A GOPALAKRISHNA (D) BY LRS. & ORS.

v.

NARAYANAGOWDA (DEAD) BY LRS. & ORS.

(Civil Appeal No.1332 of 2008)

B APRIL 03, 2019

[ASHOK BHUSHAN AND K.M. JOSEPH, JJ.]

Mysore Hindu Law Women's Rights Act, 1933 – ss. 4,10 and 11 – Limitation Act, 1908 – Arts. 140, 141 and s.28 – Appellants case that one 'R' was the owner of the scheduled properties – He passed away in 1907 – He had two wives 'J' & 'S' – From his first wife 'J', he had one daughter 'V' and 'V' in turn had a daughter 'JK' – His first wife predeceased him and daughter 'V' died in 1910 – His second wife 'S' died in 1938 – Appellants claimed right to properties by virtue of sale deeds executed by 'JK' in the year 1955 – On the other hand, respondents contended that they had purchased the said property from one 'SR', who had in turn purchased from second wife of 'R' i.e. 'S' – Respondents were in possession of the property – Trial court decreed the suit in favour of appellants and declared them as owner of the properties entitled them to recover possession from the respondents – However, in first appeal, the Appellate Court inter alia *found that the respondents were in possession and as the properties were not recovered within 12 years, thus suit was barred by limitation – High Court affirmed the judgment of the First Appellate Court – On appeal, held: In 1938, 'S' passed away – Even proceeding on the basis that 'JK', the grand-daughter of 'R' was a reversioner, her estate in expectancy became vested in her, upon the death of the 'R's widow, 'S' in 1938 – While it is true that it was open to the reversioner to ignore the sale deed executed by the widow, as not binding on her, as far as suit for recovery of possession, the law clearly provided for a period of 12 years and the period of limitation started with the death of the limited owner, namely, the widow in 1938 – The time started ticking with the passing away of the widow in 1938 – The period of limitation being 12 years, it ran out in 1950 – With the running out of the period of limitation prescribed under the Limitation Act, 1908 (by Arts.140 and 141), the very right of the alleged reversioner 'JK'*

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also came to an end – Thus, when she executed the sale in the year 1955 in favour of the appellants, she could not have conveyed any right – In such circumstances, no reason to interfere with the judgment of the High Court – Hindu Law – Madras School of Mitakshara Law – Limitation Act, 1963 – s. 31.

Dismissing the appeals, the Court

HELD: 1. Under the Hindu Law, a widow took a limited estate. She was not a trustee for the reversioners. She was owner of the properties. But she could alienate the property only for necessity or benefit of the estate. By the Mysore Hindu Law Women's Rights Act, 1933 the widow's estate became stridhana, which by virtue of Section 11 conferred upon her absolute right to dispose the property either by way of inter vivos transfer or will. The State Act came into force on 01.01.1934. When the succession opened on 'R' dying in 1907, he was survived by both his widow 'S' and also his daughter 'V'. Therefore, it is quite clear that 'S' would not get an absolute right under Section 11 of the State Act. When succession opened in this case to the estate of 'R', in fact, the State Act was not in force at that time. The estate which was inherited by 'S' was that of a widow. Therefore, be it from stand point of Hindu Law as applicable prior to the State Act or the provisions of the State Act, 'S' did not acquire absolute rights. As such, the right which she had, was the right of the Hindu widow under Hindu Law. [Para 23][397-F-H; 398-A-B]

2. Further, as long as 'S'-widow of 'R' was alive, no reversioners had any vested interest. The daughter of 'R' ('V') through his first wife passed away in the year 1910. At that time, 'S' the widow of 'R' was alive. Therefore, she ('V') would not get any right in the property. 'S' died only in the year 1938. When 'S' died in 1938, no doubt 'JK' (daughter of 'V') was alive. It is here that the Court must consider the argument of the respondents that the daughter of a daughter was not recognized as a heir. When succession opened upon the death of the widow, in this case, namely 'S' in the year 1938, if 'JK' could be treated as the reversioner being grand daughter of the last full owner, then the property would vest in 'JK'. [Para 23][398-B-D]

A **3. There would be two obstacles for the appellants:- firstly, it would have to be held that 'JK' being the grand daughter of 'R' was a reversioner upon the death of 'S', the widow of 'R'. Secondly, even assuming for a moment that 'JK' was the reversioner whether it was incumbent upon her to institute**
B **proceedings for recovery of possession within 12 years of death of 'S'. [Para 24][398-E]**

