Supreme Court of India
Radha Rani Bhargava vs Hanuman Prasad Bhargava on 20 April, 1965
Equivalent citations: 1966 AIR 216, 1966 SCR (1) 1
Author: R Bachawat
Bench: Bachawat, R.S.

PETITIONER:
RADHA RANI BHARGAVA

Vs.

RESPONDENT:
HANUMAN PRASAD BHARGAVA

DATE OF JUDGMENT:
20/04/1965

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SUBBARAO, K.
SUBBARAO, K.
SHAH, J.C.
SARKAR, A.K.
MUDHOLKAR, J.R.

CITATION:
1966 AIR 216 1966 SCR (1) 1
CITATOR INFO :
F 1973 SC2405 (8)
RF 1991 SC1581 (16,17)

ACT:
Hindu Law-Alienation by widow-Declaratory suit by reversioner Coming into force of Hindu Succession Act-Effect-Widow's death-Non-joinder of her heirs-Continuance of suit.

HEADNOTE:
A widow alienated her husband's estate and one of her daughters in a representative capacity on behalf of the reversioners instituted a suit impleading the alienees, the widow and her sister the appellant, as defendants, for a declaration that the alienation was null and void. The suit was decreed, and the alienees. preferred an appeal to the High Court impleading the widow, and her two daughters as respondents. During the pendency of the appeal the plaintiff died and the High Court directed that her sister the appellant would continue to be on record in her place.

During the pendency of the appeal the Hindu Succession Act 1956 came into force. and the High Court allowed the appeal, holding that there were no reversioners and no reversionary rights after the Act came into force. On the appellant's application, certificate under Art. 133 of the Constitution was granted. After the appeal was declared admitted, the widow died and no order of the High Court under 0. VXI r. 12(a) of the Supreme Court Rules Substituting the heirs of the widow in her place was obtained. Later the appellant filed petition of appeal in this Court, in Which, the widow was also impleaded as a respondent. The alienee-respondents raised a prelicainary objection that the widow could not be shown as respondent in this appeal, as she was dead on the date of the filng of the appeal, and consequently the appeal was defectively constituted and not maintainable in the absence of the widow's heirs.

HELD:On merits the appeal must be allowed.

It is open to a reversioner to maintain a suit for a declaration that an dienation made by a Hindu female limited owner before the coining into orce of the Hindu Succession Act, was without legal necessity and was not binding upon the reversioners. [4 D-E]

Gummalapura Taggina Matada Kotturuswami v. Serra Veeryya [1959] Supp. I S.C.R. 968 and Brahmadeo Singh v. Deomani Missir, C.A. No, 130/60, dated 15-10-62, followed.

The appeal should proceed against the other respondents on the footing at the widow was not a party to the appeal. [5 E]

In the case of the death of the widow during the pendency of the declaratory suit, the heirs of the widow are not necessary parties to be suit. Though the widow was joined as a party to the suit, no relief was claimed against her personally. On the death of the widow the entire estate of the last full owner is represented by the plaintiff suing in a representative capacity on behalf of all the reversioners, and the plaintiff can get effective relief against the alienee in the absence of the fires of the widow. The plaintiff is entitled to continue the declaratory bit without joining the heirs of the widow as parties to the suit. [6 B-B]

As the reversioners were not entitled to the possession. of the prop it the time of the institution of the suit, the next reversioner could then

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sue for a bare declaration and the proviso to s. 42 of the Specific Relief Act, did not constitute a bar to the suit. The declaratory suit does not become defective because during the pendency of the suit, the reversioners become entitled to further relief. But in the absence of an amend-ment of the plaint, a decree for possession of the property cannot be passed in the suit, and if the reversioners are to get any real benefit, they must institute a suit for possession of the property within the period of limitation.

[6 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 579 of 1961. Appeal from the judgment and decree dated September 25, 1957, of the Allahabad High Court in First Appeal No. 232 of 1942.

Naunit Lai, for the appellant.

