

Annamma Vs. Pattamma

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Court : Karnataka

Decided On : Mar-11-1992

Reported in : II(1993)DMC559; ILR1993KAR755

Judge : K.A. Swami and ;C. Shivappa, JJ.

Acts : Mysore Hindu Women's Right to Property Act, 1933 - Sections 4 and 6(2)

Appeal No. : R.F.A. No. 32 of 1992

Appellant : Annamma

Respondent : Pattamma

Advocate for Def. : S. Surendra, Adv. for R-1 and ;M.S. Bhujanga Rao, Adv. for R-2 and R-3

Advocate for Pet/Ap. : Rama Rao, Adv. for ;K. Seshadri, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Swami, J.

1. This Appeal by the plaintiffs is preferred against the judgment and decree dated 4th October, 1991 passed by the learned 19th Additional City Civil Judge, Bangalore in O.S.No. 2762/1990. The respondents are defendants 1 to 3 in the

trial Court. There are two suit properties. But the plaintiffs have confined their claim only to item No. 2 in the schedule to the plaint. The plaintiffs have claimed 1/5th share each in item No. 2 on the ground that the said property was the self-acquired property of their late father by name Shri Chinnappa Mudaliar, who died in the year 1952 leaving behind his widow, two sons and two daughters. The plaintiffs are the two daughters of Chinnappa Mudaliar. Defendant No. 1 is the widow of Chinnappa Mudaliar. The sons are not made parties to the suit on the ground that they had alienated their share along with defendant No. 1 in favour of defendant No. 2. Therefore, they are not necessary parties to the suit. According to the plaintiffs as item No. 2 of the suit schedule was the separate and self-acquired property of Chinnappa Mudaliar, succession to it was governed by Sub-section (2) of Section 6 of the Mysore Hindu Law Womens Rights Act, 1933 (hereinafter referred to as the Act). Therefore, the property was to be divided among the five heirs left by Chinnappa Mudaliar namely the widow-defendant No. 1, two sons and two daughters - the plaintiffs.

2. On the contrary, it is the case of the defendants that no doubt the property was the self-acquired property of Chinnappa Mudaliar, who died in the year 1952, but the succession to it was governed by Section 4 of the Act; that under Section 4 of the Act, the heirs could be determined whether male or female. Therefore, it is contended by them that the daughters are excluded; that it is only the sons who became entitled to entire property. As such the plaintiffs are not entitled to any share in item No. 2 of the suit schedule properties. According to the learned trial Judge the Decision in MALLIKARJUNA T.C. v. KALLAMMA AND ORS., 1982 (1) KLJ 17 governs the case. The trial Court has held that even in the case of succession to the property falling under Section 6(2) of the Act, Section 4 of the Act is applicable. Therefore, the daughters are excluded. Accordingly, he has dismissed the suit.

3. The following issues were framed in the suit having regard to the pleadings of the parties:

1. Whether the plaintiffs prove that they have got right, title and interest over the plaint schedule property and are co-owners?

2. Whether the plaintiffs prove that plaint schedule property are in joint possession?
3. Whether the plaintiffs prove that they are entitled for 1/5th share in item No. 2 and not affected by sale dt.21.9.1987?
4. Whether the defendant No. 2 proves adverse possession?
5. Whether the suit is properly valued and C.F. paid sufficient?
6. Whether the suit is maintainable in law?
7. What decree or order?

4. The learned Judge has answered Issues 1 to 4 in the negative. Accordingly, he has dismissed the suit.

5. Before us as the other questions are not urged, we do not consider it necessary to examine the correctness of the findings recorded on the other issues. Therefore, in this Appeal the only Point that arises for Consideration is:

Whether the plaintiffs are entitled to 1/5th share each in the separate property of Chinnappa Mudaliar?

6. It is not in dispute that Chinnappa Mudaliar died in the year 1952 leaving behind his widow-defendant No. 1, two sons and two daughters - the plaintiffs. Therefore, it is contended that the sons and daughters and also the widow, are entitled to share the property of Chinnappa Mudaliar, equally, as such each one is entitled to 1/5th share. The contention of Shri Ramarao learned Counsel for the appellants is that Section 6(2) of the Act is a complete Code by itself and it is not subjected to or controlled by Section 4 or 5 of the Act. The succession to the separate property of Chinnappa Mudaliar, according to the learned Counsel, has to be determined only on applying Sub-section (2) of Section 6 of the Act.

