

REVISITING V. TULASAMMA AND ORS. VS SESHA REDDY (DEAD) BY LRS.: AN OVERVIEW AND SOCIAL ANALYSIS

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IN THE SUPREME COURT OF INDIA

Civil Appeal No. 1360 of 1968

Decided On: 17.03.1977

Appellants: **V. Tulasamma and Ors.**

v.

Respondent: **Sesha Reddy (Dead) by Lrs.**

FACTS OF THE CASE

- Tulasamma's husband died in the year 1931, in a state of jointness with his step brother Sesha Reddy, leaving behind Tulasamma as his widow.
- Tulasamma filed a petition for maintenance against Sesha Reddy in the Court of the District Munsif, Nellore.
- Sesha Reddy filed an interlocutory application for recording a compromise, alleging that the parties had arrived at an out of Court settlement. Tulasamma opposed this application, which was ultimately dismissed.

- Sesha Reddy filed an appeal to the District Judge, Nellore, which was also dismissed. Certified by the Executing Court, Tulasamma put the decree in execution and the parties arrived at a settlement, out of Court.
- The terms of the compromise allotted Tulasamma the schedule properties, with only a limited interest therein, and no power of alienation. Furthermore, the properties were to revert to the Sesha Reddy after the death of Tulasamma. Subsequently, Tulasamma continued to remain in possession of the properties even after the Hindu Succession Act, 1956 (HSA) came into force.
- Tulasamma leased out some of the properties to Defendants No. 2 and 3 and sold some of the properties to Defendant No. 4.
- Sesha Reddy filed a suit before the District Munsif, Nellore challenging the alienations made by Tulasamma, as she had received a restricted estate under the terms of the compromise and claiming that it was not binding on him and could remain valid only till the lifetime of Tulasamma.
- Tulasamma claimed that by virtue of the provisions of the HSA, she had become the full owner of the properties with absolute right of alienation. Thus, Sesha Reddy had no locus standi to file the suit.
- The learned Munsif held that Tulasamma got merely a limited interest in the properties which could be enjoyed during her lifetime and that the alienations were not binding on the reversionary.
- Tulasamma filed an appeal before the District Judge, Nellore who reversed the finding of the trial Court, allowed the appeal, and dismissed Sesha Reddy's suit. The Court held that the Tulasamma had acquired an absolute interest in the properties by virtue of the provisions of the HSA.
- Sesha Reddy filed a second appeal to the High Court against the said judgement, which ruled in favour of him stating that Tulasamma's case was clearly covered by Section 14(2) of the HSA and since the compromise was an instrument, Tulasamma could not get an absolute interest under Section 14(1) of the HSA.
- Further, the High Court held that it was not a question of recognizing a pre-existing right, which she had none since her husband had died even before the Hindu Women's Right to Property Act, 1937.
- Tulasamma thus approached the Hon'ble Supreme Court, by way of appeal.

ISSUES OF THE CASE BEFORE THE SUPREME COURT

(i) Where property is given to a Hindu female in lieu of maintenance under an instrument and the instrument restricts the nature of the interest given to her in the property. In such a situation, it must be determined whether it is sub-section (1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956 that applies. In brief, the issue is to decide whether in the situation, the appellant will receive the said property as a limited estate or as her absolute property.

If sub-section (1) applies, then the limitations on the nature of her interest are wiped out and she becomes the full owner of the property. On the other hand, if sub-section (2) governs such a case, her limited interest in the property is not enlarged and she continues to have the restricted estate prescribed by the instrument.

(ii) Whether a Hindu widow has a right to property in lieu of her maintenance. If such a right is conferred on her subsequently by way of maintenance it would amount to mere recognition of a pre-existing right or a conferment of a new title, to fall squarely within Section 14(2) of the Hindu Succession Act, 1956.

The properties allotted to a Hindu widow in lieu of her maintenance are merely in recognition of her right to maintenance, a pre-existing right. Therefore, it would be taken out of the ambit of Section 14(2) and would fall squarely within Section 14(1) read with the Explanation thereto. Thus, the Hindu widow shall acquire an absolute interest when she was in possession of the properties at the time when the HSA came into force and any restrictions placed under the compromise would have to be completely ignored.

REASONING BY THE SUPREME COURT

The Bench comprising Justice S.M. Fazal Ali, Justice P.N. Bhagwati and Justice A.C. Gupta held that Section 14(1) of the Hindu Succession Act, 1956 must be liberally construed in favour of the Hindu females, making them an absolute owner of the property, instead of a limited owner.

