Chitra Devi Vs. Chembagavalli

Chitra Devi Vs. Chembagavalli

SooperKanoon Citation : sooperkanoon.com/785518

Court : Chennai

Decided On : Jul-19-1999

Reported in : AIR2000Mad38; 2000(2)CTC334

Judge : S.S. Subramani, J.

Acts : Hindu Law

Appeal No. : S.A.No. 118 of 1998 and C.M.P.No. 1164 of 1998

Appellant : Chitra Devi

Respondent : Chembagavalli

Advocate for Def. : Mr. V. Raghavachari, Adv.

Advocate for Pet/Ap. : Mrs. Chitra Sampath, Adv.

Judgement :
ORDER

1. Plaintiff in O.S.No.81 of 1993 on the file of the Principal Subordinate Judge, Pondicherry is the appellant herein. The said suit was filed by her against her father and her sister for declaration declaring that the settlement executed by her father is valid to an extent of l/8th share and the remaining property is to be partitioned by metes and bounds after the death of her father.

2. The facts could be summarised as hereunder:

First defendant Murugesa Pillai was married to plaintiff's mother one Rajalakshmi. It is averred in the plaint that the parties belong to Pondicherry and are governed by the Pondicherry Customary Hindu Law. The suit property was acquired by the first defendant and as per customary law, his daughter are the apparent heirs to inherit the suit property. Two years after the birth of the plaintiff, the first defendant and his wife namely mother of the plaintiff got separated and a divorce was also granted. When the plaintiff corning to know that her father is going to execute a settlement deed in favour of the second defendant, she issued a notice not to do so. At that time, the first defendant challenged the paternity and legitimacy of the plaintiff and according to him, the plaintiff is the daughter of the said Rajalakshmi's second husband. According to the plaintiff, the denial of paternity is not correct and she being the daughter under the Customary Hindu Law of Pondicherry, the settlement is valid only to the extent of l/8th share in regard to the property belonging to the first defendant.

3. The above suit was filed to declare that the plaintiff is the legitimate daughter of the first defendant and that she is entitled for partition, excluding the 1/8th share, which alone could be gifted under the Pondicherry Customary Hindu Law.

4. In the written statement filed by the defendants, the first defendant denied the paternity of the plaintiff. He further stated that he is not governed by the Pondicherry Customary Hindu Law as applicable to Tamil Nadu and since the properties were acquired by him were out of his own funds, he is entitled to dispose of the properties according to his wishes. It was further averred that the plaintiff's mother the said Rajalakshmi was living in adultery with one Joseph and the plaintiff was born only out of that relationship. The first defendant, ultimately, prayed for dismissal of the suit.

5. The trial Court, after taking evidence, dismissed the suit, though it held that the plaintiff is the legitimate daughter of the first defendant. It came to the conclusion that though the parties migrated to Pondicherry, the mitakshara as in Tamil Nadu will govern the rights of the parties.

6. The matter was taken on appeal by the plaintiff in A.S.No.36 of 1995 on the file of the principal District Judge, Pondicherry. Pending the first appeal, the first

defendant died and the appeal was continued as against the second defendant. The first appellate Court also confirmed the findings of the trial Court, and the appeal was dismissed. The concurrent judgments of the Courts below are assailed in this second appeal.

7. The following substantial question of law has been raised in the memorandum of appeal:

Whether the Courts below were right in rejecting the claim of the plaintiff that the Hindu Law as applicable to Pondicherry alone would govern the rights of the parties without considering the principles laid down in T.L. Sadogopan etc., and 7others v. T.N.K. Ramanujam and 10 others, 1993 (2) LW 387 and P.S. Venkataraman v. Srimathi A.G. Janaki : AIR1939 Mad595 '

8. I ordered notice of motion and the respondent also had entered appearance. The only question that requires consideration is as to whether the findings of the Courts below that the deceased first defendant is governed by the Pondicherry Customary Hindu Law or whether he is governed by the place of his birth.

