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2017 PLRonline 0204 (Bom.)

HIGH COURT OF JUDICATURE AT BOMBAY

(NAGPUR BENCH)

A. S. CHANDURKAR, J.

Ramrao s/o. Panjabrao Rahate V. Bhojraj Hari Rahate & Ors.

Second Appeal No.255 of 2011

22.08.2017.

Hindu Succession Act (1956), S.14(1) – Right of widow – Hindu female has a right to be maintained by her husband and in exercise of that right if some interest is created in her favour even though limited in nature, the said interest gets converted into absolute interest by virtue of provisions of Section 14(1) of the said Act – If some property is received in recognition of a pre-existing right to maintenance by virtue of provisions of Section 14(1) of the said Act, the Hindu female gets absolute right in the same in view of provisions of Section 14(1) of the said Act.

Widow executed sale deed of her property in which life interest was granted in property by way of Will . Her limited right in property become absolute right by virtue of S.14(1) of Hindu Succession Act. Plea of son that widow has no right to alienate property is not tenable [Paras 9, 13, 15]

Will – If a Will contains several clauses and the latter clause is found to be inconsistent with the earlier clauses, then in such situation the latter intention of the testator is given effect to and it is on this basis that the latter clause would prevail over the earlier clauses – Succession Act, 1925, S. 88.

Petitioner Counsel: Shri P.N. DEOPUJARI Respondent Counsel: Shri A.K. CHOUBE

Cases referred to:

1.Kaivelikkal Ambunhi V. H. Ganesh Bhandary, (1995) 5 SCC 444 [Para 6,11]

2.Eramma V. Veerupna, AIR 1966 SC 1879 [Para 6,13]

3.V. Tulasamma V. Sesha Reddy, 1977 PLRonline 3002 [Para 6,12,13]

4.Gangamma etc. V. Nagarathnamma & Ors., 2009 ALL SCR 1598=(2009) 15 SCC 756 [Para 6]

5.Jupudy Pardha Sarathy V. Pentapati Rama Krishna and ors., 2016(1) ALL MR 434 (S.C.)=2016(5) Mh.L.J. 259 [Para 6,13,14]

6.Ramchandra Shenoy and anr. V. Hilda Brite & Ors., AIR 1964 SC 1323 [Para 7]

7.Jagan Singh (dead) Thr. Lrs. V. Dhanwanti and anr., (2012) 2 SCC 628 [Para 7,14]

8.Mst. Karmi V. Amru and ors., (1972) 4 SCC 86 [Para 7,14]

9.Navneet Lal alias Rangi V. Gokul and ors., (1976) 1 SCC 630 [Para 7,11]

10.Shivdev Kaur (dead) By LRs. and ors., 2013(2) ALL MR 948 (S.C.)=(2013) 4 SCC 636 [Para 7,14]

11.Santosh and ors. V. Saraswathibai and anr., (2008) 1 SCC 465 [Para 7,14]

12.Thota Sesharathamma V. Thota Manikyamma, (1991) 4 SCC 312 [Para 14]

13.Shakuntala Devi V. Kamala and ors., 2005(5) ALL MR 538 (S.C.)=(2005) 5 SCC 390 [Para 14]

JUDGMENT

Judgment :- This appeal under Section 100 of the Code of Civil Procedure, 1908 is preferred by the original defendant No.3 who is aggrieved by the decree passed by the trial Court declaring a sale deed executed by defendant No.1 in favour of defendant No.3 dated 21/05/1999 to be void ab initio.

2. One Hari was the owner of property. He was married with one Radhubai and they had two sons Bhojraj and Vitthal. On 22/09/1986, said Hari executed a Will. Bhojraj was granted 81 R land from Khasra no.95 along with a farmhouse. The other son Vitthal was also granted 81 R land from Khasra No.37 along with another farmhouse. In a Will it was stated that after the death of Hari, his widow Radhubai would become the owner and after her death both the sons would become the owners. Said Hari expired on 03/05/1989. His widow Radhubai executed a sale deed in respect of 81 R land that was allotted to Bhojraj in the Will. This sale deed was executed on 21/05/1999. Bhojraj therefore filed suit on 23/06/1999 for a declaration that this sale deed was null and void as his mother had no right to alienate the same. Possession of the suit property was also sought.

