

CASE NO.:
Appeal (civil) 2930 of 1984

PETITIONER:
NARAYAN GOVIND HEGDE

RESPONDENT:
KAMALAKARA SHIVARAMA HEGDE AND ANR.

DATE OF JUDGMENT: 16/10/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 185

The Judgment of the Court was delivered by

PHUKAN, J. In this appeal by special leave the appellant has assailed the judgment of the learned Single Judge of the High Court in Civil Revision Petition No. 1992 of 1977. The parties herein shall be referred to as arrayed in the application filed under Section 37 of the Bombay Agricultural Debtors Relief Act, 1947 (for short 'the Act') read with Section 47 of the Code of Civil Procedure before the learned Munsif at Sirsi, Karnataka.

Briefly stated the facts are as follows :

The applicant before the learned Munsif, Kamalara is the son of the opposite party No. 3 viz. Smt. Yenki. Shri Ganpathi opposite party No. 2 lent a sum of Rs. 650 to the opposite party No. 3, who executed a promissory note in his favour. The opposite party No. 2 filed an application against Smt. Yenki, opposite party No. 3 under the provisions of the Act and obtained an award on 23.9.1948. By the award a charge was created over the properties mentioned in the award which included the present disputed land. The award was put into execution and the disputed suit land was auctioned. Shri Narayan, opposite party No. 1 purchased it in court auction and took possession on 5.9.1956. The father of the applicant died on 15.8.1946 and at that time the applicant was in the womb of his mother, opposite party No. 3. The applicant was born on 25.3.1947. In 1959 the brother-in-law of the applicant filed a civil suit for injunction restraining opposite party No. 1 from taking possession of the disputed land on behalf of the applicant, as his next friend, which was dismissed on the ground that the Civil Court had no power to go into legality or otherwise of the order passed under provisions of the Act. The appeal was also dismissed. In 1956, the said next friend filed an application under Section 37 of the Act which was dismissed as the learned counsel for the next friend represented that he had no instruction. On attaining majority, the present application was filed before the learned Munsif, which was dismissed. Being aggrieved, an appeal was filed by the applicant, which was allowed and the revision petition filed by the appellant was dismissed, by the impugned order, by the High Court and hence the present appeal.

We have heard Mr. S.S. Javali, learned senior counsel for the appellant and Mr. K.R. Nagaraja, learned counsel for the respondents.

On perusal of the judgment of the learned Munsif, we find that the Court relying on the pleadings of the parties framed two questions for consideration viz. whether the land was validly sold in auction under the Act and the applicant was bound by the said sale and secondly, whether the application was maintainable. Regarding the first question the Trial Court noted that the land was sold for legal necessity as the amount was borrowed

by his mother, opposite party No. 3 for necessity of the family and as the applicant did not assail the transaction on the ground of immorality or absence of any legal necessity, the auction sale was binding on the applicant. Regarding maintainability, the Trial Court held that the application was not maintainable as the order of dismissal of the application filed under Section 37 of the Act by the next friend of the applicant was dismissed and, therefore, mischief or order 9 of Rule 9 C.R.C. would come in play and the present application being a fresh one was barred. The first Appellate Court did not notice that the sale of the land was for legal necessity and in fact recorded a finding viz. "there is no allegation of legal necessity or benefit to the family so as to bind the other family members namely applicant himself, which was contrary to the facts of the case. The High Court did not consider the fact that land was sold for legal necessity.

Section 37 of the Act runs as follows :

"If, after an award is made under Section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, reopen the award and readjust the debts in accordance with the provisions of this Act.

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of Section 31."

On a plain reading of the Section we are of the view that a Court can reopen and readjust the award only if anyone of the following two conditions is satisfied, namely :

1. The debtor has other property which was not disclosed to the Court when the award was made; or
2. Any property including the award did not really belong to debtor.

The proviso deprives the debtor the benefit of Section 31 where the non disclosure of such property was in consequence of any fraud on the part of the debtor.

In the present application under Section 37 of the Act the only allegation made was that the applicant being the sole owner of disputed property after the death of his father the auction sale of the disputed property for satisfaction of the award was illegal and void and not binding on him and in other words Smt. Yenki, opposite party No. 3, against whom the award was made, was not the owner of the disputed land.

The ext. P-5 is a document, which was filed in the original proceeding under the Act on the basis of which award was made. In ext. P-5, in column 4 under the heading-'full particulars of original loan and other loans and interest charged thereon' - the following particulars were furnished, namely;

"The Debtor obtained of Rs. 650 on 1-11-46 for family necessity and executed a pro-note agreeing to pay interest on the principal at Rs. 12-8-0 per cent and to pay the principal and interest together on demand either to me or to my authority but has failed to pay anything either towards principal or interest. Hence pray for direction for pay-ment of Rs. 707 i.e., Rs. 650 being the principal and Rs. 57.00 being interest at the rate of Rs. 12-8-0." (emphasis supplied)

Thus, in the proceeding under which award was made it was disclosed that

opposite party No. 3 obtained the loan of Rs. 650 on 1-11-46 for family necessity and executed a pro-note. Therefore, the disputed property was sold for legal necessity and this has attained finality. Moreover, the applicant has not pleaded that the amount was not for legal necessity. The applicant has not also assailed this transaction on the ground of immorality or the absence of legal necessity. There is a clear finding of the learned Trial Court that the opposite party No. 3 did not take the loan for the purpose of any luxury and that as the debt incurred was for legal necessity it was binding on the applicant.

The provisions of sub-sections (2) and (3) of Section 3 of the Hindu Women's Right to Property Act, 1937 are relevant for our present purpose and are quoted below :

"3 (2). When a Hindu governed by any school of Hindu Law other than the Dayabhag 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 claim-ing partition as a male owner."

In Jaisri Sahu v. Rajdewan Dubey and others, [1962] 2 SCR 558=AIR (1962) SC 83, a four Judge Bench of this Court laid down the following ratio regarding right of a Hindu widow in dealing with properties of her late hus-band, which are extracted below :

"When a widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law."

Court further held that :

"Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are, as held in a series of decisions beginning with Hunooman Persaud v. Mussamat Babooee Mandraj Koonweree, 6 Moo Ind App 393 (PC) those of the manager of an infant's estate or the manager of a joint Hindu family".

Thus the settled position of law is that the widow succeeds as a heir to her husband. The ownership of properties vests in her. She fully represents the estate, the interest of reversioners therein being only spes successionis. In the case in hand after the death of her husband, the widow-Smt. Yenki, the opposite party No. 3 succeeded to the property of her husband and she was entitled to full enjoyment of the estate subject to limited interest known as Hindu Women's Estates. This right includes right to alienate the property for legal necessity of the family. Therefore, the allegation of the applicant that he was the sole owner of the disputed land is not sustainable in law.

In the case in hand the disputed land was sold for legal necessity. In the present application there is no averment or evidence to show that there was no legal necessity, therefore, we hold that the sale in question is binding on the applicant, who is a reversioner. We find merit in the present appeal

and accordingly it is allowed by setting aside the impugned judgment of the High Court as well as the first appellate court and the judgment of the Munsif is restored.

In the facts and circumstances of the case, parties to bear their own costs.

JUDIS