

(1983) 09 BOM CK 0057

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 241 of 1972

Anandrao and Others

APPELLANT

Vs

Govindrao Zingraji

RESPONDENT

Date of Decision: Sept. 13, 1983

Acts Referred:

- Hindu Succession Act, 1956 - Section 15(1), 8

Citation: AIR 1984 Bom 338 : (1984) ILR (Bom) 2559 : (1984) MhLj 671

Hon'ble Judges: Joshi, J

Bench: Single Bench

Advocate: B.P. Dharmadhikari, for the Appellant; G.V. Patil, for the Respondent

Judgement

1. This is a defendants second appeal against a decree for partition and separate possession of respondent plaintiffs held share in two suti fields.

2. The fields in suit are survey No. 66, Area 18 acres 39 gunthas and Survey No. 60, Area 14 acres of village of Mokhed Primpari in parties are related and their admitted relationship is disclosed by the following genealogy : -

genealogy and his sons formed a joint Hindu family. According to the plaintiff, on 22-5-1945 during the lifetime of Zingraji, he effected a partition of his property between himself and his two sons under the registered partition deed, Exhibit 39. The plaintiffs case was that the field survey No.66 was allottee in that partition to Zingraji share, certain other properties being allotted to the shares of two sons. After the partition, Zingraji purchased the second field survey No.60. Thus the plaintiffs case was that at the time of Zingraji death in 1950, he owned these two fields as his separate property. Tullasabai, the natural mother of Anandrao defendant 1, died in 1953. The plaintiffs case was that after the death of Zingraji and Tullasabai, the two sons Govindrao plaintiff and Anandrao defendant 1 owned a joint equal interest in these two fields by inheritance. In 1965, Govindrao, the respondent instituted the suit for partition and separate possession of his half share in these

two fields. The appellants denied these allegations. Both the courts below have found the partition of 1945 proved and on that basis have awarded a decree to the respondent plaintiff for partition and separate possession of his half share in the suit fields. It is against this concurrent decision of the two Courts below that the original defendants have preferred this second appeal.

3. The finding about the partition effected by Zingraji on 22-5-1945 is concurrently recorded by the Courts below and must be treated as conclusive in this second appeal. That finding is well supported, since it is based on the proof of the registered partition deed, Ext, 39 dated 22-5-1945. As rightly observed by the lower appellate court, there is no plea of reunion between Zingraji and the appellants.

4. But, in spite of that I find myself unable to agree to the conclusion drawn respondent-plaintiff was entitled to a decree for partition of his joint half interest in the suit fields. In my view, that interest would come to only one-third and not half. Since the two fields form, after the partition of 1945. The separate property of Zingraji, on his death on 21-4-1950, his interest in this property would devolve on his the Hindu Succession Act, 1956, the widow Tulsabai and the two sons Anandrao defendant 1 and Govindrao plaintiff getting an equal share. Thus, plaintiff govindrao would get a one-third interest in the suit fields at that stage, the other one-third going to the other son Anandrao defendant 1 and another one-third to his mother Tulsabai. Then Tulsabai died in the year 1953. Succession to her one-third interest in the suit fields would be governed, on her death, by the provisions of Sections to her one third interest in the suit fields would be governed, on her death, by the provisions of Section 15(1) of the Hindu Succession Act, 1956. The entry in sub-cl, (a) of Section 15(1) of the Hindu Succession Act, 1956 reads :-

"firstly, upon the sons and daughter (including the children of any pre-deceased son or daughter) and the husband".

The next entry in sub-clause (b) of 15(1) of the Hindu Succession Act, 1956 reads :-

"Secondly, upon the heirs of the husband". Now the question is, on death of Tulsabai, would her natural son Anandrao and also her step-son Govindrao plaintiff succeed equally to her interest in the suit fields u/s 15(1)(a) of the Hindu Succession Act, 1956? This would depend upon whether the expression "sons and daughter" used in that sub-clause would include step-sons and step-daughter also. If that expression did not include a step-son, then the step-son Govindrao plaintiff would come in only in the second entry there was a natural son of Tulsabai living, Anandrao defendant 1, the question of Govindrao to succeed sub-clause (b) would not arise.

5. In my view, the step-son Govindrao plaintiff would not inherit equally with anandrao defendant 1 to anandrao's mother Tulsabai on her death in 1955. This is view that has been taken by the Mysore High Court in Mallappa Fakirappa Sanna nagashetti v. Shivappa Air 1962 Mys 140 of that reported judgment, the Division

Bench deciding that case observed (at page 146) :-

In the absence of any definition or explanation to the effect that the word "son" would also include a step-son that word should be given its natural meaning; if so, a son of a deceased female would mean a male issue of the body of that deceased female".

A contrary view was, however, taken by a Division Bench of the Allahabad High Court in *Ram Katori v. Prakashwari* ILR (1968) ALL 697, where it was held that the property of a Hindu widow inherited by her from her husband would after her death devolve not only on her husband's daughter from her but equally on his (her husband) daughter from the predeceased wife. This interpretation proceeded on consideration of the fact that in Section 15(1)(a) of the Hindu Succession Act, 1956, the words used are "sons and daughter" and not "son or daughter of the deceased". This contrary view of the Allahabad High Court however, not accepted by the High Court of Punjab and Haryana in [Gurnam Singh Vs. Smt. Ass Kaur and Others](#), where the Mysore High Court view was preferred. In the Punjab and Haryana case, reference judgement to the decision of the Bombay High Court in [Rama Ananda Patil Vs. Appa Bhima Redekar and Others](#). In the Bombay decision the Division Bench observed in para 7 of the reported judgement while interpreting the provisions of Section 15(2) of the Hindu Succession Act, 1956 :-

"The plain and natural implication of the words, is that son should be hers and the daughter should also be hers. A female Hindu might have married once or she might have married more than once. Her sons and daughter may have been born to her from more than one husband....

Thus the son or daughter of the deceased can only mean a son or a daughter of the female dying intestate without regard as to from which husband they were born to her".

On a consideration of these authorities, it would appear to me that on the death of Tulsabai in the year 1953, her one-third interest in the suit fields would be inherited u/s 15(1)(a) of the Hindu Succession Act, 1956 by her natural son Anandrao defendant 1 alone to the exclusion of her step-son Govindrao plaintiff. The result would be that after the death of Tulsabai in 1953, the plaintiff respondent Govindrao would have only a one-third interest in the suit fields, while the remaining two-third interest would belong to the appellant 1 Anandrao, original defendant 1, he having inherited one-third interest in the suit fields on death of his father Zingraji and the other one-third interest on the death of his natural mother Tulsabai. Thus the plaintiff respondent would be entitled to a decree for partition of his only one-third interest in the suit fields and not a joint half interest, as has been awarded to him by both the Courts below. To that extent, the decree passed by the Courts below would need to be modified.

6. This second appeal is, therefore, partly allowed. The decree passed by the Courts below is modified by saying that the respondent plaintiff has only one-third joint interest in the suit fields and is entitled to get the same partitioned out and that he would be entitled to claim mesne profits in relation to his one third share from the date of the trial Courts judgement. The rest of the decree passed by the trial Court shall stand confirmed. In this second appeal, costs shall be borne as incurred

7. Appeal allowed partly.