ERAMMA

v.

VERRUPANNA & ORS.

November 18, 1965

[P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

Hindu Succession Act (30 *of* 1956), *ss,* 8 *and* 14(1)—*If s.* 8 *retrospective—Scope of s.* 14(1)—*Possession by female as trespasser—If title conferred.*

On the death of the last male holder of the properties in dispute his two step mothers got possession of the properties. Claiming to be his nearest heirs, respondents 1 and 2 filed a suit for recovery of possession of the properties. After the High Court had, in appeal, passed a decree in their favour, the Hindu Succession Act, 1956, came into force, and when respondents 1 and 2 sought the execution of the decree in their favour, the appellant (who was one of the step mothers) filed objections, on the ground that she had been in possession of half the properties since the death of her husband, and that by virtue of the provisions of the Act, she had become full owner of the properties in her possession. The executing court accepted the contention and dismissed the execution petition. But the appeal to the High Court was allowed on the ground that the Act did not apply.

In her appeal to this Court, the appellant contended that : (i) under s. 8 of the Hindu Succession Act, she, being the step mother, was entitled to inherit the properties in preference to respondents 1 and 2, and (ii) by virtue of s. 14 she became the full owner of the properties and therefore the respondents No. 1 and 2 could not be allowed to proceed with the execution.

HELD : (i) The provisions of s. 8 are not retrospective in operation and therefore, where a male Hindu died before the Act came into force, that is, when succession opened before the Act, the section will have no application. [629 F]

(ii) At the time of the death of appellant's husband the Hindu Women's Right to Property Act, 1937 had not come into force and so, when the Hindu Succession Act came into force, the appellant had no manner of title to the properties. Therefore, though the appellant was in possession of properties, that fact alone was not sufficient to attract the operation of s. 14. [629 H; 630 D]

The object of the section is to extinguish the estate called "limited estate" or "widow's estate" in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. It does not in any way confer a title on the female Hindu when she did not in fact possess any vestige of title. The provisions of s. 14(1) cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act, when she is only a trespasser without any right to the property. [630 G-H; 631 B, C]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 742 of 1965.

Appeal from the judgment and decree dated June 9, 1965 of the Mysore High Court in R.A. No. 90 of 1957.

B *S. P. Sinha, E. C. Agarwala* and *P. C. Agarwala,* for the appellant.

S. V. Gupte, Solicitor-General, R. V. Pillai, for respondents Nos. 1 and 2.

M. M. Kshatriya and *R. Thiagarajan,* for respondent No. 3.

C

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by the Judgment—debtor, Eramma against the judgment and decree dated June 9, 1965 in R.A. no. 90 of 1957 of the High Court of Mysore setting D aside the order of the District Judge of Raichur dated February 14, 1957 dismissing an execution petition.

The appellant—Eramma—and the 3rd respondent—Siddamma—were, at the relevant time, widows of Eran Gowda who also had a third wife—Sharnamma. By the said Sharnamma, Eran E Gowda had a son called Basanna who died in the year 1347 F. (corresponding to 1936-37 A.D.) at a time when he was the sole male holder of the property in dispute. After his death his step mothers Eramma and Siddamma got into possession of the properties. Respondents 1 and 2 thereafter filed a suit in the Sadar Adalat, Gulbarga claiming that they, as the nearest heirs of Ba- F sanna, were entitled to all the properties left by him and seeking to recover possession thereof from his step-mothers—Eramma and Siddamma. The suit was contested by Eramma on the ground that she had adopted Sogan Gouda, respondent no. 4 on the basis of the authority alleged to have been given to her by her husband Eran Gowda. It was claimed by Siddamma that she had adopted G Sharnappa, respondent no. 5 on the basis of the authority alleged to have been conveyed under a will. The trial court rejected the case of Eramma but upheld that of Siddamma. On appeal to the High Court, Siddamma's claim of adoption was also negatived. In the result the High Court passed a decree in favour of respondents 1 and 2. Eramma and Siddamma thereafter applied to the High H Court for a certificate of fitness to appeal to this Court. Siddamma was granted such certificate but the High Court refused to grant a certificate to Eramma who filed an application in this Court for

