

A BHOOMIREDDY CHENNA REDDY AND ANR.

v.

BHOOSPALLI PEDDA VERRAPPA (DEAD) BY LRS. AND ANR.

NOVEMBER 28, 1996.

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Hindu Succession Act, 1956 : Section 14(1).

C *Husband bequeathed properties to his wife under a Will in 1947—Right granted to wife to enjoy properties for life-time—Held, after 1956 Act came into force, she became absolute owner as her limited right of enjoying the properties during her lifetime for her maintenance ripened into an absolute estate under section 14(1) of the Act—Her limited right enlarged into absolute right—She became an absolute owner of property.*

D *C. Masilamani Mudaliar & Ors. v. Idol of Shri Swaminathanswami Thirukoil & Anr., [1996] 8 SCC 525, relied on.*

Specific Relief Act, 1963 : Section 34.

E *Perpetual injunction—Properties bequeathed to wife by husband under a will executed in 1947—Right given to wife to enjoy properties during life time—Remainder vested in respondents who were sons of sister of wife—Wife held the properties during her lifetime and died in 1965—After demise of wife respondents came in possession of properties which were mutated in their names—In 1951 the appellants who were sons of the brother of husband*
F *purchased some of the properties, the subject matter of the Will, from the respondents—Appellants started interfering with possession and enjoyment of properties—Suit filed by respondents for a perpetual injunction—Suit decreed by Trial Court and affirmed by First Appellate Court—Appellants' appeal dismissed by High Court—Appeal preferred before Supreme Court—Held*
G *when the respondents have been in possession and got their names mutated in assertion of their right, right from 1947, may be it was open to them to contend that they remained in possession in assertion of their own right even to the knowledge of the appellants and the appellants had acquiesced to it—Purchase of the properties from them by the appellants themselves may lend assurance to that assertion—Therefore, it would be open to them to raise*
H *that plea, had the appellants asserted their right—But no such issues were*

raised as no such plea was taken—Under these circumstances the injunction was rightly granted against the appellants. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 566 of 1981.

From the Judgment and Order dated 21.2.79 of the Andhra Pradesh High Court in S.A. No. 437 of 1977. B

K. Madhava Reddy and G. Narasimhulu for the Appellants.

A. Subba Rao for the Respondents.

The following Order of the Court was delivered : C

The appellants are sons of the brother of Bhoomireddy Pedda Chennaiah. The respondents are the sons of the sister of Laxamma, widow of Pedda Chennaiah. Pedda Chennaiah during his life time had bequeathed all his properties to his wife Laxamma by his registered Will dated May 12, 1947 with right to enjoy the property with vested remainder in the respondents with absolute right and he died on May 25, 1947. Laxamma held the property during her life time and she died on October 21, 1965. When the appellants started interfering with the possession and enjoyment of the plaint schedule properties, the respondents filed O.S. No. 187/69 in the Court of District Munsif at Anantapur for a perpetual injunction. The trial Court decreed it. On appeal, the Additional District Judge confirmed the same. In the Second Appeal No. 437/77, by judgment and decree dated February 21, 1979 the learned single Judge of Andhra Pradesh dismissed the same. Thus, this appeal by special leave. D E

Mr. K. Madhava Reddy, learned senior counsel appearing for the appellants, is right in his contention that Laxamma having inherited the properties under the Will executed by her husband Pedda Chennaiah, as a limited owner, after Hindu Succession Act, 1956 came into force, became an absolute owner as her limited right of enjoying the property during her life time for her maintenance ripened into an absolute estate under Section 14(1) of that Act and that she died as full owner of the said properties. The legal position in this behalf is settled by this Court in *C. Masilamani Mudaliar & Ors. v. Idol of Shri Swaminathanswami Thirukoil & Anr.*, [1996] 8 SCC 525, wherein it has been held that the properties given to the wife by the husband under his Will for maintenance must be construed to have F G H

- A been acquired by the wife, in view of her pre-existing right to maintenance. When properties are thus bequeathed for their enjoyment in life, it cannot be said to be a right acquired for the first time under the Will but it has to be considered as a reflection of the pre-existing right. After 1956, her limited right got enlarged into absolute right by operation of Section 14(1)
- B of the said Act. She will have to be treated as having become an absolute owner. However, the real question which arises for consideration is : whether an injunction could have been granted in favour of the respondents in view of the facts of this case? It is seen that even during the life time of Laxmamma, after the demise of Pedda Chennaiah, the respondents came in possession of the property and were enjoying the same right from 1947.
- C The properties were mutated in their name. It is also an admitted fact that in 1951, the appellants themselves had purchased some of the properties, the subject matter of the Will, from the respondents. In view of these facts, the question arises whether an injunction can be granted against the appellants? The trial Court as well as the appellate Court have concurrently found as a fact thus :
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"The lands were transferred in the name of the respondents and pattas also were granted to them and they were in possession and enjoyment of the property since the death of their testator. Voluminous evidence clearly demonstrated the fact. In view of the admission made by the appellants that the respondents were in possession of the part of the properties purchased from the respondents, it would clearly indicate that the respondents remain in possession of the property right from the date of the death of the testator. Under these circumstances, the injunction was rightly granted against the appellants."

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- Shri K. Madhava Reddy has contended that no injunction can be granted against a true owner. As a proposition of law, it is indisputable. But the question is: whether the appellants have become owners of the property? Several imponderable things would arise until that declaration is given to them. It is seen that when the respondents have been in possession and got their names mutated in assertion of their right, right from 1947, may be it was open to them to contend that they remained in possession in assertion of their own right even to the knowledge of the appellants and the appellants had acquiesced to it. The admitted purchase of the properties from them by the appellants themselves may lend assurance to that
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assertion. Therefore, it would be open to them to raise that plea, had the appellants asserted their right. But it is a fact that no such issues were raised as no such plea was taken. Under these circumstances, we think that the injunction, due to the above documentary evidence and admitted facts, was rightly granted against the appellants. A

The appeal is accordingly dismissed. No costs. B

T.N.A.

Appeal dismissed.