

CASE NO.:
Appeal (civil) 4838 of 1999

PETITIONER:
Vellikannu

RESPONDENT:
R. Singaperumal & Anr.

DATE OF JUDGMENT: 06/05/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against the judgment of the learned Single Judge of Judicature at Madras whereby the learned Single Judge by his order dated 6th March, 1997 has allowed the Second Appeal No. 773 of 1983 filed by the respondent-1st Defendant herein.

Brief facts which are necessary for disposal of this appeal are;

That an Original Suit NO. 87/1978 was filed in the Court of the District Munsif, Melur by the plaintiff-appellant (herein).

The schedule properties are the self-acquired properties of late Ramasami Konar and the first defendant was the only son of Ramasami Konar and the plaintiff is the wife of the first defendant. Wife of Ramasami Konar was already divorced and married with some other person and was residing separately. It is alleged that the first defendant in the suit married the plaintiff-appellant and both were residing as husband and wife. On 10th October, 1972 the first defendant murdered his father, Ramasami Konar and was convicted under Section 302 IPC for life imprisonment. The conviction of the first defendant was confirmed by the High Court but the High Court recommended the Government to reduce the sentence to the period already undergone. The first defendant was released in July, 1975. Since the first defendant murdered his father, he was not entitled to succeed to the estate of his deceased father and as such the claim of the plaintiff was that she alone was entitled to all the properties left by the deceased Ramasami Konar. According to the plaintiff, the first defendant must be deemed to have predeceased as provided under Section 25 read with Section 27 of the Hindu Succession Act. She claimed to be the widow of the first defendant and claimed to be the owner of all the properties left by Ramasami Konar as coparcener. After the release of the first defendant from the prison, first defendant lived with the plaintiff for some time but after some time she was driven out of the house. Second defendant is already impleaded in the suit as tenant claiming under first defendant. Plaintiff, therefore, prayed that she may be granted the relief of declaration as she is entitled to inherit the entire estate of the deceased Ramasami Konar. As against this it was contended by the first defendant that the suit was not maintainable as the plaintiff is not the legal heir of Ramasami Konar. It was alleged that all the properties acquired by the Ramasami, were joint family properties and the

first defendant has acquired the same by survivorship. The Trial Court by Order dated 31st March, 1980 held that all the properties are joint family properties of the deceased Ramasami Konar and first defendant. The second defendant is a cultivating tenant. The first defendant having murdered his father is not entitled to claim any right under Section 6 read with Sections 25 & 27 of the Act but as per proviso to Section 6 of the Hindu Succession Act plaintiff is entitled to a decree for half share and accordingly it was granted to the plaintiff. This matter was taken up in appeal by defendant No. 1. The Lower Appellate Court also confirmed the finding of the Trial Court but modified the decree that it may be treated as preliminary decree. The Lower Court also held that first defendant must be treated as non-existent. The plaintiff became a Class I heir under Schedule 1 of the Hindu Succession Act and she was entitled to a share in the property. The appeal was dismissed.

Aggrieved against this, the first defendant preferred a second appeal before the High Court.

The High Court at the time of admission of the Second Appeal, framed following substantial questions of law.

"1. Whether Ex.A.2 judgment in the Criminal case is conclusive on the question of exclusion from inheritance in the present proceedings?

and

2. Whether the exclusion from inheritance would cover enlargement of interest by survivorship, in the light of Section 6 of Hindu Succession Act ?"

So far as the question No. 1 is concerned, the High Court held that the judgment of the Criminal Court can be taken into consideration. But the main question which was addressed by the High Court was whether the plaintiff can inherit the properties from the estate of her deceased father-in-law, Ramasami Konar and what is the effect of Section 25, Section 27 read with Section 6 and Section 8 of the Hindu Succession Act. It was not disputed that the properties of the Ramasami Konar were joint family properties in which the defendant No. 1 was also one of the member and the parties are governed by the Mitakshara School of Hindu Law.

The learned Single Judge of the High Court after hearing the parties and considering the relevant law on the subject in detail, came to the conclusion that the view taken by both the Courts below cannot be sustained. It was held by the learned Single Judge that plaintiff cannot claim as a widow of the son of Ramasamy Konar. It was observed that plaintiff cannot claim one half share in the property being coparcenary property under Proviso to Section 6 of the Hindu Succession Act. It was also observed that she is entitled to half share so long as the deceased father and son had not partitioned the property. The first defendant/ respondent No 1 herein cannot be said to have inherited any share from the victim (Ramasamy Konar) and the Plaintiff can claim as a widow only if there is a succession to the estate of the victim. If there is no succession, the deeming provision that the first defendant shall be deemed to have died before the victim (his father) also will not apply and she cannot claim as a widow of his pre-deceased son. It was also held that Section 6 of the Hindu Succession Act will also not apply. The principle of justice, equity and public policy will apply and the plaintiff cannot be treated as a fresh stock of descent and defendant No.1 shall be treated as a non-existent as if he never existed. Therefore, the plaintiff also cannot claim as his

widow. It was also observed that since plaintiff claims as a widow of the defendant No. 1 and he is disqualified, same disqualification equally applies to her for she cannot claim through murderer husband.