9. DW1 is the first defendant. He chief examined himself stating that he was born and brought up at Maduranthakam Taluk in Tamil Nadu where he is holding lands and he is residing at Anna Salai at Pondicherry. He also stated that he, even now, used to frequently visit Tamil Nadu and his native village. He further stated that he still belong to Tamil Nadu and the local customary law prevailing in Pondicherry does not apply to him.

10. PW1, in her examination, admitted that her father was born at Maduranthagam Taluk and was living for some time there. She admitted that the suit property absolutely belongs to her father and even today, the first defendant is having landed properties in the native village and that the properties at Poonankarunai village belong to her mother. She denied the suggestion that the first defendant is residing both at Poonankarunai and Pondicherry. This is the oral evidence that has been let in by the parties.

11. It is admitted by both sides that the plaintiff as well as the first defendant are residing at Pondicherry, but they hail from Tamil Nadu. It is also admitted that the first defendant was born at Maduranthagam Taluk in Tamil Nadu. Regarding migration and the law applicable. It is considered by Mulla on the principles of Hindu Law -XV Edition (1982), which is as follows:

'Migration and school of law: 1. Where a Hindu family migrates from one state to another , the presumption is that it carries with its personal law, that is, the laws and customs as to succession and family relations prevailing in the state from which it came. But this presumption may be rebutted by showing that the family has adopted the law and usages of the province to which it has migrated.

2. It is the law existing at the time of migration which continuance to govern the migrated members until it is renounced. It is the law in force in the state at the time of their leaving it which continues to govern persons who have migrated to another state. Thus they are affected by decisions of the court of their state of origin which declare the correct law of the state up to the time of their leaving it, but not by customs incorporated in its law after they left it.'

12. Dr.Paras Diwan on Hindu Law-1995 edition while dealing with domicile and migration says as follows:

'Migration: When a Hindu migrates from one part of India to another, Prima facie he carries with him his personal law, and if it is alleged that he become subject to the local law, then it must affirmatively be proved that he had adopted the local law.

Ordinarily, law of the locality in which the Hindu family is living in its personal law. If such a family migrates to another part of the country, it carries with it law including any custom having any force of law. Thus it is his law in operation at the time of migration which applies. Even though the law is ascertained by decisions, subsequent to migration. However, this is merely a presumption and can be rebutted by showing that the family adopted the law or usage of the place to which it migrated by conforming to the manners. Customs and usages of the people among whom it came to live. Thus, a family migrating from Benares, where

Benares school prevails to Bengal. Where the Dayabhaga School prevails, will in all personal matters, including succession to immovable property, continue to be governed by the Benares school of law. This rule is an exception to the rule of private international law that immovable property is governed by lex citus.'

13. Mayne's treatise on Hindu Law and usage 14th Edition (1996) says that for the purpose of considering domicile. We have to consider the provisions of the Constitution and also the provisions of the Indian Succession Act thereafter, at page 170, the learned author says thus:

' The concept of domicile can be illustrated but is difficult to define. In Craigniah v. Craignish 1892 2 CH 180, Chitty, J. observed that' that a place is properly the domicile of person in which his habitation is fixed without any present intention of removing therefrom. Two elements are necessary for the existence of domicile.1. A residence of particular kind.

2. An intention of a particular kind. There must be both factum and animus. Residence need not be continuance but it must be definite, not purely fleeting. Intention must be present intention to reside for ever in the country, where the residence has been taken up.

Domicile is of three kinds:

(a). Domicile of Origin

(b). Domicile of Choice

(c). Domicile of dependency

(a). Domicile of origin:

Every person receives at birth, a domicile of origin. A legitimate child born during the lifetime of his father, has his domicile of origin in the country in which his father was domiciled at the time of his birth. A legitimate child not born during the lifetime of his father or an illegitimate child has his domicile of origin in the country in which his mother was domiciled at the time of his birth. A founding has his domicile of origin in the country in which he was found.'

The learned author has further said that strong proof is required to prove abondement of domicile and more intention of permanent residence cannot be made the basis of wiping off of domicile.

