

Savithri Amma Vs. Devaki Amma

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Court : Karnataka

Decided On : Jan-01-1981

Reported in : AIR1982Kant67; 1981(1)KarLJ162

Judge : K.S. Puttaswamy, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 3; [Hindu Succession Act, 1956](#) - Sections 6 and 8

Appeal No. : Second Appeal No. 298 of 1974

Appellant : Savithri Amma

Respondent : Devaki Amma

Advocate for Def. : P. Vasudeva Aithal, Adv.

Advocate for Pet/Ap. : P. Ganapathi Bhat, Adv.

Judgement :

1. An unsuccessful plaintiff before the Courts below appeals to the Court. A simple and a clear case that should have been decreed, has been dismissed by the Courts below because they disregarded the law of pleadings, the basic concepts of Hindu law, simple rules of interpretation of statutes and the law of precedents, the result of which is lack of clarity in their judgments, which should be the hallmark of a judicial decision.

2. At a village called Padekallu Karopady, Bantwal Taluk, Dakshina Kannada District, there was a joint Hindu family consisting of one Vishnu Bhatta, his wife Savitriamma and their three sons, Ganapathy Bhatta, Krishna Bhatta and Narayana Bhatta governed by Mithakshara School of Hindu law, owning various properties. Vishnu Bhatta died on 6-4-1952 and thereafter the other members continued to be joint till 15-10-1963. On 16-10-1963 there was a partition among the surviving members of the said joint family and by a registered partition deed of that date (Exhibit D-1) separate shares were allotted to Savithriamma, Krishna Bhatta and the other two members. On 26-1-1967 Krishna Bhatta died intestate leaving behind him his mother Savithriamma, his wife and children and the properties allotted to his share at the partition (Exhibit D-1).

3. On 8-10-1969, Savitriamma instituted O. S. No. 199 of 1969 in the Court of the Munsiff, Bantwal against the wife and children of Krishna Bhatta for partition and possession of her 1/36th share in the plaint schedule properties of Krishna Bhatta, for past mesne profits of Rs. 300/- from 23-11-1967 and future mesne profits. The plaintiff claimed that on the death of Krishna Bhatta she was one of his heirs that had succeeded to his estate under S. 8 of the Hindu Succession Act of 1956 (Central Act No. 30 of, 1956) (hereinafter referred to as the Act) and that she was entitled for the share claimed by her, partition and possession and future mesne profits.

4. In resisting the plaintiff's suit, the defendants did not dispute the plea of the plaintiff that she was the mother of Krishna Bhatta who died intestate and that he had left the properties specified in the plaint. But, still they pleaded that the plaintiff was not entitled to any share in the estate of Krishna Bhatta. Secondly they pleaded that the partition, if ordered, would result in fragmentation and violation of the law preventing the same. Lastly, they disputed the rate of past mesne profits claimed by the plaintiff.

5. On the above pleadings, the learned Munsiff framed as many as six issues, the last two of which were not really necessary. The issues framed by the learned Munsiff read thus:

- (1) Whether the plaintiff is entitled to claim share in the properties allotted to her deceased son Krishna Bhatta?
- (2) What is the correct income of the plaintiff A schedule properties?
- (3) Whether the claim for partition by metes and bounds is not maintainable under the Fragmentation Act?
- (4) Whether the plaintiff is entitled to profits? If so, at what rate?
- (5), What reliefs parties are entitled to?
- (6) What order as to costs ?.

Both the parties did not adduce any oral evidence but, preferred to argue their respective cases by marking a certified copy of the partition deed dated 16-10-1963 (Ext.-D 1) and a death extract of Krishna Bhatta as exhibits by consent.

6. On bearing the arguments addressed by counsel, the learned Munsiff (Sri V. M. Hebbar) by his judgment dated 21-7-71 upheld the plea of the defendants and consequently dismissed the suit holding that there was no need to determine the other issues. Against the said judgment and decree of the learned Munsiff, the plaintiff filed an appeal in R. A. No. 196 of 1971 before the Civil Judge, Mangalore, Dakshina Kannada. On 24-9-1973 the principal Civil fudge, Mangalore (Sri Syed Fazjulla Razvi) dismissed the said appeal and has affirmed the judgment and decree of the learned Munsiff.

