

PETITIONER:
VANKAMAMIDI VENKATA SUBBA RAO

Vs.

RESPONDENT:
CHATLAPALLI SEETHARAMARATHARANGANAYAKAMMA

DATE OF JUDGMENT: 02/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the Division Bench of the High Court of Andhra Pradesh, made on 23.3.1985 in Appeal No. 543 of 1977.

The admitted facts are that one V. Satyanarayana has executed a will dated December 1, 1950 bequeathing 2.66 acres of wet land in favour of his wife Smt. Raghavamma and also another gift deed bequeathing lands in favour of his daughter Smt. Seetharamratna Ranganayakamma, the respondent herein. He died on December 2, 1950 leaving behind him his widow Raghavamma, his minor son, the appellant herein and his daughter the respondent. Subsequently, this widow Raghavamma filed OS No.182/53 in the Sub-Court, Tenali for partition of all the properties into equal shares between herself and the appellant. Therein a compromise was effected and a decree in terms thereof under Ex.A-11 was passed on July 13, 1955. Under the compromise decree, the property bequeathed in favour of the respondent. Ranganayakamma was affirmed. The properties sold by the appellant to the third party also was affirmed. the balance property was partitioned in equal shares 6.5 acres with a right of reversion to the appellant on the demise of Raghavamma. Subsequently, on April 25, 1959, the appellant has executed another gift deed to an extent of 1.50 acres of land in favour of third party jointly with his mother wherein she acknowledged that the property has by Raghavamma under compromise decree under Ex.A-11 was conferred with a limited interest in terms thereof. Thereby, she had acknowledged that she had a life interest in the properties and under the compromise decree. Equally, the appellant has executed another gift deed to an extent of 1.97 acres bequeathing under Ex.A-4 in favour of his mother to enjoy the property during her life time as limited owner. She accepted, acted on and enjoyed for life. This was also pursuant to the compromise decree under Ex.A-11. Therein also she had acknowledged that she had life interest in the compromise decree under Ex.A-11. After the estate was abolished under the AP(AA) Estate (Abolition and Conversion into Ryotwari) Act 1948 (for short, the 'Abolition Act'), the claim under Section 15 of the Act was filed. Thereunder, the husband of

the respondent laid the claim for Ryotwari patta. The Settlement Officer negatived the claim of the appellant and granted patta in favour of Krishnamurthy, namely, the husband of the respondent. On appeal, in TAS No. 84/61 dated December 3, 1962, the appellate authority set aside the order and granted joint patta in favour of appellant No.1 and his mother Raghavamma. On her demise on April 7, 1973, the appellant filed an application and patta to the entire extent was granted exclusively in favour of the first appellant.

Raghavamma had executed a will in favour of the respondent bequeathing the property obtained under Ex.A-11. In furtherance thereof, the respondent filed OS No. 94/73 of possession of the properties under the will dated July 6, 1972. The trial Court dismissed the suit. On appeal, it was decreed. Thus, this appeal by special leave.

The only question that arises for consideration is whether Raghavamma, the mother of first respondent and the appellant has a limited estate under the compromise decree under Ex.A-11 attracting sub-section (2) of Section 14 or the same was enlarged into an absolute estate by operation of sub-section (1) of Section 14 of the Hindu Succession Act, 1956 (for short, the 'Act'). The High Court proceeded on the premise that Raghavamma being a widow of Satyanarayana had a right to partition under Hindu Women's Right to Property Act, 1937 and, therefore, when she has a right to file a suit for partition of the property acquired by her under Ex.A-11, compromise decree, is in recognition of her pre-existing right to maintenance which was enlarged into an absolute estate. Therefore, by operation of sub-section (1) of Section 14 of the Act, the right was enlarged into an absolute estate.

The question is: whether the view taken by the High Court is correct in law? Shri C. Sitaramiah, learned senior counsel appearing for the appellant contends that by virtue of the settlement deeds, Ex.B-3 and A-4 dated April 25, 1959 executed by the first appellant jointly with his mother, Raghavamma in favour of third party and Raghavamma being a signatory to the document, had acknowledged that she has only life interest in term of the compromise decree, Ex.A-11 which recites that she has life interest and on her demise the property would revert back to the first appellant, the will executed by her is neither valid nor binds the appellant. In that view of the matter and in the light of the patta granted by the Settlement Officer under Section 15 of the Act, the view taken by the High Court is not correct and the suit itself is not maintainable. The right under Section 14(2) will be only restricted right and, therefore, she has no right to will away the property has by her under Ex.A-11 in favour of the respondent.

