
H. Ananthappa Mallappa Vs H.M. Bhojappa (since dead by L.Rs. Smt. Premamma, H. Surekha, H. Veena and H. Kumar)

Regular Second Appeal No. 126 of 2002

Court: Karnataka High Court

Date of Decision: Aug. 24, 2007

Acts Referred:

Hindu Succession Act, 1956 " Section 14, 14 (10, 14 (2)

Citation: (2008) 4 KarLJ 85 : (2007) 4 KCCR 2422

Hon'ble Judges: V. Jagannathan, J

Bench: Single Bench

Advocate: F.V. Patil, for the Appellant; B.M. Siddappa, for the Respondent

Final Decision: Allowed

Judgement

V. Jagannathan, J.

The appellant herein filed the suit in O.S. No. 313/1996 for declaration, possession and mesne profits in respect of the

suit properties against the respondent-defendant and the said suit was dismissed by the trial court. The appeal preferred by the appellant in R.A.

No. 31/1999 also met with the same fate at the hands of the lower appellate court and hence this second appeal by him.

2. The essential facts are to the effect that one Thulasamma, mother of the appellant as well as the defendant, was allotted certain properties

including the suit schedule house under a partition that took place on 18.5.1966. In respect of the suit property which was given to the above said

Thulasamma under the registered partition deed, a condition was put to the effect that Thulasamma shall have the right to sell the suit house for the

purpose of performing the marriage of the children of Mallappa, (the husband of Thulasamma) Thulasamma sold the suit property in favour of her

son, the plaintiff, under a registered sale deed dated 22.4.1983. The plaintiff's case is that he put his brother, the defendant, in permissive

possession of the suit house, but however, the defendant refused to vacate the suit premises and, therefore, the plaintiff was forced to file the suit as

above praying for the relief of declaration, possession and mesne profits. The said suit of the appellant herein was contested by the defendant by

taking up the stand that the suit property was given to Thulasamma under the registered partition deed only for the purpose of performing the

marriage of the children, who were not married at the time of partition and, therefore, as the children were married much before the sale deed was

executed by Thulasamma in favour of the plaintiff and as Thulasamma had not spent any amount towards the marriage expenses, she had no

saleable interest in the suit property and, therefore, the sale effected by her is invalid and, it was further contended by the defendant that he has

been in possession of the suit property and has been in enjoyment of the same as owner uninterruptedly even prior to the sale deed i.e., 22.4.1983

and, therefore, the suit of the plaintiff was liable to be dismissed for the aforesaid reasons and also on the ground of limitation.

3. The learned trial judge framed as many as ten issues and after appreciating the evidence let in before him, he answered issue Nos. 4, 8 and

additional issue No. 1 in the affirmative and all the other issues in the negative. The trial court, in the course of its judgment, came to the conclusion

that Thulasamma had no saleable interest in the suit property and, therefore, the question of the plaintiff acquiring title under the sale deed dated

22.4.1983 did not arise and this finding was also based on the reasoning that the appellant had failed to place evidence to show that Thulasamma

had sold the suit property to meet the marriage expenses of her children or for clearing any loan taken by her. As a result of the said reasoning, the

suit of the plaintiff was dismissed. The lower appellate court concurred with the trial court's findings on all the issues and the appeal filed by the

plaintiff was dismissed giving rise to this second appeal.

4. At the time of admission of this appeal, the following substantial questions of law were framed by this Court:

a) Admittedly the property in question was given to the possession of the appellant under the partition deed and even though she has been granted

another property separately the suit properties were also given to her possession and as such u/s 14 of the Hindu Succession Act whether the suit

property could be said to be the exclusive property of the appellant in view of the said Section 14(1) of the Act and whether the court below was

justified in holding that in view of the recital in the document, the property in question cannot be said to be the property granted exclusively to

Thulasamma?

b) Whether the courts below are right in holding that the suit filed by the plaintiff is barred by limitation under Article 58 of the Limitation Act?

5. I have heard the learned Counsel for the appellant Sri F.V. Patil and the learned Counsel for the respondents-L.Rs. Sri B.M. Siddappa and also

carefully perused the entire material on record including the judgments of the courts below.