7. In this second appeal filed on 8-1-1974, the plaintiff has challenged the aforesaid judgments and decrees of the Courts below. But, alas ! as it happens in many a civil dispute in this country and more so in this Court for a variety of reasons, the plaintiff ended her life journey on 26-6-1977. On the death of the plaintiff, her youngest son P. Narayana Bhatta who claims to have succeeded to her estate under a registered will dated 24-9-1970 executed by her in his favour, has been brought on record as her legal representative leaving open the objections urged by the defendants.

8. Sri P. Ganapathy Bhat, learned counsel who appeared in support of the appeal, has challenged the findings of the Courts below as plainly opposed to the pleadings and Sections 6 and 8 of the Act.

9. Sri P. Vasudeva Aithal, learned counsel for the respondents supported the findings of the Courts below on the grounds found by them and also on other grounds.

10. On the pleadings and the contentions urged before me, the following points arise for determination in this appeal:

(1) whether there was a plea by the defendants to non-suit the plaintiff ?

(2) Whether the plea of the defendants argued at the hearing viz., that in view of the earlier partition, allotment of shares thereto to the plaintiff and Krishna Bhatta, the plaintiff was not entitled to a share in the estate of Krishna Bhatta who died intestate under S. 6 of the Act, is correct and legal?

(3) Whether the claim of the plaintiff for 1/36th share in the properties of Krishna Bhatta founded on S. 8 of the Act is tenable and correct?

(4) Whether the plaintiff's suit is barred by the provisions of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act of 1966 (hereinafter referred to as the 1966 Act)?

I propose to examine the aforesaid points seriatim.

Re: Point No. (1)-

Whether there was a plea by the defendants to non-suit the plaintiff?

11. Sri Bhat urged that on the basis of a general and vague denial and in the absence of a specific plea by the defendants to non-suit the plaintiff, the Courts below were not justified in answering issue No. 1 against the plaintiff.

12. Sri Aithal urged that the plea though not specific, was based on admitted facts and the failure if any should not be viewed with that strictness.

13. In her plaint, the plaintiff has specifically referred to the earlier partition, allotment of separate shares to herself, Krishna Bhatt, the death of the latter, her relationship and her right to succeed to the extent of the share claimed by her under Section 8 of the Act, which were all admitted by the defendants in their written statement. But, in their written statement, the defendants merely denied the rights of the plaintiff to a share in the plaint schedule properties of Krishna Bhatta. Except for the above general and vague denial, which is no denial at all (vide Order 8, Rr. 2 and 4 of the Code of Civil Procedure), the defendants did not specifically plead any factual or legal ground on which the plaintiff was not entitled for a share.

14. Under the law of pleadings incorporated in Orders 7 and 8 of the Code, even bearing in mind the oft quoted principles that mofussil pleadings should be liberally construed and that a Court should be slow to throw out a claim on a mere technicality of pleadings, if the substance of the thing was there (vide Surajpal Singh v. State, : 1952 CriLJ331), the defendants had not made out a case to non-suit the plaintiff's suit at all. Even on a cursory examination, the claim of the plaintiff founded on S. 8 of the Act and other related provisions was unanswerable. From the fore goings, it follows that the Courts below should have answered issue No. 1 in the affirmative and in favour of the plaintiff, but in holding to the contrary, have committed an error of law. Accordingly, I answer point No. 1 in favour of the plaintiff.

Re: Point No. (2).-

Whether the plea of the defendants argued at the hearing viz., that in view of the earlier partition, allotment of shares thereto to the plaintiff and Krishna Bhatta, the plaintiff was not entitled to a share in the estate of Krishna Bhatta who died intestate under Section 6 of the Act, is correct and legal?

15. In order to examine this point, a phantom created by the Courts below, it is necessary to notice the facts found by them and the views expressed thereto in the first instance.

16. At the partition (Exhibit-D 1), the plaintiff and Krishna Bhatta had been allotted their respective shares in the coparcenary property and that notwithstanding the same; she was over again claiming a share in the coparcenary property. On this finding of fact, both the Courts below held that the claim of the plaintiff was barred by Explanation (2) of S. 6 of the Act.

17. Before examining the correctness, of the views of the Courts below and the rival contentions urged thereto, it is useful to bear in mind the general principles of Mithakshara School of Hindu law relating to joint family, coparcenary and the effect of partition.