Mr. A. Subba Rao, learned counsel appearing for the respondent, on the other hand, contends that the compromise decree is dated July 30, 1955, i.e., anterior to the coming into force of the Succession Act. It is only in recognitions of her pre-existing right, though her husband has executed a will under which has bequeathed 2.66 acres for her life towards maintenance which will she did not accept. On the other hand, in assertion of her right as a widow's estate in her husband's property, she filed the suit for partition of the property in two equal shares between herself and her son, the appellant herein. Therein, the compromise decree was effected under Ex.A-11. The compromise reiterates her pre-existing right to maintenance. Therefore, this is not a right acquired for the first time under Ex.A-11. It is only in recognition of her properties given to her under Ex.A-11

enlarged into an absolute right and operation of Section 14(1) of the Act. The gift deeds Ex.B-3 and A-4 executed on April 25, 1959 between Raghavamma, the mother of the respondent, and the first appellant must be understood in the light of the mutual affection they has at that time. Therefore, though there is a recital that she has only life interest in the property has under the compromise decree, that does not stand in her way to will away the properties during her life time in favour of her daughter-the respondent. Therefore, absolute right she had under Section 14(1) cannot be defeated by her accepting Exs.B-3 and A-4. It is also contended that since her right under the will was required to be established, the first respondent was not required to approach the Settlement Authorities laying her claim for patta.

Under these circumstances, the patta granted under Section 15 of the Abolition Act does not stand in the way of the Civil Court's going into the question.

In view of the respective contentions, the question that arises for consideration is: whether the compromise decree, Ex.A-11, is only in recognition of pre-existing right or whether Raghavamma has enlarged her limited right?

It is well settled legal position that if the right by a Hindu woman under any instrument is in recognition of pre-existing right, the limited right though prescribed under the instrument, gets enlarged into an absolute right by operation of Section 14(1) of the Act. On the other hand, if a right is acquired for the first time under the document, then sub-section (2) of Section 14 gets attracted and, therefore, the right acquired under the instrument by operation of sub-section (2) of Section 14 does not get enlarged.

This controversy was considered by this Court in a recent judgment rendered in C. Masilamani Mudaliar & Ors. vs. Idol of Shri Swaminathaswami Thirukoil & Ors [(1996) 8 SCC 525]. In paragraph 27, this Court, after consideration of the entire case law, has held as under:

"As held by this Court if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige of pre-existing right under the instrument, document or device etc. then sub-section (2) of Section 14 gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of sub-section (1). Sub-Section (2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu under Section 30 is required to be understood in this perspective and if any attempt is made to put restriction female under an instrument, document or device, though executed after the Act has come into force, it must be interpreted in the light of the facts and circumstance in each case and to construe whether Hindu female acquired or possessed the

property in recognition of her pre-existing right or she get the right for the first time under the instrument without any vestige of pre-existing right. If the answer is in the gets attracted. Thus construed, both sub-section (1) and (2) of Section 14 will be given their full play without rendering either as otiose or aids as means of avoidance."

Shri C. Sitaramiah, learned senior counsel, has placed reliance on this paragraph and contends that since she has acknowledged her limited right under compromise decree, Ex.A-11, she acquired only limited right for the first time under the compromise decree and, therefore, sub-section (1) of Section 14 gets attracted. On the other hand, Mr. A. Subba Rao, learned counsel contends that this ratio squarely applies to the facts in this case. There also a compromise decree was executed. Thereunder, the right was given enlarging the limited estate of a widow into an absolute estate attracting section 14(1) of the Act and, therefore, the ratio is in hi favour.

In view of the respective contentions, the question is; what right Raghavamma acquired under the document - Ex.A-11? Ex.A-11 expressly mentions as under:

"The plaintiff gets the property marked in blue pencil in the plan attached hereto and on her death the same shall devolve on the Ist defendant (first appellant) and that Ist defendant do get the residuary properties shown in the plan hereto. (more fully described in the compromise petition)."

