

SMT. JAYAMMA AND ANR.

v.

SMT. THIMMAMMA (DEAD) BY L.RS.

NOVEMBER 1, 1995

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

Hindu Women's Right to Property Act, 1937 :

Section 8(d)—Entitlement of share in joint family property—Property passing to sole surviving coparcener—Appellants are daughter of sole surviving coparcener—Held : appellants are entitled to a share in the coparcener property.

The respondents are the daughters of D who died leaving behind the appellants who are the daughters of his predeceased son C. The respondents filed a suit for a declaration that they were entitled to the exclusive possession of the coparcenary property left behind by D. The appellants had contended before the Trial Court that they being the heirs of C were also entitled to half share in the coparcenary property left behind by D.

The Trial Court dismissed the suit. On appeal the High Court reversed the Trial Court's Judgment holding that the appellants had not proved as to when C died and that D being the sole surviving coparcener, became the absolute owner and thereby he was entitled to bequeath the entire property in favour of the respondents.

Allowing the appeal, this Court

HELD : 1.1. It is seen that in the plaint the respondents had admitted that C died 33 years prior to the suit. The suit was filed in 1972. Thus, the death of C, the father of the appellants occurred in 1938 or 1939 by which time the Hindu Women's Right to Property Act, 1937 had come into force.

[707-A]

1.2. Section 8(d) of the Act envisages that where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to the share of the classes of females enumerated in the sub-sections. Classes of females consist of widows and the daughters of the pre-deceased son of the sole surviving coparcener. Consequently, the appellants became

A entitled to the share in the coparcenery property. Since C and the father of the respondents being the only coparceners they are entitled to equal share in the property. Therefore, the appellants are entitled to half share in the plaint schedule property. [707-B-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10212 of 1995.

From the Judgment and Order dated 24.1.89 of the Karnataka High Court in R.S.A. No. 34 of 1979.

C P.R. Ramasesh for the Appellants.

The following Order of the Court was delivered :

Delay condoned.

Leave granted

D Though notices were served on both the respondents as early as in March 1991, till date none has appeared in person or through counsel. Notices served on them are sufficient. The respondents are daughters of one Doddahanumegowda. Doddahanumegowda died on May 21, 1972 leaving behind him Chikhanumegowda, Ningamma (first defendant), **E** Mariamma (Plaintiff No. 2), Javamma (defendant No. 2), and Boramma (defendant No.3) both through their predeceased son Chikhanumegowda. On his demise Mariamma and Thimmama, the daughters of Doddahanumegowda filed the suit for a declaration that they became owners pursuant to a settlement deed dated 23.5.1970 and succeeded to the entire **F** property. Therefore, they were entitled to the exclusive possession of the plaintiff's property. Thereon, the appellants and their mother had contended that they being the heirs of predeceased son Chikhanumegowda, they are also entitled to half share in the coparcenery property left by Doddahanumegowda. The Trial Court dismissed O.S. No. 216/72 by its **G** Judgment and decree dated June 20, 1977. But on appeal, the appellate Court reversed the decree holding that the appellants had not proved as to when Chikhanumegowda died and that Doddahanumegowda being the sole surviving coparcener, he became the absolute owner and thereby he was entitled to bequeath the property in favour of his daughter, which was upheld by the High Court in S.A. No. 34/79 by judgment and decree dated **H** January 24, 1989.

It is seen that in the plaint the respondents had admitted that Chikhanumegowda died 33 years prior to the suit. Suit was filed in 1972. Thus, the death of Chikhanumegowda, the father of the appellants, admittedly occurred in 1938 or 1939 by which time the Hindu Law Women's Rights Act, 1933 had come into force. Section 8(d) of the Act envisages that where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to the share of the classes of females enumerated in the sub-sections. Classes of females consist of widows and the daughter of the pre-deceased son of the sole surviving coparcener. Consequently, the appellants and their mother became entitled to the share in the coparcenary property. Since Chikhanumegowda and the father of the respondents being the only coparceners they are entitled to equal share in the property by operation of S.14 of Hindu Succession Act, 1956. Therefore, the appellants are entitled to half share in the plaint schedule property. The High Court and the appellate Court had committed error in refusing to grant relief. The judgment and decree of the appellate Court and the High Court are set aside. However, there shall be a preliminary decree to the extent of half share in the property in favour of the appellants. It would be open to the appellants to make an application to pass the final decree in the Trial Court.

The appeal is accordingly allowed. No costs.

V.S.S.

Appeal allowed.