3. The defendants viz. plaintiff's mother, his other brother and the subsequent purchaser filed their written statement at Exhibit-12. Execution of the Will was admitted. According to them, the defendant No.1 had become absolute owner of the suit property by virtue of the said Will deed and hence she was competent to alienate the suit property. The parties led evidence before the trial Court. The Will was exhibited at Exhibit-49 and the sale deed at Exhibit-50. The trial Court held that as per said Will, the properties were given to defendant No.1 to provide a source of maintenance. However, as the defendant No.1 had limited interest in the suit property and she was to enjoy it only during her life time, she had no right to execute the sale deed. As such defendant No.1 was allowed the relief of possession however sale deed dated 21/05/1999 was declared to be void. The defendants were restrained from creating any third party rights in the suit field.

4. All the defendants challenged the aforesaid decree. The Appellate Court affirmed the finding of the trial Court that the defendant No.1 had no right and interest in the suit property. It was further held that the defendant No.1 had no right to execute the sale deed. Hence judgment of the trial Court is confirmed. Being aggrieved, the original defendant No.3 has filed this appeal.

5. The following substantial question of law was framed when the appeal was admitted :

"Whether the Courts below erred in interpreting the document of Will (Ex.49) to mean that the right of widow Radhubai was limited to the right of maintenance and nothing more in the light of provisions of Section 14(2) of Hindu Succession Act?"

6. Shri P. N. Deopujari, learned counsel for the appellant submitted that under the Will at Exhibit-49, the testator had conferred interest as owner on defendant No.1 to enjoy the suit property. This was done in view of her right to maintenance. It was submitted that though the properties of Hari were bequeathed in favour of his sons, in the later part of the Will it was clearly stated that after the death of Hari, his widow would become the owner and after her death the property would devolve on the two sons. Relying upon the decision in Kaivelikkal Ambunhi v. H. Ganesh Bhandary (1995) 5 SCC 444, it was submitted that as per provisions of Section 88 of the Indian Succession Act, 1925 where there are two inconsistent provisions in a Will, the later provision should prevail. As per this principle, the defendant No.1 having been granted the property as owner thereof, she was competent to sell the same. It was then submitted that on a plain reading of said Will, the intention of a testator was clear that he intended to confer full rights on his widow. This was in respect of her right of maintenance. In view of provisions of Section 14(1) of the Hindu Succession Act, 1956 (for short, the said Act), the defendant No.1 became full owner of the aforesaid property and therefore she was competent to execute the sale deed. He referred to the deposition of the plaintiff wherein it was admitted that during her life time, the defendant No.1 was treated as the owner of the suit property and the revenue entry stood only in her name. In support of his submissions on this aspect, the learned counsel referred to the following decisions :

(a) Eramma v. Veerupna AIR 1966 SC 1879

(b) *V. Tulasamma V. Sesha Reddy, 1977 PLRonline 3002* (1977) 3 SCC 99

(c) Gangamma etc. v. Nagarathnamma & Ors. (2009) 15 SCC 756 : [2009 ALL SCR 1598]

(d) Jupudy Pardha Sarathy v. Pentapati Rama Krishna and ors. 2016(5) Mh.L.J. 259 : [2016(1) ALL MR 434 (S.C.)].

It was therefore submitted that both the Courts did not interpret the Will in the light of the legal position and on that basis the sale deed in favour of defendant No.3 was valid.

7. Shri A. Choube, learned counsel for respondent No.1-original plaintiff supported the impugned judgment. According to him on reading the Will as a whole, it was clear that only a limited interest was created in favour of defendant No.1. The intention of the testator was clear that the defendant No.1 was to enjoy the properties only during her life time and after her death, both the sons were entitled to get their respective shares. According to him, if it is held that defendant No.1 had absolute interest in the suit property, the same would be against the wishes of the testator. It was urged that such limited interest cannot be converted into absolute interest so as to enable the defendant No.1 to alienate the suit property. The learned counsel placed reliance upon following decisions to urge that defendant No.1 had limited interest as per provisions of Section 14(2) of the said Act.

