

Subbanna Vs. Kamaiah

Subbanna Vs. Kamaiah

SooperKanoon Citation : sooperkanoon.com/379801

Court : Karnataka

Decided On : Feb-09-1988

Reported in : ILR1988KAR786

Judge : K.A. Swami and ; D.R. Vithal Rao, JJ.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 3, 4 and 5; Hindu Succession Act - Sections 8; Code of Civil Procedure (CPC) - Rule 9 and 10(2), Order 1; Mysore Hindu Law Women's Rights Act, 1933 - Sections 8(2)

Appeal No. : R.F.A. No. 206 of 1980

Appellant : Subbanna

Respondent : Kamaiah

Advocate for Def. : S.G. Bhat, Adv. for R-1 and 2, ;G. Basavaraj, Adv. for R-4, ;S.G. Krishna Murthy, Adv. for R-5 and ;K. Munivenkatappa, Adv. for R-6

Advocate for Pet/Ap. : Chandrashekharaiyah and ;S.G. Raikar, Adv.

Judgement :

ORDER

K.A. Swami, J.

1. This appeal by the plaintiff is preferred against the judgment and decree dated 30-7-1980 passed by the learned IVth Addl. Civil Judge, Bangalore City, in O.S. No. 20/72.

2. The following are the suit schedule properties:

SCHEDULE :

1. Dry land Sy. No. 35/4-5 1/2 guntas in Kethamaranahally, Rajajinagar. Bangalore, bounded on the East by Subbiah and Marappa land ; West by Muniswamappa's land, North by Muniyappa's land and South by peth and SY.NO. 1.

2. Tiled roofed house No. 131 in S.No. 34/14 (formerly part of Sy. No. 35/4) of 1 1/2 guntas, Kethamaranahally, Rajajinagar, Bangalore, bounded on the: East by road; West by Marappa and Muniswamappa's houses ; North by Galli and Subbiah's house and South by road;

3. Dry land Sy. No. 150/10-17 guntas of land now it is concerned as sites by City Improvements Trust Bangalore as Chord Road, II stage, Kethamaranahally. Rajajinagar, Bangalore and bounded on the: East by Muniswamappa's land. West by Dille Mone Nanjappa's land. North by Muniappa's land.

4. Sy. No. 1 site Nos.640, 641, 664 and 665. measuring 108 plus 115 X 44 1/2 plus 66, Kethamaranahally, Rajajinagar, Bangalore ;

This property is standing in the name of Marakka mother of plaintiff and defendants 2 and 3. bounded on the:

East by Road ; West by Road ; North by Road and South by Hanumanna's house ;

5. The sum of Rs. 83.000/- deposited in the Indian Bank Ltd., 385 I Block, Rajajinagar, Bangalore-10 by the first defendant in any one of the account of the Bank through Cheque No. W 1069593 dated 1-9-71 on the Syndicate Bank; Malleswaram Branch, Bangalore.'

3. On the basis of the pleadings of the parties, the trial Court framed the following issues :

1. Whether the first defendant proves that the plaintiff has been adopted by one Mallappa and as such is not a member of the joint Hindu family?
2. Whether the plaintiff proves that the suit item No. 4 is self acquired property of Marakka the wife of the first defendant?
3. Whether the suit item No. 5 is the self acquisition of first defendant?
4. Whether the plaintiff is entitled to any share in the suit schedule properties?
5. Whether the suit is bad for non-joinder of parties and cause of action?
6. To what other relief if any is the plaintiff entitled? Additional Issue :-

Whether the 5th defendant is a bona fide purchaser for value of the suit item No. 4 without notice?

4. The trial Court has held that first defendant has failed to prove that the plaintiff has been given in adoption to one Sri Mallappa ; that suit item Nos. 4 and 5 are not the self acquired properties of Sent. Marakka the wife of the first defendant and the first defendant respectively; that the suit schedule properties item Nos.1, 2, 4 and 5 are joint family properties and are available for partition; that defendant No. 5 is not a bona fide purchaser and the alienation made in his favour is hit by lis pendens ; that the unmarried daughter, the present sixth respondent, is a necessary party to the suit as on the date of institution of the suit she was unmarried; that the suit is bad for non-joinder of necessary party i.e., the 6th respondent; that the plaintiff is entitled to 14th share in the suit schedule item Nos.1, 2, 4 and 5; that item No. 3 of the suit schedule properties is not available for partition. However, having regard to the finding on issue No. 5 regarding non-joinder of necessary party, the suit has been dismissed.