7. We find it difficult to accept this contention. We first refer to the provisions contained in the Act itself. It is no doubt true that the Preamble of the Act states that the Act is intended to amend the Hindu Law as to the Rights of Women and in

certain other respects. The preliminary portion of the Act contains the definition of certain expressions or words used in the body of the Act. The Act consists of five parts. First part deals with the 'inheritance'. It consists of two Sections namely Sections 4 and 5. Section 4 provides 'order of succession', when a male Hindu dies intestate. Section 5 lays down 'General Rules as to order of preference'. Part II deals with the 'separate property', 'partition' and 'adoption'. It consists of Sections 6 to 9. We may point out here itself that in the case of partition of joint family property between a person and his son/sons and among brothers, Section 8 specifically provides as to who are the female heirs who are entitled to shares in the joint family properties. It specifically names those heirs, whereas we do not find such naming of heirs in Sub-section (2) of Section 6 of the Act. Part III deals with 'Women's Full Estate'. Part IV deals with 'Women's Limited Estate'. Part V deals with 'Maintenance'. In this case we are not concerned with Parts-III, IV and V of the Act because we are not concerned with the case of Women's Full estate, Women's limited estate and maintenance.

8. Sub-section (2) of Section 6 of the Act states 'such separate property of a person shall, in the event of dying intestate, pass by succession to his own heirs, male or female.'

9. Shri Rama Rao, learned Counsel for the appellants lays considerable stress on the words 'of his own heirs male or female and submits that no other heir is entitled to succeed to the separate property of a male Hindu dying intestate, therefore there is no scope for applying Section 4. It is contended that application of Section 4 to determine the order of succession to the separate property of a male Hindu dying intestate would amount to reading something into Sub-section (2) of Section 6 of the Act and it would result in taking away the right given to a female heir to succeed to the separate property of a male Hindu dying intestate. If only Sub-section (2) of Section 6 had not been worded in generic terms namely 'his own heirs 'male or female' and had been worded just as Section 8 is worded identifying the heirs, this contention would have gained ground. But Sub-section (2) of Section 6 of the Act does not name the heirs. It only states in generic terms by describing them as male or female meaning thereby that the separate property of a male Hindu dying intestate can be succeeded by a male or a female heir as

the case may be according to the heirs left by the deceased. In a case where a male Hindu dies leaving behind male and female heirs both or male or female heirs only, without applying Section 4 of the Act, it is not at all possible to determine as to who are the male or female heirs of the deceased, who are entitled to succeed to the estate of the deceased. Sons are not the only male heirs. Similarly, daughters are not the only female heirs, in as much as male heirs go upto third generation, and female heirs include daughter's sons, daughter's daughter's sons, daughter's great grand daughter, daughter's sons' sons. Similarly the widow of the deceased also would be the female heir. So when there are more than one heir belonging to the same or more than one category, Section 4 comes into operation and provides a solution for it. It provides for the order of succession in the case of direct heirs, and on the failure of direct heirs, the second line and the third line of the heirs as stated therein and as to in what manner each of them shall succeed. Therefore Section 4 provides that 'The succession to, a Hindu male dying intestate shall in the first place vest in the members of the family of the propositus mentioned below and in the following order:

(i) the male issue to the third generation;

(ii) the widow;

(iii) daughters;

(iv) daughters' sons;

(v) the mother;

(vi) the father;

(vii) widows of predeceased sons;

(viii) sons' daughters;

(ix) daughters' daughters;

(x) brothers of the whole blood;

(xi) sons' sons' daughters, sons' daughters'

sons' sons' daughters' daughters, daughters'

sons' sons, daughters' sons, and daughters'

daughters' daughters:

(xii) widows of predeceased grandsons and great-grandsons.'

Sub-section (2) of Section 4 provides that in the event of failure of the family of propositus the succession shall pass to the family of the father of the propositus. It also names the heirs of this category and prescribes the order of succession. Similarly, Sub-section (3) thereof provides that in the event of the failure of the family of the father of the propositus, the succession shall pass to the family of the paternal grand father and next thereafter to the family of the paternal great grand father. Sub-section (4) thereof further provides for other category of heirs to whom the succession shall pass on in the event of failure of the families of paternal ancestors to the third degree. Sub-section (5) thereof further provides as to who will take shares per capita and per stirpes. Sub-section (6) thereof excludes an adopted son of a female relative adopted after the death of such female relative from the category of the son of a female relative. Thus Section 4 of the Act falling under Part I relating to 'Inheritance' exhaustively deals with the order of succession to a Hindu male dying intestate. The Section does not make any difference whether the property of a deceased Hindu male dying intestate in his self acquired separate property or an undivided share in a joint Hindu family. It governs succession to both the type of properties of a male Hindu dying intestate.

