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SMT. SHYAMA DEVI AND ORS.

v.

MRS. MANJU SHUKLA AND ANR.

SEPTEMBER 12, 1994

B

[R.M. SAHAI AND N.P. SINGH, JJ.]

Hindu Succession Act, 1956 :

C

Section 6 Explanation I—Partition of Coparcenary property—Presumption of deemed partition just prior to the death of Coparcener—Shares to legal representatives—Adjudication of—Courts below to adjudicate accordingly—Directions issued.

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A suit for partition was filed by 'D' in the year 1965 and a preliminary decree was passed on 24.1.1975 in respect of the properties in dispute. Though there were two defendants J and G and both of them filed appeal before the High Court, the present appeals are confined to the branch of J. The appellant is wife of J and the first respondent is the daughter of J.

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On 5.5.1980, a petition of compromise was filed on behalf of D, J and G before the High Court. Respondent No. 1 filed an application for impleading her as a party, she being the daughter of J. The said application was rejected. The High Court disposed of the appeal in terms of the petition of compromise. Thereafter J died leaving behind his widow (the appellant), two sons and four daughters including Respondent No.1. During the preparation of the final decree the respondent No.1 filed a petition claiming one-third share in the properties. The application was allowed by the District Judge.

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Appellant preferred a Civil Revision Petition and the High Court felt that death of J. the application filed on behalf of Respondent No.1 was maintainable but the Trial court should decide afresh as regards her share, after hearing all the parties concerned. Against this, Respondent filed a Special Leave Petition. This Court disposed of the Petition and directed the trial Court to allot the shares of each legal representatives in respect of the share of J as per Hindu Law without reference to the Will alleged to have been left by J. However, the question of validity of the Will of J bequeathing his property to the appellant was left open. Accordingly

the Additional District Judge directed the Commissioner to divide the property as per the decree and to submit his proposals after hearing the parties concerned. However, he observed that the question of family settlement dated 17.7.1981 alleged by the appellant was still open for adjudication. A

Respondent preferred a Civil Revision and the High Court allowed the same and directed the Additional District Judge to make a fresh adjudication of the objections filed by the parties to the report of the Commissioner. B

In these appeals, the appellant contended that in the order passed on the earlier Special leave Petition, the family settlement was not rejected or held invalid and as such the same has to be taken into consideration. It was also contended that the properties left behind by J were to be shared by his legal representatives in accordance with the Hindu Succession Act, the respondent cannot get one-third share, since the said properties would devolve upon his widow (appellant), his two sons of four daughters including the Respondent. C D

The Respondent contended that since there was a partition, it should be deemed that there was no Mitakshara Coparcenery property in existence when J Died. E

Disposing of the appeals, this Court

HELD : 1.1. Admittedly the partition suit in which preliminary decree was passed on 24.1.1975, the partition sought for was by D representing one of the three branches. It is nobody's case that at that stage or any time later there was *inter se* partition between J and his sons, who were members of coparcenery. As such it has to be assumed that on the date of death J was a member of coparcenery, and Section 6 of the Hindu Succession Act, 1956 as well as Explanation I to the said section was applicable to the interest of J in the coparcenery properties at the time of his death. [369-B-C] F G

1.2 As J died leaving behind his widow (the appellant) and four daughters, who shall be deemed to be the family relatives specified in Class I of the Schedule to the Act, the proviso to Section 6 shall come into play and the interest of J shall devolve according to the said proviso by way of intestate succession under the Act. The claim of the execution of a Will H

A made by the appellant is not to be taken into account at this stage in view of the earlier order dated 3.3.1992 passed by this Court. The Explanation I contains the formula for determining the share of the deceased and for that purpose of statutory fiction has been introduced saying that interest of the person dying intestate shall be deemed to be the share in the property that would have been allotted to him, if the partition of the property had taken place immediately before his death. As such one has to imagine for purpose of ascertaining the interest of J in the coparcenery at the time of his death that a partition of the property had been effected a little prior to his death. [368-D-G]

C 2. The Courts below shall adjudicate the shares of the legal representatives of J in accordance with the provisions of the Hindu Succession Act, as directed by this Court in its order dated 3.3.1992. [369-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5993-94 of 1994.

D From the Judgment and Order dated 21.4.94 of the Rajasthan High Court in S.B.C.R.P. Nos. 151/93 & 220 of 1993.

D.D. Thakur, K.V. Venkataraman and S.N. Sharma for the Appellants.

E Gopal Subarmanium and H.M. Singh, D.N. Misra for the JBD & Co. for the Respondent No. 2.

The Judgment of the Court was delivered by

F N.P. SINGH, J. Leave granted.