6. The learned Counsel for the appellant submitted that the facts concerning partition having taken place under a registered partition deed dated

18.5.1966 and the further fact that Thulasamma sold the suit property in favour of the appellant herein under registered sale deed dated 22.4.1983

are not in dispute. But, it was contended by him that the courts below committed serious error in arriving at the conclusion that Thulasamma had no

saleable right to execute the sale deed as per Ex.P-2 in favour of the appellant herein and the said conclusion cannot be accepted as tenable in law

because, the very fact that under the registered partition deed, Thulasamma was given the suit property and further, she was also given the power

to sell the suit property itself establishes that Thulasamma had absolute right over the suit property and, as such, the view taken by both the courts

below is not only incorrect but it goes against the very spirit of the partition deed Ex.P-1. It was also submitted that by virtue of Section 14(1) of

the Hindu Succession Act, 1956, Thulasamma had become the absolute owner of the suit property and, therefore, she had every right to sell the

suit property in favour of the appellant herein and the conditions attached to the sale of the suit property by Thulasamma will have to be ignored

because, once the property vests in Thulasamma under the partition deed, she becomes the absolute owner of it and takes it without any

restrictions whatsoever being attached to the said property. As Thulasamma had every right to get a share in the joint family property, what was

given to her, therefore, will have to be treated as her absolute property and, as such, the conditions attached while vesting the suit property upon

Thulasamma will have to be ignored and, at the most, the said conditions can only be treated as a responsibility put on the shoulders of

Thulasamma and nothing more than that. It was then contended that the appellant had led evidence to show that Thulasamma did incur the

marriage expenses and this is also reflected in the recitals of the sale deed Ex.P-2 and, therefore, the question of Thulasamma not having any

saleable rights in the suit property does not arise even on this score.

7. As far as the ground of limitation is concerned, it was submitted that the courts below erred in applying Article 58 of the Limitation Act to the

case on hand, but the proper Article which ought to have been applied is Article 65 because, the respondent-defendant himself has taken up the

stand in his written statement that he is claiming adverse possession of the suit property and even the trial court had framed an issue in this regard

and the said issue has been answered in the negative. Therefore, the suit was filed within the period mentioned in Article 65 of the Limitation Act.

As regards concurrent findings on facts of the courts below is concerned, it is submitted that as both the courts below have totally misread the

partition deed Ex.P-1 and the sale deed Ex.P-2 and have wrongly come to the conclusion that Thulasamma had no saleable right, the said question

is a question of law requiring an answer and, as such, when the document is not properly interpreted by the courts below and the said document

itself forms the foundation for the rights of the parties, in such an event, this Court has every power to interfere with the judgments of the courts

below though they are based on concurrent findings of facts. In support of the above submissions, the learned Counsel placed reliance on the

following decisions:

- a) Sikka-N-Sikka Engineers Private Ltd. Vs. Cargo Transports,
- b) Rathinasamy Konar Vs. Nagammal and Another,
- c) Mrs. Indira Bhalchandra Gokhale (deceased by LRs) Vs. Union of India and Another,
- d) Somthim Veerabhadra Rao and Another Vs. Duggirala Lakshmi Devi, &
- e) AIR 1966 Pat 199

8. On the other hand, learned Counsel Sri. B.M. Siddappa for the respondents contended that the suit property was given to Thulasamma the

mother of the appellant on the condition that she will have to perform the marriage of her children who had not been married at the time of partition

and therefore, in view of the said condition put on Thulasamma while she was given the suit property, it has to be construed that Thulasamma had

only restricted estate in the suit property and therefore, in the absence of evidence to show that Thulasamma had incurred expenses towards the

marriage of her children, she could not have derive any saleable interest in the suit property. In this regard, the evidence placed before the trial

court clearly goes to indicate that the appellant herein has failed to establish the fact of Thulasamma incurring marriage expenses or incurring any

loan in order to perform the marriage of the children who had not been married and as such, the trial court has come to the definite conclusion that

the appellant had failed to prove the important aspect of amount being spent by Thulasamma for performing the marriage of her children. In this

connection, learned Counsel took me through the entire evidence on record as well as the reasoning given by the trial court and submitted that no

perversity of finding can be found in conclusion reached by the trial court and therefore, the finding on Issue No. 1 by the trial court does not call

for any interference and consequently, Thulasamma could not have sold the suit property to the appellant as per Ex.P-2.