18. A joint and undivided Hindu family is a body consisting of persons, male or female, who are the sapindas (relations) of each other by birth, marriage, or adoption. A coparcenary is a narrower body or an inner circle within the joint family circle consisting of the male members who are related to the head of the family for the time being within four degrees. A male member of the joint family enters the coparcenary when he comes within the limit of four degrees by the death of an ancestor or ancestors provided that a break of more than three degrees has not occurred between him and the ancestor on whose death he would ordinarily have entered the coparcenary. No female can be member of coparcenary, although a female can be a member of a joint Hindu Family.

19. A coparcenary is purely a creature of law: it cannot be created by act of parties, save in so far that by adoption a stranger may be introduced as a member thereof.

20. The essence of a coparcenary under the Mithakshara law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mithakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, e. g., one-third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share. No female can be a coparcener under the Mithakshara law.

21. The effect of a partition is to dissolve the coparcenery, with the result that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. But, if a member while separating from his other coparceners, continues joint with his own male issue, the share allotted to him on partition will in his hands retain the character of a coparcenery property as regards the male issue (vide para 340, Chapter VII Effect of Partition of the Principles of Hindu Law by Mulla 14th Edition).

22. With this brief background, it is now useful to examine the Act and Ss. 6 and 8, in particular.

23. The Act is enacted to amend and codify the law relating to intestate succession among Hindus. The Act is divided into chapters comprising 31 sections and a schedule under S. 8 of the Act. Chapter 1 preliminary deals with (i) short title and extent; (ii) application of the Act; (iii) definitions and interpretation; and (iv) overriding effect of the Act. Chapter 11 deals with intestate succession, that is, with succession on intestacy to the property both of a Hindu male and 2 female governed by the provision? Of the Act. Section 6 however, deals with joint family. Chapter III which consists of only one-section deals with repeal of certain Central Acts in force at the commencement of the Act. Although the preamble declares that the Act is enacted to amend and codify the law relating to intestate succession among Hindus, the Act in fact deals with testamentary succession as well as joint family property to a limited extent. A broad examination of the provisions, shows that the Act does not destroy a joint Hindu family, Mithakshara coparcenery or the concepts of their owning properties. But, at the same time, the Act makes changes in the traditional Hindu law of succession in many respects.

24. Section 6 of the Act, with the heading 'Devolution of interest in coparcenery property', consists of four paragraphs. The first paragraph deals with the main enunciation of the previous law regarding devolution by survivorship in Hindu coparcenery. The second paragraph in the shape of a proviso provides for the exceptions to devolution by survivorship. The third paragraph by way of Explanation-1 provides that the interest of the coparcener shall be deemed to be

the share which would be allotted to him if there was a partition immediately before his death. The last paragraph by way of Explanation 2 prevents the divided members from claiming the interest of a deceased coparcener on intestacy.

25. Section 6 deals with devolution of coparcenary interest in the case of a male Hindu dying after the Act, undivided in a Mithakshara coparcenary. It does not deal with the devolution by inheritance of the separate property of a Hindu male, which is governed by S. 8, followed by Ss. 9, 10, 11, 12 and 13. Nor does it deal with devolution by inheritance of the property of a female Hindu which is governed by Ss. 15 and 16 of the Act.

26. The proviso to S. 6 creates an exception to the general rule of devolution by survivorship in regard to coparcenary property in the Mithakshara school. If a man who is a member of a joint and undivided Hindu family governed by the Mithakshara law dies, (i) leaving coparcenary or joint family property, and (ii) leaving (a) any of the female relatives mentioned in Class-I of the schedule to the Act, or (b). a male relative specified in that class, who claims through such female, his share or interest in the coparcenary property would devolve by testamentary or intestate succession under this Act and not by survivorship.

