

Venubai Ingale and Another Vs Saraswatibai alias Sumitra Ingale and Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: June 16, 1980

Acts Referred: Hindu Succession Act, 1956 " Section 6
Hindu Womens Right to Property Act, 1937 " Section 3

Citation: (1980) MhLj 907

Hon'ble Judges: S.C. Pratap, J

Bench: Single Bench

Advocate: J.N. Chandurkar, for the Appellant; N.L. Belekar, D.N. Belekar and D.B. Shende for respondent No. 1 and W.V. Deshpande and M.S. Chaudhari for respondent No. 2 and N.K. Diwan and P.T. Trivedi, for the Respondent

Final Decision: Dismissed

Judgement

S.C. Pratap, J.

This appeal by the original plaintiffs Venubai and Kamlabai, mother and daughter respectively, against the rejection by the

Courts below of their claim for partition and separate possession of their purported share in the suit joint family properties raises an interesting as

also a stimulating question of Hindu Law viz.:

Can a Hindu widow who has already, by virtue of section 3 of the Hindu Women's Rights to Property Act, 1937, carved out in her favour her

deceased husband's interest in the joint family properties, make a subsequent claim, based on section 6 of the Hindu Succession Act, 1956, to a

share in the interest of another coparcener having, at the time of his death, an interest in the remaining properties of the joint family ?

2. First, a look at the genealogy followed by a narration in brief of the undisputed facts Rajaram (died in 1958).

Renubai (defendant no. 2)

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Bajirao

(died on 1-9-1939) Manikrao (defendant no. 1) Lilabai (defendant

| no. 3)

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Venubai (plaintiff no. 1).

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Kamlabai (plaintiff no. 2).

Rajaram, his wife Renubai, their two sons Bajirao and Manikrao and daughter Lilabai constituted a joint Hindu family governed by the Mitakshara

School of Hindu Law. This family owned and possessed joint family properties. In 1939, Bajirao died leaving behind, apart from the other

members of the joint family, his widow Venubai and daughter Kamlabai, the present plaintiffs. In 1949, Bajirao's widow Venubai filed, against the

members of the joint Hindu family, a suit for partition and separate possession of her share in the joint Hindu family properties on the basis of her

having therein, by virtue of section 3 of the Hindu Women's Rights to Property Act, 1937, the same interest which her husband had therein at the

time of his death. This suit was decreed and Venubai was put in separate and exclusive possession of her decreed a share. Since then, Venubai

and her daughter Kamlabai have been, qua the said joint family, completely separate in residence, food and estate.

3. In 1956, Parliament enacted the Hindu Succession Act which came into force on 17th June, 1956. This Act radically amended and codified the

law relating to intestate succession amongst Hindus and conferred on almost all classes of female Hindu governed by it far more elevated rights

than before. In 1958, Rajaram, the father-in-law of Venubai, died leaving behind on the one hand his widow Renubai, son Manikrao and daughter

Lilabai all joint with him till his demise; and on the other hand his predeceased son Bajirao's widow and daughter, the plaintiffs herein Venubai and

Kamlabai, who had separated from the said joint family long prior to Rajaram's demise.

4. In 1963, Venubai (along with her daughter Kamlabai) filed against her brother-in-law Manikrao (defendant No. 1), her mother-in-law Renubai

(defendant No. 2) and her sister-in-law Lilabai (defendant No. 3) the present suit for partition and separate possession of one-fifth share in her

father-in-law deceased Rajaram's interest in the joint family properties. To this suit, alienees of some of the joint family properties were made party

defendants Nos. 4 to 8 on the ground that the impugned alienations were not binding on the plaintiffs. Resistance to the suit claim was mainly on the

ground that plaintiff Venubai having already in her prior suit partitioned and taken possession of her husband Bajirao's share and interest in the

joint family properties and having already separated from the joint family, it was no longer open to the plaintiffs to thereafter claim a share in

Rajaram's interest in the joint family properties because Rajaram's interest devolved only on those who were joint with him at the time of his death

and not also on those who had separated from the joint family long prior to his demise. The impugned alienations were also contended to be for

legal necessity and even otherwise not open to challenge by the plaintiffs. The suit, therefore, according to the defendants, was not maintainable

and liable to be dismissed.

5. The trial Court held that in view of the earlier decree already obtained and realised by plaintiff Venubai and her consequent separation from the

joint family long prior to the death of Rajaram, the plaintiffs had no right to thereafter claim any share in the interest of deceased Rajaram. As the

claim was liable to fail on the main issue itself, it was not considered necessary to decide the other subsidiary issues. The suit was thus dismissed.

Appeal therefrom also failed. Hence, this second appeal.

