G. VARALAKSHMI & ANR. A

v.

G. SRINIVASA RAO (D) THROUGH LRS. & ANR.

(Civil Appeal No. 5144-5146 of 2009)

AUGUST 6, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

HINDU SUCCESSION ACT, 1956:

s. 8 – Succession to properties left by a male Hindu who died intestate – Wife and daughters of deceased – HELD: Are entitled to equal shares in the property of the deceased in terms of s.8. C

R. Mahalakshmi vs. A.V. Anatharaman and Ors. **CA No. 5053 of 2009 decided on 3.8.2009 - relied on.** D

Case Law Reference:

CA No. 5053 of 2009 decided on 3.8.2009 relied on para 8

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5144-5146 of 2009.

From the Judgment & Order dated 25.06.2003 of the High Court of Andhra Pradesh at Hyderabad in CCCA No. 173 of 95 and CMP Nos. 19203 and 19360 of 2002. F

M.N. Krishna Mani, Thima Reddy, S. Udaya Kumar Sagar, Bina Madhavan for the Appellants.

A.K. Ganguli, P.Keshav Rao, P. Venkat Reddy, G.Prabhakar for the Respondents. G

The following Order of the Court was delivered

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ORDER

1. Leave granted.

2. The late G. Ramanujulu Naidu had four sons – G.K. Kuppu Swamy Naidu, G.R. Varadaraula, G.R. Sripathi Naidu and G.R. Gajapati Naidu, G.K. Kuppu Samy Naidu had two sons Mohan Babu and G. Srinivasa Rao (1st Defendant). Defendant No. 2 is the wife of Defendant No. 1 They have four daughters namely Vinodini, Vinita, Vibha and Shalini and one son G.S. Ravi Kumar who married the first plaintiff in the year 1978 and the 2nd plaintiff was born to them in the year 1980. G.K. Kuppusamy effected the partition as alleged by the plaintiffs, sometime prior to 31.12.1964. He, before dying in 1976 executed a Will on 25.10.1973, which was in the custody of the first defendant. After the death of G.S. Ravi Kumar in tragic circumstances, the plaintiffs issued notice to the defendants to partition the properties; belonging to the joint family, but they allegedly did not cooperate. Hence a civil suit was filed.

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3. The defendants admitted relationship between them and about Kuppu Swamy dying in the year 1976 and leaving behind a Will dated 1.11.1975. As many as 9 issues were framed by the trial court and a preliminary decree was passed for partition of item No. 7 into three shares of which two belonged to the plaintiff. The remaining suit was dismissed on the ground of non-joinder of necessary parties.

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4. An appeal was preferred before the High Court of Judicature at Andhra Pradesh, relating to all suit properties except item 7 wherein the point for consideration was whether the properties in the plaintiff schedule are joint family properties of the 1st Plaintiff and 1st Defendant. During pendency of the appeal the minor son attained majority and wanted to implead daughters of respondent No. 1 as some of the properties were in their names.

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5. The appeal was dismissed, hence the appellants are before us through this appeal by way of special leave.

6. A Bench of this Court by an order dated 06.05.2004 issued notice limited only to item Nos. 5 and 7 of Schedule I and on the question of the non-production of the Will. The Will in question, said to be dated 1.11.1973 executed by G.R. Kuppusamy Naidu has not been produced. In the proceeding sheet dated 23.01.2008 it was noticed:

> "One of the contentions raised before us is that the Will dated 1.11.1975 executed by G.R. Kuppuswamy Naidu purported to be in favour of his sons Mohan Babu and G. Sreenivasa Rao as also Ravi Kumar has not been produced so as to enable the Court to ascertain as to whether by reason thereof only item No. 7 of the property described in plaint schedule -I was bequeathed in favour of Ravi Kumar or not. We direct the respondent sot produce an authenticated copy of the said Will, if not the original."

7. Shri A.K. Ganguly, the learned senior counsel appearing on behalf of the respondents when the matter was called out stated that the Will, in question, is not traceable. We, thus, proceed on the basis that the said purported Will being non-existent, the parties did not inherit any property pursuant thereto or in furtherance thereof.