27. Explanation-1 defines the expression 'the interest of the deceased in the Mithakshara coparcenary property' and incorporates into the subject the concept of a notional partition. The notional partition is only for, the purpose of enabling succession to and computation of an interest which was otherwise liable to devolve by survivorship and for the ascertainment of the shares in that interest of the relatives mentioned in Class-1 of the schedule. Subject to such carving out of the interest of the deceased coparcener, the other incidents of the coparcenary are left undisturbed and the joint family can continue without disruption. A statutory fiction which treats an imaginary state of affairs as real requires that the consequences and incidents of the putative state of affairs must flow from or accompany it as if the putative state of affairs had in fact existed and effect must be given to the inevitable corollaries of that state of affairs. But, the operation of the notional partition and its inevitable corollaries and incidents has to be construed only for the purposes of Section 6 namely, devolution of interest of the

deceased in coparcenary property.

28. Explanation-II to the proviso to Section 6, provides in effect that when a coparcener dies leaving female heirs or male heirs claiming through males mentioned in Class-1, his undivided interest in the coparcenary property would devolve on the heirs in Class-I but excluding (i) any heir in Class-1, who had separated from the deceased coparcener during his lifetime and (ii) the heir of such heir if the latter was also dead. In other words, even though a share in coparcenary property would devolve by succession and not by survivorship, the heirs of the deceased coparcener would not include those who had separated from him during his lifetime; for the rest the succession would go in the same way.

29. From the above analysis, it is clear that Section 6 of the Act could have had its application only if there was no partition in the coparcenary consisting of Vishnu Bhatta and his sons and that Krishna Bhatta, a member of that coparcenary had died intestate and not otherwise. But, that is not the position in the case, and therefore, Section 6 has no application at all. The coparcenary that is referable is the coparcenary consisting of Vishnu Bhatta and the male members that are related to the head of the family for the time being within the four degrees and not coparcenary that came into existence after the partition consisting of Krishna Bhatta and his sons, if any; Section 6 of the Act in terms is applicable to intestate succession of a male Hindu in a coparcenary property dying intestate. The proviso or the two Explanations, in particular Expln. No. 2 So that section does not in any way alter that position. When that is so, the Courts below in holding that the claim of the plaintiff who had obtained a share as a member of joint Hindu family, was barred by Explanation-2 to S. 6 of the Act, though she was not a member of the coparcenary, have committed an error of law.

30. In reaching his conclusion, the learned Civil Judge has relied on the ruling of Narayana Pai, J. (as he then was) in Annubai v. Akkabai, 1967 (1) Mys LJ 654. In Annubai's case this Court had to consider only the quantification of share of a female heir under the Act and the precise question that has arisen in this case had not arisen at all. In this view, the principles stated in that case have no application. In Shivaji Rao v, Rukminiyamma, 1972 (2) Mys LJ 374: (AIR 1973 Mys 113)

referred to by the Courts below and distinguished by them on the ground that the facts in that case, are not similar to the facts in this case, the precise question that arises for determination in this case had not arisen and, therefore, the ratio in that case does not bear on the point. But, the construction placed by me on S. 6 of the Act is also in accord with the construction placed by the Divisional Bench in that case.

31. In the light of my above discussion, I answer point No. 2 in favour of the plaintiff and against the defendants.

32. Before proceeding to examine point No. 3, it is useful to notice as to how the Courts below have dealt with the cases cited before them. Both the Courts below, in particular, the learned Munsiff has distinguished every case cited before him on the opinion of the textbook writers on the ground that the facts in the decided cases were different to the facts of the case that has to be decided by them.

33. A detailed discussion into the law of precedents recognised by English Courts and followed in our country is not necessary for purposes of this case. But, at least one of the basic principles of the law of precedents is that what binds a subordinate Court is only the ratio, ratio decidendi or the principle enunciated by the superior Court in another case and not the very decision in that case which only binds the parties to that case. After all no case is an authority on facts. Salmond in his jurisprudence (12th Edition) neatly brings out the distinction in these words :

'The Ratio Decidendi

Having considered the extent to which Courts are bound by previous decisions, we must now examine what constitutes the decision in a case and what it is that is actually binding on later Courts.

First, however, we must distinguish what a case decides generally, and as against the entire world from what it decides between the parties themselves. What it decides generally is the ratio decidendi or rule of law for which it is authority; what it decides between the parties includes far more than just this.'

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As against persons not parties to the suit, the only part of a case which is conclusive (with the exception of cases relating to status) is the general rule of law for which it is authority. This rule or proposition, the ratio decidendi, may be described roughly as the rule of law applied by and acted on by the Court, or the rule which the Court regarded as governing the case.'

