

PETITIONER:
SMT. SATHYAPREMA MANJUNATHA GOWDA

Vs.

RESPONDENT:
THE CONTROLLER OF ESTATE DUTY, KARNATAKA

DATE OF JUDGMENT: 03/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
O R D E R

This appeal is by certificate granted by the Division Bench of Karnataka High Court under Section 64(1) of the Estate Duty Act, 1953. The facts are very simple and lie in a narrow compass.

The appellant is the widow of Manjunatha Gowda. Manjunatha Gowda was a member of joint family consisting of Mallegowda, his father and other members of the Hindu Undivided Family. On May 4, 1965, on a partition amongst themselves, he got 4/5th share in the Hindu Undivided Family properties. On his demise, it is claimed that his unmarried daughter has 1/5th share in it and his widow, the appellant also has a share in that property.

He died on August 18, 1971 and when estate duty was sought to be imposed, the appellant claimed exclusion of her share and that of her daughter in the property under Section 8(1) (d) of the Hindu Law Women's Rights Act, 1933 (Mysore Act No. VIII of 1933), (for short, the 'Act'). The Estate Duty officer excluded her share from taxable estate. But, on appeal, it was reversed. On a reference, the High Court held that the view taken by the Tribunal is correct. Thus this appeal.

The question on which reference was sought by the assessee is as under: "whether in the facts and the circumstances of the case, the Tribunal was correct in holding that neither the unmarried daughter nor the wife of the deceased had any interest in the above property of the deceased while he was alive"

Thus the only question for consideration is: whether the Estate left by Manjunatha Gowda was obtained by survivorship applying Section 8(1)(d) of the Act? Section 8 reads as under:

"1(a) At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue shall be entitled to a share

with them.

(b) At a partition of joint family property among brothers, their mother, their unmarried sisters and widows and unmarried daughters of their predeceased undivided brothers who have left no male issue shall be entitled to share with them.

(c) Sub Sections (a) and (b) shall also apply mutatis mutatis to a partition among other coparceners in a joint family.

(d) Where joint family property passes to a single coparcener by survivorship, it shall also pass subject to the rights to share of the classes of females enumerated in the above sub-section."

Clauses (a) to (c) of sub-section (1) of Section 8 do not apply to the facts in this case. Only clause (d) applies to the facts in this case. A reading of it would indicate that when joint family property passes to a single coparcener, by survivorship, it shall so pass subject to the rights of the share of the classes of females enumerated in clause (a) of sub-section (1) of Section 8.

Classes of females have been mentioned in Clause (a), namely, his mother, his unmarried daughters, widows and unmarried daughters of his predeceased undivided sons and brothers who have left is not necessary for its constitution. Nor is it necessary that all the members possess right or status even though the property of the family is called joint family property.

On the other hand, coparcenary is a narrower body than a joint family and consists of only those persons who have taken by birth an interest in the property of the holder from the time being and who can enforce a partition whenever they like. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees. Thus while a son, a grandson or a great-grandson is a coparcener with the holder of the property, the great-great-grandson cannot be coparcener with him, because he is removed by more than three degrees from the holder.

Hindu Undivided Family is a concept and coparcenary is not one of the same under the Hindu Law. But for the purposes of taxation under the Act, as in other tax measures, like the Income-tax Act, they are treated as one and the same. The question, therefore is: whether Manjunatha Gowda, when he had the property at the partition between the coparceners received it by survivorship? The primary meaning of the word 'survive' is to live beyond the life or extent of, or to outlive; but it also has secondary meaning namely, to live after, and as used in the phrase, "If either of any said sons should die without leaving a child which shall survive him." The word 'successor' has been defined in Black's Law Dictionary (sixth edition) at page 1431 as under.

"One that succeeds or follows; one who takes the place that another has left, and sustains the like part or character; one who takes the place of another by succession. One who has been appointed or elected to hold an office after the

term of the present incumbent.

Term with reference to corporations, generally means another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of first corporation."

The word 'survive' has been defined in the abovesaid dictionary thus:

"To continue to live or exist beyond the life, or existence of; to live through in spite of; live on after passing through; to remain alive; exist in force or operation beyond any period or event specified."

The word 'Survivorship' has been defined in the same dictionary thus:

"The living of one of two or more persons after the death of the other or others. Survivorship' is where a person becomes entitled to property by reason of his having survived another person who had an interest in it. A feature of joint tenancy and tenancy by the entirety, whereby the surviving co-owner takes the entire interest in preference to heirs or devisees of the deceased co-owner."

The word 'survivor' has been defined in P. Ramanatha Aiyar's 'The Law Lexicon' (1987 edition), thus:

"The longer liver of two joint-tenants, or of any two persons joined in the right of a thing. He that remaineth alive, after others be dead etc.

Where a trust deed conveys certain property to certain trustees, and to the survivor of them, or the assigns of such survivor, the term "the survivor or his assigns" necessarily imports the power to transfer by the survivor."

The book further defines the word 'survivorship' as under:

"The living of one of two or more persons after the death of the other or others. In relation to property the condition that exists where a person becomes entitled to property by reason of his having survived another person who had an interest in it.

"Title by survivorship" exists only when the estate is held in joint ownership (as) among Hindu Coparceners governed by the Mitakshara law."

The word 'survivor' usually applies to the longest lives of two or more partners or trustees, and has been applied in some cases to the longest liver or joint tenants and legatees, and to others having a joint interest in any property.

Here, we are concerned with Manjunatha Gowda who had obtained property at a partition with coparceners. Survivorship, therefore, is the living of one of two or more persons after the death of the others having interest to succeed in the property by succession. The shares in the coparcenary property changes with death or birth of other coparceners. However, in the case of survivorship it is not of the same incidence. He received the property at the partition without there being any other coparcener. It is an individual property and, therefore, he did not receive it by survivorship but by virtue of his status being a coparcener of the Hindu Joint family along with his father and with brothers.

Under these circumstances, the conclusion reached by the High Court that it is by partition, not by survivorship, clause (d) of sub-section (1) of Section 8 does not get attracted. No doubt, the learned counsel relied upon the judgment of this Court in *Nagendra Prasad & Anr. v. Kem Panarijamma* [AIR 1966 SC 209] which was also considered by the High Court in the impugned judgment. This Court therein has explained that the object of Section 8(1)(d) on the different footing. merely because partition by one of the coparceners under clauses (a) to (c) is a condition for a family class of persons entitled to a share in the property, it does not apply to a case where family class of persons entitled under clause 8(1)(d) since it stands on altogether on a different footing and, therefore, partition is not condition precedent for claiming a share by a class of family person enumerated in Section 8(1)(a) of the Act. But that principle has no bearing to the facts in this case for the reason that the property held was not received by survivorship.

Under these circumstances, family members enumerated under section 8(1)(d) are not entitled to a share in the estate left by the deceased. Thus we do not find any illegality in the view taken by the High Court warranting interference.

The appeal is accordingly dismissed. No costs.