G This appeal has been filed on behalf of the appellants, for setting aside an order dated 21.4.1994, passed by the High Court of Rajasthan. By the aforesaid order, the Revision Petition of Respondent No. 1 was allowed and a direction was given to the Additional District Judge, to make afresh adjudication of the objections filed on behalf of the parties, to the report of the Commissioner. A further direction was given by the High Court at while doing so, the order dated 3.3.1992, passed by this Court, should be strictly followed.

H A suit for partition was filed in the year 1965 by Dhanpat Rai. In the said suit a preliminary decree was passed on 24.1.1975 in respect of the

properties in dispute. Jamuna Prasad and Ganga Prasad were defendants in the said suit. Jamuna Prasad and Ganga Prasad filed an appeal before the High Court against the said decree. It may be mentioned that in that in the present appeal, we are concerned with the branch of Jamuna Prasad, who had two sons and four daughters, apart from his wife, who is appellant No. 1 (hereinafter referred to as the 'appellant') Mrs. Manju Shukla, respondent No. 1 (hereinafter referred to as the 'respondent') is one of the daughters of the aforesaid Jamuna Prasad. On 5.5.1980, a petition of compromise was filed on behalf of Dhanpat Rai, Jamuna Prasad and Ganga Prasad in the High Court. On 28.6.1982, the respondent made an application before the High Court, to be impleaded as a party being the daughter of Jamuna Prasad. That petition was rejected on 22.2.1983. On 1.9.1986, the appeal which had been filed before the High Court on behalf of Jamuna Prasad and Ganga Prasad, was disposed of in terms of the petition of compromise. Jamuna Prasad died on 7.1.1987 leaving behind the appellant as his widow and two sons and four daughters including the respondent. During the preparation of the final decree on 6.5.1989 respondent filed a petition claiming 1/3rd share in the properties. This application was entertained because after the death of Jamuna Prasad, respondent claimed to be his one of the legal heirs. The application filed by the said respondent was allowed by the Additional District Judge on 13.7.1990. The appellant being arrived by the said order filed a Civil Revision Petition before the High Court. The High Court was of the opinion that the application dated 6.5.1989 filed on behalf of the respondent was maintainable but the Trial Court has to decide afresh as to what share she was entitled after hearing all the parties concerned. Against the said order of the High Court, Special Leave Petition (Civil) No. 15175 of 1991 was filed before this Court, on behalf of the respondent, which was disposed of on 3.3.1992. This Court gave the following direction:—

"The appeal is, therefore,, allowed and the trial Court directed to allot the shares of each legal representatives separately in respect of the share of Jamuna Prasad as per Hindu Law without reference to any Will alleged to have been executed by Jamuna Prasad. However, we make it clear that this Will not preclude the widow of Jamuna Prasad to file a separate suit claiming title on the basis of the Will. We further make it clear that on the ground that she has filed or is going to file any such suit the final decree proceedings should not be held up. The result of leaving open the

- A truth and validity of the Will in question is to be separate suit is that the allotment of the shares of Jamuna Prasad among the legal representatives would confer title on the legal representatives only subject to any defeasance at a later stage in case the Will was found to be true, genuine and valid."
- B It may be mentioned that, the appellant as widow of the aforesaid Jamuna Prasad, claimed in the proceedings pending before the trial Court that Jamuna Prasad had executed a Will on 7.3.1986 bequeathing his property to the appellant. The aforesaid observation/direction of this Court was in connection with the said Will. The Additional District Judge on 7.12.1992
- C purporting to pass an order in the proceeding in terms of the order dated 3.3.1992 aforesaid passed by this Court, directed the Commissioner to divide the property as per the decree and to submit his proposals before the Court, after hearing the parties concerned. The Additional District Judge, however, made an observation that the question of family settlement
- D alleged by the appellant was still open for adjudication. According to the appellant, after filing of the compromise petition aforesaid in the appeal pending before the High Court on 5.5.1980, there was a family settlement on 17.7.1981 and the Trial Court in its order aforesaid made reference to the family settlement.
- E The respondent being aggrieved by the aforesaid order dated 7.12.1992 filed a Civil Revision Petition No. 151 of 1993 before the High Court, which has been disposed of by the impugned order dated 21.4.1994. The High Court pointed out that by the order dated 3.3.1992, this Court
- F had not directed to take any family settlement into consideration before adjudication of the objections raised by the parties and as such it was not open to the Trial Court to make any reference to the said family settlement. Having said so, the order dated 7.12.1992 was set aside and a direction was given for afresh adjudication of objections raised by the parties to the report of the Commissioner and while doing so the Trial Court was
- G directed to strictly follow the direction given by this Court on 3.3.1992.
- H On behalf of the appellant, it was pointed out that in the order dated 3.3.1992, passed on the earlier Special Leave Petition, filed on behalf of the respondent, the family settlement has not been rejected or held to be invalid and as such the same has to be taken into consideration for ascertaining the shares devolving on one or the other heirs of Jamuna