Learned single Judge allowed the appeal of the defendant No. 1/respondent No. 1 (herein) and judgment and decree of the Courts below were set aside. The suit was dismissed. Hence the present appeal.

Learned counsel for the appellant tried to persuade us that appellant being the sole female survivor of the Joint Hindu Property as her husband stands disqualified, she under proviso to Section 6 of the Act, is entitled to the whole of the estate as a sole survive member of the coparcenary property read with Section 8 of the Act as a Class I heir. As against this, learned counsel for the respondent-defendant has submitted that this disqualification which was attached to the son equally applies in the case of the wife as she is claiming the estate because of her marriage with the respondent and if he is disqualified, then she is also equally disqualified to claim any property being a coparcener from the estate of her deceased father in law.

In order to appreciate the rival contention, it would be relevant to reproduce provisions of the Hindu Succession Act. Sections 6, 8, 25 and 27 of the Act which read as under:

"Section 6. Devolution of interest in coparcenary property- When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.- For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not..

Explanation 2.- Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased of any of his heirs to claim on intestacy a share in the interest referred to therein."

Section 8.- General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased;
and
(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Section 25.- Murderer disqualified. \026 A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Section 27.- Succession when heir disqualified -
If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate."

As per Section 6 of the Hindu Succession Act, if a male Hindu dies after commencement of this Act, an interest in a Mitakshara coparcenary property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act. So far as the present case is concerned, the concurrent finding of the fact is that the deceased Ramasamy Konar was governed by Mitakshara Law and the property was the coparcenary property. But he died intestate. Therefore, as per Section 6, the property shall devolve by survivorship upon the surviving members of the coparcenary and not by Section 6 of the Act and at the same time there is proviso to Section which qualifies the main Section that if deceased left a surviving female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female, the interest of deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be and not by survivorship.

So far as the property in question is concerned, there is a finding of the Courts below that the property is a coparcenary property and if that being so, if the defendant No. 1 had not murdered his father then perhaps a thing would have taken a different shape. But what is the effect on the succession of the property of the deceased father when son has murdered him. If he had not murdered his father he would have along with his wife would have succeed in the matter. So far as the rights of coparceners in the Mitakshara Law are concerned, son acquires by birth or adoption a vested interest in all coparcenary property whether ancestral or not and whether acquired before or after his birth or adoption, as the case may be, as a member of a joint family. This is the view which has been accepted by all the Authors of the Hindu Law. The famous principles of Mulla, 15th Edition (1982) at pages 284 and 285, the learned Author has stated thus:

"The essence of a coparcenary under the Mitakshara Law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mitakshara Law, no individual members of that family, whilst it remains un-divided, can predicate, of the joint and undivided property, that he that particular member, has a definite share, one third or one-fourth. His interest is a fluctuating interest, capable or being enlarged by

deaths in the family, and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of coparcener in coparcenary property is "undivided coparcenary interest". The nature and extent of that interest is defined in Section 235. The rights of each coparcener until a partition takes place consist in a common possession and common enjoyment of the coparcenary property. As observed by the privy council of *Katama Natchiar versus The Rajah of Shivagunga*, "there is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession."

Likewise, S.V. Gupta, author of *Hindu Law*, Vol. 1, Third Edition (1981) at page 162, the learned author deals with the rights of a coparcener. He says thus:-
"Until partition, coparcener is entitled to:-

- (1) join possession and enjoyment of joint family property
- (2) the right to take the joint family property by survivorship, and
- (3) the right to demand partition of the joint family property"

At page 164, the learned author deals with the right of survivorship. He says;
"while the family remains joint, its property continues to devolve upon the coparcener for the time being by survivorship and not by succession. Consequently, on the death of a coparcener the surviving coparceners take his undivided interest in the joint family property by survivorship. There is community of interest and unity of possession between all the members of the family, and upon the death of any of them, the others may well take by survivorship that in which they had during the deceased's life time a common interest and a common possession."

