Kulusumbi Vs. Azeeza Begum

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Court : Karnataka

Decided On : Aug-22-1986

Reported in : ILR1986KAR4027; 1986(2)KarLJ388

Judge : Nesargi and ;Desai, JJ.

Acts : Mohammedan Law

Appeal No. : R.F.A. No. 121 of 1976

Appellant : Kulusumbi

Respondent : Azeeza Begum

Advocate for Def. : N.Y. Hanumanthappa, Adv.

Advocate for Pet/Ap. : Sridharamurthy, Adv. for ;H. Sbramanya Jois, Adv.

Disposition : Appeal dismissed

Judgement :

Nesargi, J.

1. This appeal is directed against the judgment and decree passed by the Civil Judge, Bellary on 10-2-76 in O.S. No. 10/1966. The appellants are the defendants. The respondents are the plaintiffs.

2. The undisputed facts are that one Osman Pasha died on 30-6-1960 in a motor-cycle accident. Respondent No. 1-plaintiff No. 1 was married to him on 22-7-1957 and respondent No. 2- plaintiff No. 2 is their daughter. Appellant No. 1-defendant No. 1 is the mother of Osman Pasha. Appellant No. 2 is his brother and appellant No. 3 is his sister.

3. The plaintiffs filed the suit for partition and possession of the suit schedule properties according to their shares demarcated in accordance with the provisions of Hanafi law.

4. Various contentions were advanced in defence. The two main contentions were that a motor-cycle was driven by Osman Pasha and that a person who was on the pillion seat had caused the accident and made him to die and that plaintiff No. 1 has subsequently married that person and because she has contributed to the death of Osman Pasha, she should be excluded from inheritance and because she re-married after becoming widow, she cannot claim any share in the suit schedule properties.

5. So far as plaintiff No. 2-respondent No. 2 is concerned, there is no dispute. The decree passed by the trial Court has to stand. There is a fair submission made by the Advocate for appellants and in our opinion justly.

6. The contention that the present husband of respondent No. 1-plaintiff No. 1 was the cause of the accident in which Osman Pasha died can by no stretch of imagination be extended to disqualify plaintiff No. 1 on the ground that she was guilty of homicide namely, killing her husband. What is to be considered is the fact of re-marriage of plaintiff No. 1 vis-a-vis right to inherit the property of Osman Pasha.

7. It is also not in dispute that on the death of Osman Pasha, as his wife, plaintiff No. 1 would have been entitled to l/8th share because plaintiff No. 2 the child is there. The question is whether she can in law get a share carved out and take possession of the same after ceasing to be the wife of Osman Pasha because of her re-marriage to another person.

8. The only argument advanced in the trial Court and before us also, is on the principle that on plaintiff No. 1 getting herself re-married to another person, it must, in law, be regarded as civil death of plaintiff No. 1 so far as the family of defendants and Osman Pasha is concerned, and hence it must be held that she loses her right to inherit the property of Osman Pasha. Reliance has been placed on the decision in Abdul Halim Khan v. Raja Saadat Ali Khan and Ors., AIR 1928 Oudh 1955. It is laid down that when a widow of Mohammaden had been given the power to adopt she cannot exercise that power after her re-marriage to another person. The reasoning is that after her re-marriage there is a civil death in regard to her status as widow of the first husband and therefore she loses her right to adopt though it has been specifically conferred on her by her first husband. We have no hesitation in holding that this principle has no application to the question on hand. It cannot be disputed that on the death of Osman Pasha plaintiff No. 1 got a right to her 1/8th share as his sharer along with the three defendants viz., mother, brother and sister of Osman Pasha and her first husband. These sharers had their shares specifically carved out in accordance with the provisions of Hanafi Law. As they inherit to specific shares they will be tenants in common as held by the the Privy Council in Mahomedally Tyebally and Other v. Shafiabai and Ors . It is well settled in law that a possession of a co-sharer must be presumed to be that of the other co-sharers and the onus lies on the co-sharer who claims to have perfected title by adverse possession to establish his claim (vide Sabura Ammal and Ors. v. Ali Mohamed Nachiar and Ors., : AIR1970 Mad411 . Because, they held specific shares and they are tenants in common in law each one can at any time, unless prevented by the operation of law of limitation, if that specific share is carved out, can secure possession of the same. That specific share devolves on the heir of a particular person in the event of that person dying intestate. The learned Author MULLA in his book of Principles of Mohomedan Law, Seventeenth Edition, page 53 has stated as follows :

'A 'vested inheritance' is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution, the share of the inheritance which has vested in him wilt pass to such persons as are his heirs at the time of his death. The shares therefore are to be determined at each death'.

The operation of this position in law does not depend on the marital status of the heir viz., plaintiff No. 1. When she had the specific 1/8th share in the suit schedule property on the death of her former husband, she cannot in view of the said position in law be said to lose the property which she has already inherited by marrying another person and attaining the status of a widow. Therefore, the conclusion arrived at by the trial Court, though not for the reasons stated by him, is correct.

9. No other question has arisen for consideration.

10. In the result, this appeal fails and is dismissed. No costs.