

Gullapalli Krishna Das vs Vishumolakala Venkayya And Ors. on 15 November, 1977

Equivalent citations: AIR1978SC361A, (1978)1SCC67A, 1977(9)UJ747(SC), AIR 1978 SUPREME COURT 361, 1978 (1) SCC 67 1977 U J (SC) 747, 1977 U J (SC) 747

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Bench: S. Murtaza Fazal Ali, P.S. Kailasam

JUDGMENT

P.S. Kailasam, J.

1. This appeal arises by special leave granted by this Court against the judgment and decree dated December 29, 1971 by the High Court of Andhra Pradesh in L P.A. No. 9 of 1971. The appellant in this Court is the plaintiff. He filed the suit No. O.S. 3 of 1963 against the respondents for recovery of possession of the plaint schedule properties, with past and future mense profits.

2. One Dhara Suryanarayana and Nageswarudu were brothers and were members of a joint Hindu family. Suryanarayana died on 1896 leaving behind his widow Kutumbamma. The joint family owned 80 acres of wet land, at the time of his death. Subsequently, Nageswarudu put Kutumbamma in possession of the suit schedule properties in lieu of her maintenance, in 1897. On September 29, 1956 Kutumbamma registered a will in favour of the appellant, bequeathing him the suit lands and died in 1959. Nageswarudu's son Venkata Sabrahmanya Sastry issued a registered notice dated November 12, 1958 asserting that Kutumbamma was not entitled to the suit property absolutely. Kutumbamma replied denying the allegation. After the death of Kutumbamma, Venkata Sabrahmanya Sastry issued a notice to the appellant. The appellant replied on December 12, 1959. The second respondent is the tenant who expressed his preparedness to pay the rent and the possession to the true owner. The appellant preferred a claim before the Tenancy Tribunal for eviction of the tenant. Venkata Subrahmanya Sastry transferred the suit property it in favour of his two sons on December 30, 1959 and they sold it to the first respondent. The first respondent in collusion with the tenant, the second respondent, obtained a decree against the latter restraining him from interfering with first respondent's possession. The respondents contested the suit contending that Kutumbamma was given only a life-interest in the suit property and the allegation of execution of settlement deed without her knowledge was denied. The second respondent also supported the first respondent and contended that the will executed by Kutumbamma was not true and that the maintenance deed gave only a life interest and that Kutumbamma could not assert any absolute title to the property.

3. The trial court held that the will executed by Kutumbamma was true and valid and that Kutumbamma had a right to be maintained out of the family properties and the deed of maintenance was executed in recognition of that right. It also held that the right of the widow became enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956. The respondent took up the matter in appeal to the High Court of Andhra Pradesh. The only contention raised by the respondents was that the maintenance deed fell within the ambit of Section 14(2) and not under Section 14(1) of the Hindu Succession Act and therefore Kutumbamma's estate was not enlarged. The learned Single Judge held that of the deed fell within the ambit of Sub-section (2) of Section 14 and Kutumbamma's estate was not enlarged.

4. The appellant took up the matter on Letter Patent Appeal and the Division Bench confirmed the judgment of the Single Judge and dismissed the appeal. The petition for the grant of a certificate was rejected by the High Court and thereupon the appellant preferred a petition for special leave to this Court which was granted.

5. The only point that arises for consideration is whether the maintenance deed by which Kutumbamma was given a life interest became enlarged conferring on her absolute title under Section 14(2) of the Hindu Succession Act, 1956. When the property was in (he possession of Kutumbamma the Hindu Succession Act, 1956 came into force. The question that has been raised is fully covered by a recent decision of this Court in V. Tulasamma and Ors. v. Sasha Reddy (Dead) by L.Rs. . Mr. Lalit, the learned counsel for the respondent, submitted that the question is of great importance and the decision needed reconsideration by a larger bench. We heard the learned Counsel at some length but we do not find any reason for directing the matter to be posted before a larger bench. The question of law has been fully considered and with respect following the decision we allow the appeal. We set aside the judgment of the High Court and restore the judgment and decree of the trial Court. In view of the fact that the question was finally settled only after this appeal had been filed there will be no order as to costs.