I have drawn reference to this as I have found many a subordinate Court distinguishing cases as had been done by the learned Munsiff in the present case. I do hope that the subordinate Courts will at least avoid the same in future.

Re: Point No. M.-

Whether the claim of the plaintiff for 1/36th share in the properties of Krishna Bhatta founded on S. 8 of the Act is tenable and correct?

34. As noticed earlier, the plaintiff's claim for 1/36th share in the properties of Krishna Bhatta is founded on S. 8 of the Act.

35. In law, the properties that came to the share of Krishna Bhatta at the partition became his separate properties who died intestate. The plaintiff, the mother of Krishna Bhatta, is one of the Class-I heirs under the schedule appended to S. 8 of the Act Section 8 regulates the intestate succession of a Hindu male dying intestate. Krishna Bhatta being a Hindu male dying intestate, the plaintiff, his mother, who is one of the Class-I heirs is entitled to a share. She had claimed that 1/36th share in the properties of Krishna Bhatta, the correctness of which had not been disputed by the defendants. Even otherwise, the quantum of share claimed by the plaintiff in the separate property of Krishna Bhatta is correct and she is, therefore, entitled for that share. Accordingly I answer point No. 3 in favour of the plaintiff.

Re : Point No. (4).-

Whether the plaintiff's suit is barred by the provisions of the 1966 Act?

36. Before the Courts below, the defendants who had urged that the share, of the plaintiff if decreed would result in fragmentation and, therefore, the suit was not maintainable on which plea, issue No. 3 had been framed, do not appear to have pressed the same. Sri Aithal did not address any arguments before me on that plea. But, still to find out whether there is any substance or not in the said plea, I have examined the same.

37. The 1966 Act that is in force in the new State of karnataka from 1-5-1969 repealing the corresponding Acts in the erst while Bombay and Hyderabad areas, does not bar a suit for partition and possession of a share in a Civil Court. Whether a share that is claimed if ultimately decreed would result in fragmentation cannot be predicted before actual partition of the lands by metes and bounds and the same has necessarily to be examined only in the final decree proceedings and steps taken to prevent the same in conformity with the provisions of the 1966 Act. In this view, I hold that the plaintiff's suit is not barred under the 1966 Act and answer point No. 4 in favour of the plaintiff. But, at the same time it is necessary to point out whether the partition would result in fragmentation within the meaning of that term occurring in the 1966 Act and if so, what steps should be taken to prevent the same is not decided and is left open to be decided by the Court or the authority in conformity with the 1966 Act.

38. In the normal circumstances, I should have decreed the plaintiff's suit for 1/36th share and directed the trial Court to determine the other matters. But, I cannot do so as the original plaintiff is dead and I. A. No. I filed by Narayana Bhatta has been allowed only for the purpose of prosecuting this appeal leaving open the rival claims of the parties thereto. In this view all that this Court can do, is to reverse the findings of the Courts below on issue No. 1 and hold that the plaintiff was entitled to 1/36th share in the plaint schedule properties and direct the trial Court to hold an inquiry into the other matters viz., (i) whether Narayan Bhatta is the legal representative of the plaintiff as claimed by him? (ii) if Narayana Bhatta proves that he is the legal representative of the plaintiff, then hold enquiry into the past and future mesne profits and draw up a decree accordingly. In order to enable the learned Munsiff to hold an inquiry on the claim of Narayana Bhatta, that he is the legal representative of the plaintiff, I, direct the Registrar to send a copy

of I. A. No. I and objections filed thereto by the defendants duly authenticated by him.

39. In the result, I allow this appeal, set aside the judgments and decrees of the Courts below, declare that the plaintiff was entitled to 1/36th share in the plaint schedule properties of Krishna Bhatta and direct the learned Munsiff to hold an inquiry into the claim of Narayana Bhatta whether he has succeeded to her estate under the registered Will dated 24-9-1970 as claimed by him and if he accepts the said claim of Narayana Bhatta thereafter hold an inquiry into past and future mesne profits and draw up a preliminary decree in conformity with his findings on those issues.

40. Regular Second Appeal allowed. Case remanded.

41. As the original and present dispute is between close relations, it is proper to direct the parties to bear their own costs throughout. I, therefore, direct the parties to bear their own costs throughout.

42. Appeal allowed.