CASE NO.:
Appeal (civil) 9147 of 1996

PETITIONER:
MUNINANJAPPA AND ORS.

RESPONDENT:
R. MANUAL AND ANR.

DATE OF JUDGMENT: 11/04/2001

BENCH:
A.P. MISRA & U.C. BANERJEE

JUDGMENT:
JUDGMENT

2001 (2) SCR 1113

The Judgment of the Court was delivered by

MISRA, J. In spite of expertise in drafting a Will, the testators infusing his intentions in it, the struggle for a claim under it remained unabated, the tug of war between the two claimants under it has been the cause of issue before the courts from its very inception. The strong desire to succeed, even for wrongful claims, has led such claimants to split and interpret, even simple words and clear intentions into two possible interpretations. That is why court has to exercise and interpret a Will with circumspection and caution in order to give thrust to the true intentions of a testator.

This appeal also raises similar question of the interpretation of a Will and consequently the right of a widow of a benefactor under the Will. The questions raised are :

(a) Whether the right given to Guruswamy, the benefactor under the Will dated 1st June, 1942 was a limited right.

(b) If Guruswamy had a limited right, whether his widow Sevamma could get absolute right under Section 14(1) of the Hindu Succession Act, 1956 to execute the impugned sale deed in favour of respondent nos. 1 and 2.

In order to appreciate the controversies and to answer the aforesaid two questions, we are hereunder giving short matrix of facts which are essential for the disposal of this appeal.

The following Genealogical Table showing the relationship inter se between testatrix Poovamma and the beneficiaries under the Will is given as under:

Revalappa Muniyamma = Lakshmaiah = Vellamma Poovamma

(First Wife) (Second Wife)
Textatrix

Muninanjappa Guruswamy=Sevamma(widow)

(Plaintiff) (Defendant no. 3)

The suit was filed by the plaintiffs-appellants for declaration that the sale deed executed by defendant no. 3 Sevamma, widow of Guruswamy in favour of defendant-respondent nos.l and 2 is not binding on them as she had no right to’ sell the same, hence defendant nos. 1 and 2 cannot derive any right, title or interest over the suit property by virtue of the said sale

deed. Poovamma was the original owner of the suit property which is not in dispute. The plaintiffs lost his father Lakshmaiah, the brother of Poovamma'When he was four years old and was lookedafter by Poovamma. Guruswamy the brother of plaintiff born from the second wife also came under the care of Poovamma. Defendant no.3 Sevamma is the widow of Guruswamy. The case of plaintiffs-appellants is, under the aforesaid registered Will dated 1st June, 1942 Poovamma bequeathed the suit property in favour of both plaintiff and Guruswamy. Under the Will none of the legatees, the benefactor under the Will gets any right to alienate any part of the suit property hence Guruswamy and his widow Sevamma could at best have life interest without any right of alienation. Thus the property bequeathed, after the death of both, namely, Guruswamy and his widow Sevamma reverts back to the plaintiff. In spite of this limited right, Sevamma sold this property to defendant nos. 1 and 2 (respondent nos. 1 and 2 in this Court) on 4th September, 1980 through a registered sale deed. As a consequence of this respondent nos. 1 and 2 filed petition for plaintiffs eviction. This led to the filing of the present suit by the plaintiffs-appellant as aforesaid. The case set up by respondent nos. 1 and 2 is that after the death of Guruswamy his widow Sevamma became absolute owner by virtue of Sections 13 and 14 of the Hindu Succession Act and hence alienation of this property, through the said sale deed is valid. Defendant no. 3 Sevamma supported the case of respondent nos. 1 and 2 and further said that after the death of her husband she was in possession of the suit property, which was in lieu of her right of maintenance, thus by virtue of Sections 13 and 14 of the Hindu Succession Act she became absolute owner after her husband's death on 23rd August, 1970.

The trial court came to the conclusion, while interpreting the aforesaid Will, that the suit property was bequeathed to Guruswamy for enjoying it during his life time without any right of alienation, in case a son is born to him, such son would be the full owner, with a right of alienation. However, Guruswamy died without any male issue. Thus the question which came for consideration was, whether after the death of Guruswamy, his widow could succeed to this property in lieu of maintenance, which could mature into full owner under the Hindu Succession Act, if not, whether the impugned sale deed would be void and this property would reverts back to the plaintiff (Muninanjappa) the only surviving heir. The trial court concluded that the testatrix intention under the Will was to bequeath the suit property to the branch of Guruswamy exclusively though with life interest to Guruswamy. The reason for this is because of the absence of recording in the Will after the death of Guruswamy and his widow, the suit property would revert back to the plaintiff. The trial court finally concluded that the branch of Guruswamy and of plaintiffs would become absolute owner of the suit property be-queathed to them. Thus the widow being the only heir of the Guruswamy branch would succeed to the said property under Section 8 of the Hindu Succession Act as she falls under class I category of the schedule. It further held, Section 14(2) of the Hindu Succession Act has no application. Thus the sale deed in question cannot be held to be illegal, so dismissed the plaintiff's suit. Aggrieved by this the plaintiff-appellant filed appeal before the High Court which was also dismissed in which it is held :