5. In this appeal the unmarried daughter by name Smt. K. Vimala has been impleaded as respondent No. 6. Respondents 1 to 5 are defendants 1 to 5. The appellant is the plaintiff. The relationship between the parties is not in dispute. First

defendant and 4th defendant who are respondents 1 and 4 in the appeal are husband and wife. The plaintiff-appellant and defendants 2 and 3 - respondents 2 and 3 are the sons of defendants 1 and 4 - respondents 1 and 4. Sixth respondent impleaded in the appeal is also the daughter of defendants 1 and 4 - respondents 1 and 4 and the sister of the plaintiff - appellant and defendants 2 and 3 - respondents 2 and 3. Fifth respondent-defendant-5 is an alienee of one of the suit properties i.e. item No. 4. The trial Court has held that the suit schedule properties are joint family properties, and the plaintiff and defendants 1 to 4 and the sixth respondent herein are members of the joint family. However, the trial Court has held that item No. 3 of the suit schedule properties is not available for partition as it had been disposed of. These findings are neither challenged nor disputed by any of the parties to the appeal including respondent-6.

6.1. During the pendency of the appeal, the second defendant-respondent No. 2 died and his legal representatives are brought on record as respondents 2(a) to 2(f). Defendant No. 4 respondent No. 4 - the mother of the plaintiff, defendants 2 and 3 and respondent-6 also died during the pendency of the appeal. A memo dated 29-10-1987 is filed by the learned Counsel for the appellant stating that the appellant, respondents 1 and 3 and the legal representatives of the deceased second respondent i.e., respondents 2(a) to 2(f) are the legal representatives of the deceased respondent-4, therefore they be shown as such. The memo has been recorded on 23-11-1987. Accordingly, the cause title has been amended.

6.2. However, during the course of the arguments, it is brought to the notice of the Court that sixth respondent who has been brought on record on the application of the appellant, himself, and five more daughters of respondent-4 are also required to be brought on record as the legal representatives of deceased respondent-4 as her interest in the suit properties has devolved upon them also. The names of those daughters are : Madakka, Seethamma, Smt. Jayamma, Jayalakshmi and Gouramma. Smt. Jayamma died leaving behind her son Venkatesh who also died subsequent to the death of defendant-4. Thus there are no heirs of Jayamma. Therefore, it is submitted that the other daughters of respondent-4 are also to be brought on record. As far as respondent-6 is concerned, it is submitted that she is already on record, therefore she may also be shown as a legal representative of

deceased respondent-4 along with other heirs. However, it may also be pointed out here that defendant-4 has not been awarded any share in the suit properties. In addition to this, it is very relevant to notice that this is a suit brought by the son against his father and his other brothers for partition and separate possession of his share in the joint family properties. Thus, the partition of the joint family properties has to take place between the father and his sons. To such a partition, the provisions of clause (a) of Sub-section (1) of Section 8 of the Mysore Hindu Law Women's Rights Act, 1933 are attracted. Therefore the unmarried daughter of defendant-1 and his mother (if she were alive) were entitled to a share and not the wife of defendant-1. As such, defendant-4 who was the wife of defendant-1, though she was also the mother of the plaintiff and defendants 2 and 3 - in the presence of her husband - defendant-1, at a partition between the father-defendant-1 and his sons was not entitled to a share in the suit properties except to seek maintenance. Her right of maintenance died with her. Defendant-4 has predeceased her husband. No share has been awarded to her by the decree under appeal. Hence, the fact that the remaining daughter of deceased defendant-4 are not brought on record as her legal representatives does not or cannot affect the suit or appeal in any manner.

