formerly Princely State of Mysore and they had done so with the intention of changing their personal law into the one that was in force in the former Princely State of Mysore. The mere fact that Venkataswamy stayed in Mysore City would not by itself be sufficient evidence to hold that the parties come to be governed by the Hindu Law in force in the Princely State of Mysore. The Mysore Act of 1933 is admittedly not applicable to the properties in Kollegal Taluk, namely, Items 2 to 8 of the plaint schedule. It may be mentioned here that under Section 119 of the States Reorganization Act the laws in force in any one of the integrating areas of the new State of Mysore continue to be in force only in those areas in which they were in force prior to reorganization. In this view of the matter, we reject the first contention of Mr. Gopalaswamy Iyengar that the plaintiff and defendants 1 and 2 are governed by the Hindu Law as it was in force in the former Princely State of Mysore, and that the Mysore Act of 1933, was applicable to Items 2 to 8 of the plaint schedule.

11. The next contention of Mr. Gopalaswamy Iyengar was that even though Items 2 to 8 of the plaint schedule which were outside the former Princely State of Mysore, were not governed by the Mysore Act of 1933, so far as the devolution of interest in Item 1 of the plaint schedule on the death of Venkataswamy is concerned, the rights of the parties will have to be regulated by the provisions of the Mysore Act of 1933 which was territorial in its application irrespective of the domicile of the parties concerned. His contention was that so far as the devolution of the interest, in immovable properties by way of inheritance is concerned the law applicable would be the law in force in the area in which the immovable property is situate. He relied on the general principles of Private International Law as set out in *Nelson v. Bridport*, (1845) 1 Beay 527 at p. 570. In that case this is what Lord Langdale M. R. said:--

'The incidents to real estate, the right of alienating or limiting it, and the course of succession to it depend entirely on the law of the country where the estate is situated. Lord Nelson having accepted the Sicilian estate could deal with it only as the Sicilian law allowed; he had a right to appoint a successor, but no right to modify the estate, Interest, or powers of disposition to which the successor was entitled by the law of Sicily. The successor became the holder of the estate subject to the incidents annexed to it by the grant and the law of Sicily and no others. Amongst the incidents was a particular course of succession different from that which Lord Nelson had directed, and the necessary consequence appears to be that no operation or effect could be given to the expressed wish and intention as to the succession to the estate itself beyond that which the law of Sicily allowed.'

It was contended that the Federal Court of India in *Umayal Achi v. Lakshmi Achi* also accepted the view that the position as regards immovable property was different from the moveable property because according to the well established rule of International Law, the law of domicile did not furnish the rule of succession to immovable property, but only the law that was in force in the area in which the immovable property was situate. It was submitted by Mr. Gopalaswamy Iyengar that this view of Private International Law has received statutory recognition by Indian Legislature when it enacted Section 5 of the Indian Succession Act.

It was on the above basis, it was contended for the plaintiff that even though the properties outside the State might not be governed by the Mysore Act of 1933, the devolution of interest in the house which was situated in the City of Mysore should be held to be governed by the Mysore Act of 1933. Mr. H. J. Babu appearing for the respondents contended that the Mysore Act of 1933 could not be applied to Hindus who had their domicile outside the former Princely State of Mysore and that it should be held that the Mysore Legislature intended to modify the personal law of Hindus who were the subjects of the former Princely State of Mysore only and did not intend to affect the rights of parties who had their domicile outside the Princely State of Mysore in respect of immovable properties situate inside the Princely State of Mysore. He relied on the provisions of Section 2 (i) of the Mysore Act of 1933 which read as follows :--

'(i) This Act applies to persons who but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted.'

It may be noticed that this Act has modified the personal law applicable to Hindus governed by Mitakshara school in several important respects. Part 1 of the Act deals with inheritance; Part II separate property, partition and adoption; Part III women's full estate; Part IV women's limited estate; and Part v. maintenance. It is thus to be seen that this Act altered the personal law of Hindus in the Princely State of Mysore to a considerable degree in several important matters including devolution of interest in respect of joint family properties. It was contended for the respondents that this was not merely a law relating to succession to immovable property, but it was a law intended to amend the personal law of Hindus who were governed by Mitakshara Law as in force in former Mysore State and who were residents of former Princely State of Mysore.