Justice Fazal Ali

(i) Justice Ali first carefully considered the question of incidence and characteristics of the Hindu woman's right to maintenance. He referred to the opinion of various authors of Hindu Shastric Lawⁱ and several judgments on the same issue.ⁱⁱ After which, he came to the following conclusion:

- A Hindu woman's right to maintenance flows from the social and temporal relationship between the husband and the wife.
- The widow's right to maintenance becomes an equitable charge on the husband's property, and any person who succeeds to the property carries with it the legal obligation to maintain the widow.
- Though the widow's right to maintenance is not a right to property, it is undoubtedly a pre-existing right in the property, existing in the Hindu Law long before the passing of *The Hindu Women's Rights to Property Act, 1937* or the *Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946*, and can be enforced by the widow by creating a charge for maintenance on the property.
- The right of maintenance is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance.
- Where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.

(ii) According to Justice Fazal Ali, The Hindu Succession Act, 1956 has made revolutionary and far-reaching changes in the Hindu Society, by attempting to do away with the distinction between a Hindu male and female in matters of intestate succession. In light of these observations, the following interpretations were made:

- The provisions of Section 14 of The Hindu Succession Act, 1956 must be liberally construed, which is to enlarge the limited interest possessed by a Hindu widow in the property.

- It is clear that sub-section (2) of Section 14 does not refer to any transfer that recognises a pre-existing right, without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Pershad's case.ⁱⁱⁱ
- Sub-section (2) of Section 14 is merely a proviso to sub-section (1) of Section 14 and must be interpreted as a proviso and not in a manner to destroy the effect of the main provision.
- The right of maintenance was a pre-existing right, any instrument or transaction by which the property was allotted to the appellant would not be a new transaction to create a new title but would be only in recognition of a pre-existing right, namely, the right of maintenance.
- The language of sub-section (2) clearly shows that it would apply only to such transactions which are **independent in nature**, and which are **not in recognition of or in lieu of pre-existing rights**. The use of express terms like “*property acquired by a female Hindu at a partition*”, or “*in lieu of maintenance*” or “*arrears of maintenance*” in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).
- Furthermore, for Section 14(2) to apply, Justice Fazal Ali carves out three conditions -
 - that the property must have been acquired by way of gift, will instrument, decree, order of the Court or by an award;
 - that any of these documents executed in favour of a Hindu female must prescribe a restricted estate in such property; and
 - that the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a pre-existing right which the female Hindu already possessed

(iii) Justice Fazal Ali, on applying the principles enunciated above to case, rendered the following conclusion:

- that the properties in suit were allotted to the appellant Tulasamma on 30.07.1949 under a compromise certified by the Court;
- that the appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties;

- that despite these restrictions, she continued to be in possession of the properties till 1956 when the Act of 1956 came into force; and
- that the alienations which she had made in 1960 and 1961 were after she had acquired an absolute interest in the properties

Justice P. N. Bhagwati

In alignment with Justice Fazal Ali's reasoning, the following iterations were concluded:

- Sub-section (1) of Section 14 covers every kind of acquisition of property by a female Hindu, including acquisition in lieu of maintenance, and where such property was possessed by her at the date of commencement of The Hindu Succession Act, 1956, or was subsequently acquired and possessed, she would become the full owner of the property.
- The legislative intent of sub-section (2) of Section 14 was that it should be applicable only to cases where acquisition of property is made by a Hindu female for the first time, without any pre-existing right.

SOCIAL ANALYSIS

It is important to understand this case in the historical context of the development of Feminism in India. According to Rekha Pande, after independence, the issue of women empowerment was subsumed in poverty related issues and rarely any policies were directed only towards women empowerment.^{iv} This approach steadily changed in the 1970s with an increase in welfare policies and organisations working for socio-economic upliftment of women in general and marginalised women specifically.

Furthermore, the 'Towards Equality Report' came out in 1974 as one of the most iconic pieces of literature on the condition of women in India with respect to the law. Naturally, this report had its say on various issues related to Family Law including inheritance, maintenance, and

such. It would be prudent to analyse some parts of this judgement from this historical context as put forth to best understand its social impact.

STRENGTHS

Even though the Towards Equality Report of 1974 criticised the changes in Family Laws as narrow minded, it still lauded the right to absolute property for women.^v There is no contesting the fact that the interpretation by various High Courts of Section 14 of the Hindu Succession Act, 1956 was skewed. One of the major positive contributions of this judgement is that it set aside a very patriarchal and biased interpretation of a progressive provision.