4. While it was open to the reversioners to ignore an alienation made by a Hindu widow and the period of limitation would not start to run upon a transfer effected by the Hindu widow, undoubtedly, the period of limitation for filing a suit for recovery
C **of possession would commence upon the death of the widow. [Para 26][401-E-F]**

5. The property was alienated by 'S', the widow of 'R' in favour of her brother 'SR' in the year 1913. Undoubtedly, it was open to the reversioner to proceed on the basis that such
D **alienation does not bind her. [Para 27][401-F-G]**

6. Thereafter, in 1938, 'S' passed away. Even proceeding on the basis that 'JK', the grand-daughter of 'R' was a reversioner, her estate in expectancy became vested in her, upon the death of the 'R' widow, 'S' in 1938. While it is true that it was
E **open to the reversioner to ignore the sale deed executed by the widow, as not binding on her, as far as suit for recovery of possession, the law clearly provided for a period of 12 years and the period of limitation started with the death of the limited owner, namely, the widow in 1938. The time started ticking with the**
F **passing away of the widow in 1938. The period of limitation being 12 years, it ran out in 1950. With the running out of the period of limitation prescribed under the Limitation Act, 1908 (by Articles 140 and 141), the very right of the alleged reversioner 'JK' also came to an end. Thus, when she executed the sale in the year 1955 in favour of the appellants, she could not have conveyed**
G **any right. That apart, even for a moment, proceeding on the basis that period of limitation would start from 12 years from 1955 when the sale deed was executed in favour of the appellants by 'JK' even that period ran out in 1967. In such circumstances, no reason to interfere with the Judgment of the High Court.**
H **[Para 28][401-G-H; 402-A-C; F]**

Jaisri Sahu v. Rajdewan Dubey & Ors. **AIR 1962 SC 83 : [1962] SCR 553 ;** *Gogula Gurumurthy & Ors. v. Kurimeti Ayyappa* **(1975) 4 SCC 458 : [1974] 3 SCR 595 – relied on.**

Kalipada Chakraborti & Anr. v. Palani Bala Devi & Ors. **AIR 1953 SC 125 : [1953] SCR 503 – referred to.**

Case Law Reference

[1962] SCR 553	**relied on**	**Para 20**
[1974] 3 SCR 595	**relied on**	**Para 21**
[1953] SCR 503	**referred to**	**Para 26**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1332 of 2008

From the Judgment and Order dated 28.11.2005 of the High Court of Karnataka at Bangalore in R.S.A. No. 870/1996 C/w R.S.A. No. 871/1996.

Trideep Pais, N. K. Verma, Pranav Jain, Ms. Sanya Kumar, Ms. Anjana Chandrashekar Advs. for the Appellants.

M. Gireesh Kumar, Anand Srivastava, Vijay Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. This appeal filed by special leave is directed against the judgment dated 28.11.2005 passed by the High Court of Karnataka in Regular Second Appeal Nos. 870/1996 and 871/1996. The High Court, by its impugned judgment, dismissed the appeals and affirmed the judgment of the First Appellate Court which had reversed the decree passed by the Trial Court. The Trial Court decreed the suits [O.S. No. 68/1985 and 21/1986 (O.S. No. 393/75)] filed by the appellants.

2. The case of the appellants is as follows:-

One Ramanna was the owner of the properties which are scheduled to the plaint. He passed away in 1907. He was married to

A Jankamma (first wife) who predeceased him. The second wife Seethamma passed away in the year 1938. Through his first wife (Jankamma), he had a daughter named Venkamma. Venkamma passed away in 1910. Venkamma, in turn, had a daughter named Jankamma. The appellants before us claimed right to the properties by virtue of sale deeds executed by Jankamma in the year 1955.

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After the sale executed by Jankamma, the father of the first plaintiff and the second plaintiff claimed that they were in possession of the suit properties. The respondents filed the suits (bearing O.S. Nos. 211 and 213 of 1955) for declaration of their title and injunction. The said suit was decreed by the Trial Court. The High Court in second appeal set aside the decree of the lower court and confirmed the sale of Jankamma in favour of the first plaintiff's father and the second plaintiff and held that title to the properties could not be decided. It is their case that since Venkamma survived Ramanna, Jankamma became a full owner of the properties and through her under the sale deed, the plaintiffs claimed absolute ownership, and sued for declaration of title, recovery of possession and mesne profits.

