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SooperKanoon Citation : sooperkanoon.com/815053

Court : Chennai

Decided On : Jan-26-1916

Reported in : 33Ind.Cas.532

Judge : Abdur Rahim and ;Srinivasa Aiyangar, JJ.

Appellant : Magunta Veeraraghava Reddi and anr.

Respondent : Magunta Veeraraghava Reddi

Judgement :

Abdur Rahim, J.

1. There are two appeals before us from the judgment of the Subordinate Judge. Appeal No. 273 is preferred by the plaintiff and Appeal No. 279 by the defendants.

2. There were three brothers, Rama Reddi, Venku Reddi and Krishna Reddi, forming a joint Hindu family. The plaintiff is the son of Venku Reddi. Rama Reddi left three sons, Veeraraghava Reddi, Subba Reddi and Kothandarama Reddi. The defendant is the son of Kothandarama Reddi. Krishna Reddi when he died left a widow called Akkamma.

3. The question which we have to decide is whether there was a partition among these three brothers in the lifetime of Krishna Reddi himself. The Subordinate Judge has come to the conclusion that the partition was after his death and we

have no doubt that this is a correct conclusion. The oral evidence on the point is not of very much importance. The question rests upon the document Exhibit A, which is a deed of relinquishment executed by the widow of Venku Reddi, the mother of the plaintiff, on 4th March 1876, and on a recital in Exhibit XXI, the Will executed by Akkamma on the 31st October 1912. The recital in Exhibit A is in support of the case of the plaintiff that the partition was after Krishna Reddi's death. The recital in the Will is to the opposite effect but there is no difficulty in holding that that recital is not reliable and cannot be acted upon. The statement in Exhibit A, which was executed nearer the date of the partition, is far more likely to be correct than what is stated in Exhibit XXI. Besides, so far as Exhibit XXI is concerned, the defendant with whom Akkamma was living was interested in having a recital inserted such as that which occurs in Exhibit XXI. Exhibit H shows that on partition in 1866, that is ten years before the execution of Exhibit A itself, Akkamma got one-third share of the family property in lieu of her maintenance and Venku Reddi, who had left his village to settle in his wife's village called Chinthathopu, agreed to relinquish his share of Rs. 600. This sum of Rs. 600 with the interest thereon was received by the plaintiff's mother in 1876 when Exhibit A was executed. As is evident from the terms of Exhibit A and from the admitted facts of the case, Akkamma received one-third share in lieu of her maintenance and it is conceded that on her death the property would revert to the family, that is to say, the plaintiff and the defendant will have a half share each in the one-third share which Akkamma was given in lieu of her maintenance. Venku Reddi's share was sold to Subba Reddi and Akkamma. Under that sale Akkamma acquired one-sixth of the whole. The question has been raised before us--it was raised also in the lower Court--whether this one-sixth is to be regarded as an accretion to the one-third share which she was in possession of in lieu of her maintenance and would go to the family; or whether it must be treated as her stridhanam property and as such devolve on her heirs. Upon this point there can be no doubt as to the state of the law in this Presidency, and I think it is covered in its essential aspects by the Full Bench ruling of this Court reported as Subramanian Chetti v. Arunachelam Chetti 28 M.K 1. The whole question as regards accretion to or incorporation with property held by a Hindu female is fully discussed there and what has been laid down as being the law prevalent in this Presidency is binding

upon as. The proposition which is there enunciated is in these words: 'Where, however, what is given is current income not for mere use and return, but for actual consumption, it would be almost absurd to talk of an intention that there should be any reverter, it being now thoroughly well established that what may not have been consumed may be disposed of by the female as she likes. In such circumstances, whether' as a matter of common sense or of legal principle, but one view is possible, viz., that money so received is the absolute property of the woman descendible as such to her own heirs.' In that case, what the woman enjoyed was allowance for maintenance in shape of money and the only difference between that case and this, therefore, is that here the woman received maintenance from the income of the property which she was in possession of for that purpose. That however, can make no difference in the application of the principle which I have just quoted. The property itself which Akkamma was in possession of would revert to the family on her death. She was entitled to the income in her own right for her maintenance and she was entirely free to use it as she liked. She was possessed of absolute powers of disposition over the whole of that income and when she died the property itself would go, like any other property which belonged to her absolutely in her own right, to her heirs.

4. Much reliance has been placed before us on the well-known ruling of the Privy Council in *Isri Dutt Koer v. Hansbutti Koerain* 10 C.S 324, which has been considered in *Subramanian Chetti v. Arunachellam Chetti* 28 M.A 1 and *Akkanna v. Venkayya* 12 M.L.J. 5. The proposition which is enunciated in the Privy Council decision is that when a widow receives income from the estate inherited by her from her husband that income unless she has spent it, belongs to husband's estate. Whether we regard this as a dictum as suggested or not, this Court has consistently refused to extend it any further than the circumstances with reference to which the proposition was laid down. In the present case we are not concerned with the sayings out of the income of an estate held by a Hindu widow and I see no necessity or any good reason for extending what has been stated with reference to the income of property bought with such savings to a case like this where the woman held the property, the destination of the savings of which is in dispute, solely for purposes of her maintenance.