This judgement settled an important legal issue of maintenance. It was stated that the 'Right to Maintenance' of women is a natural right which has been bestowed upon them even before tangible enactments in various laws. This right was solidified through precedence and eliminated any chances of skewed interpretations in the future and ensured that maintenance would be seen as a truly inclusive concept.

Similarly, women's absolute right to property was interpreted by many High Courts in an erroneous manner. This judgement correctly interpreted the law and its rightful intentions. This was a small but significant step towards ensuring financial independence for women.

WEAKNESSES

One of the key arguments made by Justice Fazal Ali in his judgement is with regards to the right to maintenance. It is disheartening to see how the reasonings and justifications for the same have been drawn from ancient texts and their archaic interpretations. This led to a direct linkage between the right to maintenance with the patriarchal gendered division of roles. Women were always subordinate in the economic sphere, especially with regards to matters such as property holdings. This institutional economic oppression has been carried through generations and has been at the root of several other societal problems. This judgement failed

to recognise and criticise how the economics of gender worked towards oppression of women, which had already been done in the ‘Towards Equality Report’.^{vi}

The feminist literature in the post-colonial world focused on financial independence of women and right to property was therefore considered critical to women empowerment. Furthermore, even the ‘Towards Equality Report’ had comprehensive literature which examined the position of women in the economic sphere.

Yet, this judgement relied on literature which reinforced gendered roles and saw women as the subordinate gender which needed to be maintained for its sustenance. The lack of mention of financial independence and agency of women being crucially tied to absolute right of property is saddening. This point must be emphasised strongly, especially because this judgement would become a critical point of reference for the judiciary in issues of similar nature.

There was a clear lack of emphasis on equalising gender roles in the broader context of this case. Furthermore, in the context of advancing Feminist literature and the recently published ‘Towards Equality Report’, it can be said that this judgement failed to recognise the need for more reforms and criticise the regressive portions of the Hindu Succession Act, 1956.

OPPORTUNITIES

This case dealt with one of the most important issues within the Feminist Jurisprudence not just in India, but across the world, i.e., Financial Dependency of Women on the Patriarchs of their family. It is important to note at this juncture that financial independence has always been argued to be one of the foundational issues on which women empowerment is dependent. Financial Independence can pave the way to fixing a variety of gender related issues. One such issue, which is well documented in feminist literature, is of domestic abuse. This issue is incidentally perfect to analyse the effects of a case dealing with the property rights of women in the Indian familial structures.

Sofia Amaral points to the fact that progressive inheritance laws are key to financial liberation of women in India. She argues that equalising inheritance rights and furthering the cause of

property rights for women has a direct impact on various issues critical to women empowerment in general. She says:

*“The implications of equal access to inheritance rights is relevant as it is well-established that targeting income or land resources to women has implications for **female empowerment, fertility, higher infant-survival rates, improved labour and political participation, and in reducing the gender wage gap.**”^{vii}*

In addition to these conclusions, Sofia Amaral stressed that there is a direct correlation between financial independence of women and cases of domestic violence.^{viii} Furthermore, even Dana Harrington Conner emphasised that domestic violence has a direct correlation with the financial dependency of women on their partners. The economic dependence of women on the patriarchs (usually their partner) chains them to abusive relationships.^{ix}

It would not be a stretch to conclude that this judgement was able to pave the way for more progressive reforms which helped improve women’s conditions vis-a-vis financial independence. Therefore, as mentioned, those minute improvements had their impact on other women related issues like gender wage gap, economic participation, political participation, fertility and so on.

THREATS

As mentioned before, a fundamental flaw in this case is the line of reasoning used to establish a progressive rule. The overemphasis on the need for women to be maintained by both judges was disappointing to say the least, especially in the context of changing climate around Feminist Jurisprudence and literature in India. To pile on the misery, the right to maintenance was justified through ancient texts which have been the root cause of perpetrating gendered roles and restricting women to a familial subject in society.

For instance, in Para 17 of the judgement, Justice Fazal Ali, quotes Golapchandra Sarkar Sastri from his book ‘Yajnavalkya’:

“ ... the lawfully wedded wife acquires from the moment of her marriage a right to the property belonging to the husband at the time and also to any property that may subsequently be acquired by him. so that she becomes a co-owner of the husband, though her right is not co-equal to that of the husband, but a subordinate one. owing to her disability founded on her status of perpetual or life long tutelage or dependence.”

