

PETITIONER:
VAIJANATH & ORS.

Vs.

RESPONDENT:
GURAMMA & ANR.

DATE OF JUDGMENT: 18/11/1998

BENCH:
SUJATA V. MANOHAR, & G.B. PATTANAIK.

JUDGMENT:

DER

The application to bring on record Respondent No.2 also as legal representative of deceased Respondent No. 1 is allowed.

The Ist respondent was the widow of one Ramshetti who died some time in July, 1954. The 2nd respondent is her daughter. Ramshetti and his brother Veerappa, during their life time constituted a joint family which owned, inter alia agricultural land. The present appellants are the widow, sons and daughters of Veerappa.

On a partition of the joint family property which was ordered in proceedings arising pursuant to regular Suit No. 88/78 for partition and possession, the Ist respondent as widow of Ramshetti has been given a share in the agricultural lands belonging to the joint family. The appellants contended that under the Hindu Women's Right to Property Act as applied in the erstwhile State of Hyderabad where the lands were situated, the Ist respondent being the widow of deceased Ramshetti, was not entitled to a share in the joint family agricultural lands. Agricultural lands are excluded from the provisions of the Hindu Women's Right to Property Act, 1937. This contention has been negatived by the High Court. Hence the present appeal has been filed by the heirs of Veerappa.

On the date of death of Ramshetti in July, 1954, the lands were situated in the erstwhile State of Hyderabad, Under the Hyderabad (Application of Central Acts) Act, 1952 which received assent of the President on 22nd of July, 1953, certain Central Acts affecting Hindu and Muslim laws were applied to the State of Hyderabad. One of the laws so applied to the State of Hyderabad was the Hindu Women's right to Property Act, 1937.

Scheme 3 of the Hyderabad (Application of Central Acts) Act, 1952, hereinafter referred to as the Hyderabad Act of 1952, stated that Acts specified therein shall, with effect from the appointed day, extend to and be in force in the whole of the State of Hyderabad subject to the modification mentioned in the Schedule and shall accordingly be in force in the said State with effect from the said date in the forma respectively specified in Annexures 'A', 'B', 'C', 'D', 'E' and 'F' to the Schedule, in the Schedule to the said Act the modification to the Hindu Women's Right to Property Act, 1937 is set out. The only modification is,

"For sub-section (2) of Section 1, the following sub-section shall be substituted, it extends to the whole of the State of Hyderabad, 'Annexure C' to the said Hyderabad Act of 1952 sets out the text of the Hindu Women's Rights to Property Act, 1937 as modified by the aforesaid Schedule and applicable in the State of Hyderabad. the entire text of the Act remains the same with the modification of sub-section (3) of the said Hindu Women's Right to Property Act, 1937 when a Hindu governed by any school other than Dayabhaga School of Hindu Law or a customary law, dies intestate having at the time of his death an interest in a Hindu Joint Family Property, his widow shall have in the property the same interest as he himself had, subject to sub-section (3). Under sub-section (3) Under sub-section (3) the interest devolving on a Hindu Woman's Estate. There is no definition of property under the Hindu Women's Rights to Property Act, 1937. Therefore, the term property has to be given its ordinary meaning which would include agricultural land also.

However, the appellants rely upon a decision of the Federal Court in Re: Hindu Women's Right to Property Act. 1937 AIR 1941 Federal Court page 72 under which the validity of the said Original Act which had been enacted by the Central Legislature was considered by the Federal Court, Examining the question of legislative competence of the Central Legislature to enact in 1937 the Hindu Women's Right to Property Act the Federal Court examined the legislative entries under the Government of India Act, 1935. It held that under Entry 21 of List II which applied to the Provincial Legislatures, laws with respect to devolution of agricultural land could be enacted only by the Provincial Legislature. It also noted that in List III, that is to say, the Concurrent List, Entry 7 was wills, intestacy and succession save and except agricultural land'. The Federal Court observe that while the Act purports to deal in quite general terms with property' or 'separate property' of a Hindu dying intestate or his interest in joint family property, it does not distinguish between agricultural land and other property and. therefore, is not limited in terms to the latter. However, looking to the completeness of the Central Legislature to enact such a law the word 'property' will have to be suitable construed. 'When legislature with limited and restricted powers makes use of such a word of such a wide and general import, the presumption must surely be that it is using it with reference to that kind or property with respect to which it is competent to legislate and to no other. The Federal Court, therefore, restricted the application of the Hindu Women's Rights to Property Act, 1937 by excluding agricultural lands from its purview.