S. T. Desai, Rameshwar Nath and S. N. Andley, for respon- dents Nos. 1 and 3.

M. V. Goswami, for respondent Nos. 2 and 4.

S. Murthy and B. P. Maheshwari, for respondent No. 5. The Judgment of the Court was delivered by Bachawat, J. One Kalyan Singh died sonless in the year 1918 leaving him surviving his widow, Mst. Bhagwati and two daughters., Mst. Indrawati and Mst. Radha Rani. By a deed, dated October 10, 1919, Mst. Bhagwati alienated her husband's estate in favour of certain alienees. On October 23, 1931, Mst. Indrawati suing in a representative capacity on behalf of the reversioners to the estate of Kalyan Singh, instituted the suit in the Court of the Additional Civil Judge of Mathura, out of which this appeal arises. impleading the alienees as also Mst. Bhagwati and Mst. Radha Rani as defendants and claiming a declaration that the alienation was null and void against the subsequent heirs of Kalyan Singh and that on the death of Mst. Bhagwati, his next heirs would be entitled to get possession of the alienated properties. On Angus 12, 1941, the trial Judge decreed the suit and granted a declaration that the alienation "is void beyond the lifetime of Mst Bhagwati and does not bind the reversions, who would be entitled after the death of Mst. Bhagwati to possession over the assets of Babu Kalyan Singh." On February 12, 1942, some of the alienees preferred an appeal to the Allahabad High Court impleading Mst. Bhagwati, Mst. bidrawati and Mst. Radha Rani as respondents to the appeal. Three sons of Mst. Indrawati and two sons of Mst. Radha Rani were also impleaded as respondent Nos. 8 to 12, but by an order dated March 11, 1942, the High Court directed that those persons would not be allowed to be impleaded as respondents. During the pendency of the appeal in the High Court, Mst. Indrawati died. By an order, dated May 11, 1950, the High Court directed that Mst. Radha Rani would continue to be on the record in place of her deceased sister, Mst. Indrawati, and as the next reversioner to the estate of Kalyan Singh. During the pendency of the appeal, on June 17, 1956, the Hindu Succession Act. 1956 came into force. At the hearing of the appeal before the High Court, the alienees raised the preliminary contention that after the coming into force of the Hindu Succession Act, 1956, there are no reversioners and no reversionary rights, and a suit for a declaration that the alienation is not binding on the reversioners is. no longer maintainable. The High Court accepted this contention, allowed the appeal and dismissed the suit. the High Court did not go into the other questions raised in the appeal. On January 2, 1958, Mst. Radha Rani applied to the High Court for grant of a certificate under Art. 133 of the Constitution of India. On August 8, 1958, the High Court granted the certificate, and on February 27, 1959, the High Court declared the appeal admitted. On May 29, 1961, Mst. Bhagwati died. On or about November 13, 1961, the High Court despatched the records to this Court. No order

of the High Court under O.XVI, r.12(a) of the Supreme Court Rules substituting the heirs of Mst. Bhagwati in her place was obtained, and the appeal abated against her. On March 26, 1962, Mst. Radha Rani filed the petition of appeal in this Court. In this petition of appeal, Mst. Bhagwati and also the above-mentioned three sons of Mst. Indrawati and two sons of Mst. Radha Rani were impleaded as respondents. On August 24, 1964, respondents Nos. 1 to 3 filed Civil Miscellaneous Petition No. 2219 of 1964 raising certain preliminary objections, and praying that the appeal be dismissed. This petition was posted for hearing along with the appeal.