It is true, as rightly contended by Mr. Subba Rao, that a compromise decree was passed in July, 1955; it was in recognition of her pre-existing right. But how she has understood her limited right gets reflected in subsequent documents to which she was admittedly a partly and dealt with after the Act came into force pursuant to the compromise decree.

Raghavamma, the mother of the first respondent and the first appellant has executed a sale deed, Ex.B-3, in favour of the third party alienating 1.50 acres of land has under the compromise decree. Therein she has specifically stated that she has a life interest in terms of the compromise decree, Ex.A-11. Similarly, a gift deed was executed in favour of Raghavamma by the first appellant in respect of 1.90 acres of land. Thereunder also, she had acknowledged not only the limited estate had under the compromise decree but also her limited right under Ex.4 for enjoyment during her life time and the possession given as per the compromise decree. Thus, it could be seen that after the Act had come into force, in 1959 she had acknowledged in Ex.A-3 and A-4 that what she obtained under the compromise decree, Ex.A-11, was a limited right with the provision that the property would revert to her son, the first appellant. Thus, it could be seen that she had admitted that she had only limited right acquired for the first time under the compromise decree. Thereby, sub-section (2) of Section 14 of the Act and not sub-section (1) of Section 14 stands attracted. That apart, even the Settlement Officer has passed an order granting ryotwari patta under Section 15 of the Abolition Act which became final.

This Court in Vatticherukuri Village Panchayat vs. Nori Vnkatarama Deekshithulu & Ors. [(1991) Supp. 2 SCC 288], after considering the entire case law, had held that the civil Court has no jurisdiction to go into the correctness of the patta granted by the Settlement Authorities. Under Section 9, CPC, the Courts shall, subject to the provisions contained therein, have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil Court would take cognizance of its. Therefore, the normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The Rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the civil Court is assumed. The exclusion would, therefore, normally be an exception. Court generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. However, in the development of civil adjudication of civil disputes, due to pendency of adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of disputes with less expensive but expeditious disposal. It is settled legal position that if a Tribunal with limited jurisdiction cannot assume jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the Court that is required to decide whether the Tribunal with limited jurisdiction has correctly assumed jurisdiction equally settled that when jurisdiction is conferred on a Tribunal, the Court examine whether the essential principle of jurisdiction have been followed and decided by the Tribunal leaving the decision on merits to the Tribunal. It is also equally settled legal position that where a statute gives finality to the order of the special Tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil Court would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principle of judicial procedure. Where there is an express bar of jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides procedure for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the Tribunal so constituted and whether remedies is normally associated with the action in civil courts or prescribed by the statutes or not. Therefore, each case requires examination whether the statute provides right and remedies and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil Court in respect thereof. After the advent of independence, the land reforms was one of the policies of the Government abolishing feudal system of land tenures and conforment of the Ryotwari patta on the

tiller of the soil. Thereby, the land reform laws extinguish pre-existing rights and create new rights under the Act. The Act confers jurisdiction on the Tribunals in matter relating thereto and hierarchy of appeals/revisions are provided thereunder. Thereby, by necessary implication, the jurisdiction of the civil Court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded giving not only the finality to the decision of the Tribunal but also ensuring expeditious, inexpensive and simple procedure for disposal of the matters by the Tribunal and make the Ryotwari patta granted to the tiller of the soil conclusive. Under the normal course of civil procedure, the jurisdiction of the trial of the civil suits in relation to the matters covered under the Acts being time consuming and tardy the lack of his financial support or otherwise incapacity in defending or working the rights in the civil courts and by hierarchy of appeals defeat justice. Obviously, therefore, the civil suits by necessary implication stand excluded unless the fundamental principle of procedure are not followed by the Tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires Tribunals to enquire into the rival claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil Court stands excluded.

Thus, it could be seen that the civil Court cannot unsettle the patta which has become final in the decree now passed pursuant to the declaration.

We are of the view that the Division Bench is not right in granting the decree for the proprieties gifted to her under the will dated 16.7.1972.

The appeal is accordingly allowed. But, in the circumstance, without costs.