special leave. During the pendency of these proceedings the Hindu Succession Act, 1956 came into force with effect from June 17, 1956. Respondents 1 and 2 have put to execution the decree granted by the High Court in their favour. Eramma filed an objection in the Execution Court on the ground that she had been in possession of half the properties since the death of her husband and the decree was non-executable in view of the provisions of the Hindu Succession Act, 1956 and that she had now become full owner of the properties of which she is in possession. The case of Eramma was accepted by the District Judge, Raichur who dismissed the execution case on February 14, 1957. Respondents 1 and 2 preferred an appeal to the Mysore High Court against the order of the District Judge, dismissing the execution case. The appeal was allowed by the High Court on the ground that Hindu Succession Act, 1956 was not applicable to the case and Eramma did not acquire full ownership under s. 14(1) of that Act. The High Court accordingly set aside the order of the District Judge dated February 14, 1957 dismissing the execution case and restored the execution case to the file of the District Judge for being dealt with in accordance with law.

On behalf of the appellant Mr. Sinha contended, in the first place, that under s. 8 of the Hindu Succession Act the appellant being the step mother is entitled to inherit the properties of Baswan Gouda in preference to respondents 1 and 2. Mr. Sinha conceded that Baswan Gouda died on October 23, 1936 long before the coming into operation of Hindu Succession Act. It was, however, submitted for the appellant that s. 8 of the Hindu Succession Act was retrospective in operation and the appellant must be held to be in possession of the properties in her own right. In our opinion, the submission of Mr. Sinha is not warranted by the language of s. 8 which is to the following effect:

> "8. 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;
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> (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
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> (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."

A There is nothing in the language of this section to suggest that it has retrospective operation. The words "The property of a male Hindu dying intestate" and the words "shall devolve" occurring in the section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Hindu Succession Act.
B Reference may be made, in this connection, to s. 6 of the Act which states :

> "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
C 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
D 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.
>
> .....
E "

It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of s. 8 must be construed in the context of s. 6 of the Act. We accordingly hold that the provisions of s. 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force *i.e.*, where succession opened before the Act, s. 8 of the Act will have no application.

It was next contended by the appellant that she was admittedly in possession of half the properties of her husband Eran Gowda
G after he died in 1341 F and by virtue of s. 14 of the Hindu Succession Act she became the full owner of the properties and respondents 1 and 2 cannot, therefore, proceed with the execution case. We are unable to accept this argument as correct. At the time of Eran Gowda's death the Hindu Women's Right to Property Act, 1937 (Act 18 of 1937) had not come into force. It is admitted by
H Mr. Sinha that the Act was extended to Hyderabad State with effect from February 7, 1953. It is manifest that at the time of promulgation of Hindu Succession Act, 1956 the appellant had no manner

of title to properties of Eran Gowda. Section 14(1) of the Hindu Succession Act states : A

> "14. (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. B
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> *Explanation.*—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill C or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

It is true that the appellant was in possession of Eran Gowda's D properties but that fact alone is not sufficient to attract the operation of s. 14. The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to s. 14(1) sets out the various modes of acquisition of the property by a female E Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-s. (1) of s. 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be F changed into full ownership. In other words, s. 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who G under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-s. (1) of s. 14 defines the word 'property' as including "both movable and immovable property acquired by a female Hindu by inheritance H or devise.....". Sub-section (2) of s. 14 also refers to acquisition of property. It is true that the Explanation has not given

A any exhaustive connotation of the word 'property' but the word 'acquired' used in the Explanation and also in sub-s. (2) of s. 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not B in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of s. 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the com- C mencement of the Act when she is only a trespasser without any right to property.

For these reasons we hold that the judgment of the High Court is correct and this appeal should be dismissed. We do not propose to make any order as to costs.

D

Appeal dismissed.