14. The Supreme Court had an occasion to consider this question in the case of Vimla Bai v. Hirlal Gupta : (1990)2SCC22 . of the said judgment, their Lordships stated that migration is changing one's abode, quitting one's place of abode and settling permanently at another place, and the burden of proving migration lies on the person setting up the plea of migration. In paragraph 6 of the said judgment, their lordships further held that in India, a Hindu his governed by his personal branch of law which he carries with him wherever he goes. It is further held that but the law of the province wherein he resides prima facie governs him and in this sense and to this extent only the law of domicile is of relevance or importance. But if it is shown that a person came from another province, the presumption will be that he is governed in his earlier home at the time of migration. Their Lordships further held that an inference can well be made from the known facts of the chief characteristics of the family, the language observance of customs and rites through they are not sufficient to prove that they are governed by a particular school of law, and the presumption can be displaced by showing that the immigrant had renounced the law of the place of his origin and adopted the law of the place to which he had migrated, and the onus lies on the person alleging that the family had renounced the law of its origin and adopted that prevailing in the place to which he had migrated.

15. In one of the earliest cases reported in the case of Soorendranath Roy v. Mussumat Heeramonee Burmonesh, 12 MIA 81, it has been held thus:

'The prevalence in any part of India of a special rule of decent in a family, differing from the ordinary course of descent common in the locality among people of the like class or race, stands upon the footing of the usage or custom of the family, which having a legal origin and continuance, regulates the succession.'

In that case, a Hindu Family migrated from Mithila and settled down in Bengal. In mithila, Mitakshara School prevails whereas in Bengal, Dayabagha School of Hindu Law prevails. The family continued joint and living in Bengal for years

together and on the question as to what is the law of succession of the deceased, their lordships said that the Law of succession as that of Mitakshara prevails and not on Dayabhaga.

16. In Madhai Kumhar v. Sabi Bewa : AIR1973 Pat160 it has been held that the Hindu family, migrating from one part of India to another, is presumed to continue to observe the Shastras by which it was governed, and the presumption can only be displaced by showing that the immigrant has renounced the law of his place of origin and adopted 5th law of the place to which he had migrated. In the said judgment, their lordships followed the decision in Sourendranath Roy v. Mussumat Heeramonee Burmonesh, 12 MIA 81 and also the decision reported in the case of Balwant Rao v. Baji Rao, AIR 1921 PC 59.

17. Similarly, in B.C.Gope v. Manjura Gowel : AIR1973 Pat208 , it has been held thus:

'To sum up, therefore, the law on the subject is that a Hindu residing in a particular province carries with him the laws and customs relating to succession and family relations prevalent in that province and is subject to the particular doctrines of Hindu Law recognized in that province. But this law is not merely a local law. It becomes the personal law and part of the status of every family which is governed by it. Consequently, therefore, where any such family migrates from one province to another governed by another law, it carries its own law with it as it was at the time of migration. If nothing is known except that a man lived at a certain place, it will be assumed that his personal law is the law which prevailed at that place. But if more is known then his personal law must be determined, unless it could be shown that he had renounced his original law in favour of the law of the place to which he had migrated. The onus to prove it is on the person alleging that the family has renounced the law of its origin and adopted those prevailing in the place where he has migrated.'

18. I do not want to multiply the case law on this point, since the Honourable Supreme Court has settled the legal position. Once it is admitted that the first defendant was born and brought up at Tamil Nadu, even though for the purpose of his employment he might have settled at Pondicherry, unless and until he

renounces his domicile in Tamil Nadu and intentionally wants to have the domicile at Pondicherry, he will be governed only by domicile of origin. Absolutely, no evidence has been let in by the plaintiff in that regard. The first defendant is the best person to speak about the relinquishment of the domicile and acquisition of another domicile. He has spoken that he continues to be governed by the Mitakshara Law in Tamil Nadu and not the Pondicherry Customary Hindu Law. That is sufficient for the disposal of this second appeal.

19. In the result, the second appeal is dismissed. No costs. Consequently, the above CMP is also dismissed.