The learned Author further says :-

A coparcener who is disqualified by reason of a disability (such as insanity) from taking a share on partition may nevertheless take the whole property by survivorship."

At page 165, the learned Author has further said thus:

By survivorship a coparcener does not obtain the share of a deceased coparcener as his representative; strictly speaking it does not pass to him the effect if merely to enlarge his share in what he already owns in the aggregate. Surviving coparceners are not therefore, the legal representatives of a deceased coparcener".

In N.R. Raghavachariar's *Hindu Law* \026 Principles and precedents " 8th Edition (1987) at page 230 under the heading 'Rights of Coparceners' it is said thus:-

"The following are the rights of a coparcener :- (1)

Right by birth (2) Right by survivorship, (3) Right to partition, (4) Right to joint possession and enjoyment, (5) Right to restrain unauthorized acts (6) Right of alienation, (7) Right to accounts and (8) Right to make self-acquisition".

While dealing with "Right by birth' learned Author says thus:-

"Every coparcener gets an interest by birth in the coparcenary property. This right by birth relates back to the date of conception. This, however, must not be held to negative the position that coparcenary property may itself come into existence after the birth of the coparcener concerned \005"

While dealing with Right of survivorship, it is said thus:-

"The system of a joint family with its incident of succession by survivorship is a peculiarity of the Hindu Law. In such a family no member has any definite share and his death or somehow ceasing to be a member of the family causes no change in the joint status of the family. Where a coparcener dies without male issue his interest in the joint family property passes to the other coparceners by survivorship and not by succession to his own heir. Even where a coparcener becomes afflicted with Lunacy subsequent to his birth, he does not lose his status as a coparcener which he has acquired by his birth, and although his lunacy may under the Hindu Law disqualify him from demanding a share in a partition in his family. Yet where all the other coparceners die and he becomes the sole surviving member of the coparcenary, he takes the whole joint family property by survivorship, and becomes a fresh stock of descent to the exclusion of the daughter of the last pre-deceased coparcener, a case of leprosy of the last surviving coparcener. The beneficial interest of each coparcener is liable to fluctuation, increasing by the death of another coparcener and decreasing by the birth of a new coparcener\005"

Therefore, it is now settled that a member of coparceners acquires a right in the property by birth. His share may fluctuate from time to time but his right by way of survivorship in coparcenary property in Mitakshara Law is a settled proposition.

In this connection, a reference may be made in the case of State Bank of India Vs. Ghamandi Ram reported in AIR 1969 SC 1333, it was held thus:-

"According to the Mitakshara School of Hindu Law all the property of a Hindu Joint Family is held in collective ownership by all the coparceners in the quasi-corporate capacity. The textual authority of the Mitakshara Lays down in express terms that the joint family property is held in trust from the joint family members then living and thereafter to be both (See Mitakshara, Chaper I, 1-27) The incidents of coparcenership under the Mitakshara Law are: first the lineal male descendants of a person upto the third generation, acquire on birth ownership in the ancestral properties of such person; Secondly that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property co- jointly with the rest; fourthly, that as a result of such co-ownership the possession

and enjoyment of the properties is common fifthly that no alienation of the property is possible unless it before necessity, without the concurrence of the coparceners, and sixthly; that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except in so far that on adoption the adopted son becomes a co-parcener with his adoptive father as regards the ancestral properties of the letter."

The concept of coparcener as given in the Mitakshara School of Hindu Law as already mentioned above, is that of a joint family property wherein all the members of the coparceners share equally. In this connection a reference may be made to a decision of this Court in the case of State of Maharashtra vs. Narayan Rao Sham Rao Deshmukh & Ors. reported in (1985) 2 SCC 321 in which Their Lordships have held as follows:

" A Hindu coparcenary is however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating."

Therefore, in view of various decisions of this Court it appears that Defendant No.1 and the plaintiff who was married to Defendant No.1 were members of joint Hindu family. If the defendant- appellant had not incurred the disqualification, then they would have inherited the property as per Mitakshara School of Hindu Law. But the question is that when the sole male survivor had incurred the disqualification can he still claim the property by virtue of Mitakshara School of Hindu Law? If he cannot get the property by way of survivorship, then the question is whether his wife who succeeds through the husband can succeed to the property? Our answer to this question is in negative. In fact, prior to the amendment of the Hindu Succession Act, Sections like 25 & 27 were not there but the murderer of his own father was disqualified on the principle of justice, equity and good conscience and as a measure of public policy. This position of law was enunciated by the Privy Council way back in 1924 in the case of Kenchava Kom Sanyellappa Hosmani & Anr. vs. Girimallappa Channappa Somasagar reported in AIR 1924 PC 209 wherein Their Lordships have held as follows:

" In their Lordships' view it was rightly held by the two Courts below that the murderer was disqualified; and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the

distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of Madras in the case of Vedanayaga Mudaliar v. Vedammal, their Lordships reject, as did the High Court here, any such distinction. The theory of legal and equitable estates is no part of Hindu law, and should not be introduced into discussion.