9. Learned Counsel also referred to the contents of the partition deed Ex.P-1 to submit that in more than one place in the partition deed, it has

been mentioned that apart from giving some property to her, Thulasamma was also given the suit property, so that she could sell the suit property

and spend the amount towards the marriage of her children. Since the evidence on record goes to show that all the children of Thulasamma being

found married even prior to the execution of the sale deed as per Ex.P-2 in favour of the appellant herein, the question of Thulasamma incurring

any expenses towards marriage of her children therefore, did not arise. It was therefore, submitted that the view taken by the trial court is in

accordance with the evidence on record and the lower appellate court, has also concurred with the trial court on all aspects of the matter and thus,

concurrent finding of facts cannot be interfered by this Court in this second appeal unless it is shown that the findings recorded on facts are totally

perverse in nature. Even if the courts below had arrived at the conclusion erroneously on facts, yet, that is not a ground for this Court to interfere

with the concurrent finding of facts merely because it is possible for this Court to take another view of the matter. Another submission made by the

learned Counsel for the respondents is that as conditions were put on Thulasamma for bringing the suit property to sale, it has to be construed that

she was not given absolute power over the suit property and she had only limited interest in the suit property and as such, the case fell squarely u/s

14(2) of the Hindu Succession Act 1956 and Section 14(1) has no application.

10. It is also contended that it is not in the pleadings of the appellant before the trial court that Thulasamma had become the absolute owner of the

suit property and therefore, in the absence of any pleadings, it is not permissible for the appellant to now canvas before this Court that Thulasamma

has become the absolute owner of the suit property and that the case fell u/s 14(1) of Hindu Succession Act, 1956(Act for short).

11. So far as the ground of limitation is concerned, it is submitted that the view taken by the courts below that, Article 58 of the Limitation Act is

applicable, is correct and as the appellant is seeking the relief of declaration of title, it is Article 58 and not 65 that is applicable to the case on hand

and as such, having regard to the date of the sale deed Ex.P-2 the suit filed on 30.4.1996 is therefore, barred by time. As regards the contents of

Ex.P-2 sale deed is concerned, it is submitted that oral evidence is permissible to show that the recitals in the sale deed can be shown to be

incorrect or wrong or for that matter that they were only nominal in nature. In support of the above submissions, learned Counsel for the

respondents placed reliance on the following decisions:

a)

b) Raghubar Singh and Others Vs. Gulab Singh and Others,

c) Ram Khilona and Others Vs. Sardar and Others,

d) AIR 2002 SCW 718

e)AIR 2006 SCW 4790

f) ILR 1989 Kar 996

g) 1999 SCW 2240

h) AIR 199 SCW 3004

i) AIR 2006 SCW 2404

In the light of the principles laid down in the above cases, it was submitted that Thulasamma had only restricted interest in the suit property,

because of the conditions imposed upon her in the partition deed and therefore, as the appellant had failed to place convincing evidence to show

that Thulasamma had actually incurred expenses towards the marriage of her children or having taken loan in this connection, the view taken by the

courts below does not call for interference and the appeal therefore, be dismissed.

12. Having regard to the submissions made as aforesaid and the contentions put forward by the learned Counsel for the parties and also after

having gone through all the decisions cited by the learned Counsel for the parties, I proceed to answer the substantial question of law raised for

consideration as under.

13. The first question to be answered is whether it can be said that the suit property was the exclusive property given to the mother of the appellant

and that she became the absolute owner of the suit property by virtue of Section 14(1) of the Act and if the said question is answered by holding

that Thulasamma had become the absolute owner of the suit property, then the sale deed executed by Thulasamma in favour of the appellant will

have to be upheld as valid in law, notwithstanding the conditions attached to the vesting of the suit property in favour of Thulasamma. In that event,

the entire evidence concerning Thulasamma having not incurred any expenses towards marriage of her children becomes inconsequential. If on the

other hand, the answer to the question falls u/s 14(2) of the Act and in view of the evidence indicating that Thulasamma had not spent any amount

towards marriage of her children in favour of the respondents the sale by her will be invalid. With the above premise, I proceed to examine this

aspect of the matter having regard to the provisions of law and the principles laid down by the Apex Court and other courts in this regard. Section

14 of the Act reads as under:

Property of a female Hindu to be her absolute property- (1) Any property possessed by a female Hindu, whether acquired before or after the

commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a

decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a

restricted estate in such property.

