

**Nanjamma Vs. Chandrappa**

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**Court :** Karnataka

**Decided On :** Mar-07-1974

**Reported in :** AIR1975Kant196; ILR1974KAR782; 1974(2)KarLJ156

**Judge :** V.S. Malimath, J.

**Acts :** Hindu Women's Right to Property Act, 1933 - Sections 8(1) and 8(2);  
Mulla's Hindu Law - Sections 270

**Appeal No. :** Second Appeal No. 781 of 1971

**Appellant :** Nanjamma

**Respondent :** Chandrappa

**Advocate for Def. :** S.V. Narasimhan, Adv.

**Advocate for Pet/Ap. :** N.C. Biligiri Rangiah, Adv.

**Judgement :**

1. This is a plaintiff's second appeal against the decree passed by the Civil Judge. Chickmaealur, in R. A. No. 67 of 1970, reversing the decree passed by the Munsiff, Tarikere, in O. S. No. 328 of 1967.

2. The plaintiff instituted the suit for partition and possession of half-a-share in the suit properties. The admitted facts of the case are that one Kollurappa was the propositus who died in or about 1936 leaving behind his widow Kariyavva his son

Mallappa and his daughter Nanjamma (the plaintiff). The defendant Chandrappa was, on the date of the death of Kollurappa, in the womb of Kariyavva and was born only a couple of months after his father's death. Mallappa died unmarried. By the time Mallappa died, Nanjamma, the plaintiff, had got married. She had claimed a share in the joint family properties under Clause (d) of Sub-section (1) of Section 8 of the Hindu Women's Right to Property Act, 1933 (hereinafter referred to as the 'Act'), which came into force on 1-1-1934. The suit was resisted by the defendant who, inter alia, took the stand that as the plaintiff is the married sister of his, she having got married long before the death of her brother, Mallappa, is not entitled to claim any share in the suit properties. The Court of first instance accepted the plaintiff's case and made a decree for partition and separate possession, as prayed for by her. On appeal, the learned Civil Judge reversed the said decree and dismissed the plaintiff's suit. Hence this second appeal by the plaintiff.

3. Sri N. C. Biligiri Rangaiah, learned counsel appearing for the appellant, contended that the plaintiff became entitled to half-a-share in the suit properties immediately on the death of her father, Kollurappa, as Mallappa got the suit properties by survivorship, he being the sole coparcener in the family. His submission is that the defendant being a posthumous child, he must be regarded as having been born only after the right to a share in the suit properties accrued to the plaintiff under Clause (d) of Sub-section (1) of Section 8 of the Act.

4. Sub-section (1) of Section 8 of the Act confers right on certain females to a share in the coparcenary property, when there is a partition in the family or when the family property passes on to a single coparcener by survivorship. Clause (a) of Sub-section (1) of Section 8 provides that the mother, the unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issues shall be entitled to a share when the partition of the joint family property takes place between the said person and his son or sons. Clause (b) of Sub-section (1) of Section 8 provides that the mother, unmarried sisters, the widow and unmarried daughters of the predeceased undivided brothers who have left no male issues shall be entitled to a share at a partition of the joint family property among the brothers. Clause (c) of Subsection (1) of Section 8 provides that Clauses (a) and (b) shall also apply mutatis mutandis

to a partition among other coparceners in a joint family. The provisions of Clauses (a), (b) and (c) of Sub-section (1) of Section 8 of the Act, it is not disputed, are not attracted to the facts of the present case. Clause (d), on which the appellant -- plaintiff -- has based her claim, reads as follows:--

'(d) Where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to share all the classes of females enumerated in the above sub-sections.'

5. The actual share, to which a female is entitled under Sub-section (1), is regulated by the provisions of Sub-section (2) of Section 8 of the Act. The occasion that gives right to a female enumerated in Clauses (a) to (c) of Sub-section (1) of Section 8 to a share in the joint family property under Clause (d) of that sub-section is, when the family property passes on to a single coparcener by survivorship. The argument constructed by Sri Biligiri Rangaiah is that such an event took place when the plaintiff's father Kollurappa died leaving behind him, Mallappa as a sole surviving coparcener. If the right to a share accrued to the plaintiff under Clause (d) of Sub-section (1) of Section 8 on the date of death of Kollurappa, it is contended that the birth of the defendant on a subsequent date should be ignored for the purpose of ascertaining of the right to which the plaintiff is entitled in the joint family properties. This argument fails to take notice of the position of a posthumous son under the Mithakshara Law. The defendant who was in the womb of his mother Kariyavva at the time of the death of Kollurappa, must, for the purpose of Law, be regarded as having been born before the death of Kollurappa and the rights of the surviving coparceners have to be worked out on that basis. In Section 270 of Mulla's Hindu Law. 13th Edition, this is what is stated at page 309:

'..... Under the Hindu Law a son begotten for conceived, or in his mother's womb) is equal, in many respects, to a son actually in existence. Thus a son in his mother's womb and this also applies to a daughter is entitled to inheritance, if born alive. He is also entitled to a share on partition. Further, he is entitled to take coparcenary property by survivorship as against a legatee of such property under his father's will. That is to say, just as a son living at the time of his father's death

is entitled on his father's death to take coparcenary property by survivorship, so is a son who is in his mother's womb at the time of the father's death. The father cannot bequeath coparcenary property to a third person so as to defeat the son's right of survivorship whether the son was in existence at the time of his death or was in his mother's womb at the time. Lastly, an alienation that can be impeached by a son actually existing at the time of alienation can also be impeached by a son who was in his mother's womb at the time.'

6. The fiction under Hindu Law is that a posthumously born son must be deemed to have been born immediately before the death of the father of the posthumous son. If this fiction is given effect to then it follows that the joint family property did not pass to Mallappa by survivorship on the death of Kollurappa, but that the property passed on by survivorship to Mallappa as well, as his brother. Chandrappa, the defendant. It therefore follows that on the death of Kollurappa the property did not pass on to a single coparcener by survivorship in order to attract the provisions of Clause (d) of Sub-section (1) of Section 8 of the Act. Hence, it is not possible to accede to the contention of Sri Biligiri Rangaiah that for the purpose of ascertaining the right of the plaintiff, the birth of the defendant Chandrappa, who was in the womb of his mother Kariyavva, on the death of Kollurappa should be ignored.

7. It was next submitted by Sri Biligiri Rangaiah that the plaintiff was an unmarried daughter of Kollurappa and unmarried sister of Mallappa and Chandrappa, who got married only a couple of years later. The argument constructed by the counsel is that if the plaintiff as an unmarried sister of Mallappa and Chandrappa was entitled to a share under Clause (b) of Sub-section (1) of Section 8 of the Act, she cannot be deprived of that right merely because she has subsequently got married. The right of an unmarried sister to claim a share under Clause (b) of Sub-section (1) of Section 8 arises only when a partition takes place of the joint family property among the brothers. If no partition takes place among the brothers, the unmarried sister cannot claim any share under Clause (b). I am fortified in this view of mine by the decision of the Supreme Court in *Nagendra Prasad v. Kempananjamma*, : [1968]1SCR124 .

8. It was however contended by Sri Biligiri Rangaiah that the aforesaid decision of the Supreme Court lays down the proposition that for the purpose of the application of Clause (d) of Sub-section (1) of Section 8 of the Act, all that is required is to ascertain who are the females that are enumerated in Clauses (a) and (b) of Sub-section (1) of Section 8. He submitted that a sister is one of the persons enumerated in Clauses (a) and (b), and as such, she would be entitled to a share in the joint family property, when it passed on to the defendant by survivorship on the death of Mallappa.

9. The aforesaid decision of the Supreme Court makes it clear that the object of Sub-section (1) of Section 8 of the Act is, to confer a right to secure a share on certain females who are otherwise entitled to be maintained out of the joint family property. An unmarried sister of a coparcener is entitled to be maintained out of the joint family property until she gets married. It is precisely for this reason that Clauses (a), (b) and (c) of Sub-section (1) of Section 8 provide that it is only the unmarried daughters and unmarried sisters that have been enumerated as persons entitled to claim a share and not the married daughters and married sisters.

10. It is not disputed that on the date of the death of Mallappa when the property passed on by survivorship to the sole surviving coparcener, viz., Chandrappa the defendant, the plaintiff Nanjamma was married. As on the date on which the properties passed on by survivorship to the defendant the plaintiff was married, she cannot be regarded as a female enumerated in Clauses (a), (b) and (c) of Sub-section (1) of Section 8 of the Act to become entitled to a share. Hence, it is not possible to accede to the contention of Sri Biligiri Raneiah that the plaintiff is entitled to a share under Clause (d) of Sub-section (1) of Section 8. If the joint family property had passed on to a single coparcener before the plaintiff got married, she would have been entitled to claim the benefit of Clause (d). But, as in this case the plaintiff was married by the time the property passed on by survivorship to the defendant, she is not entitled to claim any share in the joint family properties. The view taken by the Court below in this behalf is perfectly justified and does not call for interference.

11. For the reasons stated above, this appeal fails and is dismissed.

12. No costs.

13. Appeal dismissed.

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