(a) Ramchandra Shenoy and anr. v. Hilda Brite & Ors., AIR 1964 SC 1323

(b) Jagan Singh (dead) Thr. Lrs. v. Dhanwanti and anr., (2012) 2 SCC 628

(c) Mst. Karmi v. Amru and ors., (1972) 4 SCC 86

(d) Navneet Lal alias Rangi v. Gokul and ors., (1976) 1 SCC 630

(e) Shivdev Kaur (dead) By LRs. and ors., (2013) 4 SCC 636 : [2013(2) ALL MR 948 (S.C.)]

(f) Santosh and ors. v. Saraswathibai and anr., (2008) 1 SCC 465

8. I have heard the learned counsel for the parties at length and I have also gone through the records of the case. The execution of the Will at Exhibit-49 is not in dispute and both the parties claim their respective rights on the basis of the same. It is also not in dispute that after the death of Hari, defendant No.1 sold 0.81 R land on 21/05/1999 in favour of defendant No.3. The question to be adjudicated is whether the defendant No.1 executed the sale deed as an absolute owner in view of Section 14(1) of the said Act or whether she had limited right as per provisions of Section 14(2) of the said Act.

9. The plaintiff examined himself at Exhibit-15 and deposed that defendant No.1 had no authority to alienate the suit property. He referred to the public notice issued seeking to restrain the defendant No.1 from executing the sale deed. In his cross-examination he stated that the Will deed was in Marathi and he admitted the same having read it. He further admitted that till the death of his mother, he and his brother had no right in the property. After the death of his father, the land was standing in the name of his mother alone. The plaintiff examined another witness at Exhibit-31 who was attesting witness on the Will. The defendant No.2 examined himself at Exhibit-55 and he supported the execution of the sale deed. The defendant No.3 also examined himself at Exhibit-56.

10. In the Will at Exhibit-49 dated 22/09/1986, the executant Hari has referred to the ancestral properties that were initially partitioned after which he came in possession of his share. It is then stated in the Will that he intended to bequeath the properties in favour of his two sons, the plaintiff and defendant No.2. After describing the respective shares, it is then stated that after his death his widow Radhubai would become the owner of both the properties and after her death both the sons would become the owners thereof. The latter part of this Will is sought to be relied upon to contend that the testator intended to confer full right in favour of his widow and after her death, the property was to go to the two sons.

11. In so far as interpretation of various clauses in a Will is concerned, in Kaivelikkal Ambunhi (supra), the Honourable Supreme Court has held that if a Will contains several clauses and the latter clause is found to be inconsistent with the earlier clauses, then in such situation the latter intention of the testator is given effect to and it is on this basis that the latter clause would prevail over the earlier clauses. Reference in that regard was made to the provisions of Section-88 of the Indian Succession Act, 1925. In Navneet Lal (supra) it has been held that while construing a Will it has to be read as a whole and by gathering the true intention of the testator. Importance cannot be attached to isolated expression and an attempt should be made to give effect to every disposition contained in the Will unless the law prevents effect being given to it. The ratio of these decisions would be applicable to the

facts of the present case while considering the substantial question of law.

12. The legal right of a Hindu widow to claim maintenance has been considered by the Honourable Supreme Court in V. Tulasamma (supra). It has been held that under Hindu Law, the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled as of right to be maintained out of such properties. The claim of a Hindu widow to be maintained is not an empty formality but is a valuable spiritual and moral right which flows from the spiritual and temporal relationship of the husband and wife. The widow's right to maintenance has been recognized as a pre-existing right in the property. In the light of the aforesaid principles, it was held that Section 14(2) of the said Act would apply only to cases where the grant is not in view of maintenance or in recognition of any pre-existing right but only when a fresh right is created or title is confirmed for the first time and while conferring such title restrictions are placed by the grant of transfer.