7.1. Sri Raikar, learned Counsel for the appellant submits that no doubt sixth respondent was unmarried as on 20th January, 1972, when the suit was filed, but during the pendency of the appeal her marriage was performed, therefore, she is not entitled to any share in the suit schedule properties. Alternatively, it is contended that even if she is entitled to a share, plaintiff and defendants 1 to 4 have spent a huge sum on her marriage ; therefore, that amount has to be set off in the share that may be allotted to her. This contention is not supported by any of the Counsels appearing on behalf of the respondents. It is submitted on behalf of sixth respondent that as per the provisions contained in the Mysore Hindu Law Women's Rights Act, 1933 (Mysore Act No. X of 1933) (hereinafter referred to as the 'Mysore Act') respondent-6 being an unmarried daughter at the time of filing of the suit she is entitled to a share. Merely because the suit has been dragged on for a long time and it is decided after the marriage is performed, the right that came to be vested in her on the filing of the suit, cannot at all be taken away. It is submitted that even though the decree may be passed subsequent to the

marriage, but the rights and interests of the parties as on the date of the suit have to be determined.

7.2. Regarding the expenses incurred for the marriage, it is submitted that respondent-6 being a female member of the joint Hindu family, it is the responsibility of the parents and the members of the joint Hindu family to perform her marriage; therefore, any amount incurred out of the joint family funds for performing her marriage cannot at all be deducted from the share she is entitled to under the Mysore Act.

7.3. On behalf of the 6th respondent it is also further submitted that the 6th respondent does not dispute the findings recorded by the trial Court and she accepts them, therefore it is not necessary to remand the suit merely because she is impleaded in the appeal; that the share allottable to her on the basis of the findings recorded by the trial Court may be determined in the appeal itself.

8. The other respondents including the appellant plaintiff have not challenged the findings recorded on all issues except the issue relating to non-joinder of necessary parties which is challenged by the appellant-plaintiff only.

9. Having regard to the contentions urged on both sides, the following points arise for determination ;

1) Whether respondent No. 6 in the appeal is a necessary party to the suit?

2) Whether the legitimate expenses incurred on the marriage of respondent No. 6 have to be set off in the share that may be allottable to her in the event she is held to be entitled to a share?

3) Whether, it is a case for remand? :-

Point No. 1

10.1. It is not in dispute that respondent-6 is a daughter of defendants 1 and 4 and the sister of the plaintiff. It is also not in dispute that as on the date of institution of the suit she was unmarried. It is also not in dispute that the suit schedule properties 1,2,4 and 5 are the joint Hindu family properties and are available for

partition; that the plaintiff and defendants 1 to 4 are members of the Hindu joint family.

10.2. In a suit for partition of the property of a Hindu joint family, necessary parties to the suit are : (a) heads of all branches ; (b) females who are entitled to a share on partition ; (c) purchaser of the portion of the plaintiff's share in a case where the plaintiff himself is a coparcener; (d) if the plaintiff himself is a purchaser from a coparcener, his alienor and (e) in case the devolution of interest in Mithakshara coparcenary property has taken place as per Section 6 of the Hindu Succession Act, all those persons on whom the interest in the property has devolved. In a case where the devolution of interest in the property of a male Hindu has taken place in accordance with Section 8 of the Hindu Succession Act, all those heirs on whom the interest in the property has devolved upon. In the instant case, the plaintiff is one of the coparceners' he has sought for partition and separate possession of his share in the joint family properties. He has impleaded his brothers and parents. The trial Court has dismissed the suit on the ground that the unmarried daughter is also a necessary party to the suit as she is entitled to a share in the suit properties. Therefore, the point for consideration is :

Whether the unmarried daughter who is now impleaded in the appeal as respondent-6 is a necessary party to the suit?

10.3. As already pointed out, on the date of institution of the suit, respondent-6 was unmarried. As the facts stood on the date of filing of the suit, respondent No. 6 either under the Hindu Succession Act or under the Hindu Law was not entitled to a share. However, as the parties come from old Mysore Area, they are governed by special law, namely, the Mysore Act which is not repealed by the Hindu Succession Act. The Mysore Act for the first time enlarged the rights of a Hindu woman, it was a measure to give better right to women. As the Mysore Act intended to improve the conditions of and confer better rights on women, the interpretation to be placed on it must be such which advances the intendment of the enactment and any interpretation which tends to defeat the very object of the enactment must be avoided. Section 8(1) of the Mysore Act reads as follows :

'Section 8(1)(a) - At 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 his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them,

(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) Sub-sections (a) and (b) shall also apply mutatis to a partition among other coparceners in a joint family,

(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.'