"As far as the first aspect of the matter is concerned, I need to observe that the learned trial Judge has relied on the provisions of S. 14 of the Hindu Succession Act. Admittedly the property was not inherited by Sevamma in her own right. What was contended on her behalf was that on the death of her husband, she was the sole surviving hek of Guruswamy and that consequently the property which constituted his estate devolved on her but the supportive reason for this was that being the wife of Guruswamy she had the absolute right of claiming maintenance and that by virtue of the proviso to s. 14 on the ground, principally that she was entitled to maintenance, the property did come to her.

.....The respondents' learned advocate has seriously contested this position because he points out that by virtue of operation of S. 14,

regardless of provisions of S. 14 (2) that on the facts of the present case, Sevamma had become the absolute owner. I have already held that it is impossible to read into the will any limitation vis-a-vis the alienation of this property and under these circumstances, the provisions of S. 14 (2) would not come into operation. Under these circumstances for very good reasons the legislature has pro-vided that a Hindu wife will acquire absolute rights in respect of the property of her husband. When the law uses the word 'absolute', it envisages the freedom or liberty to deal with those properties in whatever manner the holder deems fit....

To my mind, the wordings in the Will are unambiguous and are quite clear. They do not create any doubt whatsoever in my mind and it is very clear also in law that on the death of Guruswamy, his wife did acquire an absolute right in respect of the disputed property."

Aggrieved by this the appellant has filed the present appeal.

Mr. S.N. Bhat, learned counsel appearing for the respondent submits, in interpreting a Will; intention of testatrix should be taken into account and thus if the said Will is construed properly, it would reveal that testatrix's brother Lakshmaiah had two wives - one Muniyamma and other Yellamma. Plaintiff was born from the first wife Muniyamma while Guruswamy was bom from the second wife Yellamma. Since at the time of the execution of the said Will both plaintiff and Guruswamy were young, hence limited right was given to them by dividing the suit property half and half - one going to the branch of the son bom from the first wife and second going to the branch of son bom from the second wife. This clearly reveals testatrix intended the property to go to two branches absolutely specially in the absence of any reference in the Will that the property would revert to the other branch where no son is born. Thus the right of the said two brothers even if limited would mature into absolute right if this intention of the testatrix is read into the Will. He further submits, in any case, even if Guruswamy had a limited right, after his death his widow having right in lieu of maintenance out of any estate of her husband it would mature into full right by virtue of Section 14(1) of the Hindu Succession Act.

On the other hand Mr. Rajesh Mahale, advocate appearing for the appellant submits that the said Will gives limited right to both the brothers, namely, the plaintiff and Guruswamy and it is only when a son is bom to them, such son is to acquire the absolute right of his branch. Further if Guruswamy himself had a limited right it cannot mature into full right either in his favour or in favour of his widow. In any case, at the most the widow may continue to enjoy this limited right until a son is born out of her wedlock with Guruswamy, but in no case this limited right could be construed to be in lieu of maintenance or any of her pre-existing right. Hence the judgment of both the trial court and the appellate court holding the widow Sevamma having full right is not sustainable in the eyes of law and liable to be set aside. He also referred to Sections 112 and 115 of the Indian Succession Act, 1925. The submission is, Section 112 spells out, when a bequest is made to a person not in existence till testator's death then such bequest to such person is void to that extent. In the present case admittedly at the time of death of testatrix no son was born to Guruswamy hence the second bequest in favour of son of Guruswamy is void. However, by virtue of Section 115, if bequest is made to a class of person and even if for some it is inoperative viz. those falling under Section 112, then such bequest would be void only in regard to such persons and not in regard to the remaining class of persons.

Learned counsel for the respondent construes the Will to mean that intention of the testatrix was that the two branches, one out of 1st wife and other out of 2nd wife of Lakshmaiah become absolute owner. Submission is, even if words in the Will are missing, the court should supply these missing words to subserve the intentions of the testator. For this, reliance is placed in Smt. Pramod Kumari Bhatia v. Om Prakash Bhati and Ors., [1980] 1 SCC 412, which holds while constituting a Will, the court

could supply the missing words to carry out the intention of the testator, in order to appreciate this, the relevant portion of the Will is quoted hereunder:

"After my death the schedule item one house shall go to Guruswamy, the 4 years old minor son of my above said deceased elder brother, Lakshmaiah through his second wife Yellamma and also to the male child to be born to Yellamma who is presently carrying.

