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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
C.T. RAVIKUMAR; J., SUDHANSHU DHULIA; J.
CIVIL APPEAL NO. 254 OF 2010; AUGUST 28, 2023
M. SIVADASAN (DEAD) THROUGH LRs. & ORS *versus* **A. SOUDAMINI (DEAD) THROUGH LRs. & ORS.**

Hindu Succession Act, 1956; Section 14 - Possession of property necessary for woman to claim rights under section 14. *(Para 4)*

Agricultural Land - Argument that merely because the land has a few coconut trees, that will not make it an agricultural land, as in Kerela, coconut trees are found everywhere even in the urban residential properties and their presence itself will not make the land an agricultural land. Held, the land in question undoubtedly has coconut trees on it, most of them are very old but fruit bearing, and moreover in revenue records, the land is described as "theaattam" i.e., "garden". This would mean that the land in question may be put for agricultural use. Theoretically, it is possible that a land which is recorded as "theaattam" may not be actually put for agricultural use. All the same, in the present case, the overwhelming evidence which has been duly appreciated by the three Courts below clearly prove that the land was indeed an agricultural land. Therefore, find no reason to take a different view at this stage. *(Para 7)*

Constitution of India, 1950; Article 136 - Special Leave Petition - Even after leave is granted and appeal is admitted, the appellants must show that exceptional and special circumstances exist to reverse the findings, or grave injustice will be done if the decision under challenge is not interfered with. *(Para 8)*

For Appellant(s) Mr. Sudhivasudevan, Sr. Adv. Mr. Jishnu M L, Adv. Mr. Priyanka Prakash, Adv. Mr. Beena Prakash, Adv. Mr. Anoop R, Adv. Mr. G. Prakash, AOR Mr. Sudhi Vasudevan, Sr. Adv. Mr. P.N. Raveendran, Sr. Adv. Ms. Shilpa Sathish, Adv. Ms. Aswathi M.K., AOR

For Respondent(s) Mr. A. Raghunath, AOR Dr. P. George Giri, AOR Ms. Jasmin Kurian Giri, Adv. Mr. Ginesh P., Adv. Mr. Shaji Sebastian, Adv. Mr. Saratendu Kumar Boss, Adv. Mr. Abhay Singh, Adv.

J U D G M E N T

1. The appellants had filed a suit for partition and *mesne* profit way back in the year 1988, before the Court of Principal Munsif, Kozhikode-I, Kerala, claiming ancestral rights over the property comprising of Items 1 & 2 in Plaint Schedule A; property admeasuring 33 ½ cents and 42 cents respectively. The Trial Court dismissed the suit of the plaintiffs/appellants vide its Order and Judgment dated 03.02.1993 on the ground that the land along with the house sought to be partitioned is an agricultural land on which the plaintiffs/appellants, cannot claim any right. This finding of the Trial Court was upheld by the First Appellate Court, and finally by the High Court of Kerela by the impugned Judgment dated 29.01.2009 in second appeal. In short, the present appellants have lost from all the Courts below.

2. The contesting parties before this Court belong to "*Thiyyas"* community of Kozhikode, Kerala who were governed by Hindu Mitakshara law. The admitted position is that amongst "*Thiyyas*" of Kozhikode, ancestral property devolves only on the male children; daughters, have a right of maintenance till the time of their marriage. We are speaking here of the rights, including possession as it existed prior to the Hindu Succession Act, 1956. The plaintiff/appellant had filed a civil suit before the court of Munsif for partition of the property which has a total area of 75 ½ cents. Built on the land is the ancestral residential house of the parties. The suit of partition was dismissed by the trial

court holding that Hindu Women's Right to Property Act, 1937 was not applicable to agricultural land, till its amendment in the year 1946 and the succession to the said property had opened in the year 1942 itself which precedes the date of amendment.

3. The property originally belonged to Sami Vaidyar. On his death in the year 1942, it devolved on his male successor son Sukumaran. Rights on the property are being claimed presently by the progenies or daughters of Sami Vaidyar through their mother Choyichi, who was the widow of Sami Vaidyar. The claim of the plaintiff was that Choyichi (who died in the year 1962) had a right, though a limited right under the Hindu Mitakshara law as well as by virtue of Hindu Women's Right to Property Act, 1937 which blossomed into full-fledged right under Section 14 subsection (1) of Hindu Succession Act, 1956 which is reproduced below:

14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner

4. This argument of the plaintiff was rejected by the Trial Court and the same was upheld by the First Appellate Court as well as by the Second Appellate Court on the reasoning that after the death of Sami Vaidyar, his son Sukumaran succeeded in the property in year 1942 itself. Thereafter, Sukumaran and later the children succeeding Sukumaran had the right over the property which undisputedly remained in their possession. Section 14 sub-Section (1) had no application in this case. The essential ingredient of Section 14 sub-Section (1) is possession over the property. Admittedly the plaintiff was never in possession of the property. The possession was always that of the defendant and therefore Section 14 sub-Section (1) would not be applicable. In ***Ram Vishal (dead) by Irs. and Ors.*** *v.* ***Jagan Nath & Another.*** reported in **(2004) 9 SCC 302** the position of possession being a pre-requisite to sustain a claim under sub-section (1) of Section 14 of the 1956 Act was confirmed in Para 16 which is quoted below:

'**16.** In our view, the authority in *Raghubar Singh case* [(1998) 6 SCC 314] can be of no assistance to the respondent. As has been held by this Court, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property. Such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or by her own skill or exertion, or by purchase or by prescription…'

[Emphasis Supplied]

5. As per the law as it existed at their relevant time the property which was an agricultural property would devolve upon the male child and daughters would get only a limited right to maintenance till, they were married and the widow would be entitled to maintenance from the income from the property till her death or remarriage. As per the family Settlement Deed dated 12.03.1938 which was relied upon by both the parties, the property in dispute was specifically allotted to Sami Vaidyar and his only son Sukumaran. Therefore, the widow of Sami Vaidyar i.e., Choyichi will not have any right over the property. The findings of all the courts below were that Choyichi was never in possession of the property and therefore she would not get the right, as claimed by her under Section 14(1) of the Hindu Succession Act, 1956.

6. We have heard at length Mr. P.N. Raveendran and Mr. Sudhivasudevan, learned senior counsel appearing on behalf of the appellants and Mr. V. Chitambaresh, learned senior counsel, for the respondents/defendants. The effort of the learned senior counsel for the appellants here was to persuade us to reappreciate the entire case on facts, on

which three Courts have given the same findings. The learned Counsel would argue that the determination of the land in question as an agricultural land has been wrongly done by all the three Courts. The argument which has been put forward by the learned senior counsel before us is on the reasoning that merely because the land has a few coconut trees, that will not make it an agricultural land, as in Kerela, coconut trees are found everywhere even in the urban residential properties and their presence itself will not make the land an agricultural land.

7. The land in question undoubtedly has coconut trees on it, most of them are very old but fruit bearing, and moreover in revenue records, the land is described as "*theaattam*" i.e., "garden". This would mean that the land in question may be put for agricultural use. Theoretically, it is possible that a land which is recorded as "*theaattam*" may not be actually put for agricultural use. All the same, in the present case, the overwhelming evidence which has been duly appreciated by the three Courts below clearly prove that the land was indeed an agricultural land. We therefore find no reason to take a different view at this stage.

8. We must state here that this case is here before us in a Special Leave Petition filed under Article 136 of the Constitution of India. It is true that leave has been granted in this case. Nevertheless, the settled legal position remains that even after leave is granted and appeal is admitted, the appellants must show that exceptional and special circumstances exist to reverse the findings, or grave injustice will be done if the decision under challenge is not interfered with. We do not find any special circumstances here which may warrant our interference. [See Pritam ***Singh*** *v.* ***State,*** AIR (1950) SC 169: (1950) SCR 453, ***Hem Raj*** *v.* ***State of Ajmer*** AIR (1954) SC 462: (1954) SCR 1133, ***Bengal Chemical & Pharmaceutical Works Ltd.*** *v.* ***Employees***, AIR (1959) SC 633: 1959 Supp (2) SCR 136: (1959) 1 LLJ 413, **Municipal Board,** ***Pratabgarh and Anr.*** *v.* ***Mahendra Singh Chawla and Ors.*** (1982) 3 SCC 331: (1983) SCC (L&S) 19, ***Taherakhatoon (dead) by LRs*** *v.* ***Salambin Mohammad*** (1999) 2 SCC 635].

9. There is another aspect of the matter. Admittedly the defendants have all along been in possession of the property. The finding of adverse possession in favour of the defendants by the Trial Court, was never challenged by the plaintiffs/appellants before the First Appellate Court. We refer here the observations of the High Court which are as under:

"10…It is pertinent to note that the findings of the trial court that the rights, if any, of the plaintiffs have been lost by adverse possession and ouster does not appear to have been assailed before the lower appellate court. The lower appellate court also did not interfere with the said finding…"

Consequently, even if we keep nature of the land aside for a while, the present appeal is liable to be dismissed on this ground alone.

10. The concurrent findings on facts by the Trial Court and the First Appellate Court have been reaffirmed in second appeal by the High Court, yet by and large the entire submissions of the appellants is nothing but a persuasion before this Court for reappraisal of the case on facts.

11. In view of the above discussion, the judgment of the Trial Court and First Appellate Court, affirmed by the High Court in second appeal on 29.01.2009 is upheld and the present appeal is hereby dismissed. The order granting status quo by this Court dated 06.01.2010 stands vacated. No order as to costs.