

PETITIONER:
SMT. JAYAMMA & ANR.

Vs.

RESPONDENT:
SMT. THIMMAMMA (DEAD) BY L.RS. & ANR.

DATE OF JUDGMENT 01/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KIRPAL B.N. (J)

CITATION:
1996 SCC (1) 506 JT 1995 (8) 505
1995 SCALE (6) 601

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.
Leave granted.

Though notices were served on both the respondents as early as in March 1991, till date none has appeared in person or through counsel. Notices served on them are sufficient. The respondents are daughters of one Doddahanumegowda. Doddahanumegowda died on May 21, 1972 leaving behind Chikhanumegowda, Ningamma (first defendant), Mariyamma (Plaintiff No.2), Javaramma (defendant No.2), and Boramma (defendant No.3) both through their predeceased son Chikhanumegowda. On his demise Mariyamma and Thimmamma, the daughters of Doddahanumegowda filed the suit for a declaration that they became owners pursuant to a settlement deed dated 23.5.1970 and succeeded to the entire property. Therefore, they were entitled to the exclusive possession of the plaintiff's property. Thereon, the appellants and their mother had contended that they being the heirs of predeceased son Chikhanumegowda, they are also entitled to half share in the coparcenary property left by Doddahanumegowda. The Trial Court dismissed O.S. No.216/72 by its judgment and decree dated June 20, 1977. But on appeal, the appellants court reversed the decree holding that the appellants had not proved as to when Chikhanumegowda died and that Doddahanumegowda being the sole surviving coparcener, he became the absolute owner and thereby he was entitled to bequeath the property in favour of his daughter, which was upheld by the High Court in S.A. No.34/79 by judgment and decree dated January 24, 1989.

It is seen that in the plaint the respondents had admitted that Chikhanumegowda died 33 years prior to the suit. Suit was filed in 1972. Thus, the death of Chikhanumegowda, the father of the appellants, admittedly occurred in 1938 or 1939 by which time the Hindu Women's Right to property Act, 1937 had come into force. Section

8(d) of the Act envisages that where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to the share of the classes of females enumerated in the sub-sections. Classes of females consist of widows and the daughter of the pre-deceased son of the sole surviving coparcener. Consequently, the appellants and their mother became entitled to the share in the coparcenary property. Since Chikhanumegowda and the father of the respondents being the only coparceners they are entitled to equal share in the property. Therefore, the appellants are entitled to half share in the plaint schedule property. The High Court and the appellate court had committed error in refusing to grant relief. The judgment and decree of the Trial Court and the appellate court are set aside. However, there shall be a preliminary decree to the extent of half share in the property in favour of the appellants. It would be open to the appellants to make an application to pass the final decree in the Trial Court.

The appeal is accordingly allowed. No costs.