Clause (c) of Sub-section (2) of Section 8 of the Mysore Act fixes the shares of the female relatives who are entitled to a share as per Sub-section (1) of Section 8 thereof. As per this provision, 'every unmarried daughter or unmarried sister gets 1/4th share of a brother if she has a brother alive and in any other case, 1/4th of what her father, if he were alive, would receive as his share; provided that the share to which a daughter or sister is entitled to under this section, shall be inclusive of and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.'

10.4. The suit being the one for partition between the father and his sons, it falls under clause (a) of Sub-section (1) of Section 8 of the Mysore Act. It is on this basis the trial Court has awarded 1/4th share to the plaintiff. Respondent-6 being an unmarried daughter, on the date of institution of the suit for partition, became entitled to a share in the suit properties, in accordance with clause (a) of Sub-section (1) read with clause (c) of Sub-section (2) of Section 8 of the Mysore Act. However, the contention urged on behalf of defendant-5 in the trial Court and the plaintiff-appellant before this Court is that as the marriage of the 6th respondent was performed during the pendency of the suit and before the conclusion of the

trial of the suit, she is not entitled to a share in the suit properties as she is no more an unmarried daughter. The trial Court has rejected this contention holding that on the date of filing of the suit for partition, respondent-6 was an unmarried daughter, therefore a right to claim a share accrued to her and that right was not taken away merely because her marriage was performed during the pendency of the suit. The opening words in clauses (a) and (b) of Sub-section (1) of Section 8 of the Mysore Act are 'At a partition of joint family property.' Therefore, the question will arise whether the provisions of clauses (a) and (b) of Sub-section (1) of Section 8 of the Mysore Act are attracted only when an actual division of the properties by metes and bounds takes place or whether they are attracted merely on filing a suit for partition of joint family properties. In our view, this should not present us any difficulty. In *APPOVIER ALIAS SEETARAMIER v. RAMA SUBBA AIYAN*, 1866-67 Moore's Indian Appeals 75, the Judicial Committee of the Privy Council has observed thus :

'Certain principles, or alleged rules of law, have been strongly, contended for by the Appellant. One of them is, that if there be a deed of division between the members of an undivided family, which speaks of a division having been agreed upon, to be thereafter made, of the property of that family, that deed is ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds.

Their Lordships do not find that any such doctrine has been established ; and the argument appears to their Lordships to proceed upon error in confounding the division of title with the division of the subject, to which the title is applied.'

xx xx xx xx xxThen, if there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by a de facto actual division of the subject-matter. This may at any time be claimed by virtue of the separate right.'

Again in *NANI BAI v. GITABAI*, : [1959]1SCR479 , the Supreme Court has held thus :

'Partition in the Mitakshara sense may be only a severance of the joint status of the coparcenary, that is to say, what was once a joint title, has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst co-sharers who may not be members of a Hindu coparcenary. For partition in the former sense, it is not necessary that all the members of the joint family should agree, because it is a matter of individual volition. If a coparcener expresses his individual intention in unequivocal terms to separate himself from the rest of the family, that effects a partition, so far as he is concerned, from the rest of the family. By this process what was a joint tenancy has been converted into a tenancy in common. For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary.'