Prasad after his death. According to us, in view of the direction dated 3.3.1992 given by this Court, which has become final, it was not open to the Trial Court to take into consideration any family settlement alleged to have been made by Jamuna Prasad, during his life time, in respect of the properties, which he got after partition from his other co-sharers. If any such direction is given, it will amount to modifying the order dated 3.3.1992. The High Court was justified in issuing a direction to the Trial Court to consider the objections to the report of the Commissioner in the light of the direction given in the earlier Special Leave Petition on 3.3.1992. It need not be pointed that when this Court said, the Trial Court shall allot the shares of each legal representatives separately in respect of the properties of Jamuna Prasad as per the Hindu Law, this Court meant in accordance with the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act').

The learned counsel, appearing for the appellant, pointed out that if the shares of the legal representatives of Jamuna Prasad, in respect of the properties of Jamuna Prasad is to be worked out in accordance with the Act, there is no question of respondent getting 1/3rd share, out of the properties left behind by Jamuna Prasad, because after death of Jamuna Prasad, his interest in the coparcenary property would devolve upon his widow the appellant, his two sons and four daughters.

The relevant part of Section 6 of the Act is as follows :—

"Sec. 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 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 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.

Explanation I.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of

- A the property had taken place immediately before this death, irrespective whether he was entitled to claim partition or not."

B In view of the direction given by this Court on 3.3.1992, we have to proceed on the assumption that Jamuna Prasad at the time of his death had an interest in Mitakshara Coparcenery property and as such the pre-conditions of Section 6 are satisfied. Under the main provision of Section 6, the interest of Jamuna Prasad in the coparcenery property would have devolved by survivorship upon the surviving members of the coparcenery and not in accordance with the provisions of the Act. But in the facts and circumstances of the case, the proviso to Section 6 along with the

C Explanation I is attracted since the widow and daughters are amongst the family relatives specified in Class I of Schedule to the Act. Proviso to Section 6 come into operation, if the deceased leaves behind any female relative specified in Class I of the Schedule of the Act or a male relative, specified in that Class, who claims through such female relative, the interest of the deceased in the Mitakshara coparcenery property. Then in

D that event, it shall devolve by intestate succession under the provisions of the Act and not by survivorship. As Jamuna Prasad leaving behind his widow the appellant and four daughter who shall be deemed to be family relatives specified in class I of the Schedule to the Act, the proviso to Section 6 shall come into play and the interest of Jamuna Prasad shall devolve according to the said proviso by way of intestate succession under

E the Act. The claim of the execution of a Will made by the appellant is not to be taken into account at this stage in view of the earlier order dated 3.3.1992 passed by this court. The Explanation I contains the formula for determining the share of the deceased and for that purpose a statutory fiction has been introduced saying that interest of the person dying intestate shall be deemed to be share in the property that would have been

F allotted to him, if partition of the property had taken place immediately before his death. As such one had to imagine for purpose of ascertaining the intestate of Jamuna Prasad in the coparcenery at the time of his death that a partition of the property had been effected a little prior to his death. The scope of section 6 of the Act along with proviso and Explanation I has

G been examined in detail by this Court in the case of *Gurupad Khandappa Megdum v. Hirabai Khandappa Magdum*, AIR (1978) SC 1239.

H Mr. Gopal Subarmanium, Senior Advocate, appearing on behalf of the respondents, took a stand that Section 6 is attracted only when the dispute is in respect of interest in Mitakshara Coparcenery property. As in

the present case there was partition, out of which the present dispute has arisen, it shall be deemed that there was no Mitakshara coparcenary property in existence when Jamuna Prasad died. It is an admitted position that the partition suit which had been filed in the year 1965 in which preliminary decree was passed on 24.1.1975, the partition sought for was by Dhanpat Rai, representing one of the three branches. It is nobody's case that at that stage or any time later was *inter se* partition between Jamuna Prasad and his sons, who were members of coparcenary. As such it has to be assumed that on the date of death, Jamuna Prasad was a member of coparcenary, and Section 6 as well as Explanation I to the said Section was applicable to the interest of Jamuna Prasad in the coparcenary properties at the time of his death.

Accordingly, the appeals are disposed of with a direction that the Courts below shall adjudicate the shares of the legal representatives of Jamuna Prasad in accordance with the provisions of the Act, as directed by this Court in its order dated 3.3.1992. However, in the facts and circumstances of the case, there shall be no orders as to cost.

G.N.

Appeals disposed of.