In that view of the matter, it was argued that unless it was established that the parties to this suit were persons in respect of whom the Mysore Act X of 1933 was enacted, no relief could be granted under that Act.

12. It was next contended on behalf of the respondents that the expression 'joint family property' in Section 8 of the Mysore Act of 1933 meant the distributable surplus that was available for partition after deducting the liabilities of the family

from the gross value of the assets of the joint family. It was, therefore, suggested that the expression 'joint family property,' should not be taken to mean any or every item of joint family property, but the distributable surplus arrived at as stated above. In that view of the matter, it was contended for the respondents that the devolution of interest in respect of a single item of joint family property should not be dealt with in isolation, but it should be considered as part of the entire joint family properties which were situated in this case both inside and outside the Princely State of Mysore, and that being the position, the law that should be applied to the parties in Question would be the law of domicile governing the parties.

13. In support of his contention, Mr. Gopalaswamy Iyengar relied on a decision of the Calcutta High Court in *Ratan Kumari v. Sunder Lal* : AIR1959 Cal787 . In that case the Court was dealing with a case relating to a family of Hindus who hailed from Jaipur, which was a Part B State, owning properties both in Jaipur and in Part A States and the question for consideration was whether the properties which were situate in Part A States were governed by the provisions of the Hindu Women's Rights to Property Act, 1937, which was in force in Part A States. On a true construction of the provisions of that Act which extended to the whole of India except Part B States, the Court found that the Hindu Women's Rights to Property Act, 1937, was applicable to all the properties belonging to the family situated in Part A States irrespective of the fact whether they were moveables or immoveables. This is what the court observed:--

'The Hindu Women's Rights to Property Act, 1937, is the Law of the Land *Lex Loci*. The question involved in this case is this and this only whether the legislation was intended to affect all properties, moveable and immoveable, within British India, no matter whether it belonged to a deceased Hindu who is a citizen or a foreigner, or whether he had Indian or non-Indian domicile.

I have indicated the reasons why in my judgment the rule of domicile has no bearing on the question of construction. The language of the Act indicates that it gives an extended right to a Hindu widow in respect to all properties of her husband. Indian Legislature was competent to legislate in respect to all properties

within the territory. It does not matter whether the properties belonged to a citizen or an alien. It excludes the operation of the Act to territories outside British India. Properties of a Hindu situate outside British India are not affected by the Act. But all properties, moveable as well as immoveable, situate within British India -- no matter whether it belongs to a Hindu citizen or a Hindu alien and no matter whether ' the Hindu alien had Indian or non-Indian domicile are affected by the provisions of the Hindu Women's Rights to Property Act, 1937. I see no reason to exclude either the moveables or the immovables from the operation of the Act, either on the ground of non-Indian domicile of the husband or his politician (political) (sic) status. Section 1 (2) of the Act. which limits the operation of the Act originally to British India except the stated territories and after adaptation to the whole of India except Part B States, does not mean that in order to attract the provisions of the statute the Hindu husband must reside and have his domicile within that territory. What the statute requires is that the property must situate within the specified territory and that the husband must be a Hindu at the time of his death. Whether he is a resident within or outside whether he had domicile within or outside at the time of his death is wholly immaterial and irrelevant for the purpose of determining the widow's right.'

14. Basing his argument on the observations of the Calcutta High Court extracted above, it was contended by the counsel for the appellant that the Mysore Act of 1933 was also in the same way applicable to Item 1 of the plaint schedule. For the respondent it was contended that the above decision of the Calcutta High Court was rendered on the construction of Hindu Women's Rights to Property Act, 1937, and whatever might have been stated in respect of that Act could not be extended to a case governed by the Mysore Act of 1933, in which there was a specific provision in Section 2 (1) regarding the applicability of the said Act to persons to whom the said Act was applicable who were no other than the subjects of the Princely State of Mysore.