6. Before proceeding ahead, the relevant provisions of the two statutes, around which this appeal revolves, may be noted.

The Hindu Women's Rights to Property Act, 1937.

Section 3. "(1)...(Not relevant here).

(2) When a Hindu governed by any school of Hindu Law other than the Dayabhaga school or by customary law dies having at the time of his death

an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as

he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate,

provided however that she shall have the same right of claiming partition as a male owner.....".

The Hindu Succession Act, 1956.

Section 6. "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---(Not relevant here).

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 or any of his heirs to claim on intestacy a share in the interest referred to therein.

7. The Hindu Women's Rights to Property Act, 1937 (hereinafter the 1937 Act), constituted an important mile-stone in the history of social

reforms in Hindu Society. It made a vital inroad upon the concept of coparcenary transforming it to the extent of conferring upon a Hindu widow,

the status, if one may use the phrase, of a statutory or a deemed coparcenary albeit with a limited interest known as a Hindu Women's estate. As

observed by the Supreme Court in *Satrugan Isser Vs. Smt. Subujpari and Others*, [Paragraph (4)] :

The Act seeks to make fundamental changes in the concept of a coparcenary and the rights of members of the family in coparcenary

property.....The Act in investing the widow of a member of a coparcenary with the interest which the member had at the time of his death has

introduced changes which are alien to the structure of a coparcenary.

The right of a Hindu widow under this 1937 Act were, to a great extent, though not in all aspects, *pari passu* with those of a coparcener. This Act

conferred on her "the same interest" in the joint family properties which her husband had at the time of his death consequently giving rise, between

herself and the other surviving coparceners, to a community of interest and unity of possession. She also had "the same right" of claiming partition

as her husband had as also an equal right to question alienations. Her dominion extended jointly with the coparceners over the entire joint family

properties; and her interest therein, also like that of the coparceners, fluctuated with births and deaths. Thus, as her husband's surviving half, she

took his seat in the coparcenary and continued his legal persona till the joint family disrupted or till there occurred her own exit therefrom either as

a result of her demise or by her act of partial partition. But, unlike a coparcener, she took in the coparcenary no interest by birth nor any interest by

marriage but interest only on her husband's death and that too limited only to the extent of her husband's interest. In other words, on her

husband's demise, she, as his widow, became by operation of law viz., the 1937 Act, one akin or analogous to an associate or a co-opted

member of a corporate body possessing, though not all, yet some of the main indicia or concomitants of a coparcener's interest. It was a Hindu

widow's statutory induction---a new kind of interest---in the coparcenary. But whereas the male coparcenary took interest by birth or adoption, a

Hindu widow took interest only on her husband's death. Whereas the former was a creation *sou motu* by birth or adoption of a till then non-

existent interest, the latter was a statutory transmission of the husband's pre-existing interest. As held by the Supreme Court in *Potti Lakshmi*

Perumallu Vs. Potti Krishnavenamma,

This interest is in substitution of her right under the pre-existing Hindu Law to claim maintenance.....Undoubtedly she does not become a

coparcener, though her interest in the family property is to be the same as that of her deceased husband except that in extent it is to be that of a

Hindu widow.....According to the theory underlying the Hindu Law the widow of a deceased Hindu is his surviving half and, therefore, as long as

she is alive he must be deemed to continue to exist in her person. This surviving half had under the Hindu Law texts no right to claim a partition of

the property of the family to which her husband belonged. But the Act of 1937 has conferred that right upon her. When the Act says that she will

have the same right as her husband had it clearly means that she would be entitled to be allotted the same share as her husband would have entitled

to had he lived on the date on which she claimed partition".

8. The position and status of a Hindu widow, indeed of Hindu women in general, received radical impetus by the enactment in 1956 of the Hindu

Succession Act (hereinafter the 1956 Act). Though his enactment, by its own section 31, repealed the 1937 Act, it did so only after consolidating

and further extensively augmenting the rights of female Hindus. This 1956 Act amended and codified the law relating to succession amongst Hindu,

in the process effecting and bringing about far-reaching and fundamental changes in that behalf resulting in a comprehensive statutory scheme and

system of inheritance amongst Hindus. If the 1937 Act was the amber light, the 1956 Act was the green signal on the onward journey towards the

goal of equality amongst Hindu men and women. This 1956 Act brings about a drastic reorientation in the matter of succession and inheritance

rights of Hindu women. It unquestionably constitutes a landmark in the history of evolution of Hindu society with particular and special reference to

its women members. Hindu society has by now well assimilated these radical social reforms steadfastly uplifting and elevating Hindu women qua

property rights by succession and inheritance to the status of equality, in as many respects as possible, with their male counterparts. As observed in

Mulla's Principles of Hindu Law, 14th Edition, page 833:

Evolution and expansion are discernible in the successive state of legal thought in India and the traditional law itself had changed from time to time

down the centuries. The new legislation is characteristic of the age which is one of great ideals and fast changing theories. There is considerable

force in the remark belonging to times long past that Rules of succession to property being in their nature arbitrary are in all systems of law merely

conventional and even deep rooted traditions must yield to the march of time.