On the merits, the respondents have very little to say. The High Court took the view that the effect of ss. 14, 15 and 16 of the Hindu Succession Act, 1956, was that after the coming into force of the Act, there are no reversioners and no reversionary rights. The Patna High Court in some of its earlier decisions took the same view, but other High Courts took the view that s. 14 did not apply to properties in the possession of alienees under an alienation made by the Hindu female before the Act came into force, and in respect of such properties, ss. 14, 15 and 16 of the Act did not abolish the reversioners and reversionary rights. In Gummalapura Taggina Mattada Kotturuswami v. Serta Veeravya and others(1), this Court approved of the latter view, and this opinion was followed by this Court in Brahmadeo Singh and another v. Deomani Missir and others(2). In the last case, the trial Court had decreed a suit by the reversioners for a declaration that two sale deeds executed by a Hindu widow were without legal necessity and not binding upon them. The Patna High Court allowed an appeal by the alienees and dismissed the suit holding that by reason of the provisions of s. 14 of the Hindu Succession Act, a suit by a reversioner for a declaration that an alienation made by a Hindu female is not binding on the reversioner is not maintainable. From the decision of the Patna High Court the reversioners preferred an appeal to this Court. This Court held that the view taken by the Patna High Court following its earlier decision in Ramsaroop Singh and others v. Hiralal Singh and others(-') and of the Allahabad High Court in Hanuman Prasad v. Indrawati(4) (the decision under appeal in this case) was incorrect, and S. 14 of the Hindu Succession Act, 1956 did not extend to property already alienated by a Hindu female. This Court accordingly allowed the appeal, and reversed the decree of the Patna High Court. The effect of this decision is that it is open to a reversioner to maintain a suit for a declaration that an alienation made by a Hindu female limited owner before the coming into force of the Hindu Succession Act., 1956, was without legal necessity and was not binding upon the reversioners. It follows that the High Court was in error in holding that the present suit was not maintainable since the coming into force of the Hindu Succession Act, 1956. But the contesting respondents raise certain preliminary objections, and they contend that the appeal should be dismissed.

The first preliminary objection is that the three sons of Mst. Indrawati and the two sons of Mst. Radha Rani are improperly joined as respondents Nos. 8 to 12 in the petition of appeal. Respondents Nos. 8 to 12 were not parties to the appeal before the High Court, nor was any order obtained permitting their joinder in the appeal to this Court. The contesting respondents, therefore, pray that the names of respondents Nos. 8 to 12 be struck off from the record. The appellant does not object to this prayer. We direct accordingly that the names of respondents Nos. 8 to 12 be struck off from the record.

(1) [1959] Supp. I S.C.R. 968, 975-976.

(2) Civil Appeal No. 130 of 1960 decided on October 15, 1962.

(3) A.I.R. 1958 Patna 319 (4) A.I.R. 1958 All. 304.

The next preliminary objection is that the petition of appeal is a nullity as Mst. Bhagwait, a dead person was impleaded as a party respondent therein. As Mst. Bhagwati was dead on the date of the filing of the petition of appeal, she could not be shown as a respondent in this appeal. But the appeal may proceed against the other respondents on the footing that Mst. Bhagwati is not a party to the appeal.

The next preliminary objection is that the appeal is defectively constituted and is not maintainable in the absence of the heirs of Mst. Bhagwati. The heirs of Mst. Bhagwati are Mst. Radba Rani and the sons and daughters of Mst. Indrawati. The appellant did not obtain any order of Court substituting the heirs of Mst. Bhagwati in her place. Besides the three sons of Mst. Indrawati who are shown as respondents Nos. 10, 11 and 12 in the petition of appeal, Mst. Indrawati left another son, Lallu also known as Ram Prasad and two daughters, Ram Dulari and Vimla. Labu, Ram Dulari and Vimla are not parties to the appeal. Respondents Nos. 10, 11 and 12 were improperly added as parties in the petition of appeal and their names must be struck off. The result is that none of the sons and daughters of Mst. Indrawati are parties to the appeal. It follows that all the heirs of Mst. Bhagwati are not parties to the appeal, and the question is whether the appeal is defectively constituted in their absence.