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3. The respondents, on the other hand, denied the allegations that Ramanna had a daughter by name Venkamma and Venkamma had a daughter by name Jankamma. The ownership by Jankamma was denied. Seethamma had sold the properties to her brother - Srinivasa Rao.

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It is the further case of the respondents (defendants) that they purchased property from Srinivasa Rao under registered sale deed dated 13.09.1954 and they are in possession since then. They also claimed adverse possession. They have been found to be in possession right upto the High Court in the earlier proceedings.

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4. The Trial Court decreed the suit and found *inter alia* that Venkamma was the daughter of Ramanna and Venkamma had two daughters by name Patamma and Jankamma. Patamma died and Jankamma alone survived. The Trial Court further proceeded to enquire whether Jankamma had acquired any right in the properties of her grandfather which was alienated to the plaintiffs. The Court referred to the following findings of the High Court in the earlier litigation commenced by the respondents:

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> "17. Now, whether Seethamma independently got any right to acquire the suit property from her husband is a matter to be looked into.

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Further, this aspect has also been considered by the Hon'ble High Court in S.A. No. 801/60 at page-16. It is observed in the said judgment:-

"Now it should be point out that although there is no dispute that Ramanna left behind him his wife Seethamma, who died in the year 1938, there was a serious controversy in this litigation in regard to the question whether Ramanna had a daughter Jankamma. A question which was even more serious than that was whether Venkamma was alive when Ramanna died in the year 1907 or there about. This question assumes great importance in the context of the finding recorded by the courts below, that Seethamma under the provisions of Mysore Hindu Law Women's Right to property Act became an absolute owner of the properties of her husband. It is clear from Sec. 10(2)(g) of the Act that she could become absolute owner of these properties, only if Ramanna when he died did not left behind his a daughter or daughter's son. If Venkamma was the daughter of Ramanna and she was alive when Ramanna died, then it becomes clear that Sec. 10(2)(g) of the Act is no application and Seethamma had only a widow's estate and the properties could not become her Sreedhana properties. It was for this purpose to demonstrate that they did not that way become Sreedhana properties of Seethamma that defendants contended that Ramanna left behind him his daughter Venkamma and that Venkamma had a child Jankamma, who could convey to the contesting defendants the properties purchased by them. Both the courts have found that Venkamma was the daughter of Ramanna and that finding being a finding on the question of fact has remained undisturbed. They have further found that defendant No.8 is Jankamma, daughter of Venkamma and that finding is equally unassailable for the same reason.

18. While answering issue Nos. 1 and 2, not only I have come to the conclusion that Venkamma survived her further and she was the daughter of Ramanna and she had a daughter by name Jankamma but earlier proceedings between the same parties have also established this fact beyond any shadow of doubt. When Venkamma survived her father, who died in the year 1907, then Seethamma, the 2nd wife of late Ramanna enquiring the properties of her husband could not have been there at all. Because as it is already stated above under Section 10(2)(g) of Hindu Law

A Women's Right to Properties Act she could not become an absolute owner of the properties of her husband, Ramanna. Because Ramanna had left behind his daughter Venkamma. The said Venkamma died in the year 1910. Leaving behind her daughter by name Jankamma. So under Section 10(2)(g) of the said Act, Seethamma had only a widow's estate but the properties of her husband could not form her Sreedhana properties so in that way any alienations made by her in favour of her brother Srinivasa Rao were all illegal."

5. When Venkamma survived her father then Seethamma (the second wife of Ramanna) could not acquire properties of her husband. Reference was made to Section 10(2)(g) of the Mysore Hindu Law Women's Rights Act, 1933 (for short 'the State Act'). On finding that Ramanna had left behind her daughter - Venkamma who died in the year 1910, therefore under Section 10(2)(g) of the Act, the widow Seethamma had only widow's estate which could not form her Stridhan properties and therefore any alienation made by her in favour of her brother - Srinivasa Rao was illegal. Seethamma was found to have no vested interest in the properties of her husband except having widow's estate. Seethamma herself had not acquired any saleable interest in the properties of her husband - Ramanna. It was observed that in the earlier second appeal that the sale by Srinivas Rao in favour of the respondents could not be sustained and accordingly the sale had been set aside only confirming the decree for permanent injunction against the appellants. The sale of the properties by Jankamma was upheld in the earlier proceedings. On this basis, the sale of properties by Seethamma in favour of her brother was found to be illegal entitling the plaintiffs to be declared as owner.

