

Muniswamy Vs. Laxmakka

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Court : Karnataka

Decided On : Jul-17-1987

Reported in : AIR1989Kant67; ILR1987KAR2666

Judge : M.S. Nesargi, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 6 and 4; Hindu Women's Rights to Property Act, 1937 - Sections 3; Mysore Hindu Law Women's Rights Act, 1933 - Sections 8

Appeal No. : Regular Second Appeal No. 460 of 1977

Appellant : Muniswamy

Respondent : Laxmakka

Advocate for Def. : B.A. Reddappa, Adv.

Advocate for Pet/Ap. : M.S. Gopal, Adv.

Judgement :

1. This is defendant's second appeal. The respondent-plaintiff filed the suit for partition and separate possession of her share in the suit schedule 11 items of properties.

2. The undisputed facts are that one Tammanna had two sons, Papanna and the defendant Muniswami. The plaintiff is the wife of Papanna. Papanna died before

the coming into force of the [Hindu Succession Act, 1956](#) (hereinafter referred to as the Act).

3. According to the plaintiff, she is entitled to the share in the joint family properties of Papanna her husband, and the defendant and that would be one-half.

4. The defendant contended that Papanna pre-deceased Tammanna; the plaintiff went wayward. Tammanna advised the plaintiff repeatedly; but she did not mend her conduct and therefore Tammanna gave the plaintiff suit items 4, 5 and 10 to herself and thereby the plaintiff got divided from the joint family and commenced residing separately. Suit item No.11 is not the joint family property. Other properties have been acquired after the plaintiff got herself divided and therefore they are his own properties.

5. The trial Court, after applying its mind to the evidence relied upon by the parties, concluded that the defendant had established that the plaintiff had taken her share and got divided from the joint family. It also held that suit item No. 11 was not the joint family property and dismissed the suit.

6. The lower appellate Court has held that Papanna had died in about the year 1954-55 and had pre-deceased Tammanna and that the case of the defendant that the plaintiff had been given suit items 4, 5 and 10 towards her share and therefore she had divided herself, is not established. It also held that suit item No. 11 was not the joint family property. Further on it applied the provisions in the Hindu Women's Rights to, Property Act, 1937 and calculated the quantum of share of the plaintiff as one-third.

7. This Court has, while admitting the appeal on 17-7-1977, formulated the following substantial questions of law for consideration.

(1) Whether under the undisputed facts and circumstances of the case the provisions of the Hindu Law Women's Rights Act, 1933 (Mysore Act No. 10 of 1933) or the provisions of the Hindu Women's Rights to Property' Act, 1937, are applicable and

(2) Whether the principle of ouster is attracted against the plaintiff-respondent ?

8. The facts found on appreciating the evidence are, Papamma died in about the year 1954-55 and Tammanna died thereafter. Suit items 4, 5 and 10 had not been given to the plaintiff towards her share. Suit item No. 11 is not the joint family property.

9. Learned Counsel appearing on both sides fairly stated that Hindu Women's Rights to Property Act, 1937 (hereinafter referred to as the 1937 Act) has never been made applicable to the old Mysore area and is not applicable to this area even now. It is the provisions in the Hindu Law Women's Rights Act, 1933 (Mysore Act No. 10 of 1933) (hereinafter referred to as the 1933 Act) that would be applicable. S. 8 of the 1933 Act and S. 3 of the 1937 Act are two relevant provisions. It is S.3 of the 1937 Act that has been applied by the lower appellate Court. What is contained, in S. 3 of the 1937 Act varies from what is contained in S. 8 of the 1933 Act. It has been already seen that the provisions in the 1937 Act would not be applicable to the parties in this case as they belonged to old Mysore area. Therefore, it is S. 8 of the 1933 Act that is to be considered. The relevant portion of S. 8 of the 1933 Act that applies to the facts and circumstances reads as follows:

'8. (1)(a)

(b) At a partition of joint family property among brothers, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue shall be entitled to share with them.

