Dharmarajan Vs. Narayanan

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Court : Kerala

Decided On : May-25-2000

Reported in : I(2001)DMC73

Judge : K.A. Abdul Gafoor, J.

Acts : Hindu Succession Act, 1956 - Sections 14(1); Hindu Widows' Remarriage Act, 1856 - Sections 2

Appeal No. : A.S. No. 366 of 1989

Appellant : Dharmarajan

Respondent : Narayanan

Advocate for Def. : K.P. Balasubramanyan,; Sally Thomas,; K.M. Kurian,;

Advocate for Pet/Ap. : V.V. Surendran and; P.M. Padmanabhan, Advs.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. Defendant Nos. 3 to 6 and 9 in a partition suit are the appellants in this case. Plaintiff-lst respondent herein sought for partition of the plaint schedule property by dividing it into three equal shares among himself and defendants 1 and 2 and

sought separate possession for one-third of the schedule property. That suit was contested by the appellants on the ground that they are also. entitled to a share as they are children born to the mother of the plaintiff and defendant No. 2 in her second marriage. The property ought to have been divided into four among plaintiff, defendants 1, 2 and their mother Choyichi. But the Trial Court found that the property was acquired by Chathukutty, father of plaintiff and defendants 1 and 2. On his death in 1943 Choyichi did have only right of maintenance. It is the admitted case that Choyichi remarried Sami. It was in that wedlock that defendants 3 to 9 were born. On remarriage the right to maintenance from out of the property left by Chathukutty came to an end and, therefore, Choyichi did not have any right at all. It was also the admitted case as found by the Trial Court that the second marriage of Choyichi with Sami had taken place before the advent of Hindu Succession Act, 1956. Therefore, Choyichi cannot have any share in the property left by Chathukutty, Trial Court found.

2. This finding is assailed by the appellants on the ground that as per Section 2 of Hindu Widows' Remarriage Act, 1856, if there was express permission for remarriage the right to maintenance in the father's share will not be lost on remarriage. The right to maintenance would ripen into the share only because of Hindu Succession Act. But in this case the evidence was that the marriage took place even before the advent of that Act and, therefore, there arise no question of ripening of the right to maintenance as right to share. Even if, thus, there was consent in terms of express permission, there cannot have any right to share in the property left by Chathukutty. With regard to the permission contemplated in Section 2 of the said Act there is no pleading by the appellants that there was express permission. But they submit that express permission is to be presumed on the basis of the conduct of the parties, namely, Choyichi on second marriage with Sami living alongwith the plaintiff and defendants 1 and 2 in the property belonging to Chathukutty, and Choyichi alongwith the plaintiff and defendants 1 and 2 applying to the Land Tribunal for assigning landlord's right in their favour. But that does not mean that there was express permission by the plaintiff and defendants 1 and 2, minor children at the time of such re-marriage. Merely because Choyichi had joined in the proceeding before the Land Tribunal for assignment of landlord's right in respect of the property left by Chathukutty alongwith the plaintiff and

defendants 1 and 2, her own children born to her in the wedlock with Chathukutty, that does not qualify her with right of ownership. The purchase certificate issued alongwith the right owners cannot also advance the case set up by the appellants. When Choyichi does not have any right, naturally, the appellants, her children in the wedlock with Sami cannot get partition.

3. Moreover the Supreme Court has recently held in Velamuri Venkata Sivaprasad v. Kothuri Venkateswarlu, 1999 AIR SCW 4583=1 (2000) DMC 1 (SC), that :

'While there is no amount of doubt that by reason of the well-settled law as laid down by this Court, to the effect that a limited right of maintenance permeated into an absolute right under Section 14(1) of the Hindu Succession Act but would the effect be the same, in the event of there being a re-marriage of the widow prior to 1956? The Act of 1956, incidentally is prospective in its operation and no element of retrospectivity can be attributed therein.'

Here Choyichi got remarried as found above before 1956. As held by the Supreme Court:

'there was no subsisting legal right of maintenance available to defendant No. 1 qua her deceased husband's estate in any of his properties nor was there a subsisting limited interest of hers in any of those properties which get matured into full ownership under Section 14(1) of the Hindu Succession Act when it came into force.'

The Apex Court also held that:

'The Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act could not confer the widow who has already remarried any rights in terms of Section 14(1) of the Act of 1956.'

Thus the Trial Court was perfectly justified in directing division of the plaint schedule property into three among plaintiff and defendants 1 and 2.

Appeal, therefore, fails and it is dismissed. No costs.