Thus, partition according to Mitakshara law consists in a numerical divisions of the property. In other words, it consists in defining the shares of the coparceners in the joint properties, an actual division of the properties by metes and bounds is not necessary. The institution of a suit by a coparcener for partition of a joint family property is an undoubted and unequivocal intimation of his intention to separate himself from the rest of the joint family. Therefore, no sooner the suit is filed severance of joint status takes place. Once it happens, division of title takes place. The decree is necessary only to apply the division of title and for allotting definite properties according to the shares. As such, it is only consequential or the result of the severance. Therefore, as on the date of filing of the suit for partition, the 6th respondent was an unmarried daughter became entitled to a share. The fact that the suit was pending for a long time and in the meanwhile the marriage of respondent-6 was performed did not and could not affect the right that had accrued to respondent-6 as an unmarried daughter because the partition in the Mitakshara sense of the joint family properties took place on the filing of the suit for partition when she was an unmarried daughter. Therefore, sixth respondent is a necessary party to the suit. If the words 'At a partition' are interpreted to mean, actual partition by metes and bounds, it will defeat the very intendment of the enactment to confer better rights on female relatives. The best example of it is the instant case. If the suit had been decided immediately, the actual partition by

metes and bounds would have taken place before the marriage of the 6th respondent was performed.

10.5. This can also be viewed from another angle also. Normally excepting in certain exceptional circumstances the rights of the parties to a suit or proceeding and, more so, in the case of a suit for partition get crystalised on the date of filing of the suit. In other words, the rights of the parties are to be determined on the factual and legal position obtaining as on the date of the suit. Of course, in certain cases subsequent changes in law as well as in facts are to be taken into account even at the appellate stage also, if such changes have a direct bearing on the reliefs sought for in a suit or proceeding. But in a case where a right to claim a share accrues to a party on the date of filing of a suit, such a right cannot at all be defeated on the basis of a subsequent change in law or facts as long as such changes do not specifically take away the rights which came to be vested in a party. Such a right came to be vested in the sixth respondent on the filing of the suit for partition. Hence, point No. 1 is answered in the affirmative.

10.6. However, it is necessary to point out that the trial Court, on holding that the sixth respondent being an unmarried daughter on the date of filing of the suit is a necessary party to the suit, ought to have adjourned the suit and directed the plaintiff to implead her instead of dismissing the suit. Rule 9 of Order 1 of C.P.C. specifically provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. A proviso has been added by Central Act 104 of 1976 to the effect that 'nothing in this rule shall apply to non-joinder of a necessary party.' But sub-rule (2) of Rule 10 of Order 1 C.P.C., empowers the Court to direct the plaintiff to add a person to the suit who ought to have joined whether as plaintiff or defendant whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. The instant case was admirably the one in which the trial Court ought to have adjourned the suit and directed the plaintiff to implead the sixth respondent instead of dismissing the suit solely on the ground that respondent-6 has not been impleaded even though all other issues were decided in favour of the plaintiff. In

case, even after such a direction the plaintiff had failed to implead the 6th respondent then only the trial Court could have resorted to dismissing the suit for not joining the necessary party. This should have avoided the delay in effecting the partition by metes and bounds and it would have also avoided multiplicity of proceedings.

Point No. 2 :

11. The contention of the appellant is that the expenses for performing the marriage of the sixth respondent has to be taken into account while determining the share of the 6th respondent in the suit properties in view of the provisions contained in clause (c) of Sub-section (2) of Section 8 of the Mysore Act. On the contrary, it is contended on behalf of the sixth respondent that her share is not inclusive of the expenses incurred for performing her marriage. Clause (c) of Sub-section (2) of Section 8 of the Mysore Act reads thus:

'8(2) - Such share shall be fixed as follows :-

(a) xx xx xx xx (b) xx xx xx xx (c) in the case of every unmarried daughter or sister, one-fourth of the share of a brother if she has a brother alive, and, in any other case, one-fourth of what her father, if he were alive, would receive as his share: provided that the share to which a daughter or sister is entitled under this section shall be inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.'

From the clear provisions contained in clause (c) of subsection (2) of Section 8 of the Mysore Act, it is not possible to accept the contention of the 6th respondent.

The share of the unmarried daughter or sister 'is inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.' Thus, the legitimate expenses incurred for performing the marriage of the 6th respondent are to be taken into account while determining her share.

11.1. Clause (c) also provides that the legitimate expenses of the marriage also include the amount paid by way of reasonable dowry. Mysore Act is a State Law. It

was made before the commencement of the Constitution. Thus, it is an existing law as per Article 466(10) of the Constitution.

