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Ammu Vs. Janu

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Court : Kerala

Decided On : Nov-10-1989

Reported in : II(1990)DMC91

Judge : Pareed Pillay, J.

Acts : Hindu Succession Act, 1956 - Sections 14(1); Hindu Women's Rights to Property Act

Appeal No. : S.A. No. 35 of 1984

Appellant : Ammu

Respondent : Janu

Advocate for Def. : K. Ramakumar and; C.P. Ravindranath, Advs.

Advocate for Pet/Ap. : V.P. Mohankumar and; K.P. Sreekumar, Advs.

Disposition : Appeal dismissed

Judgement :

Pareed Pillay, J.

1. Defendants 3 to 8 are the appellants. Plaintiffs (respondents 1 to 4) filed the suit for partition claiming 5/12 shares in the plaint B schedule property. Defendants 3 to 8 contended that since 1st plaintiff's husband Choyikutty died in 1949 without

male issues his right over the property reverted to the coparcenary consisting of Thamaran alias Pachu, Ganapathy alias Appu and his male children who are defendants 4 to 7 and that the plaintiffs are not entitled to any share in the property.

2. It is not disputed that the parties are governed by Hindu Mitakshara Law, Choyikutty, father of plaintiffs 2 to 4 and husband of 1st plaintiff died before the commencement of the Hindu Succession Act. Contention of the plaintiffs is that by virtue of Section 14(1) of the Hindu Succession Act (for short the Act) the right which devolved on the 1st plaintiff after death of her husband has blossomed into full right and so the plaintiffs cannot to denied of their share. On the other hand, it is contended by the defendants that the first plaintiff had no possession in the property and so Section 14(1) has no application.

3. Both the Courts below held that the first plaintiff was having constructive possession of the property. The lower appellate Court held that though the first plaintiff has not exercised any act of possession either independently or jointly with others the fact that she has been in constructive possession cannot be disputed in view of her statement that she was paid money by the other members of the family and the further fact that the expenses in connection with the marriage of her daughters were met by her husband's father. That apart, there is no evidence on the side of the contesting defendants to show that the first plaintiff was kept out of possession or that there was ouster.

4. Defendants' plea that the plaintiffs cannot claim the benefit of Section 14(1) of the Act as the first plaintiff was never in possession of the property cannot be sustained in view of the findings of the -Courts below to the contrary. Section 3(1) of the Hindu Women's Rights to Property Act provides that when a Hindu governed by the Dayabhaga School of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow shall, subject to the provisions of Sub-section (3) be entitled in respect of which he dies intestate to the same share as a son. Section 3(2) provides that when a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law

dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3), have in the property, the same interest as he himself had. Section 3(3) provides that any interest devolving on a Hindu widow under the pro visions of this Section shall be the limited interest known as a Hindu Women's estate, provided however that she shall have the same right of claiming partition as a male owner. This Act confers new rights on widows in modification of the previous law as found in the texts and interpreted by various judicial pronouncements. In the case of a Mitakshara joint family the widow takes the place of her husband.

5. After the commencement of the Hindu Succession Act a widow who had limited right under the Hindu Women's Rights to Property Act becomes a full owner. As the first plaintiff had obtained limited right in her husband's estate and as that right has blossomed into a full right ia view of Section 14(1) of Hindu Succession Act the defendants' contention that plaintiffs are not entitled to partition is not tenable.

6. Learned counsel for the defendants relied on Pachi Krishnamma v. Kumaran Krishnan, (AIR 1982 Kerala 137) and contended that a widow not in possession of any property at the commencement of the Act is not entitled to claim benefits under Section 14(1) of the Act. The above ruling only states that a widow who had no possession of any joint family property will not be entitled to claim full ownership under Section 14(1). This ruling has no application to the case in hand as both the Courts below held that the first plaintiff was having constructive possession over the property. Section 14(1) of the Hindu Succession Act makes it abundantly clear that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. In view of the wordings of the Section we have to consider whether a female Hindu possessed the property or had acquired right in it so as to get the benefit of Section 14(1) in a broad sense. The Supreme Court in Kotturuswami v. Veerawa, (AIR 1959 SC 577) held that the word 'possessed' in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. The Supreme Court clarified that that possession may be either actual or constructive or in any form recognised by law. Courts have given the widest connotation to the expression 'possessed' in

Section 14(1). The word 'acquired' in Section 14(1) also requires a liberal interpretation. In Mangal Singh v. Rattno, (AIR 1967 SC 1786) the Supreme Court held that even if a female be, in fact, out of actual possession, the property must be held to be possessed by her, if her ownership rights in that property still exist and in exercise of these ownership rights, she is capable of actual possession. Thus in a case where a female Hindu has not relinquished her right in the property or parted with possession it will have to be held that she continues to have possession of the property vis-a-vis Section 14(1).

7. The Supreme Court in the cited case held thus :

'The expression used in Section 14(1) of the Act was intended to cover cases of possession in law also, where lands may have descended to a female Hindu and she has not actually entered into them. It would, of course cover the other cases of actual or constructive possession. On the language of Section 14(1), therefore, this provision will become applicable to any property which is owned by a female Hindu, even though she is not in actual, physical or constructive possession of that property.'

8. There is nothing in evidence to show that the first plaintiff had parted her possession over the property. The very fact that she had filed the suit for partition would show that she is really keen to get her share of the property. As she has acquired right in the property and as she has constructive possession over the same it can never be held that Section 14(1) of the Act has no application and that she will not get any share in the property. In Rangaswami v. Chinnammal, AIR 1964 Madras 387 the Madras High Court held that Section 14(1) of the Act will apply not only to cases where a woman inherited the property under the ordinary Hindu Law but also where she got it by virtue of the provisions of Section 3 of the Hindu Womens Right to Property Act, As the first plaintiff after death of her husband obtained limited rights under the Hindu Women's right to Property Act and as that right was with her when Hindu Succession Act came into force certainly the limited right became an absolute right. Section 14(1) will not have any application in a case where a female Hindu did not actually have any vestige of right or if she is a mere trespasser.

9. By enacting Section 14(1) of the Act the legislature really intended that the limited ownership of a Hindu female should be changed into full ownership. There cannot be any doubt that if a female Hindu had already acquired any right before the Act or if she acquired any right thereafter it loses its limited character and she is vested with full right. The lower appellate court was justified in holding that the limited interest which the first plaintiff had consequent to the death of her husband ripened to a full estate by virtue of Section 14(1) of the Hindu Succession Act and therefore the plaintiffs are entitled to claim partition and allotment of their shares.

There is no merit in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

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