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L. GOWRAMMA (D) BY LR.

v.

SUNANDA (D) BY LRS. & ANR.

(Civil Appeal Nos. 174-175 of 2016)

JANUARY 12, 2016

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[KURIAN JOSEPH AND R. F. NARIMAN, JJ.]

Hindu Law Women's Rights Act, 1933 (Mysore Act No. X of 1933) – ss. 4, 10 and 8 – Succession to Hindu male dying intestate – On facts, constitution of joint Hindu family between two brothers and wife of elder brother – Elder brother karta of the family – Partition of joint family property between two brothers – Death of younger brother leaving behind his widow and three daughters – Execution of Will by widow-defendant no. 1 bequeathing her share in joint property in favour of only one of her daughters – Suit by other daughter against her mother-defendant no. 1, her sisters and a purchaser who bought some property from her mother – Claim as regards her share in the property – Trial court applying s. 10(2)(g) held that the plaintiff entitled to 1/4th share in the scheduled properties and decreed the suit – First appeal by defendant no. 1, dismissed – Review petition also dismissed applying s. 8(1)(d) – On appeal, held: Succession to a Hindu male dying intestate would vest only in the widow u/s. 4(1)(ii) to the exclusion of the daughters – Judgments of the courts below set aside.

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Allowing the appeals, the Court

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HELD: 1.1 A partition of joint family property among brothers is expressly mentioned in Section 8(1)(b) of the Hindu Law Women's Rights Act, 1933 (Mysore Act No. X of 1933). Therefore, upon partition of joint family property between 'T' and his older brother, it is only their mother, their unmarried sisters and widows and unmarried daughters of their pre-deceased undivided brothers who have left no male issue who would get a share under the Section. Unlike sub-section (a), unmarried daughters of 'T' do not get any share at the partition between 'T' and his brother. [Para 18] [265-C-D]

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1.2 Under Section 10(1)(g) it is only property taken by inheritance by a female from her husband that is included in stridhana. This would not include the unmarried daughters as

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property taken by inheritance by a female from her father is not included. The succession to a Hindu male dying intestate would vest only in the widow under Section 4(1)(ii) to the exclusion of the daughters who are mentioned in a subsequent clause i.e. clause (iii) by virtue of the expression “in the following order”. The judgment of the courts below is set aside and the suit would be dismissed as a consequence. [Para 19, 20] [265-F-G]

Byamma v. Ramdev ILR 1991 KAR 3245; *Sathyaprema Manjunatha Gowda (Smt) v. Controller of Estate Duty, Karnataka* (1997) 10 SCC 684; 1997 (3) SCR 86; *Nagendra Prasad v. Kempnanjamma* 1968 1 SCR 124; *Smt. Ramakka and others v. Smt. Thanamma since deceased by LR, P. Srinivas and Others* ILR 2014 Karnataka 1335 – Referred to.

Case Law Reference

ILR. 1991 KAR 3245	Referred to. Para 11	D
1997 (3) SCR 86	Referred to. Para 12,13	
1968 1 SCR 124	Referred to. Para 15	
ILR 2014 Karnataka 1335	Referred to. Para 17	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 174- 175 of 2016 E

From the Judgment and Order dated 05.08.2005 and 24.11.2007 of the High Court of Karnataka at Bangalore in R.F.A. No. 915 of 2005 and in Review Petition No. 712 of 2005 in R.A.A. No. 915 of 2005.

R. S. Hegde, Shanti Prakash, Rajeev Singh for the Appellants. F
S. N. Bhat for the Respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. Delay condoned in filing the special leave petitions. G

2. Leave granted.

3. These appeals raise an interesting question on the true construction of some of the provisions of the Hindu Law Women’s Rights Act, 1933 (Mysore Act No.X of 1933). One Venkatsubbaiah had two H

A sons Mahabalaiah and Thimmappa. After the death of Venkatsubbaiah, the two sons and the wife of Mahabalaiah constituted a joint Hindu family. Mahabalaiah being the elder brother was the Karta of the said family. In the year 1940-1941, Mahabalaiah and Thimmappa partitioned and divided their joint family properties and got possession of their respective shares. Thimmappa died on 9.10.1952, leaving behind him B his widow one Gowramma and three daughters. The widow has executed a will on 9.5.1990 bequeathing her share in the joint family property in favour of only one of the three daughters namely the third defendant. The 4th defendant has been joined in the suit inasmuch as the first defendant widow had sold one of the scheduled items of the suit property C namely item No.3 to the said 4th defendant during the pendency of the suit.