The same constraint do not apply to the said Hyderabad Act of 1952 passed by the legislature of the State of Hyderabad, which has received the assent of the President on 22nd of July, 1953. The relevant Legislative entries under the Constitution of India are somewhat different. Entry 5 in the Concurrent List, being List III in the 7th Schedule of the Constitution, is as follows:

"Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."

The is no exclusion of agricultural lands from Entry 5 which covers wills, intestacy and succession as also joint family and partition. Although Entry 6 of the Concurrent List refers to transfer of property other than agricultural land, agriculture as well as land including transfer and alienation of agricultural land are placed under Entries 14 and 18 of the State List. Therefore, it is quite apparent that the Legislature of the State of Hyderabad was competent to enact a Legislation which dealt with intestacy and succession relating to Joint Family Property including agricultural land. The language of the Hindu Women's Right to Property Act, 1937 as enacted in the State of Hyderabad is as general as the Original Act. The words 'property' as well as 'interest in Joint Family Property' are wide enough to cover agricultural lands also. Therefore, on an interpretation of the Hindu Women's Right to Property Act, 1937 as enacted by the State of Hyderabad, the Act covers agricultural lands. As the Federal Court has noted in the above judgment, the Hindu Women's Right to Property Act is a remedial Act seeking to mitigate hardships of a widow regarding inheritance under the Hindu Law prior to the enactment of the 1937 Act; and it ought to receive a beneficial interpretation. The beneficial interpretation in the present context would clearly cover agricultural lands under the word 'property'. This Act also received the assent of the President under Article 254(2) and, therefore, it will prevail.

The appellants, however, rely upon a subsequent Act passed by the State of Hyderabad, namely, Hyderabad Hindu Women's Rights to Property (Extension to Agricultural Land) Act, 1954. Section 2 of the said Act provides that "term 'property' in the Hindu Women's Rights to Property Act as in force in the State of Hyderabad shall include agricultural land. This Act received the assent of the President on 15th October, 1954 and was published in the State Gazette dated 22nd of October, 1954. It was submitted that prior to the enactment of the Hyderabad Hindu Women's Right to Property (Extension to Agricultural Lands) Act, 1954, the Hindu women's Right to Property Act as enacted in 1952 would not apply to agricultural land. The High Court has rightly negatived this contention. A subsequent Act cannot be used to interpret the provisions of an earlier enactment in this fashion. The language of the earlier Act is wide enough to cover agricultural land also. In the entire Hindu Women's Right to Property Act, 1937, there is nothing which would indicate that the Act does not apply to agricultural land. The word 'property' is a general term which covers all kinds of property, including agricultural land. A restricted interpretation was given to the original Hindu Women's Right to Property Act, 1937 enacted by the then Central Legislature, entirely because of the legislative entries in the Government of India Act, 1935, which excluded the legislative competence of the Central Legislature over agricultural lands. Such is not the case in respect of the Hindu Women's Right to Property act, 1937, as enacted by the State Legislature of the State of Hyderabad. The ratio of the Federal Court judgment, therefore, would not apply. There is, therefore, no substance in the contention that the subsequent Act of 1954 restricted the application of the Hindu Women's Right to Property Act, 1937 brought into force by the earlier Hyderabad Act of 1952. As is pointed out by the High Court, the Act of 1954 was enacted by way of abundant caution, to make sure that the agricultural lands

were not considered as excluded from the scope of the Hindu Women's Right to Property Act as enacted in 1952. The second Act is, therefore, clarificatory.

The High Court has dealt at length with various decisions of this Court and other Court on the question of interpretation of the said statute. Since we are in agreement with the reasoning and conclusion arrived at by the High Court, we are not again examining the cases referred to by the High Court. We, therefore, affirm the reasoning and conclusion arrived at by the High Court and dismiss this appeal. There will, however, be no order as to costs.

JUDIS