6. The contention of the respondents was that they were in possession and there were also entries in the revenue record to that effect. It was found that the entries in the revenue record would not advance the case of the respondents.

The Trial Court proceeded to consider the question whether the possession of the defendants could be found to be adverse and the Court came to the conclusion that the defendants had miserably failed to establish adverse possession. The contention based on limitation was accordingly rejected. Accordingly, on these findings, the suit came to be decreed declaring the appellants as owners of the scheduled properties

and entitled to recover possession of the suit properties and also *mesne profits* from the respondents.

7. In the first appeal, the Appellate Court *inter alia* found that the respondents were in possession and if the properties were not recovered within 12 years, then the right to recovery is extinguished as per the decision in [AIR 1972 Mysore 22].

Though the High Court in the earlier round of litigation observed that the question relating to whether Venkamma survived Ramanna or predeceased him has to be decided, the appellants should have approached the Court immediately but they had approached the Court with the delay of beyond 12 years and that too without giving any proper explanation for the delay.

It was found that the right of the appellants for recovery of possession on the foot of their acquisition of title by sale from Jankamma on 16.04.1955 accrued on 16.04.1955. The judgment of the High Court in the earlier second appeal delivered on 16.09.1963 did not give rise to any cause of action. Accordingly, the appeals were allowed and the suits were dismissed.

Proceedings in the High Court

8. The High Court framed the following substantial questions of law in R.S.A. No. 870/96 and R.S.A. No. 871/96:

R.S.A. No. 870/96

i) Whether the finding of the first appellate Court that the suit is barred by time is without considering the provisions of Section 65 of the Limitation Act of 1963?

ii) Whether the finding that the respondents have perfected their title by adverse possession is justified when they have contended that they are the owners of the property by virtue of a registered sale deed?

R.S.A. No. 871/96

i) Whether the lower appellate Court was justified in holding that the suit was barred by limitation?

ii) Whether the lower appellant court was justified in holding that the respondents acquired title by adverse possession?

A 9. The High Court came to the following findings after referring to the relationship of the parties. It was found *inter alia* that during the life time of Jankamma although the properties were sold by Seethamma in favour of his brother Srinivasa Rao but she had not challenged the same, so possession of the properties by the defendants by virtue of sale deed in favour of Srinivasa Rao and by Srinivasa Rao in favour of the B respondents remained unchallenged and that would be the starting point of limitation.

10. The transferees from Jankamma namely the appellants moved the Court only in 1975, 1985 and 1986. As per Madras School of Mitakshara Law in a catena of decisions, it is held that at a place other C than Bombay State the right of survivorship necessarily is in favour of the widow than the daughter and the grand-daughter. So the alienation made by Seethamma in favour of Srinivas Rao and by Srinivas Rao to the respondents could not be said to be invalid.

11. Thereafter, the Court referred to the 'the State Act' and D observed that even under Section 4 as per Section 4(1)(ii) of the State Act, the widow stands in preference to the daughters i.e. the right of widow (Seethamma) is preferable to the right of daughter and Jankamma's position comes only afterwards. Jankamma - the grand daughter is in category (ix) of the aforesaid provision.

E 12. Such being the position of law, the sale made by Jankamma, grand-daughter of Ramanna, in favour of the appellants, if any, is non est, more so, as noted, since Jankamma had not challenged the earlier sale made by Seethamma in favour of Srinivas Rao. Seethamma although had a limited interest, the alienation had not been challenged by the F reversioners of Ramanna for 50 years. The right of Seethamma stood unchallenged and the alienation made also remained unchallenged.

As regards the point relating to limitation, it was found that first of all Jankamma had to challenge the alienation by Seethamma, which was of the year 1913. No special privilege was given in excluding G limitation created by the Limitation Act by the observation of the High Court in the earlier second appeals (801/1960 and 819/1960). Since the right of Seethamma had not been challenged by Jankamma, the suits are necessarily barred by time.