11.2. The [Dowry Prohibition Act, 1961](#) (Central Act 28/61) prohibiting the giving or taking of dowry came to be enacted by the Parliament and it was brought into force on 1-7-1961. In this case, we are not concerned with the amendments effected to the Act subsequent to 1980. As the [Dowry Prohibition Act, 1961](#), stood at the time the marriage of the 6th respondent was performed, the giving or taking or abetting of giving or taking of dowry was an offence. Sections 3 & 4 as they stood then are as follows :

'Section 3 - If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Section 4 - If any person after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both :

Provided that no Court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government may, by general or special order, specify in this behalf.'

Section 5 made an agreement for giving or taking of dowry void. Subsequent amendments have made the Act more drastic in order to do away with the evils of dowry. But we are not concerned with those amendments in this case. Thus, it is clear from the aforesaid provisions that with effect from 1-7-1961 giving or taking or abetting the giving or taking of dowry has been made punishable with imprisonment or with a fine or with both. When the giving or taking of dowry is prohibited and is made penal by the law made by the Parliament, whether the provisions contained in the 'existing law' of the State providing for taking into account the amount spent on the dowry for performing the marriage while determining the share of an unmarried daughter or sister in a Hindu joint family

property can hold good after 1-7-1961, the date from which the [Dowry Prohibition Act, 1961](#), is brought into force. Legislative competency of the Dowry Prohibition Act 1961, is traceable to Entry No. 5 of List (III) of VII Schedule. So also the Mysore Act falls under the same Entry. Thus, both the enactments are in respect of one of the matters enumerated in the Concurrent List. The words 'reasonable dowry' contained in clause (c) of subsection (2) of Section 8 of the Mysore Act are undoubtedly in conflict with the provisions contained in the Dowry Act, 1961, in as much as, giving or taking of dowry is made penal under the Dowry Prohibition Act. There fore, the obedience to State law will not only be violative of the Central law but also results in an offence punishable with imprisonment or with fine or both. Thus, there is a conflict between the two provisions. When the existing Law of the State conflicts with the law made by the Parliament in respect of one of the matters enumerated in the Concurrent List, to the extent of the repugnancy, the existing law becomes void. In DEEP CHAND v. STATE OF UTTAR PRADESH, : AIR 1959 SC648 , it is held thus :

'Mr. Nambiar contends that, as the U.P. Act and the Amending Act operate in the same field in respect of the same subject - matter i.e., the nationalisation of bus transport, the U.P. Act becomes void under Article 254(1) of the Constitution. This argument ignores the crucial words 'to the extent of the repugnancy' in the said clause. What is void is not the entire Act but only to the extent of its repugnancy with the law made by Parliament. The identity of the field may relate to the pith and substance of the subject - matter and also the period of its operation. When both coincide, the repugnancy is complete and the whole of the State Act becomes void. The operation of the Union Law may be entirely prospective leaving the State Law to be effective in regard to thing already done. Sections 68C, 68D and 68E, inserted by the Amending Act, clearly show that those Sections are concerned only with a scheme initiated after the Amending Act came into force.

None of the Sections, either expressly or by necessary implication, indicates that the schemes already finalised should be reopened and fresh schemes be framed pursuant to the procedure prescribed thereunder. Therefore, under Article 254(1), the law under the U.P. Act subsists to support the schemes framed thereunder and it becomes void only in respect of schemes framed under the Central Act. A

similar question arose in the context of the application of Article 13(1) to a pre-Constitution law which infringed the fundamental rights given under the Constitution.

In *Keshavan Madhava Menon's Case*, : 1951 CriLJ680 , which we have referred to in a different context, the question was whether Indian Press (Emergency Powers) Act, 1931, was void, as infringing the provisions of Article 13(1) of the Constitution; and the Court held that the said Act was valid and would continue to be in force to sustain a prosecution launched for an act done before the Constitution. In the words of Das J., as he then was:

'Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.' P.234 (of SCR) : (at p. 130 of AIR) :

So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights.' (pp 235-236 of SCR) : (at p. 130 of AIR).