13. In Eramma (supra) while considering the provisions of Section 14(1) and (2) of the said Act, it has been held that the object of the aforesaid provision is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of Act. This decision has been referred to by the Honourable Supreme Court in its subsequent judgment in V. Tulsamma (supra) while considering the aspect of the right of a Hindu wife to be maintained by her husband. In a recent decision in Jupudy Pardha Sarathy [2016(1) ALL MR 434 (S.C.)] (supra) it was held that by virtue of provisions of Section 14 of the said Act whenever a limited interest is created in favour of a Hindu female who is having a pre-existing right of maintenance, the same becomes her absolute right.

Thus from the aforesaid decisions, it is clear that a Hindu female has a right to be maintained by her husband and in exercise of that right if some interest is created in her favour even though limited in nature, the said interest gets converted into absolute interest by virtue of provisions of Section 14(1) of the said Act.

14. The decision in case of Mst. Karmi (supra) that was relied upon by the learned counsel for the respondent No.1 has been distinguished by the Honourable Supreme Court in Thota Sesharathamma v. Thota Manikyamma, (1991) 4 SCC 312 by observing that the decision in Mst. Karmi (supra) cannot be considered as an authority on the ambit and scope of the provisions of Section 14(1) and (2) of the said Act. Reference to these observations have also been made in Jupudy Pardha Sarathy [2016(1) ALL MR 434 (S.C.)] (supra). In Shakuntala Devi v. Kamala and ors., (2005) 5 SCC 390 : [2005(5) ALL MR 538 (S.C.)] in somewhat similar facts it was held that life interest granted in lieu of maintenance by Will got converted into absolute interest.

The decision in Jagan Singh (supra) relates to right of estate created in the bequest of bhumidhari rights under the Will. It was held that a widow who succeeded to the property of her husband by the terms of the Will cannot acquire any right other than that conferred by the Will. In Santosh and anr. (supra) it was clarified that provisions of Section 14(2) of the said Act are confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right. It was reiterated that property acquired by a Hindu female in lieu of right to maintenance by virtue of a pre-existing right would not fall within the scope and ambit of Section 14(2) of the said Act. Similarly, the decision in Shivdev Kaur [2013(2) ALL MR 948 (S.C.)] (supra) also does not support the stand of the respondent.

15. Thus on consideration of the various decisions referred to by the learned counsel for the parties it is clear that if some property is received in recognition of a pre-existing right to maintenance by virtue of provisions of Section 14(1) of the said Act, the Hindu female gets absolute right in the same in view of provisions of Section 14(1) of the said Act. On a complete reading of the Will dated 22/09/1986, the same indicates reference being made to the care being taken by both the sons of the testator and his wife with a further belief that the same would continue even after his demise. The use of the words "Malik" used in the later part of the Will also indicates the mind of the testator of giving full rights to his widow in the suit property. This is also in recognition of the right to maintenance. Both the Courts however failed to take into consideration the legal effect of the bequest in favour of the widow as a bequest towards maintenance. The Courts gave more importance to the

stipulation that after the death of the widow, the sons would become the owners of the suit property. On bequest being made in favour of the widow, she got absolute rights in the suit property and hence the alienation of the same in favour of defendant No.3 was legal and valid. The impugned judgment has the effect of depriving the defendant No.1 of her absolute right to the property in terms of Section 14(1) of the said Act.

Hence for aforesaid reasons, the substantial question of law as framed is answered by holding that the defendant No.1 had a right to execute the sale deed of her property in which she had absolute right in view of provisions of Section 14(1) of the said Act. As a result, the suit filed by the plaintiff is liable to be dismissed.

Accordingly the appeal is allowed. Judgment of the trial Court in Spl.C.S. No.267 of 1999 as well as judgment of the appellate Court in RCA No.557 of 2007 are quashed and set aside. The suit filed by respondent No.1 stands dismissed. There would be no order as to costs.

Appeal allowed