In this connection, it is necessary to consider whether the heirs of the widow were necessary parties to a suit against the alienee either for a declaration that the alienation is void beyond her lifetime or for possession of the alienated property. In the case of an alienation by a Hindu widow, without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait until her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity without the intervention of any Court. See Bijoy Gopal Mukherji v. Krishna Mahishi Debi(1). To such a suit by the reversioners for possession of the property after the death of the widow, the heirs of the widow were not necessary parties. The reversioners could claim no relief against the heirs of the widow and could effectively obtain the relief claimed against the alienee in their absence. Instead of waiting until her death, the next reversioner as representing all the reversioners of the last full owner could institute a suit against the alienee for a declaration that the alienation was without legal necessity and was void beyond her lifetime. The widow was usually added as a party defendant to, (1) (1907) I.L.R. 34 Cal. 329, 333 P.C.

such a suit. The widow was certainly a proper party, but was she a necessary party to such a suit ? On behalf of the appellant it is suggested that the widow is not a necessary party to the suit, and in this connection, reference is made to Illustration (e) to S. 42 of the Specific Relief Act, 1877. For the purposes of this appeal, it is not necessary to decide this broad question; it is sufficient to say that in the case of the death of the widow during the pendency of the declaratory suit, the heirs of the widow are not necessary parties to the suit. Though the widow was joined as a party to the suit, no relief was claimed against her personally. On the death of the widow, the entire estate of the last full owner is represented by the plaintiff suing in a representative capacity on behalf of all the

reversioners, and the plaintiff can get effective relief against the alienee in the absence of the heirs of the widow. In view of the fact that on the death of the widow, the reversioners become entitled to possession of the property, in a proper case leave may be obtained to amend the plaint in the declaratory suit by ,adding all the reversioners as plaintiffs and by including in the plaint a prayer for possession of the property. If the plaint were amended and the suit were converted into one for possession of the property, clearly the heirs of the widow would not be necessary parties to the suit. The fact that the plaint is not amended makes no -difference. The plaintiff is entitled to continue the declaratory suit without joining the heirs of the widow as parties to the suit.

As the reversioners were not entitled to the possession of the property at the time of the institution of the suit, the next reversioner could then sue for a bare declaration and the proviso to S. 42 of the Specific Relief Act, 1877 did not constitute a bar to the suit. The declaratory suit does not become defective because during the pendency of the suit, the reversioners become entitled to further relief. The next reversioner is entitled to continue the declaratory suit; but in the absence of an amendment of the plaint, a decree for possession of the property cannot be passed in the suit, and if the reversioners are to get any real benefit, they must institute a suit for possession of the property within the period of limitation. Had Mst. Bhagwati died during the pendency of the suit, her heirs would not have been necessary parties to the suit. The position is not altered because the suit has been dismissed on appeal by a decree of the High Court, and during the pendency ,of the further appeal to this Court, Mst. Bhagwati died, and the -appeal against her has abated. The appeal against the surviving respondents has not abated, and we think that the appeal is not defectively constituted in the absence of the heirs of Mst. Bhagwati. In the appeal to this Court, Mst. Radha Rani asks for the identical relief which the original plaintiff sought in the suit. She can get effective relief in the appeal in the absence of the heirs of Mst. Bhagwati just as the original plaintiff could obtain the relief in the suit in their absence. The fact that the suit was dismissed by the High Court in the presence of Mst. Bhagwati makes no difference. In the suit, the plaintiff asked for the necessary relief against the alienees; Mst. Bhagwati was joined as a party to the suit, but no relief was claimed against her personally. The High Court dismissed the suit against the alienees. The appellant to this Court now seeks for a reversal of the High Court decree in the presence of the alienees. The reversal of the High Court decree in the absence of the heirs of Mst. Bhagwati would not lead to the passing of inconsistent and contradictory decrees. The High Court did not pass any decree in favour of Mst. Bhagwati. The success of this appeal cannot lead to the passing of a decree by this Court in conflict with any decree passed by the High Court in favour of Mst. Bhagwati. The cause of appeal in this Court survives against the surviving respondents, and the appeal can proceed to a final adjudication in the absence of the heirs of Mst. Bhagwati. We hold that the appeal is not defective on account of the non-joinder of necessary parties. Civil Miscellaneous Petition No. 2219 of 1964 is dismissed, save that we direct that the names of respondents Nos. 8 to 12 be struck off from the record.

In the result, the appeal is allowed, tile judgment and decree, dated September 25, 1957, of the High Court are set aside, and First Appeal No. 232 of 1942 must now be heard on the merit.-, by the High Court. The contesting respondents must pay to the appellant the costs in this Court. Appeal allowed.