Thereafter, regarding the adverse possession, this is what the Court H held:

"As to the point of adverse possession is concerned, it is made clear by the lower appellate court that even after order of declaration has been negatived by this Court in the second appeals 801/60 and 819/60, the suits are belatedly filed by the plaintiffs in the year 1985 and 86 respectively and as such Sreenivas Rao and thereafter, the defendants have acquired right and title to the suit properties by adverse possession. It is needless to say that when necessarily these defendants have set up their right not only for possession, but also by virtue of the sale deed, that finding would not be appropriate."

13. We have heard learned counsel for the parties. Learned counsel for the appellant drew our attention to Section 4 of the State Act and then he further sought support from Section 10 of the Act. Section 10 (2) (g) of the Act reads as follows:-

"10. (2) Stridhana includes:-

(g) property taken by inheritance by a female from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited."

14. The appellant's contention is that the High Court has committed a clear error in taking the view that Seethamma - the widow would get an absolute right. It is his contention that as per the definition of Stridhan which undoubtedly is her absolute right, there is an exception carved out in Section 10(2)(g) of the Act. In so far as the properties in question were properties inherited by Seethamma on the death of her husband - Ramanna and at that time the daughter Venkamma was very much alive, therefore, Seethamma would not get an absolute right. In this case, the daughter of Ramanna (Venkamma) died only in 1910 which was after the death of Ramanna – 1907. When succession to the estate of Ramanna in 1907 opened, then Seethamma his widow would inherit the property where the right is only limited to the estate of a widow. On her death, the property would revert back to the reversioners of her late husband - Ramanna.

15. It is his complaint that the High Court has overlooked this vital aspect by not referring to Section 10 of the Act and confining its focus

A on Section 4 of the State Act. Under Section 4 of the State Act, the widow has priority over daughter and granddaughter.

When it was pointed out to the learned counsel for the appellant that since Ramanna died in 1907 and the State Act was not in existence as the Act was passed in 1933, learned counsel for the appellant took up B another contention. He contended that under the Mitakshara law which was applicable, the widow was entitled only to a limited estate. He would contend that the position even prior to the passing of the State Act was that the widow did not get absolute estate.

16. Per contra, learned counsel for the respondents would contend C that Seethamma had transferred the property in the year 1913. Seethamma died in 1938. If that is so, the suit should have been filed if at all within a period of 12 years from the date on which the alleged right in the reversioners came to be vested namely upon the death of Seethamma in the year 1938. The period of 12 years would run out in 1950. The appellants - plaintiffs purchased the property in the year D 1955 from Jankamma - grand daughter of Ramanna. Even then the suit was filed by them only after more than 20 years. It is further contended by learned counsel for the respondent that under Mitakshara law applicable in the region in question, the grand daughter was not a heir. Only the daughter of a male upon his death intestate could inherit the E property. Therefore, even the limited right attributed to the widow Seethamma would by default become an absolute right.

Findings in the earlier Second Appeal

17. The findings in the earlier Second Appeals which emanated from the suits filed by the respondents are as follows: The High Court F did not interfere with a finding that the sale deeds executed by Seethamma in favour of Srinivas Rao were genuine. Equally, the High Court affirmed the finding that the respondents in this appeal were in possession of the properties purchased by them. Jankamma was found to be the grand-daughter of Ramanna. Further, the Court proceeded to G pose the question whether Venkamma was a daughter of Ramanna and whether she was alive when Ramanna died having regard to Section 10(2)(g) of the State Act. It was noticed that both the Courts below had found that Venkamma was the daughter of Ramanna and Jankamma was the daughter of Venkamma. It was, however, observed that there

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were no pleadings as to whether Venkamma survived or predeceased Ramanna.

18. The Court was of the view that the first issue in all the cases was whether Seethamma became absolute owner of the properties of her husband and it was equally true that the processes by which she could become such owner would be by her being alive and there being no surviving child of Ramanna when he died. It was found that the parties did not have the opportunity to produce all evidences in this regard and an investigation was required. The finding that Seethamma became absolute owner of Ramanna's properties was set aside. The Court, however, proceeded to find that the fact that the aforesaid finding was set aside did not mean that the Court held that Seethamma had not become the absolute owner. No opinion was expressed as it was dependent upon the question whether Venkamma was alive when Ramanna died and materials in this regard were insufficient.