5. It has been argued that the recital in Exhibit XXI, that is the Will of Akkamma, shows that the one-sixth share which was relinquished in her favour by Venku Reddi's widow was incorporated by her with the one-third which was given to her for maintenance. The recital is that, as a matter of fact, the entire property belonged to the defendant's branch of the family, was enjoyed by the defendant and she had no share in it either by purchase from Venku Reddi's widow or by partition after Krishna Reddi's death. That is an untrue recital and it is impossible for me to conceive how from it any inference can be drawn that she meant to incorporate this property with the one-third share which she enjoyed for maintenance. The doctrine of incorporation, or what perhaps is more accurately described as accretion, so far as the property acquired by a Hindu widow is concerned has been fully considered by this Court and also by the Privy Council not only in *Isri Dutt Koer v. Hansbutti Koerain* 10 C.S 324 but in *Musammat Bhagbutti Dae v. Chowdry Bholanath Thakoor* 2 I.A. 256 and *Saodamini Dasi v. Administrator-General of Bengal* 20 CSA. 433. The proposition laid down in *Isri Dutt Koer v. Hansbutti Koerain* 10 C. S 324 is to the effect that whatever property is bought by a Hindu widow out of her savings from her husband's property is presumed to belong to the estate, but it is open to her to treat that property as her own and if she expresses that intention either by words or by conduct, then it will no longer belong to the husband's estate but would be regarded as her own stridhanam property. It may be doubtful, having regard to the Full Bench ruling in *Subramanian Chetti v. Arunachelam Chetti* 28 M.K 1 and the ruling in *Akkanna v. Venkayya* 12 M.L.J. 5 which I have already mentioned, whether this presumption holds good in this Presidency. But whatever the presumption in the case of property bought by a Hindu widow out of the income of her whole property may be, I do not find any authority for extending such a presumption to the case of properties bought by a Hindu female not holding a similar estate. On the other hand, the case reported as *Musammat Bhagbutti Dae v. Chowdry Bholanath Thakoor* 2 I.A. 256 is authority for the contrary proposition. There also a Hindu female was in enjoyment of certain property for her life and it was held by their Lordships of the Privy Council: 'According to this construction she would have the power of making whatever use she chose of the proceeds of the estates, and if she bought land or personal property with them, that land and that property would

be hers, and would devolve on the defendant who represents her.' The construction alluded to was of a document by which the lady in question received the property in the nature of a family settlement giving to her an estate for life with power to appropriate the profits, the remainder being vested in some other person on her death. The case reported as Saodamini Dasi v. Administrator-General of Bengal 20 CS. 433 also supports this proposition. The result of the authorities is that there is no reason for holding that when a Hindu female receives property for her maintenance and out of the savings from the income of that property she buys other property, the property so purchased would not belong to her in her absolute right and descend upon her heirs, but revert to the family on the same basis as the property which she held for her maintenance. In such a case there is really no question of reverter or accretion. The Subordinate Judge is not right, therefore, on this point and the one-sixth which was acquired by Akkamma from Venku Reddi must be held to go to the plaintiff as the nearest heir on Akkamma's death.

6. The next question that arises in these appeals is as to the genuineness of Exhibit XXI, the Will of Akkamma. The Subordinate Judge has found that it was genuine and valid and I think he has given good reasons for his conclusion. Akkamma admittedly died in a village called Varigonda. It is not the village where she ordinarily resided, but where she had some relative. The Will was executed on 31st October 1912 and was registered on 3rd November. The Sub-Registrar apparently came to the house where she was living and she acknowledged her signature before the Sub-Registrar, being identified to his satisfaction by some other person. She died, according to the case of the defendant, on 11th February 1913. The case of the plaintiff is that she died early in November 1912 and that on the 31st October she was suffering from paralysis, unable to talk and unable to use her hands. It was in that condition it is said she went to Varigonda for change of air and treatment, that, therefore, she could not have executed any document. The question when Akkamma died is of considerable, in fact conclusive, importance in deciding as to the genuineness of the Will, but I think there can be very little doubt on the point. Exhibit XIII, which is an extract from the death register kept in the village, shows that one Magunta 'Akkamma died on the 11th February 1913.