(c)

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

Plain reading of these provisions shows that in case the shares of Papamma and Tammanna in the joint family had passed to Muniswami the defendant by survivorship, S. 8(l)(d) of the 1933 Act would apply in turn calling for the

application of S. 8(l)(b) of the 1933 Act. It is well settled that on the death of a coparcener, his interest in the coparcenary property does not pass by succession to his heirs. It passes by survivorship to other coparceners, subject to the rule that where the deceased coparcener leaves male issue, they represent his rights to a share on partition, and are his sole representatives for purposes of execution of money decrees passed against him. This position in law is subject to the riders that are found in the 1937 Act and the 1933 Act.

10. On the death of Papanna his interest in the coparcenary property passed by survivorship in favour of Tammanna and the defendant. On the death of Tammanna, the interest of Tammanna and Papanna passed by survivorship to the defendant. When that is, so, S. 8(l)(d) of the 1933 Act comes into application. Therefore, under S. 8(l)(b) of the 1933 Act the plaintiff gets a share in the coparcenary property.

11. the quantum of share that a female heir gets is prescribed by S. 8(2) of the 1933 Act. S. 8(2)(a) reads as follows:

'8(2)(a). In the case of the widow, one-half of what her husband, if he were alive, would receive as his share.'

This provision applies to the plaintiff Therefore, she would be entitled to half the share of what her husband would have received if he were to be alive and there were to be a partition between him Tammanna and the defendant, In short, she would be entitled to one-sixth share in the coparcenary property. That coparcenary property consists of suit schedule properties except suit item No. 11.

12. Sri B. A. Reddappa, learned Advocate appearing on behalf of the defendant, urged that in view of S. 4 of the Act the provisions in S. 8 of the 1933 Act would not be applicable as the provisions of the Hindu Succession Act would have an overriding effect on it. According to him, the interest that Papanna had in the coparcenary property, would devolve on the plaintiff irrespective of what is contained in S. 8 of the 1933 Act.

13. Section 4(1) of the Act reads as follows :

'4. (1) Save as otherwise expressly provided in this Act, -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law, in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.'

It is plain that S. 4(1)(b) of the Act applies to the facts and circumstances of this case in view of the 1933 Act being in force.

14. Now it is to be seen whether the provision in S. 8 of the 1933 Act are inconsistent with any of the provisions contained in the Hindu Succession Act. At this stage, S. 6 of the Act and the proviso to it are to be considered. They read as follows:

'6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative, specified in that' class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or in testate succession, as the case may be, under this Act and not by survivorship.'

15. It is under S. 6 of the Act that a surviving female relative, specified in Class I to the Schedule, of a deceased Hindu leaving behind his interest in the Mitakshara coparcenary property, will succeed to his interest. Reference to the Schedule shows that in the absence of a son or a daughter, the widow would be Class I heir. Therefore, the plaintiff would be entitled to succeed to the interest of Papanna provided he had died after the commencement of the Hindu Succession Act. If the condition about the death of the concerned Hindu is left out of consideration, then

the remaining part of the provision will be inconsistent with S. 8(l)(b) and (d) and S. 8(2)(a) of the 1933 Act. It would be under such circumstances that S. 4 of the Act would operate. But, it has been found as a fact by the lower appellate Court that Papanna had died in about the year 1954-55. Therefore, the main requisite of S. 6 of the Act would not be satisfied. Hence, the said S. 6 would not be applicable. There is no other provision in the Act that can be said to be inconsistent with what is contained in S. 8(l)(b) and (d) and S. 8(2)(a) of the 1933 Act. Therefore, this argument of Sri Reddappa fails.

16. In view of the foregoing reasons, this appeal is allowed partly. The quantum of share fixed by the lower appellate Court in its decree is modified to one-sixth in place of one-third in the suit schedule properties except suit item No. 11. Each party is directed to bear his or her own costs throughout.

17. It is noticed that though the lower appellate Court has, by its judgment, excluded suit item No. 11 from the purview of its decree, the decree appears to have been wrongly drawn up showing suit item No. 11 as partible property. That error has to be rectified and it is directed that that error be rectified while drawing up a decree pursuant to this judgment.

18. Appeal partly allowed.