19. On this basis, the decree declaring the respondents to be the owners of the property was set aside. The decree restraining the appellants from disturbing the respondents' possession was also affirmed. It may be seen from the judgment of the High Court in the earlier round of litigation that the respondents were found to be in possession. The question relating to title was essentially not decided as is clear from what was found by the High Court. The Court left it open to be decided on the basis that Seethamma would become absolute owner if Venkamma - the daughter of Ramanna had not survived Ramanna.

20. Now we shall proceed to render our findings.

Position of a Hindu Widow prior to Hindu Succession Act and the State Act

There is no dispute that the parties are governed by the Madras School of Hindu Law. Thereunder, every female who succeeded as a heir whether to a male or a female, took a limited estate in the property inherited by her. As regards widow's estate, this statement is found in Mulla Hindu Law, 23rd Edition.

> "176. Widow's estate – A widow or other limited heirs is not a tenant for life, but is owner of the property inherited by her, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner upon her death. The

A whole estate is for the time vested in her, and she represents it completely. As stated in a Privy Council case, her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however limited; but so long as she is alive no one has any vested interest in the succession."

B In *Jaisri Sahu v. Rajdewan Dubey & Ors.* [AIR 1962 SC 83], this Court proceeded to hold that it could not be an inflexible proposition of law that whenever there is a usufructory mortgage, the widow could not sell the property on the ground that it would deprive the reversioners of the right to redeem it. This is what the Court held:

C "…….Such a proposition could be supported only if the widow is in the position of a trustee, holding the estate for the benefit of the reversioners, with a duty cast on her to preserve the properties and pass them on intact to them. That, however, is not the law. When a widow succeeds as heir to her husband, the ownership in the properties both legal and beneficial vests in her. She fully
D represents the estate, the interest of the reversioners therein being only spec successiones. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not
E one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law. It is for this reason that it has been held that when Crown takes the property by escheat it takes it free from any alienation made by the widow of the last male holder which is not valid under the Hindu law vide : Collector of Masulipatam v. Cavaly Venkata 8 Moo Ind App 529(PC). Where,
F however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are, as held in a series of decisions beginning with Hunooman Persaud v.
G Mussamat Babooee Mundraj Koonweree, 6 Moo Ind App 393 (PC) those of the manager of an infant's estate or the manager of joint Hindu family."

(Emphasis Supplied)

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21. In *Gogula Gurumurthy & Ors. v. Kurimeti Ayyappa* (1975) 4 SCC 458, this Court reiterated the position of a Hindu widow and of greater relevance to us held no one has any vested interest in succession as long as the widow is alive.

> "A hindu widow is entitled to the full beneficial enjoyment of the estate. So long as she is not guilty of wilful waste, she is answerable to no one. Her estate is not a life-estate, because in certain circumstances she can give an absolute and complete title. Nor is it in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to no one. She fully represents the estate, and so long as she is alive, no one has any vested interests in the succession. It cannot be predicted who would be the nearest reversioner at the time of her death. It is, therefore, impossible for a reversioner to contend that for any loss which the estate might have sustained due to the negligence on the part of the widow he should be compensated from out of the widow's separate properties. He is entitled to get only the property left on the date of the death of the widow. The widow could have, during her lifetime, for necessity, including her maintenance alienated the whole estate."
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> (Emphasis Supplied)

The impact of the State Act of 1933

The State Act that is the Mysore Act of 1933 (as it was when it was passed) came into force on first day of January, 1934.

Section 2 reads as follows: -

> "2. (1) This Act applies to persons who but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted.
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> (2) Save as aforesaid, nothing herein contained shall be deemed to affect any rules or incidents of the Hindu Law which are not inconsistent with the provisions of this Act."

Thus, the rules or incidents of Hindu law to the extent they were not inconsistent with the Act was to continue to operate. Section (4) of the Act provided as follows:-

A "4(1) The succession to a Hindu male dying intestate shall, in the first place, vest in the members of the family of the propositus mentioned below, and in the following order:-

(ii) the widow;

(iii) daughters;

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(ix) daughters' daughters;

As far as Section 10 is concerned, the relevant portion reads as follows: -

"10(1) *"Stridhana"* means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate.

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10(2) *Stridhana* includes:-

(g) property taken by inheritance by a female from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited."

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It is necessary to notice Section 11 also. Section 11 reads as follows:-

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"11.(1) A female owning *stridhana* property shall have over it absolute and unrestricted powers both of enjoyment and of disposition *inter vivos* and by will, subject only to the general law relating to guardianship during minority.