My adopted son, the said Muninanjappa shall only enjoy the schedule one item house and he shall not have any right to alienate it by way of either sale, gift or mortgage. His male children may enjoy the same as they desire. The schedule item two house may be enjoyed by the said Yellamma's son Guruswamy and the male child to be born to Yellamma and they shall not have any right to alienate the same by way of sale, gift, mortgage etc. Their male children shall have every right to enjoy the same as they desire. The said Yellamma shall have the right to reside in the said house along with the minor children during her life time."

Reliance is also placed in Raghbir Singh and Ors. v. Budh Singh and Ors., AIR (1978) Delhi 86. In this case also the Court held, while construing a Will the intention of the Testator should be carried out. It further held, keeping this in view, different parts of the Will should be construed harmo-niously. The Courts should not reject any part of the Will being a surplusage. As the testator could not have intended to make any bequest in the Will as an exercise in futility. It further held, in doing so, if necessary, the Court may read down the language of a part of the Will to give full effect to the general words of the other part of the Will.

The principle laid down in the aforesaid decisions cannot be disputed. This will depend on the facts of each case and the language of the Will. It may be, in a given case the court may supply the missing words and in some other the court may read down the language of the Will in order to implement the intention of a testator. However, where the language and the words of a Will are clear, there is no ambiguity which could be understood clearly without any doubt then it would not be proper to either supplement the words or read it down to give benefit to either of the contesting parties. In the present case we find that the language of the Will is clear and unambiguous. Thus to find out intentions of the testatrix, no supplementing or reading down any word is necessary. The testatrix bequeathed her property to her brother's sons, namely, one from first wife, plaintiff and other to Guruswamy, from the second wife. To both she clearly records in no uncertain words that they would have limited right with no right to alienate. She also clearly records in case son is bom to them they would get absolute right including right to alienate. The language in the Will is :

"After my death the schedule item one (which is item No.2 in the schedule to the plaint) house shall go to Guruswami....., My adopted son, the said Muninanjappa (Plaintiff) shall only enjoy the schedule one item house and he shall not have any right to alienate

.....His male child may enjoy the same as they desire. The schedule item two, house may be enjoyed by the said.....Guruswamy and the male child to be born to Yellamma and they shall not have any right to alienate.....The male child shall have every right to enjoy the same as they desire."

The aforesaid language in the Will are clear that the testatrix intended to give limited right to both plaintiff and Guruswami and absolute right only to the sons born to them. If that be so, the only point which requires our consideration, is what right Sevamma widow of Guruswamy gets after the death of Guruswamy? We have no hesitation to hold that the limited right of Guruswamy cannot be Interpreted by any stretch of language that testatrix intended to give absolute right to Guruswamy or to his widow. They were to

hold the property for delivery to the son, in case, bom out of their wedlock. In no case Sevamma's right over the property would mature into absolute right by virtue of Section 14(1) of the Hindu Succession Act. Her right could only mature as such, if her claim could be based on any of her pre-existing right including right in lieu of maintenance out of her husband's property. But in no case it would mature where the property is held by her husband either in trust for the benefit of other or as limited and restricted owner with no right to alienate. Hence even if Sevamma continued to enjoy the property after the death of her husband, she held the property at the most, in the same capacity as her husband but not to claim it towards her right of maintenance. If husband had any other property apart from what was gifted by Poovamma, she could claim her above right under Section 14(1) but not over the property given to her husband Guruswamy as a limited owner. The High Court fell into error while construing Section 14(1) of the Hindu Succession Act by extending its width so wide which spills over its permissible boundary when it held, a Hindu wife will acquire absolute right in the property of her husband and then applying it to the facts of this case. It seems High Court was not appraised with the settled law, in respect of the field of Section 14(1) as declared by this Court as far back as in V. Tulasamma & Ors. v. Sesha Reddy (Dead) by Lrs., [1977] 3 SCC 99 and also reiterated in Velamuri Venkata Sivaprasad (Dead) by Lrs., v. Kothuri Venkateswarlu (dead) by Lrs. & Ors., [2000] 2 SCC 139, which holds benefit to a female could be given under Section 14 (1) where her claim is based on her pre-existing right over her husband's property. V. Tulasamma & Ors. (supra) holds Section 14 (2) is in the nature of a proviso to Section 14 (1). Section 14 (1) applies to property granted to a female Hindu by virtue of a pre-existing right of maintenance. The decision while carrying out the field of Section 14 (2) held:

"...Sub-section (2) must be confined to cases where property is acquired by a Hindu female for the first time as a grant, without any pre existing right....., the terms of which prescribes a restricted estate in the property.....Where, however, property is acquired by a Hindu female at a partition or in lieu of maintenance, it is by virtue of a pre-existing right and such an acquisition would not be within the scope of sub-section (2), but within the scope of sub-section (1)."