Article 13(1), so far as it is relevant to the present inquiry, is *pan materia* with the provisions of Article 254(1) of the constitution. While under Article 13(1) all the pre-Constitution laws, to the extent of their inconsistency with the provisions of Part III, are void, under Article 254(1) the State Law to the extent of its repugnancy to the law made by Parliament is void. If the pre-Constitution law exist for the post-Constitution period for all the past transactions, by the same parity of reasoning, the State law subsists after the making of the law by Parliament, for past transactions. In this view, both the laws can co-exist to operate during different periods.'

11.3. In the instant case, the words 'reasonable dowry' contained in clause (c) of Sub-section (2) of Section 8 of the Mysore Act only are repugnant and not the other provisions thereof, because the other provisions relate to different topic, which is not covered by the [Dowry Prohibition Act, 1961](#). Therefore, the words 'reasonable dowry' contained in Clause (c) of subsection (2) of Section 8 of the Mysore Act only are repugnant and not the other provisions. These words with effect from 1-7-1961 have become void and ineffective and are not enforceable

from that date. Consequently, clause (c) of Sub-section (2) of Section 8 of the Mysore Act has to be read excluding the words 'reasonable dowry or', as these words are severable from clause (c). Without these words, clause (c) reads thus:

'In the case of every unmarried daughter or sister, one-fourth of the share of a brother if she has a brother alive, and, in any other case, one-fourth of what her father, if he were alive, would receive as his share: provided that the share to which a daughter or sister is entitled under this Section shall be inclusive of, and not in addition to, the legitimate expenses of her marriage including a marriage portion.'

Therefore, it is not open to deduct any amount out of the value of the share allottable to the 6th respondent as having been paid by way of dowry to the other party to the marriage of the 6th respondent.

12. In view of the finding recorded on point No. 1, respondent-6 is entitled to a share in the suit schedule properties, namely, item Nos.1, 2, 4 and 5.

13. Accordingly, point No. 2 is answered as follows:

Respondent-6 is entitled to a share in the suit schedule properties, namely, item Nos. 1,2,4 and 5, as per clause (c) of Sub-section (2) read with clause (a) of Sub-section (1) of Section 8 of the Mysore Act. In that share the legitimate expenses incurred for her marriage including a marriage portion only are to be given set off and not any amount spent on the alleged payment of dowry, if any.

Point No. 3 :-

14. Having regard to the finding recorded on point No. 2, it is necessary to determine the legitimate expenses incurred for performing the marriage of respondent-6 as her share is inclusive of such expenses and not in addition to it. This issue has not been determined by the trial Court as it has dismissed the suit on the ground that the 6th respondent has not been impleaded to the suit. It is necessary to determine this issue of fact as it is essential to the right decision of the suit upon the merits.

14.1. The suit is of the year 1972. By now more than 15 years have elapsed. The conduct of the parties to the suit as has come on record in this appeal has been one of depriving respondent-6 of her legitimate share. Remitting of the case to the trial Court, under the circumstances of the case, would necessarily result in further procrastination of the proceeding. Therefore, we are of the view that it will not be in the interest of justice to remit the case to the trial Court. Point No. 3 is answered accordingly. We are also of the view that in the interest of justice and in order to ensure early decision, it is necessary to frame an issue and refer the same for trial to the trial Court. Accordingly, we frame the following additional issues and refer the same to the trial Court with a direction to take additional evidence as may be required on the issue and record a finding and return the evidence together with the finding and the reasons therefor on or before 30-6-1988.

Additional issue :

What are the legitimate expenses incurred by the first defendant - first respondent for performing the marriage of the 6th respondent?

15. The parties are directed to appear before the trial Court on 3-3-1988. No notices need be sent by the trial Court to the parties in this regard. The first defendant shall file the verified statement on 7-3-1988 before the trial Court as to the legitimate expenses incurred by him for performing the marriage of the 6th respondent. Respondent-6 shall file before the trial Court her verified statement of objections, if any, on or before 22-3-1988. Thereafter, the trial Court shall try and record evidence on, the additional issue on the basis of the verified statement and objections filed by defendant-1 and respondent-6 respectively and record a finding thereon and submit the same along with records to this Court on or before 30th June, 1988.