10. It is contended that in Sub-section (2) of Section 6 of the Act, the words 'members of the family of the propositus', are not used; that the words used are 'his own heirs male or female'; therefore if Section 4(1) is applied it would amount to reading something into Sub-section (2) of Section 6 of the Act. The argument ignores the fact that what has to be decided is, the succession to a Hindu male dying intestate. The word 'person' used in Sub-section (2) of Section 6 of the Act is referable to a Hindu male. Therefore, in the case of a Hindu male dying intestate,

the succession has to take place even when the property left by the deceased male Hindu falls under Sub-section (2) of Section 6 of the Act, in accordance with Section 4 of the Act only. The male issues to the third generation, exclude the widow, daughters, daughter's sons and so on and so-forth as stated in Sub-section (1) of Section 4 of the Act, as explained in Section 5 of the Act. The contention that it would be opposed to the very object and intendment of the Act because the Act is intended to give rights to a Hindu Woman whereas the interpretation so placed as indicated above would deprive a female heir to succeed to the separate property of her father. Reliance is also placed on a Decision in KANAI LAL SUR v. PARAMANIDHI SADHUKHAN. : [1958]1SCR360 . In Kanailal Sur's case regarding construction of a statute it has been observed thus:

'The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the Statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct'.

11. In Section 6(2) and Section 4 of the Act, we do not find any ambiguity or uncertainty so as to fall back on the intendment of the Legislature of the Statute. As already pointed out Sub-section (2) of Section 6 only provides that the separate property by a person in the event of dying intestate will pass by succession to his own heirs male or female. As such it does not specify as to who are those male or female heirs. Therefore, we have to fall back on Section 4 of the Act. The interpretation placed by us that Section 6(2) has to be read with Section 4 of the Act does not affect the object and intendment of the Act, nor does it in any way defeat the same. If the contention of Shri Rama Rao, learned Counsel for the

appellant is accepted, it would not be possible to determine as to who are those female heirs who are entitled to succeed to a separate property of a male Hindu dying intestate in the event of multifarious heirs left by the deceased. An interpretation placed on a statute must be such that it does not, either unnecessarily expand the scope of the statute, or restrict its operation and at the same time subserves the object and intendment of the statute. If the interpretation is confined to the particular facts of the case it would defeat the very object of the statute itself and it would not be workable. Therefore the contention cannot be accepted.

12. MALLIKARJUNA T.C. v. KALLAMMA AND ORS., 1982(1) KLJ 17 was not a case in which Section 6(2) of the Act was considered. In that case the last full owner died leaving behind only female heirs namely two widows and one daughter. Applying Section 4 of the Act it was held that the widows excluded the daughter. Therefore the Decision in Mallikarjuna's case did not cover the case on hand.

13. Shri Rama Rao, learned Counsel for the petitioner also placed reliance on a Decision of this Court in BASAPPA (Deceased by L.Rs.) v. REVAMMA, 1961 Mys. L.J. 813. In that Decision Section 6(2) was not considered. However, Sections 4, 2, 3 and 5 of Sub-section (4) and Rule 4 of Section 5 of the Act, were considered. That was not a case of first degree heirs, but it was a case of uncle's son and uncle's son's son. In that Decision however, it was observed that the provisions of Section 4 applied to the succession of a male Hindu dying intestate. It was held that such succession was regulated in the manner laid down in Section 4. To this extent the said Decision also accords with the view expressed by us.

14. Shri Bhujanga Rao, learned Counsel for respondents-2 and 3 brought to our notice a Decision in ANNAMMA v. PATTAMMA, ILR 1991 KAR 1696. We may point out here that, that Decision arose out of the very case on hand, against an order passed at the interlocutory stage. In that Decision certain observations had been made regarding rights of the plaintiffs in the suit property i.e., item No. 2 of the Schedule property. As that Decision was rendered at the interlocutory stage, it is not possible to hold that any of the contentions involved in the suit are finally

adjudicated. It was only intended to safeguard the interests of the parties till, and subject to, the final adjudication of the suit.

15. No other contention is urged. Accordingly, the Point raised for Determination is answered in the negative. Consequently, the Appeal fails and the same is dismissed. The interlocutory orders passed, relating to the subject matter in dispute shall abide by the result of the Appeal, In the facts and circumstances of the case, there will be no order as to costs.

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