4. One of the said daughters namely Sunanda filed a suit against defendant No.1 – her mother, defendant Nos. 2 and 3 – her sisters, and defendant No.4 – the purchaser, being O.S. No.46 of 1994. After setting D out the relevant facts, the Civil Judge, Senior Division by judgment dated 28.3.2005 framed as many as 12 issues and ultimately decided on application of Section 10(2)(g) of the 1933 Act that the plaintiff would be entitled to a 1/4th share in the scheduled properties and the suit was decreed accordingly.

E 5. In a first appeal filed by defendant No.1, the first Appellate Court agreed with the conclusions both on facts as well as law with the trial court. Accordingly, the first appeal was dismissed on 5.8.2005.

6. Thereafter, a review petition was filed and by the judgment dated 24.11.2007, the review was dismissed but this time adverting to F Section 8(1)(d) of the 1933 Act and decreeing the suit with reference to the said Section. The review also was accordingly dismissed.

7. Shri R.S. Hegde, learned counsel appearing on behalf of the appellant has urged before us that the applicable Section of the 1933 Act is Section 4, and not Sections 8 and 10, and accordingly the succession G of a Hindu male dying intestate vests property only in the widow to the exclusion of the daughters and hence the plaintiff's suit should have been dismissed on this ground.

8. On the other hand, Shri S.N. Bhat, learned counsel, invited our attention to Section 8(1)(d) of the Act and according to him since joint H family property passed to Thimmappa who was a single coparcener by

survivorship, on partition in 1940-1941, all the classes of females mentioned in Section 8 would be entitled to a share in the said property which would include not only his widow but also his unmarried daughters. A

9. For a proper appreciation of the controversy at hand, we set out the relevant Sections of the Hindu Law Women's Rights Act, 1933 (Mysore Act No.X of 1933). B

“Part I

INHERITANCE

4. Order of succession:-

(1) The succession to a Hindu male dying intestate shall, in the first place, vest in the members of the family of the propositus mentioned below, and in the following order:- C

- i) the male issue to the third generation ;
- ii) the widow ; D
- iii) daughters ;
- iv) daughter's sons

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8. Certain females entitled to shares at partition- E

(1) (a) At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them. F

(b) At a partition of joint family property among brothers, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue shall be entitled to share with them. G

(c) Sub-sections (a) and (b) shall also apply mutatis mutandis to a partition among other co-parceners in a joint family.

(d) Where joint family property passes to a single co-parcener by survivorship, it shall so pass subject to the right to shares of the classes of females enumerated in the above sub-sections. H

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 .10. What is "stridhana" –
- (1) "Stridhana" means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate.
- B (2) "Stridhana" includes :-
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- C (g) property taken by inheritance by a female from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited.
- D (3) All gifts and payments other than or in addition to, or in excess of, the customary presents of vessels, apparel and other articles of personal use made to a bride or bridegroom in connection with their marriage or to their parents or guardians or other person on their behalf, by the bridegroom, bride or their relatives or friends, shall be the stridhana of the bride."
- E 10. A cursory reading of Section 8 would reveal that various females mentioned in the Section would be entitled to a share of joint family property in the circumstances mentioned therein. Under Sections 8(1)(a) to 8(1)(c) there has necessarily first to be a partition in the circumstances mentioned in each of the said sub-sections whereas under sub-section (d) what is required is that joint family properties should pass to a single coparcener by survivorship. If this condition of sub-clause (d) is met,
- F then all the women mentioned in sub-clauses (a) to (c) would be entitled to a share therein.
11. Shri Bhat relied upon a judgment delivered by B.P. Singh, J. in **Byamma v. Ramdev** reported in I.L.R. 1991 KAR 3245. After setting out Section 8 of the 1933 Act, it was held:-
- G "It is well settled that devolution of joint family property, which come to the hands of a son from his father or grand-father or great-grand-father as unobstructed heritage is governed by the Rule of Survivorship. A male coparcener acquires right to such property by birth. This is different from property that may come
- H to the hands of a coparcener in which he has no right by birth.

This is what is known as obstructed heritage, and such property devolve by succession and not by survivorship. Such a distinction is well known in Hindu Law. Therefore, when Section 8(1)(d) of the Mysore Act refers to the properties passing on to a single coparcener by survivorship, it has reference to the ancestral properties which come to his hands upon partition or otherwise.