The second question to be decided is whether the title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters, would take precedence of the plaintiff, his cousin. In this matter also, their Lordships are of opinion that the Courts below were right. The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited."

Their Lordships also explained the decision in the case of Gangu vs. Chandrabhagabai reported in (1908) 32 Bom. 275 and held as follows :

" It was contended that a different ruling was to be extracted from the decision of the Bombay High Court in Gangu v. Chandrabhagabai. This is not so. In that case, the wife of a murderer was held entitled to succeed to the estate of the murdered man but that was not because the wife deduced title through her husband, but because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right, as it is called in Hindu law a gotraja-sapinda. The decision therefore has no bearing on the present case. "

Therefore, the principle which has been enunciated by their Lordships is in no uncertain terms totally disinherit the son who has murdered his father. Their Lordships have observed as follows:

" A murderer must for the purpose of the inheritance, be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed through him. "

This Privy Council decision made reference to the decisions of the High Courts of Madras and Bombay and their Lordships have approved the ratio contained in those decisions

that a murderer should be totally disinherited because of the felony committed by him. This decision of the Privy Council was subsequently followed in the following cases :

- i. AIR (29) 1942 Madras 277 (K.Stanumurthiayya & Ors. v. K.Ramappa & Ors.)
- ii. AIR 1953 All. 759 (Nakchhed Singh & Ors. vs. Bijai Bahadur Singh & Anr.)
- iii. AIR 1956 All. 707 (Mata Badal Singh & Ors. vs. Bijay Bahadur Singh & Ors.)
- iv. AIR 1982 Bomb. 68 (Minoti vs. Sushil Mohansingh Malik & Anr.).

This position of law was incorporated by way of Section 25 of the Hindu Succession Act, 1956 as quoted above, which clearly enunciates that a person who commits murder or abates the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder. In fact, the objects and reasons also makes a reference to the Privy Council judgment (supra). The objects and reasons for enacting Section 25 read as under :

" A murderer, even if not disqualified under Hindu Law from succeeding to the estate of the person whom he has murdered, is so disqualified upon principles of justice, equity and good conscience. The murdered is not to be regarded as the stock of a fresh line of descent but should be regarded as non-existent when the succession opens."

Therefore, once it is held that a person who has murdered his father or a person from whom he wants to inherit, stands totally disqualified. Section 27 of the Hindu Succession Act makes it further clear that if any person is disqualified from inheriting any property under this Act, it shall be deemed as if such person had died before the intestate. That shows that a person who has murdered a person through whom he wants to inherit the property stands disqualified on that account. That means he will be deemed to have predeceased him. The effect of Section 25 read with Section 27 of the Hindu Succession Act, 1956 is that a murderer is totally disqualified to succeed to the estate of deceased. The framers of the Act in the objects and reasons have made a reference to the decision of the Privy Council that the murderer is not to be regarded as the stock of a fresh line of descent but should be regarded as non-existent. That means that a person who is guilty of committing the murder cannot be treated to have any relationship whatsoever with deceased's estate.

Now, advertng to the facts of the present case, the effect of Sections 25 and 27 is that the respondent No.1 cannot inherit any property of his father as he has murdered him on the principle of justice, equity and good conscience and the fresh stock of his line of descent ceased to exist in that case. Once the son is totally disinherited then his whole stock stands disinherited i.e. wife or son. The defendant-respondent No.1 son himself is totally disqualified by virtue of Sections 25 and 27 of the Hindu Succession Act and as such the wife can have no better claim in the property of the deceased, Ramasamy Konar.

Therefore, as a result of our above discussion, we are of opinion that the view taken by the learned Single Judge of the High Court of Madras is correct that the plaintiff is not entitled to

inherit the estate of the deceased, Ramasamy Konar and the learned Single Judge has rightly set aside the orders of the two courts below. Since we cannot decide this appeal without deciding the right of the respondent No.1 as the right of the appellant flows therefrom as his wife i.e. the plaintiff. Therefore, it was necessary for us to first decide whether the respondent No.1 could succeed or inherit the estate of his deceased father. When son cannot succeed then the wife who succeeds to the property through the husband cannot also lay a claim to the property of her father-in-law. The appeal is thus dismissed. No order as to costs.

JUDIS