7. It has been suggested that the person referred to might be some other woman. But having regard to the facts entered in the register, there can be no good ground for accepting that suggestion. If Akkamma died on 11th February 1913, then the registration of Exhibit XXI before the Sub-Registrar must have been obtained according to plaintiff's case by some one by false personation. Beyond the merest suggestion there is really nothing upon which it can reasonably be held that the Will was forged and somebody falsely personated Akkamma, and got it registered while she was still living. The Subordinate Judge has found himself unable to believe the witnesses of the plaintiff who speak to Akkamma being ill when she went to Varigonda at the end of October. Our attention has also been drawn to the evidence, of these witnesses and I have no hesitation in saying that the Subordinate Judge's estimate of this evidence is quite correct. The Will must, therefore, be held to be genuine.

8. The result will be that Appeal No. 279 is dismissed with costs. Appeal No. 273, therefore, partially succeeds and the decree of the Subordinate judge will be modified so that the plaintiff will have $\frac{1}{2}$ of $\frac{1}{3}$ plus $\frac{1}{2}$ of the entire property instead of What has been given by the Subordinate Judge. There will be proportionate costs so far as Appeal No. 273 is concerned. The civil revision petition will be dismissed with costs.

Srinivasa Aiyangar, J.

9. I agree and I desire to add only a few words, as regards the one-third share of the plaintiff's father acquired by Akkamma and Subba Reddi jointly under the terms of Exhibit A. The suggestion was made in the course of the argument that Akkamma and Subba Reddi took this property as joint tenants, and not as tenants-in-common. There is absolutely no warrant for this construction and even if that construction is possible, the result would be that Akkamma as the survivor of the two would be entitled to the whole property as acquired instead of one-half. It is impossible to treat Akkamma and Subba Reddi as members of a joint Hindu family acquiring properties for that family jointly. The more natural and reasonable construction is that she and Subba Reddi were tenants-in-common of the one-third share acquired under Exhibit A and that Akkamma became the owner of a moiety

of that one-third.

10. The next question is as to the nature of the interest possessed by Akkamma in that property. It is reasonably clear that that acquisition was made out of the income of the one-third, allotted to her originally on account of her maintenance, in which she had a life-interest. She was entitled to the beneficial enjoyment of the income during her life. That one-third share was not given to her on account of the share of her husband and was not inherited by her as the separate property of her husband. The income from the one-third share was absolutely hers and any purchase made out of that fund would also be absolutely at her disposal. It would be her stridhanam and descend as such on her death. That position is conclusively established by the decision of the Full Bench of this Court in *Subramanian Chetti v. Arunachalam Chetti* 28 M.S.D 1 and the same result follows from the decision of the Privy Council in the case reported as *Musammatt Bhagbutti Dae v. Chowdry Bholanath Thakoor* 2 I.A. 256. Assuming then that when acquired it was the stridhanam property of Akkamma, the further question is whether, she did anything with reference to that property so as to make it devolve not on her own heirs after her death as stridhanam property, but pass along with the one-third share in which she had only a life-estate. It was argued that by some conduct of hers, this property which was her stridhanam was incorporated with the one-third in which she had only a life-estate, i e., that by some conduct of hers her absolute interest in this property was cut down to a life-interest. Assuming that is possible without a transfer inter vivos or devise by Will, in this case there is really no evidence to show that she did anything to convert her absolute interest into a life-estate. The only evidence to which our attention was drawn is a statement in Exhibit XXI, the Will executed by Akkamma. In that, she says that the original one-third and the subsequently acquired one third were enjoyed as joint family property by Subba Reddi, his brother and his sons, and after the death of the two brothers the son of the last brother Kota Reddi became entitled to it and is enjoying it. That statement, however, is not true, and that incorrect recital could not in any way convert her absolute interest into a life-estate. Assuming that she was under a misapprehension and that is the utmost that we can read into that language as to the nature of the interest possessed by her at the time of the acquisition, that cannot cut down her absolute interest into a life-estate. I, therefore, think that

nothing was done by her to convert this property into a life-estate so as to make it devolve on her death on the persons who would be entitled to the one-third allotted for her maintenance.

11. I further doubt whether she could legally have done so. In the case of heritable property vesting in her as heiress of her husband, it is possible that she might acquire property from out of the income so as to make the after-acquisition an accretion to the original estate. The language used in some of the cases suggests the possibility of a Hindu widow succeeding to her husband's estate, incorporating properties subsequently purchased by her out of the income which at the time of the acquisition were at her absolute disposal. In *Saodamini Dasi v. Administrator-General of Bengal* 20 C. S 433 the Privy Council appears to have contemplated the possibility of a Hindu widow, by her conduct or other indication of her intention, making her absolute estate part of her husband's estate, though it was not in her possession. I am unable to find any case in which the property which she acquired as her stridhanam, was held to have been incorporated with a life-estate so as to pass it along with the property which she held for her life. She can no doubt improve the property in which she has a life-interest, or free it from incumbrances with her own money. But it is difficult to see, how, without a transfer, property owned by a Hindu female as her absolute property can be made part of her husband's estate or of the property allotted for her maintenance.

12. In the result I agree to the order proposed.