14. The above section came up for interpretation before the Supreme Court in the case of Vaddeboyina Tulasamma and Ors. v. Vaddeboyina

Sesha Reddi (dead) by L.Rs. AIR 1977 SC 1944 and referred to the applicability of Sub-section (1) and (2) of Section 14, the Apex Court laid

down the following proposition of law:

Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in

lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and

possessed, she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso or exception to Sub-section (1)

and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and

economic position of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the

ameliorative provision contained in Sub-section (1). It cannot be interpreted in a manner which would rob Sub-section (1) of its efficacy and

deprive a Hindu female of the protection sought to be given to her by Sub-section (1).

Sub-section (2) must, therefore, be read in the context of Sub-section (1) so as to leave as large a scope for operation as possible to Sub-section

(1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing

right, under a gift, will, instrument, decree, order or award, the terms of which prescribed a restricted estate in the property. Where, however,

property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition

would not be within the scope and ambit of Sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a

restricted estate in the property.

15. It, therefore, becomes clear from the above interpretation given by the Apex Court that where a property is acquired by a Hindu female at a

partition or in lieu of right of maintenance, it is by virtue of pre-existing right and such acquisition is not within the scope and ambit of Sub-section

(2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

16. The use of word "possessed" in Sub-section (1) of Section 14 and the word "acquired" used in Sub-section (2) of Section 14 also came to be

explained by the Apex Court in another decision in the case of Seth Badri Prasad Vs. Srimati Kanso Devi, which reads thus:

While determining whether a particular case is governed by Sub-section (1) or Sub-section (2) of Section 14, the section has to be read as a

whole and it would depend on the facts of each case whether the same is covered by Sub-section (1) or (2). The word ""possessed"" in Sub-section

(1) has been used in its widest connotation and it may be either actual or constructive or in any form recognised by law. In the context in which it

has been used in Section 14 it means the state of owning or having in one"" hand or power.

The word ""acquired"" in Sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the

explanation which makes Sub-section (1) applicable to acquisition of property in manners mentioned therein. Sub-section (2) is more in the nature

of a proviso or an exception to Sub-section (1). It comes into operation only if acquisition in any of the methods indicated therein is made for the

first time without there being any pre-existing right in the female Hindu who is in possession of property.

17. Therefore, it becomes clear from the above proposition of law laid down by the apex Court that Section 14(2) comes into operation only if

acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in a female Hindu.

18. It is not the case of the parties that Thulasamma acquired the right, to the suit property for the first time under Ex.P-1 since Section 14(1) of

the Act provides that any property possessed by the Hindu female whether acquired before or after the commencement of the Act, the property

held by her as full owner and not as a limited owner. As both the parties do not dispute the fact of the suit property being given to Thulasamma as

her share in the partition, it becomes clear that Thulasamma also had an interest in the property of the family and under the partition she was given

the suit property along with another property. In other words, her share of the joint family property was given to her under the partition deed,

which implies that Thulasamma also had a pre-existing right in the property belonging to the joint family. A question was put to the learned Counsel

for the parties as to whether Thulasamma would have got her share in the property even in the absence of the partition deed Ex.P-1 coming into

existence and both the counsel answered the said question in the affirmative. In other words, learned Counsel for the respondent submitted that

only if there is a pre-existing right of maintenance, in such an event Thulasamma would get her share in the property even if the partition deed were

not be there.

19. By virtue of Section 14(1) of the Act, whatever be the nature of interest given to a female member at a partition, she takes the property as a

full owner. With regard to the property acquired by a female Hindu under a partition, it is also useful to refer to the observations of the learned

author N.R. Raghavachariar in his ""Hindu Law Principles and Precedents"" (8th Edition 1987). He has this to say:

Where a property is acquired by a female Hindu at a partition it is in virtue of a preexisting right and such an acquisition does not fall u/s 14(2) even

if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. To restrict this interest under an

instrument to a limited estate, it is necessary to establish that but for this instrument she cannot have taken any interest in the property.

20. The test is, therefore, to find out whether the acquisition is under the instrument or otherwise. If even without the instrument she has an interest

which interest becomes enlarged into an absolute interest by the enactment of this section, that absoluteness cannot be taken away by an instrument

of partition giving her a qualified interest in the property. No doubt, the word ""instrument"" in Sub-section (2) is comprehensive enough to take in an

instrument of partition. But the proper construction of Sub-section (2) appears to be that it relates to acquisitions under instruments in cases where

but for the instruments she can have no right in the property acquired.