8. Indisputably, G.R. Kuppuswamy obtained the property by reason of a Will executed by his father in the year 1921 from Ramanujulu Naidu. He expired on 16.01.1976. Srinivasa Rao, the predecessor-in-interest of the parties thereto expired on 30th July, 2006. One of the questions which was raised before us by Mr. M.N. Krishnamani, the learned senior counsel is that Prabhavati, widow of Srinivasa Rao and his daughters, Vinodini, Vinita, Vibha and Shalini could not inherit any property of G.R. Kuppuswamy Naidu or Srinivasa Rao, the same being a Mitakshara coparcenery one. The contention of the learned

A counsel is not correct, inasmuch as Kuppuswamy got the property by reason of a Will, it was, therefore, his individual properties and not, Mitakshara coparcenery property on 30th November, 1921. Furthermore, the execution of the said Will and with effect thereof is not in question as all the four sons of B Ramanujulu Naidu were beneficiaries in terms thereof. Furthermore, the State of Andhra Pradesh amended Section 6 of the Hindu Succession Act by A.P. Hindu Succession Act, 1987 in terms whereof the daughters also by reason of a legal fiction became coparceners. Similar provision has been C introduced by the Parliament by Hindu Succession (Amendment) Act, 2005 and the effect of such a State amendment in relation to the State of Tamil Nadu has been considered by us recently in *R. Mahalakshmi v. A.V. Anatharaman & Ors.* in Civil Appeal No. 5053 of 2009 disposed D of on 3rd August, 2009 wherein it was held as under:-

> "25. Section 23 of the Hindu Succession Act, 1956 has since been omitted w.e.f. 9.9.2005, but before omission it stood as thus:
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> > E "23. Special provision respecting dwelling houses :- Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his F or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall G be entitled to a right of residence therein:
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> > Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or H is a widow."

26. In a recent judgment of this Court in *G. Sekar v. Geeta* (2009) 6 SCC 99 pronounced by one of us (Hon'ble S.B. Sinha J.), the effect of amendment in the Hindu Succession Act, 1956 by reason of the Hindu Succession (Amendment) Act, 2005 insofar as therein Section 23 has been omitted was considered. It was held as under:

> "21. The said property belonging to Govinda Singh, therefore, having devolved upon all his heirs in equal share on his death, it would not be correct to contend that the right, title and interest in the property itself was subjected to the restrictive right contained in Section 23 of the Act. The title by reason of Section 8 of the Act devolved absolutely upon the daughters as well as the sons of Govinda Singh. They had, thus, a right to maintain a suit for partition. Section 23 of the Act, however, carves out an exception in regard to obtaining a decree for possession inter alia in a case where dwelling house was possessed by a male heir. Apart therefrom, the right of a female heir in a property of her father, who had died intestate is equal to her brother. Section 23 of the Act merely restricts the right to a certain extent. It, however, recognises the right of residence in respect of the class of females who come within the purview of the proviso thereof. Such a right of residence does; not depend upon the date on which the suit has been instituted but can also be subsequently enforced by a female, if she comes within the purview of the proviso appended to Section 23 of the Act.

27. However, on account of death of Respondent No. 3, unmarried sister of the parties, the said question No. 1 had become academic in nature and it was not necessary for us to answer the same but as it stood answered in a recent judgment of this Court in *G. Sekar* (supra), to put

A the controversy at rest, we have considered this aspect of the matter also and answered in accordingly hereinabove."

9. In that view of the matter, there cannot be any doubt or dispute that the defendants herein could be entitled to equal share of the property of Srinivasa Rao in terms of Section 8 of B the Hindu Succession Act. We would however, make it clear that in these proceedings we are concerned with the properties left at the hands of G.R. Kuppusamy Naidu. The learned counsel, however, tried to persuade us to modify the said order of this Court dated 06.05.2004 so as to consider the entire C matter afresh and in its entirety. The contention having not been raised before us earlier in this Court and all concerned having proceeded on the basis that the subject matter of this appeal is confined to only Item Nos.5 & 7 of Schedule I to the plaint, we are of the opinion that said request of the learned counsel D cannot be accepted. We, therefore, direct that the parties shall be entitled to equal share also in respect of item Nos. 5 and 7.

10. The appeal is disposed of in the aforesaid terms.

R.P. Appeal disposed of.