“The father guards her during virginity, the husband guards her in youth, her sons guard her in old age; the woman is never fit for independence.”^x

The advancement of the HSA still limits women's rights, which may not necessarily affect her agency in a direct manner, however through laws imposing superiority otherwise. On a woman's death intestate, the first option for devolution of her property goes to sons and daughters, including children of any predeceased son or daughter, and the husband.

However, the problem rests in the next option, the property MUST devolve to her husband's heirs. This majorly reinstates the patriarchalism of the law, putting the rights of men over that of women.

The destination reached is certainly important but the journey by which the court arrived at its judgement leaves a lasting mark. The problematic reasoning given by the court has an adverse effect on future interpretation of ancient texts and feminist literature. The court failed to understand the heart of the issues it was addressing and reasoned in a fallacious manner. The precedent it has set through this style of reasoning will have a negative impact on how women's rights are interpreted when in question with the law.

REFERENCES

ⁱ Mulla, 'Hindu Law', 14th Edition, p. 597; Mayne, 'Treatise of Hindu Law and Usage', 11th Edition, p.813; Colebrook, 'Digest of Hindu Law', Vol II, p.121; Golapchandra Sarkar Sastri, 'Hindu Law', p. 553, 523, 529, 533.

ⁱⁱ Vellawa v. Bhimangavda, ILR (1894)18 Bom 452; Jayanti, Subbiah v. Alamelu Mangamma. ILR (1904) Mad 45; Namangini Dasi v. Kedarnath Kundu Chowdhury ILR (1889)16 Cal 758; Sheo Dyal v. Judoonath. (1868) 9 Suth WR 61; Rachawa v. Shivayagoappa. ILR (1894) 18 Bom 679; Pratapmull Agarwalla v. Dhanabati Bibi MANU/PR/0013/1936; Narbadabai v. Mahadeo Narayan. ILR (1880) 5 Bom 99; Narayan Rao Ramchandra Pant v. Ramabai (1878) 6 I A 114

iii Badri Pershad vs Smt. Kanso Devi MANU/SC/0293/1969 : [1970] 2 SCR 95

iv *“In the post-Independence period during the first few decades, the major concern was for overall economic growth. This was immediately followed by another decade, which witnessed an increased concern for equity and poverty alleviation. Gender issues were subsumed in poverty related concerns and there were no specific programs which aimed at women.”*

Pande, Rekha. (2018). "The History of Feminism and doing Gender in India." *Revista Estudos Feministas* 26

v *“The most remarkable features of the Act, however, are the recognition of the right of women to inherit equally with men and the abolition of the life estate of female heirs. The Class I heirs of a man today are widow, mother, son, daughter, widow of a predeceased son, and sons and daughters of predeceased sons or daughters. These heirs take the property in equal shares and as absolute owners.”* Committee on the Status of Women in India. (1974) “Towards Equality Report”. p. 135

vi *“The opposition to increasing opportunities for women's participation in economic activities springs firstly from a conservative view regarding women's 'proper' role in society, where 'proper' imposes clearly, and often rigidly defined limits to the activities that women may or may not perform. For example, the elite classes in most societies limited the activities of women to the home only.”* Committee on the Status of Women in India. (1974). “Towards Equality Report”. p. 149

vii Amaral, Sofia. (2017). "Do Improved Property Rights decrease violence against Women in India?." Available at SSRN 2504579. p. 2

viii *“Using the timing, state and religious variation in access to inheritance, I examine the effects of an improvement in inheritance rights on three distinct measures of violence against women: aggregate police reported violence against women, gender-specific unnatural death rates and individual-level self-reports of domestic violence. I find that violence committed against women (VAW) fell in states where inheritance rights were made equal between men and women. This result is consistent across the three different measures of VAW.”*

Amaral, Sofia. (2017). "Do Improved Property Rights decrease violence against Women in India?." Available at SSRN 2504579. p. 2-3

ix *“While a batterer is empowered by his partner's financial dependence, the autonomy of a woman who is victimised is diminished by her abuser's ability to control her through financial means. Moreover, financial instability is one of the greatest reasons why, after gaining freedom, a woman who experiences battering has limited choices and may ultimately acquiesce to her partner's attempts to reconcile”* Conner, Dana Harrington. (2013) "Financial Freedom: Women, Money, and Domestic Abuse." *Wm. & Mary J. Women & L.* 20. p. 340

x Manu Smriti. Verse 9.3