9. In the light of this legal position reverting to the question arising herein, it becomes clear that on her husband Bajirao's demise, plaintiff Venubai,

by virtue of section 3 of the 1937 Act, succeeded to his interest in the joint family properties and took therein the same interest which he had

therein including the right to claim partition and possession thereof. On Bajirao's demise, there was ipso facto a statutory vesting of his aforesaid

interest in his widow Venubai who, as his surviving half continued the legal persona of her husband. In that character Venubai, as the undisputed

facts show, instituted her 1949 suit and obtained therein in her favour a decree for partition and separate possession of her husband's interest and

share in the joint family properties. She realised that decree, took possession of the decreed share and along therewith severed from and left the

joint family. By these acts of Venubai and legal consequences flowing therefrom, Bajirao's branch thus stood delinked and separated from the joint

family with no surviving rights therein. However, the other members of the joint family continued to be joint as before retaining their status

accordingly and holding rest of the properties as of a joint and undivided family.

10. In 1958, Rajaram died. By that time, however, there had already come into effect the 1956 Act. u/s 6 thereof, Rajaram's interest in the

coparcenary properties would have devolved by survivorship upon the surviving members of the coparcenary. But in view of the proviso to the

said section, such devolution was not possible in the present case because, under this proviso, if the deceased left behind him surviving a female

relative specified in class I of the Schedule, then his interest would devolve not by survivorship but by testamentary or intestate succession, as the

case may be. As deceased Rajaram left behind as many as three such female relatives viz., Renubai his widow; plaintiff No. 1 Venubai, the widow

of his predeceased son Bajirao; and plaintiff No. 2 Kamlabai, the daughter of his said pre-deceased son, his i.e. Rajaram's interest devolved not

by survivorship but by succession which, in the absence of any will, would be intestate succession. This proviso was this an exception to the

doctrine of survivorship embodied in the main section 6. And under this proviso, had it stood by itself, the plaintiffs would have been entitled to a

share in Rajaram's interest and their instant suit would have had to be accordingly decreed.

11. But benefit of the said proviso is lost to the plaintiffs and their suit claim stands foreclosed and forfeited by virtue of Explanation 2 thereto. This

proviso, which carves out an exception to section 6, is itself subject to the exception embodied in this Explanation. Explanation 2 is thus an

exception to an exception. To recall the said Explanation :

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 or any of his heirs to claim on intestacy a share in the interest referred to therein

A Division Bench of the Mysore High Court which had occasion to consider this Explanation in *M.V. Shivaji Rao v. Rukminiyemma*, AIR 1973

Mys 113, observed thus (vide paragraph 11) :

Explanation 2 only reproduces the law which was already in force before the Act came into force.....persons who continue to remain joint with

other members of the family should be preferred in the matter of intestate succession to a person who has gone out of the family by taking away his

share.

Plaintiff Venubai who had continued in the coparcenary the legal persona of her husband Bajirao had, as already noticed, crystallized and carved

out his interest therefrom by her 1949 suit and decree therein. Having thus severed and separated Bajirao's branch from the coparcenary, the

plaintiffs, by virtue of Explanation 2 (and in the same manner as Bajirao himself, had he so taken his share, would have been), were disabled from

thereafter claiming any share in another coparcener Rajaram's interest in the coparcenary property. When Bajirao, if similarly situated, would have

himself been so precluded, the plaintiffs claiming through him would be fortiori be debarred. What Bajirao himself could not have claimed, his

heirs, the plaintiffs, also cannot claim. The Mitakshara School of Hindu Law is clear on the point that once any member of coparcenary gets

separated from the other members thereof, the members continuing thereafter to be joint exclude the separated erstwhile coparcener. Explanation

2 supra retains and reiterates this principle. The untenability of the plaintiffs' claim in their present suit is thus obvious. It fails to carry conviction. To

hold otherwise would not only be at once unjust but also contrary to law. It would result in "judicial frustration of parliamentary legislation".

12. My answer to the question framed at the inception would, therefore, be in the negative and against the claim contemplated thereunder. The

plaintiffs' instant suit based and founded on such a claim was, therefore, not maintainable. Its dismissal accordingly by the courts below was

correct and must be upheld. This appeal thus fails and is dismissed but, parties being closely related, with no order as to costs.