21. As regards property given to the mother at the time of partition (as is in the instant case), it is also pertinent to refer to the commentary of

learned author Maine in his work ""Hindu Law and usage"" (14th Edition 1998) dealing with the property coming to the share of the mother in a

partition, says thus:

Prior to the Act, when the mother was given the property at the time of partition, it was held by her only as limited owner unless that was

specifically given to her to be held by as her absolute stridhana. But she now takes the property as full owner. In *Tulasamma v. Seshareddi* it was

held that the woman in a Hindu family is having an existing right to be maintained and has rights against the family property. It is, therefore, based

upon that right that the mother is given a share in the family property at the time of partition by coparceners. Consequently, the partition deed is not

one which creates a new right in her. It does not amount to creating a new right for the first time in her in property. It cannot therefore be said that

she acquired property by virtue of that deed; and consequently Sub-section (2) is not attracted and Sub-section (1) only would apply; thereby

enlarging her rights in the property as absolute rights notwithstanding any recitals in the deed.

22. In the same work, the learned author also has referred to a decision of the Supreme Court and make the following observations:

In *Jaswant Kaur v. Major Harpal Singh*, the Supreme Court had to consider a case where the husband bequeathed to his wife half of his property

imposing certain restriction on alienation. The Supreme Court observed that if a Hindu female acquires property under a written instrument or

decree, where such acquisition is not traceable to any antecedent title Sub-section (2) would be attracted and where an antecedent title is traceable

document in the nature of a will is of no consequence and the case will be covered by Sub-section (1). The Supreme Court held in this case that

Section 14(1) applied and the wife had an absolute right and the suit challenging an alienation made by her was liable to be dismissed.

23. It is also observed by the learned author at page 1107 of the said work thus:

Where property is allotted or transferred to a female in lieu of maintenance or a share at partition the instrument is taken out of the ambit of Sub-

section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

24. Keeping in view the above position in law as has been laid down by the Apex Court and also the views of the learned author referred to above

with regard to Section 14(1) and 14(2) of the Act, in the case on hand, it is not disputed by the parties that the suit property fell to the share of

Thulasamma under a partition effected through a registered partition deed as per Ex.P-1. Therefore, it has to be held that as it was a share given to

Thulasamma under a partition, the case falls squarely within the ambit of Section 14(1) of the Act and not u/s 14(2) of the Act. Once the said

conclusion is reached, it follows that Thulasamma has absolute right over the suit property and the restrictions put on her in the partition Ex.P-1,

therefore, will have to be ignored.

25. In this regard, in the decision referred to by the learned Counsel for the appellant reported in the case of Lachhia Sahuain Vs. Ram Shankar

Sah, a Division Bench of Patna High Court has observed that where a family property was divided by the owner between his wife and sons under

a partition and in the partition deed, the wife was directed to meet the expenses of litigation and ceremonies by selling the properties allotted to her,

such a direction held did not take the case out of the ambit of Section 14(1) of the Act.

In another case in the case of Somthim Veerabhadra Rao and Another Vs. Duggirala Lakshmi Devi, it has been held that:

In order to attract the provisions of Section 14(2), three things must necessarily exist. Firstly, there must be an instrument or a document in writing.

Secondly, that instrument or document must be the source or the foundation of the right of the Hindu female to the property in question: and thirdly,

that document must contain terms which create ""restricted estate"" taken by the Hindu female. If any one of these essentialities is absent, the estate

taken by the woman would fall under Sub-section (1) and she will get absolute estate. The three requirements constitute the test to determine

whether a given falls under Sub-section (2). If that test is not fulfilled, and if the requirements of Sub-section (1) are fulfilled, the woman instead of

a "restricted estate" would get an absolute one. Sub-section (1) therefore can be said to be subject to Sub-section (2).

26. Thus it becomes clear from the above observations made by the court, that if the instrument does not constitute the source of foundation of the

right to the property, a female Hindu takes the opportunity absolutely despite the instrument in her favour restricting her right in the property.

27. As Thulasamma also had a right to the joint family property of the family, what was given to her was her share of the property under the

partition deed Ex.P-1 and therefore, it cannot be said that the right to the suit property was created for the first time and newly under the

instrument of partition. But what was given to her under the partition was, as already stated by me, her share in the joint family property. Such

being the nature of the right derived by Thulasamma, merely because certain conditions were attached to the property which fell to her share in the

partition, it cannot be said that the restrictions will have to be given effect and that Section 14(2) is applicable and not Section 14(1).