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(2) Except when acting as the lawful guardian of his wife, a husband shall have no right to or interest in any portion of his wife's *stridhana* during her life nor shall he be entitled to control the exercise of any of her powers in relation thereto."

Thus, the female owning stridhana property was conferred absolute powers to dispose of the same as also in the matter of enjoyment. The disposal could be by will or transfer *inter vivos*. The only limitation was the law relating to guardianship would continue to operate during minority. Reverting back to Section 10 (2) (g), the property inherited by a woman *inter alia* from her husband was brought under the definition of stridhana. This was a clear expansion of a widow's rights by conferring upon a

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widow absolute right over property inherited from her husband being a radical departure from the widow's estate under Hindu Law which was a limited estate and under which there was no such absolute right of disposal. There was however a catch and it was this. If the husband was survived by the widow and a daughter or a daughter son, then the widow's estate as understood in Hindu Law was to continue undisturbed. If a daughter or grandson as mentioned did not survive the husband, the widow would get the absolute right notwithstanding Section 10(1) defining stridhana as meaning property of any description belonging to a Hindu female other than which she has by law 'only a limited estate'. Thus though under Section 4, the widow would inherit in preference to the daughter and daughters' daughter the nature of the right is as contained in Section 10 and Section 11, the effect of which we have called out.

22. The next thing which we must ascertain is who are the reversioners. The reversioners are the heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living (as per para 175 of the Mulla on Hindu Law).

The nature of the interest of reversioners is also discussed under the same para, which is as follows:

> (2) Interest of reversioners – The interest of a reversioner is an interest expectant on the death of a limited heir and is not a vested interest. It is a spes successionis or a mere chance of succession within the meaning of Section 6, Transfer of Property Act, 1882. It cannot, therefore, be sold, mortgaged or assigned, nor can it be relinquished. A transfer of a *spes successionis* is a nullity, and it has no effect in law.

23. Under the Hindu Law, a widow took a limited estate. She was not a trustee for the reversioners. She was owner of the properties. But she could alienate the property only for necessity or benefit of the estate. By the State Act, the widow's estate became stridhana, which by virtue of Section 11 conferred upon her absolute right to dispose the property either by way of inter vivos transfer or will. The State Act came into force on 01.01.1934. When the succession opened on Ramanna dying in 1907, he was survived by both his widow Seethama and also his daughter Venkamma. Therefore, it is quite clear that Seethama would not get an absolute right under Section 11 of the State Act. When

A succession opened in this case to the estate of Ramanna, in fact, the State Act was not in force at that time. The estate which was inherited by Seethama was that of a widow. Therefore, be it from stand point of Hindu Law as applicable prior to the State Act or the provisions of the State Act, Seethama did not acquire absolute rights. As such, the right which she had, was the right of the Hindu widow under Hindu Law.

B

Further, as long as Seethamma - widow of Ramanna was alive, no reversioners had any vested interest. The daughter of Ramanna (Venkamma) through his first wife passed away in the year 1910. At that time, Seethamma the widow of Ramanna was alive. Therefore, she (Venkamma) would not get any right in the property. Seethamma

C died only in the year 1938. When Seethamma died in 1938, no doubt Jankamma was alive. It is here that we must consider the argument of learned counsel for the respondents that the daughter of a daughter was not recognized as a heir. When succession opened upon the death of the widow, in this case, namely Seethamma in the year 1938, if Jankamma

D could be treated as the reversioner being grand daughter of the last full owner, then the property would vest in Jankamma.

24. There would be two obstacles for the appellants:- firstly, it would have to be held that Jankamma being the grand daughter of Ramanna was a reversioner upon the death of Seethamma, the widow

E of Ramanna. Secondly, even assuming for a moment that Jankamma was the reversioner whether it was incumbent upon her to institute proceedings for recovery of possession within 12 years of death of Seethamma.

25. Taking up the second question, we notice the following

F commentary of Mulla on Hindu Law:

> "207. Reversioner's suit for possession and limitation._ A suit by reversioners, entitled to succeed to the estate on the death of a widow or other limited heir, for possession of immovable property from an alienee from her must be brought within 12 years from

G her death (the Indian Limitation Act, 1908, Schedule I, Article 141), and of movable property, within six years from that date.
>
> Now see Articles 65, 109 and 113 of the new Limitation Act, 1963.