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It is also well settled that if a coparcener dies, his interest devolves upon other coparceners by survivorship. As long as the joint family is in existence, all the coparceners jointly own all the properties. Each coparcener is a full owner of each property owned by the joint family. The effect of partition is severance of status and, as a consequence, each coparcener becomes entitled to separate possession and enjoyment of his share in the joint family properties. Partition by itself does not create a right because the right of a coparcener existed even before partition. It only brings about demarcation of his interest with a right to separate possession and enjoyment. It is therefore, not correct to state that when a coparcener, upon partition, gets his share in the joint family properties, it does not come to him by survivorship. The right which accrues to the coparcener is by operation of the Rule of Survivorship and the partition only demarcates his share in the joint family properties. As observed earlier, unobstructed heritage always devolves by operation of the Rule of Survivorship and there is no exception to this Rule. It has therefore been held that where a father disposes of by a Will, his interest in the joint family properties in favour of his son, the properties in the hands of the son still retain the character of coparcenary property, and not self-acquired property.

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I, therefore, hold that the properties to which Chowdappa became entitled, upon partition passed on to him by survivorship. I find no substance in the contention raised on behalf of the respondents that it passed on to him by reason of partition and not by survivorship.

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In view of Section 8(1) of the Act, there can be no doubt that a single coparcener such as Chowdappa took the ancestral property, subject to the right to shares of female members of the joint family enumerated in Clauses (a), (b) or (c) of Section 8(1) of the Mysore Act. The plaintiff, being a widow of a pre-deceased son, was

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- A entitled to a share equal to one half of the share to which her husband would have been entitled if he were alive [vide Section 8(1) (a) of the Mysore Act]. I therefore hold that the plaintiff is entitled to claim one half of the share which her husband could have claimed if he was alive. In the instant case her husband would have got half share in the properties in a partition between his father and himself in the year 1946 when Chowdappa became a single coparcener. Consequently, she is entitled to 1/4th share in the suit schedule properties.” (at para nos.10, 11, 12 and 17)
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12. Unfortunately for Shri Bhat, this Court in **Sathyaprema Manjunatha Gowda (Smt) v. Controller of Estate Duty, Karnataka**, (1997) 10 SCC 684, has taken a view which is directly contrary to the view of the single Judge of the Karnataka High Court.

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13. In **Sathyaprema’s case** (supra), the question posed was whether in the facts and circumstances of the case the Tribunal was correct in holding that neither the unmarried daughter nor the wife of the deceased had any interest in the joint family property of the deceased while he was alive. This Court stated that the only question for consideration is whether the estate left by the husband and father of the widow and unmarried daughter respectively on partition was obtained by survivorship applying Section 8(1)(d) of the Act.

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14. This Court exhaustively discussed the meaning of the expressions “survivor” and “survivorship” and ultimately held:-

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“Here, we are concerned with Manjunatha Gowda who had obtained property at a partition with coparceners. Survivorship, therefore, is the living of one of two or more persons after the death of the others having interest to succeed in the property by succession. The shares in the coparcenary property changes with death or birth of other coparceners. However, in the case of survivorship it is not of the same incidence. He received the property at the partition without there being any other coparcener. It is an individual property and, therefore, he did not receive it by survivorship but by virtue of his status being a coparcener of the Hindu Joint Family along with his father and brothers.

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Under these circumstances, the conclusion reached by the High Court that since it is by partition, not by survivorship, clause (d) of sub-section (1) of Section 8 does not get attracted, is not (sic) correct. No doubt, the learned counsel relied upon the judgment

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of this Court in *Nagendra Prasad v. Kempananjamma* [AIR 1968 SC 209] which was also considered by the High Court in the impugned judgment. This Court therein has explained that the object of Section 8(1)(d) is to give a right to claim a share in the joint family property to all females referred to in clauses (a) to (c) thereof. Merely because partition by one of the coparceners under clauses (a) to (c) is a condition for a class of family members entitled to a share in the property, it does not apply to a case where class of family members entitled under clause 8(1)(d) since it stands altogether on a different footing and, therefore, partition is not a condition precedent for claiming a share by a class of family members enumerated in Section 8(1)(a) of the Act. But that principle has no bearing to the facts in this case for the reason that the property held was not received by survivorship.