28. I therefore, hold that Section 14(1) of the Act comes into operation in the instant case in respect of the suit property which fell to the share of

Thulasamma under the partition. Thulasamma in fact became the absolute owner of the suit property and therefore, the conditions or the

restrictions put will have to be ignored and consequently, the subsequent sale of the suit property by Thulasamma under the sale deed Ex. P-2

dated 22.4.1983 will have to be held valid in law and therefore, the courts below were completely in error in not applying correct provision of law

and by holding that Thulasamma had no saleable interest in the suit property, the trial court as well as the lower appellate court committed serious

error of law and the very fact that the suit property was given to the share of Thulasamma and that she was also given the right to sell the suit

property though for the purpose of incurring the marriage expenses, it becomes clear from a reading of conditions of Ex.P-1 that Thulasamma also

had saleable interest. As rightly submitted by the learned Counsel for the appellant, there is no condition mentioned in the partition deed Ex.P-1

that if Thulasamma does not spend amount towards the marriage expenses of her children, the property would revert back to the family and

therefore, what is not there in the document of partition cannot be read into it. Hence, the answer to the first question of law raised is that,

Thulasamma derived absolute ownership over the suit property by virtue of Section 14(1) of the Act and having become the exclusive owner of the

suit property, she also had the right to sell it and the alienation made by her by way of sale in favour of the first appellant herein will have to be held

as valid in law.

29. The next question is with regard to application of relevant article of the Limitation Act to the case on hand. Both the courts below have come

to the conclusion that Article 58 of the Limitation Act applies in view of the nature of the prayer made in the plaint by the appellant. I am unable to

subscribe myself to the view taken by the courts below because in the written statement filed, the respondent has clearly admitted that he is

claiming adverse possession of the suit property against the title of the appellant and therefore, the very stand taken by the respondent in the written

statement and the trial court also having framed an issue with regard to the claim of the respondent by way of adverse possession, Article 65 comes

into play and not Article 58 and therefore, the courts below also committed serious error of law in not applying the proper article to the case on

hand. Accordingly, I hold that the suit of the appellant is not barred by limitation. As far as the decisions referred to by the respondents' counsel is

concerned, the principles laid down in the said decisions are all well established principles of law, but the application of the said principles will

depend upon the facts and circumstances of each case.

30. So far as the scope of interference by this Court in the second appeal is concerned, all the decisions referred to by the learned Counsel for the

respondents lay down the well established principles and the Apex Court has summed up the said principles in the recent decision *Hero Vinoth v.*

Seshammal AIR 2006 SCW 2833 wherein the Supreme Court has observed thus:

The principles relating to Section 100 summarised as follows: (i) An inference of fact from the recitals or contents of a document is a question of

fact. But the legal effect of the terms of document is a question of law. Construction of a document involving the application of any principle of law,

is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a

document, it gives rise to a question of law. (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a

mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights

of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging

from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal

position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring

or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable,

but because the decision rendered on a material question, violates the settled position of law. (iii) The general rule is that High Court will not

interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognised exceptions are where (a) the

Courts below have ignored material evidence or acted on no evidence: (b) the Courts have drawn wrong inferences from proved facts by applying

the law erroneously; or (c) the courts have wrongly cast the burden of proof. When refer to "decision based on no evidence", it not only refers to

cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of

supporting the finding.

31. Thus, where the courts below have drawn wrong inference from proved facts by applying law erroneously, this Court will get the jurisdiction to

interfere u/s 100 of the CPC. In the case on hand also, though on facts both the courts have concurred with regard to the appellant having failed to

show that Thulasamma has spent any amount towards marriage expenses or of having incurred any loan, yet in the application of law is concerned,

both the courts committed serious error by holding that Thulasamma had no saleable interest in the suit property and hence, I am of the view that

both the courts lost sight of Section 14(1) of the Hindu Succession Act which confers absolute ownership to a female Hindu in respect of property

which falls to her share in a partition. As such, interference is called for despite concurrent finding of facts by the courts below.

32. In the result, I proceed to pass the following order:

33. The appeal is allowed.

34. The judgments and decrees passed by the lower appellate court as well by the trial court are set aside.

35. The suit of the appellant is allowed and decreed as prayed for by holding that the appellant is declared to be the owner of the suit property and

is also entitled to possession of the same. The respondent shall deliver possession of the suit property to the appellant within a period of three

months, failing which the appellant is at liberty to get the possession with due assistance from the court in accordance with law.

36. An enquiry is ordered in regard to mesne profits in accordance with Order 20 Rule 12 of the CPC. No Costs.