H

The reversioner may sue for possession without suing to have alienation set aside. The reason is that he is entitled to treat the unauthorized alienation as a nullity without the intervention of any court.

26. Learned counsel for the respondents has placed considerable reliance on the judgment of this Court in *Kalipada Chakraborti & Anr. v. Palani Bala Devi & Ors*. [AIR 1953 SC 125]. Therein, this Court dealt with transfer of Shebeiti right by Hindu Widow and the suit by reversioners challenging the same. This Court held as follows:

"But all doubts on this point were set at rest by the decision of the Privy Council itself in *Faggo v. Utsava* [(1929) 56 I.A. 267] and the law can now be taken to be perfectly well settled that except where a decree has been obtained fairly and properly and without fraud and collusion against the Hindu female heir in respect to a property held by her as a limited owner, the cause of action for a suit to be instituted by a reversioner to recover such property either against an alienee from the female heir or a trespasser who held adversely to her accrues only on the death of the female heir. This principle, which has been recognized in the law of limitation in this country ever since 1871 seems to us to be quite in accordance with the acknowledged principles of Hindu law. The right of reversionary heirs is in the nature of spes succession is, and as the reversioners do not trace their title through or from the widow, it would be manifestly unjust if they are to lose their rights simply because the widow has suffered the property to be destroyed by the adverse possession of a stranger. The contention raised by Mr. Ghose as regards the general principle to be applied in such cases cannot, therefore, be regarded as sound.

Ordinarily, there are two limitations upon a widow's estate. In the first place, her rights of alienation are restricted and the in the second place, after her death the property goes not to her heirs but to the heirs of the last male owner."

This view has been followed in the judgment reported in AIR 1969 SC 204. The law of limitation relevant at that point of time was the Indian Limitation Act, 1908. It is crucial to notice Articles 140 and 141:-

Description of Suit	Period of Limitation	Time from which period begins to run
140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	Twelve years	When his estate falls into possession.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	Twelve years	When the female dies.

It is this statutory framework which formed the basis of the law laid down by this Court which we have noticed.

It is next relevant to notice Section 28 of the Act:-

> "28. Extinguishment of right to property. - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

In other words, while it was open to the reversioners to ignore an alienation made by a Hindu widow and the period of limitation would not start to run upon a transfer effected by the Hindu widow, undoubtedly, the period of limitation for filing a suit for recovery of possession would commence upon the death of the widow.

27. The property was alienated by Seethamma, the widow of Ramanna in favour of her brother Srinivas Rao in the year 1913. Undoubtedly, it was open to the reversioner to proceed on the basis that such alienation does not bind her.

28. Thereafter, in 1938, Seethamma passed away. Even proceeding on the basis that Jankamma, the grand-daughter of Ramanna was a reversioner, her estate in expectancy became vested in her, upon the death of the Ramanna's widow, Seethamma in 1938. While it is true that it was open to the reversioner to ignore the sale deed executed by the widow, as not binding on her, as far as suit for recovery of possession,

the law clearly provided for a period of 12 years and the period of limitation started with the death of the limited owner, namely, the widow in 1938. The time started ticking with the passing away of the widow in 1938. The period of limitation being 12 years, it ran out in 1950. With the running out of the period of limitation prescribed under the Limitation Act, 1908 (by Articles 140 and 141), the very right of the alleged reversioner Jankamma also came to an end. Thus, when she executed the sale in the year 1955 in favour of the appellants, she could not have conveyed any right. That apart, even for a moment, proceeding on the basis that period of limitation would start from 12 years from 1955 when the sale deed was executed in favour of the appellants by Jankamma even that period ran out in 1967. Admittedly, the suits were filed several years even after 1967. Section 31 of the Limitation Act, 1963 reads as follows:-

> "31 Provisions as to barred or pending suits, etc:- Nothing in this Act shall,—
>
> (a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), expired before the commencement of this Act; or
>
> (b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement."

Quite clearly much before the Limitation Act, 1963 came into force, the period of limitation for instituting the suits had expired. This is apart from the effect of not filing such a suit on the very right itself.

29. In such circumstances, we see no reason to interfere with the judgment of the High Court. The appeals will stand dismissed with no order as to costs.

Ankit Gyan

Appeals dismissed.