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Pachu Vs. Chirutha

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Court : Kerala

Decided On : Oct-01-2002

Reported in : 2003(1)KLT241

Judge : R. Bhaskaran, J.

Acts : Hindu Succession Act, 1956 - Sections 14(1)

Appeal No. : S.A. No. 229/90

Appellant : Pachu

Respondent : Chirutha

Advocate for Def. : D. Krishna Prasad, Adv.

Advocate for Pet/Ap. : O. Ramachandran Nambiar and; K.S. Babu, Advs.

Disposition : Appeal dismissed

Judgement :

R. Bhaskaran, J.

1. Defendants 1, 4, 6, 10, 11, 32 and 33 are the appellants. The suit is for partition. The plaint schedule properties originally belonged to Koran @ Cherooty and on his death the properties devolved upon his three sons, Pachu, Kandan and Kuttayi. Plaintiff is the daughter of Pachu. Defendants 17 to 24 and 25 and 26 are the

children of two other daughters of Pachu. The suit for partition was resisted on the basis of Ext. B-1 which was executed on 24th February, 1953 between the legal heirs of Kandan and Kuttayi. Under that document, the rights of Imbichi Manikyam, the wife of Pachu, for maintenance by taking the income from certain trees was recognised. According to the defendants, the plaintiff is not entitled to claim any right for partition as Pachu died before the Hindu Succession Act came into force and his right survived to the other two brothers. The trial court found that Pachu died before the commencement of the Hindu Women's Right to Property Act and therefore the suit was dismissed. In appeal, the lower appellate court has reserved the same and granted a decree declaring that Imbichi Manikyam had a right of maintenance over the joint property and that right is enlarged to a full right under Section 14(1) of the Hindu Succession Act.

2. The following questions of law are raised in the Second Appeal.

(i) Whether the appellate court has committed illegality in decreeing the suit for partition and has overlooked the material evidence and facts in the case?

(ii) Whether the court below has committed illegality in holding that the plaintiff has got right over the plaint schedule properties while interpreting Section 14 of the Hindu Succession Act ?

(iii) Whether the appellate court has committed illegality in holding that the right of maintenance of Imbichi Manikyam had matured into absolute right over the plaint schedule properties under Section 14 of the Hindu Succession Act?

(iv) Whether the appellate court has committed illegality in holding that the right of the plaintiff over the plaint schedule property is not lost by ouster, adverse possession and limitation?

3. The learned Counsel for the appellant pointed out that under the provisions of Ext. B-1, there is a right to Imbichi Manikyam to take the usufructs from eight coconut trees and one jack tree and therefore she had no possession of the property by virtue of that document. A decision of this Court in Pachi Krishnarnma v. Kumaran Krishnan (AIR 1982 Ker. 137) is also relied on by the Counsel for the

appellant. It is stated in that judgment that the right of a Hindu widow is only to be maintained from out of the income of the joint family properties and that it is a charge on that property itself. But that does not mean that she has a right to possession of joint family property as she is not a coparcener entitled to claim its possession along with other members. It is further stated that the plaintiff can have no right to demand partition of the joint family properties under Section 14(1) of the Hindu Succession Act.

4. In this case, the learned Counsel for the respondents relied on a portion of the written statement in which the right of maintenance over the joint properties held by Kuttayi and Pachu is admitted. He also relied on the decision of the Supreme Court in Naresh Kutnari v. Shakshi Lal (AIR 1999 SC 928) in which the Supreme Court held as follows:

'The possession may be physical, constructive or formal in a legal sense on the date of the coming into operation of the Act. But this is not the sine qua non for the acquisition of full ownership in the property. Under this sub-section when a female Hindu is put in possession of any property pursuant to her right to maintenance, her limited right or interest in the property thus far, by virtue of Section 14(1), blossoms into full ownership. On the other hand Sub-section (2) of Section 14 is in the nature of exception or proviso to Sub-section (1) makes a widow, who had a limited interest, to be a full owner regardless whether acquisition was prior to or after the coming into force of the 1956 Act.'

In the decision in Pachi Krishnamma's case (AIR 1982 Ker. 137), the widow had possession of the property. But in this case, admittedly the widow had the right to take income from certain coconut trees situated in the property. According to the learned Counsel appearing for the appellants that will not amount to possession of the property and if there is no possession of the property Section 14(1) will not have any application. It has to be noted that the right to take income from the coconut trees was given to Imbichi Manikyam in lieu of the right to get maintenance which alone was available to her prior to the commencement of the Hindu Succession Act. In this connection, the observations of the Supreme Court in Mangal Singh and Ors. v. Smt. Raltno (AIR 1987 SC 1786) are relevant. The

Supreme Court said in paragraph 7 of the judgment, as follows:

'7. It is significant that the Legislature begins Section 14(1) with the words 'any property possessed by a female Hindu' and not 'any property in possession of a female Hindu'. If the expression used had been 'inpossession of instead of 'possession by', the proper interpretation would probably have been to hold that, in order to apply this provision, the property must be such as is either in actual possession of the female Hindu or in her constructive possession. The constructive possession may be through a lessee, mortgagee, licensee etc. The use of the expression 'possessed by' instead of the expression 'in possession of, in our opinion, was instead to enlarge the meaning of this expression. It is commonly known in English language that a property is said to be possessed by a person, if he is its owner, even though he may for the time being, be out of actual possession or even constructive possession. The expression 'possessed by' is quite frequently used in testamentary documents, where the method of expressing the property, which is to pass to the legatee, often adopted is to say that tall property I did possessed of shall pass to..... In such documents, Will etc., where this language is used, it is clear that whatever rights the testator had in the property would pass to the legatee, even though, at he time when the Will is executed or when the Will becomes effective, the testator might not be in actual, physical or constructive possession of it. The legatee, will in such a case, succeed to the right to recover possession of that property in the same manner in which the testator could have done. Stroud in his Judicial Dictionary of Words and Pharses, Vol. 3 at p. 2238, has brought out this aspect, when defining the scope of the words 'possess' and 'possessed'. When dealing with the meaning of the word 'possession', Stroud defines 'possession' as being in two ways, either actual possession or possession in law. He goes on to say that 'actual possession is when a man enters in deed into lands or tenements to him descended, or otherwise. Possession in law is when lands or tenements are descended to a man, and he has not as yet really, actually, and in deed, entered into them'. In Wharton's Law Lexicon, 14th Edition, at p. 777, the word 'possession' is defined as being equivalent to 'the stateof owing or having a thing in one's own hands or power'. Thus, three different meanings are given; one is the state of owning, the second is having a thing in one's own hands, and the third is having a thing in

one's own power. In case where property is in actual physical possession, obviously it would be in one's own hands. If it is in constructive possession, it would be in one's own power. Then, there is the third case where there may not be actual, physical or constructive possession and, yet, the person still possess the right to recover actual physical possession or constructive, possession; that would be a case covered by the expression 'the state of owning'. In fact, elaborating further the meaning of the word 'possession', Wharton goes on to say that 'it is either actual, where a person enters into lands or tenements descended or conveyed to him; apparent, which is a species of presumptive title where land descended to heir of an abator, intruder, or disseisor, who died seised; in law, when lands, etc., have descended to a man, and he has not actually entered into them, or naked, that is, more possession; without colour of right'. It appears to us that 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, we hold that 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.'

5. The facts of the above decision will show that the widow was dispossessed from the property at the commencement of the Hindu Succession Act by collaterals of her husband on the basis of the order of the Naib Tahsildar. It is in that context the Supreme Court made the distinction between the words 'any property possessed by a female Hindu' and 'any property in possession of a female Hindu'.

6. In C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami (AIR 1996 SC 1697), the Supreme Court interpreted Section 14(1) of the Hindu Succession Act with reference to Articles 14, 15 and 21 of the Constitution and the declaration of the General Assembly of the United Nations and the U.N.O. declaration on the elimination of all forms of discrimination against women. In that case, the property belonged to one Somasundaram Pillai who had executed a Will bequeathing the properties to his wife, and his cousin's widow for their maintenance. The wife had appointed a power of attbrney-holder who had alienated the suit properties and the

appellants had purchased them under a registered sale deed. The suit was filed on the allegation that the alienation made by the widow were illegal. Though the suit was decreed by the trial court it was dismissed in appeal by the single Judge which decision was upset by the Division Bench. The Supreme Court allowed the appeal and dismissed the suit finding that the widow had acquired the property in recognition of her pre-existing right for maintenance and that right of maintenance received statutory recognition under the Hindu Adoption and Maintenance Act. It was held that in the light of the facts and circumstances of the case and the legal setting, a widow had under Sastric law, as envisaged in the Will, her pre-existing right to maintenance. It is not actually a right acquired under the instrument Will, but a reflection of the pre-existing right under the Sastric law which was blossomed into an absolute ownership after 1956 under Section 14(1) of the Act.

7. It is to be noted that Imbichi Manikyam admittedly died in 1968. Her right of maintenance as recognised in Ext. B-l and admitted in the written statement was not a mere illusory right, but was given effect to by allowing her to take income from coconut trees in a portion of the property and it is stated in Ext. P-l that after her death the right to take usufructs from those trees will revert to the respective allottees. It is also to be noted that the plaintiff's mother was not a party to Ext. B-1. At the time of execution of Ext. B-l since her right was only a right of maintenace, there was nothing wrong in not dividing the property by metes and bounds and allowing separate portion to her as she had no such right at that time. But having recognised the limited right and that right having got enlarged under Section 14(1) of the Hindu Succession Act, the decree granted by the lower appellate court cannot be found fault with. In the light of the above discussion, the questions of law raised in the memorandum of appeal are found in favour of the respondents and against the appellants.

The second appeal is dismissed.

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