Applying the said principle, it has to be seen whether Sevemma is possessed of the property of her deceased husband based on her pre-existing right or is holding such property under any instrument prescribing restrictive estate in such property. By no stretch of interpretation it could be said, Sevamma was possessed of the suit property in lieu of her any pre-existing right. When a widow claims her right under sub-section (1) of Section 14 in the hand of either coparcener or male issue of her deceased husband, it is because of her pre-existing right of maintenance to the extent of her husband share in a joint family property. She cannot claim any such right out of the share of other coparcener in which there is no trace of her husband's share. So when limited right as spoken with reference to the husband right in joint Hindu family property, it only means limited to the extent of husband's share.

Learned counsel for the respondent referred to N. Appavu Udayan and Anr. v. Nallammal, AIR (1949) Madras 24. In this case, it is held that even father-in-law has a moral obligation to maintain his widowed daughter-in-law out of his self-acquired property and on his death this liability passes on to his heirs. This case has no application to the facts in the present case. We are in the present case not called upon to decide any claim of the daughter-in-law over the property of her father-in-law and further in the said case father-in-law was the absolute owner being self-acquired property. In the present case her husband's right to the suit property is limited and restricted hi its enjoyment under the said Will, thus no right on the widow could be conferred more than what her husband possessed. He also referred to Ram Kali (Smt.) v. Choudhri Ajit Shankar and Ors., [1997] 9 SCC 613. This case also has no application, as the property acquired by

the widow under Will was in lieu of maintenance allowance. Widow in this case was given the right to reside in the house during her lifetime and was debarred from alienating the same. However, widow was in possession of the house when the Hindu Succession Act came into force. The Court held that she held the property in recognition of her pre-existing right to maintenance. As a consequence her limited estate enlarged into an absolute estate.

Next reference was made Kalawatibai v. Soiryabai and Ors., [1991] 3 SCC 410. This was a case where the Hindu widow alienate the entire property inherited by her from her husband by executing a gift deed. This was a case where the question was, whether a widow possessed of the property in question being the limited owner could she mature her right under Section 14 of the Hindu Succession Act. Reliance is placed on the following lines:

"No actual division of share had taken place, yet the court held that it was property 'possessed' by her on the date the Act came into force. In Sukhram v. Gauri Shankar, it was held that a widow was full owner in Joint Hindu family property as she became entitled to the interest which her husband had by virtue of Hindu Women Right to Property Act. The court ruled that even though a male was subject to restrictions qua alienation on his interest in joint Hindu family property, but a widow acquiring an interest by virtue of the Act did not suffer such restriction. V. Tulsamma v. Shesha Reddy and Bai Vajia v. Thakorbhai Chelabhai, were cases where the widow was 'pos-sessed' of the property in lieu of maintenance, and therefore, she was held to be full owner".

This was a case of joint Hindu family property where husband had a right in the property being member of the joint Hindu family, even though limited, which is distinguishable from the limited right which testatrix granted to Guruswamy. In the aforesaid case husband's limited right is referred as limited to the extent of his share, but there existed in the property the right of the husband independently to the extent of his share while right to Guruswami in the suit property, he had no other right except what is conferred under the Will, which restricts it for its enjoyment only but no independent right to transfer. Distinguishing feature between these two types of limited rights is, in the case of husband's right in the joint family property, even though limited, has a right to seek partition or right to transfer to the extent of his share which Guruswami could not enjoy in the restrictive right under the said Will. In other words, Guruswamy could neither seek right of partition nor transfer his such right to any one else.

We find in the case before us trial court held that Sevamma became absolute owner by virtue of Section 8 of the Hindu Succession Act which has no legs to stand, both on facts and law. We have already recorded Guruswamy has a limited and restrictive right, no absolute right. His widow on the facts of this case cannot be treated to be class I heir under the said Act. Hence both the courts below fell into error in holding that Sevamma became absolute owner. Accordingly, the finding of both the trial court and the appellate court are unsustainable in law. In view of the aforesaid findings we answer the first question by holding that the Will dated 1st June, 1942, grants Guruswamy limited and restrictive right in no case to mature into full right.

As a consequence of this we answer the second question by holding that Sevamma did not inherit the suit property from her husband nor possessed it in lieu of maintenance hence question of maturing it into full right under Section 14(1) of the Hindu Succession Act does not arise. Thus we hold Sevamma had no right to alienate the suit property, thus sale of the suit property in favour of respondent nos. 1 and 2 can not be held to be valid. Thus for these reasons and findings, we set aside the findings and the judgment of both of the trial court and the High Court and decree the suit of the plaintiff. Costs on the parties.