Vasant And Anr. vs Dattu And Ors. on 8 December, 1986

Equivalent citations: AIR1987SC398, (1987)89BOMLR63, 1986(2)SCALE957, (1987)1SCC160, 1987(1)UJ111(SC), AIR 1987 SUPREME COURT 398, (1987) 1 CURLJ(CCR) 239, (1987) 1 APLJ 18.1, (1987) 1 ALL WC 349, (1987) MARRILJ 229, (1986) JT 988 (SC), 1987 (1) SCC 160, 1987 ALL CJ 457, 1987 (1) UJ (SC) 111, (1987) 1 HINDULR 76, (1987) 1 SCJ 227, (1987) 1 SUPREME 133, 1987 89 BOM LR 63

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Bench: O. Chinnappa Reddy, V. Khalid

JUDGMENT

O. Chinnappa Reddy, J.

1. Ganoba had four sons, Raoji, Ramchandra, Narsoba and Shanker. Raoji, Narsoba and Shanker died in that order. Shanker died in 1951. Vasant and Yaswant, defendant Nos. 4 & 5 are Raoji's sons. Ramchandra is the first defendant and his sons are Manik and Moti, defendant Nos. 2 & 3. Narsoba died leaving behind him two widows Subabai and Kadubai. Shanker died leaving behind him a widow Aaubai.

2. We may mention here that at the time of death of Raoji. Narsoba and Shanker, the Hindu Women's Right to Property Act, 1937 was not applicable to the parties, as they were residents of the erstwhile native state of Hyderabad. In 1961 Kadubai the widow of Narsoba adopted Dattu. Aaubai, the widow of Shanker adopted Vilas. Soon after the adoptions, Dattu and Vilas filed the suit, out of which the present appeal arises for partition and separate possession of their shares in the joint family properties. Defendants 4 and 5 were the main contestants of this suit. Among several please raised by them, they also claimed that in 1956 there was a partition between Ramchandra on the one hand and defendants 4 & 5 on the other. However, the question of partition was not put in issue and, as we shall presently see, the evidence in regard to the partition was also scanty. The factum of the two adoptions was disputed. It was also claimed that after the death of Narsoba and Shanker the properties devolved on defendants 1 to 5 by survivorship and the plaintiff's were not entitled tc claim any share in the properties. Section 12 of the Hindu Adoption & Maintenance Act, 1956 barred the plaintiffs from claiming any share in the properties. It is not necessary to pursue the course of the suit in the lower courts. It is enough if we refer to the conclusions arrived at by the High Court. The High Court upheld the truth and validity of the adoptions. The High Court further took the view that the Hindu Women's Right to Property Act, 1937 applied to the parties, that the widows succeeded to the shares of their husbands, Narsoba and Shanker and that the two plaintiffs, on adoption,

succeeded to the shares of Narsoba and Shanker. On the question whether there was a partition in 1956, the High Court noticed that there was no issue in regard to the question of partition and concluded that defendants 4 and 5 had not put the question in issue as their case in regard to the partition 'was not tenable."

3. We may straightway say that the High Court was in error in holding that Hindu Women's Right to Property Act, 1937 applied to the parties. The Act was made applicable to the erstwhile Hyderabad State long after the death of Narsoba and Shanker. The real question, therefore, is whether Section 12 of the Hindu Adoption and Maintenance Act precludes the plaintiff's from claiming any share in the joint family properties. Section 12 is as follows:-

> An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:
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> Provided that-
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> (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
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> (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
>
> (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

4. We are concerned with proviso (c) to Section 12. The introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the share of the rest of the members of the joint family, but it certainly docs not involve any question of divesting any person of any estate vested in him. The joint family continues to hold the estate, but, with more members than before. There is no fresh vesting or divesting of the estate in anyone.

5. The learned Counsel for the appellants urged that on the death of a member of a joint family the property must be considered to have vested in the remaining members by survivorship. It is not possible to agree with this argument. The property, no doubt, possess by survivorship, but there is no question of any vesting or divesting in the sense contemplated by Section 12 of the Act. To interpret Section 12 to include cases of devolution by survivorship on the death of a member of the joint family would be to deny any practical effect to the adoption made by the widow of a member of the joint family. We do not think that such a result was in the contemplation of Parliament at all.

6. The learned Counsel for the appellants argued that there was a partition in 1956 and that as a consequence of the partition the properties had become vested in Ramchandra and the heirs of Raoji and they could not be divested of those properties by adoptions. The learned Counsel would be right in this submission if the partition was true. We have already referred to what the High Court had to say about the partition. The question of partition was not put in issue. The evidence relating to partition was also very scanty. Though a deed of partition was stated to have been written, no such deed was produced in evidence. It was said that the partition deed was in the custody of Ramchandra, but nothing prevented defendants 4 & 5 from calling upon Ramchandra to produce the deed. Vasant who gave evidence on behalf of defendants 4 and 5 admitted that he never called upon Ramchandra to produce the deed. One of the witnesses examined by the defendants stated that Vasant was given a copy of the memo prepared at the time of partition. This was also not produced. Neither Vasant, nor his witnesses stated why there was a partition in 1956, since Vasant and his younger brother were minors at that time. The evidence does not indicate who effected the partition and no one has been examined to explain the circumstances under which the partition was effected. We think that the High Court was justified in concluding that the case of the defendants in regard to the alleged partition was untenable.

7. In the result, the appeal is dismissed with costs.