Under these circumstances, family members enumerated under Section 8(1)(d) are not entitled to a share in the estate left by the deceased. Thus we do not find any illegality in the view taken by the High Court warranting interference.” (at paragraph nos.13-15)

15. In fact, this follows from a reading of Section 8. Whereas Sections 8(1)(a)(b) and (c) refers to a partition among coparceners in a joint family, sub-section (d) refers to property passing to a single coparcener only by survivorship. In this behalf, in *Nagendra Prasad v. Kempananjamma*, [1968] 1 SCR 124, this Court by a majority judgment held:-

“This intention can only be given effect to on the basis that clause (d) does not restrict itself to finding out females on the basis of an assumed partition between the last two male coparceners. It is significant that clause (d) gives a right independently of a partition and we do not see why its scope should be restricted by assuming a partition.” (at page No.128).

16. In fact, even the dissenting Judge held:-

“Clause (d) applies to a case when the family property passes by survivorship to a sole surviving coparcener. In such a case there can be no partition, as is the case under clause (a) or (b) or (c). Indeed, the property becomes incapable of partition and but for clause (d) no female relative would have any right to a share. To

- A save such a result clause (d) provides that the rights of the female relatives should not be lost only by reason of the property passing to the sole surviving coparcener. Sub-section 5, furthermore, gives such female relatives as fall under sub-section 1 a right to have their shares separated and thus makes them co-sharers subject to whose rights the sole surviving coparcener takes the property.
- B Therefore, whereas under clauses (a), (b) and (c) the rights fluctuate according to the position of the female relatives in the family when the partition takes place there is no such uncertainty in the case falling under clause (d) as the sole surviving coparcener takes the property subject to the right to shares of female relatives
- C falling under the provisions of clause (a) or (b) or (c). Such is the scheme of Section 8(1)."

17. The dissenting Judge basically dissented on the point that under sub-clause (d), a partition has to be assumed because it is only on such assumption that females on whom a right to share is conferred can be
- D ascertained. It is clear, therefore, that Section 8(1)(d) can have no application to a case where joint family property passes to a single coparcener not by survivorship but by partition.

- A recent view of Section 8(1)(d) in **Smt. Ramakka and others v. Smt. Thanamma since deceased by LR, P. Srinivas and Others**, ILR 2014 Karnataka 1335, has been taken by a Division Bench of the
- E Karnataka High Court. While construing Section 8(1)(d), the Division Bench has held:-

- "When the coparcenary property passes to a sole surviving coparcener, provision has been made in clause (d) of Section 8(1). This clause, in protecting the rights of females, had necessarily to give females the right to share in the coparcenary property even if there be no partition at all, because, on passing of property to a sole surviving coparcener, there could not possibly be any partition sought by the male members of the coparcenary body. The right conferred by clause (d) is, therefore, an independent right and not
- F connected with the rights granted to the females under clauses (a), (b) and (c). The females who are to get benefit are all those to whom a right to a share in the joint family property would have accrued if there had been a partition either under clause (a), or clause (b) or clause (c). The language of clause (d) has to be
- G interpreted as laying down that right to shares will vest in all
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females of the joint Hindu family who would have possibly received the right to a share if at any earlier time there had been partition in the family in any of the three manners laid down in clauses (a), (b) and (c). It is significant that clause (d) gives a right independent of a partition and its scope should not be restricted by assuming a partition.”

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This is the correct view of the law on Section 8(1)(d), and we endorse it.

18. There is also another way of looking at the issue raised in the present appeals. A partition of joint family property among brothers is expressly mentioned in Section 8(1)(b). Therefore, upon partition of joint family property between Thimmappa and his older brother, it is only their mother, their unmarried sisters and widows and unmarried daughters of their pre-deceased undivided brothers who have left no male issue who get a share under the Section. Unlike sub-section (a), unmarried daughters of Thimmappa do not get any share at the partition between Thimmappa and his brother.

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19. The ground on which the judgments below rested, namely Section 10(1)(g), was not even sought to be supported by Shri Bhat. And for a very good reason. In order that Section 10(1)(g) apply, first and foremost the property referred to is “stridhana” which is defined as property of every description belonging to a Hindu female other than property in which she has by law or under the terms of an instrument only a limited estate. Under Section 10(1)(g) it is only property taken by inheritance by a female from her husband that is included in stridhana. This would not include the unmarried daughters as property taken by inheritance by a female from her father is not included.

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20. In this view of the matter, Shri Hegde is right in saying that the succession to a Hindu male dying intestate will vest only in the widow under Section 4(1)(ii) to the exclusion of the daughters who are mentioned in a subsequent clause i.e. clause (iii) by virtue of the expression “in the following order”. This being the case, it is clear that the appeals will have to be allowed and the judgments of the courts below set aside. The suit will stand dismissed as a consequence.

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