15. Reliance was also placed by the counsel for respondents on the observations made in a decision of the former High Court of Mysore in Keshava Anantha Dixit v. Rama Dixit, (1947) 25 Mys LJ 94. That was a case in which a Hindu male who belonged to a family that migrated to former Mysore State from Ranibennur in

Dharwar District in the days of his paternal grand-father, died intestate in Mysore after the Mysore Act of 1933 came into force, leaving immoveable property in Mysore. He and his father who had pre-deceased him were born in Mysore after the migration. After his death the plaintiffs who were the sons of his mother's sisters, filed a suit claiming to be his nearest heirs according to the school of Hindu Law that prevailed at Ranibennur at the time of migration.

The suit was resisted by the defendants who were the paternal grand-father's sister's sons of the Hindu male in question on the ground that they were the nearest heirs to succeed to his estate according to the Hindu Law Women's Rights Act of 1933 in force in Mysore. The Court found that the members of the family who migrated to Mysore had become the subjects of the Maharaja of Mysore, and, therefore, they were governed by the Mysore Act of 1933 which laid down a course of succession different from the one on which the plaintiffs based their suit. The above case however is of no assistance to either of parties since the facts of that case are different from the facts of the present case in which it is not established that the members of the family had become the subjects of the Princely State of Mysore.

16. We have set out in the foregoing paragraphs the various rival contentions of the parties regarding the applicability of the Mysore Act of 1933 to Item 1 of the plaint schedule. But it may not be necessary to decide the above point since this case can be disposed of on another ground.

17. Even assuming, but without deciding, that Item 1 of the plaint schedule is governed by the provisions of the Mysore Act of 1933, the plaintiff has to fail in view of the provisions of the said Act and the state of pleadings in the case. It is admitted that Item 1 of the plaint schedule was acquired sometime in the year 1950 and even at that time there was only a sole surviving coparcener in the family. The first defendant was born in or about 1954 and till his birth, Venkataswamy was the only coparcener in the family. Mr. Gopalaswamy Iyengar submitted that the plaintiff acquired a right to a share in Item 1 of the plaint schedule on its acquisition from out of the joint family funds. If that be so, she acquired title to a share in that property under the Mysore Act of 1933, if the Act

was applicable, in or about 1950. Any subsequent change in the composition of the joint family on account of birth or death of coparcener would not affect the extent of the right of a female who acquired a right under Section 8 (1) (d) of the Mysore Act of 1933. That it is so is to be gathered from a decision of the former High Court of Mysore in Chikka Kempegowda v. .Madaiya, (1951) 29 Mys LJ 64 in which it was held that the interest that was acquired in a joint family property by a Hindu female governed by Mitakshara under Clause (d) of Section 8 (1) of the Mysore Act of 1933, was a vested right which was heritable and transferable. This view of the former High Court of Mysore receives support from a decision of the Supreme Court in Nagendra Prasad v. Kempananjamma : [1968]1SCR124 . While construing the provisions of Section 8 (1) (d) of the Mysore Act of 1933 Bhargava, J-, speaking for the court observed as follows:--

'This example makes it clear that the scope of ascertainment of the females who are to receive a share under Clause (d) must be very wide, because Clause (d) mentions that when the joint family property passes to a single coparcener by survivorship, the right to shares is vested in all the classes of females enumerated in all the three Clauses (a), (b) and (c). That being the position, we do not think that Clause (d) can be interpreted narrowly as giving a right to only those females who happen to be related to one or the other of the last two male coparceners in the manner laid down in Clauses (a) and (b). In fact the language of Clause (d) has to be interpreted as laying down that right to shares will vest in all females of the joint Hindu family who would have possibly received the right to a share if at any earlier time there had been partition in the family in any of the three manners laid down in Clauses (a), (b) and (c). This intention can only be given effect to on the basis that Clause (d) does not restrict itself to finding out females on the basis of an assumed partition, between the last two male coparceners. It is significant that Clause (d) gives a right independently of a partition and we do not see why its scope should be restricted by assuming a partition. The reference to the earlier Clauses in this Clause must be held to be restricted to the sole purpose of ascertainment of the females falling under Clauses (a), (b) and (c). and once they are ascertained, it has to be held that each one of them becomes entitled to a share under this Clause. The object of Clause (d) is to give to all females entitled to maintenance from the coparcenery property a right to claim a share in the joint

family property instead of a right to maintenance and that is why reference is made in it to all females enumerated in Clauses (a), (b) and (c).....'

It is therefore clear from the observations of the Supreme Court extracted above, that females who are entitled to a share under Clause (d) of Section 8 (a) of the Mysore Act of 1933, acquire a vested right to a share as laid down by that section. There is no provision in the Mysore Act of 1933 which provides for a vested right being created in respect of a share of a joint family property on a second occasion when the joint family properties pass on the hands of a sole surviving coparcener during the lifetime of the same female who is entitled to a share under that provision.

As already stated above, in this case on the death of Puttanniah. Venkataswamy was the only surviving coparcener and this position continued till 1954 when he got a son and again there was a sole surviving coparcener in the family when Venkataswamy died in 1955 leaving the first defendant as the sole surviving coparcener. If the plaintiff had acquired a vested right which was heritable and transferable in respect of Item 1 of the plaint schedule in or about the year 1950 when it was acquired out of the joint family funds by Venkataswamy, it could not be said that a fresh right accrued to her again when the property passed on for the second time during her lifetime to a sole surviving coparcener on the death of Venkataswamy in the year 1955.

18. In the plaint, however, the plaintiff has relied upon a cause of action which is alleged to have accrued to her on 6-10-1955 when M. P. Venkataswamy died leaving a sole surviving coparcener in the family. If as already stated, the plaintiff had a right in Item 1 of the plaint schedule even before the birth of the first defendant and if any subsequent alteration in the composition of the family by reason of birth, death or adoption, could not take away the vested right which the plaintiff had in Item 1 of the plaint schedule, she should have filed a suit on the basis of a cause of action which accrued prior to 6-10-1955 on which date Venkataswamy died. It is alleged in the plaint that the plaintiff had made several demands for partition and separate possession of the family Properties before the suit was instituted. The dates on which such demands were made by her are not

furnished in the plaint.

The suit was based on the cause of action which according to her accrued on 6-10-1955 which was within 12 years from the date of the suit. On the basis of her right which existed prior to the death of Venkataswamy if the plaintiff had filed a suit, it is not known what defence would have been taken by the defendants in this case. It is, therefore, clear that even granting that Mysore Act of 1933 was applicable to Item 1 of the plaint schedule but not deciding it, the suit filed by plaintiff on the cause of action which is alleged to have accrued -on 6-10-1955, namely, the joint family properties passing on to a sole surviving coparcener on the death of Venkataswamy, is not maintainable, since no fresh cause of action is shown to have accrued to the plaintiff on 6-10-1955.

19. In this view of the matter, we feel that it is not necessary to decide the question which has been raised in this case, namely, whether the Mysore Act of 1933 is applicable to immovable properties situated in the area which formed part of the former Princely State of Mysore and owned by Hindus who do not belong to that area.

20. When the case came up for argument before this Court, an application on behalf of the appellant was made under Order VI, Rule 17 of the Code of Civil Procedure praying that she may be permitted to amend the plaint permitting her to raise a plea on the basis of the Hindu Women's Rights to Property Act, 1937, and claiming a decree for partition and possession of one-half share in the plaint schedule properties except agricultural lands, i. e., in Items 1, 5 and 6 of the plaint schedule, it was argued on behalf of the appellant that even though she may not be able to succeed on the ground that the law in force in Mysore was not applicable to the facts of this case, at least she would be entitled to a decree in respect of the non-agricultural properties to which Hindu Women's Rights to Property Act, 1937, which came into force on April 14, 1937, would be applicable. This application has been opposed by the respondents.

It is to be seen that a similar contention was raised before the lower appellate court and the lower appellate court refused to grant relief on that basis on the ground that it would change the scope of the suit altogether. In their objections, the

respondents have pleaded that they have been in adverse possession of the property over the statutory period and since that there were admittedly earlier demands for a share by the appellant, any claim made by the plaintiff on the basis of a cause of action which accrued in 1937 when Puttanniah died, should or would have been barred by time. We feel that the objection of the respondents is well founded. We, therefore, reject the amendment application, I. A. No. 1, filed in this appeal by the appellant.

21. For the reasons stated above, the appeal fails and it is dismissed. Since the respondents raised a plea in the course of their written statement that the plaintiff was leading an immoral life even during the lifetime of her husband which has been negatived by the lower appellate court, we feel that this is a case in which the parties should be directed to bear their costs in this Court as well as in the Courts below.