

MOOT COURT PROBLEM -3

**BEFORE THE HONOURABLE JUDICATURE OF THE A.P. HIGH COURT AT
CHITTOOR**

O.S.No._____ /2008

Between :

Prasanthi **Plaintiff**

Vs.

Praveen **Defendant**

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TABLE OF CASES

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LIST OF ABBREVIATIONS

A I H C (All India High Court Cases)

A I R (All India Report)

I L R (India Law Review)

TABLE OF CASES

1. In Nanjamma Vs State of Karnataka { 1999 AIHC 3003 KARN}
2. In Ramesh Verma Vs Smt. Layesh Saxena {AIR 1998 MP 16}
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VS
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4. Imperial Gas Light and Coke Company
Vs
Broodbent [1859 followed in ILR 47Cal.733]

ISSUES INVOLVED IN THE PROBLEM

1. Whether daughter has entitle to get the share of the fathers property or not? if she is entitle to that property under which out ?
2. Whether doubter has entitle to passers the property under section 28 & 29 of the Hindu succession amendment Act of 1986 or not ?
3. Whether that will is a valid or not ?
4. Whether plaintiff is entitle for declaration of title ship over the property and whether the daughter or plaintiff is entitle for relief of permanent injunction or not ?

FACTS OF THE CASE :-

An old man Ramaiah aged about 68 years. He is suffering with Causinoma disease. ramaiah earned lot of properties both moveable and immovable with the assets of his own as well as with the income of his father. Among those properties one palatial building was earn with his own earning which worth 25,00,000. He had one son by name Praveen and one daughter by name Prasanti. His only daughter is looked after him. So, Ramaiah executed a will with regard to that building infavour of his daughter Prasanti, on 12-08-06 and he is died on 9-2-2007. As per the will Prasanti tries to take possession of that building, but Praveen objected to do that act. Prasanti try to tell him. But Praveen was not convinced.

Hence Prasanti wants to file a suit for declaration and injuction basing on that will.

My contention for the first issue is

- 1) Whether daughter has entitle to get the share of the fathers property or not? If she is entitle to that property under which act ?

Yes, definitely daughter has entitle to get the share of the fathers property. Why because, in tune with the constitutional gola is equality before law. Here Hindu succession (A.P. Amendment Act of 1986) Act inserted a new sections 29-A, 29-B, 29-C, in the Hindu succession Amendment act. The object of the Act is to confer equal rights on daughters in co-pracenary property at par with the sons. This amendment is sought to remove gender discrimination of exclusion of daughters from co-pracenary ownership which led to the creation of the socially pernicious dowry system with its attendant social dts.

Here is this case the deceased person suffering with Consinoma disease. He had the two children one son is Praveen and daughter is Prasanti. He was so much of suffered with that disease so his final stage the daughter only looked after him his son Praveen was not to take any interest on his father. So he made a will infavour of his daughter. On that time he is fully sound and disposing a State of mind. He wrote the will worth of 25,00,000 palatial building infavour of his daughter. That property is a self acquired property. So he had the right to make a will infavour of any body. So definitely daughter has entitle to get the share in her father's property.

Here I would like to relay upon one case :

In Nanjamma Vs. State of Karnataka (1999 AIHC 3003 (KARN))

In this case also done the same thing after her fathers death the daughter also entitle the co-pracenary property because this case is in the years of 1999. The Hindu succession (Amendment Act of 1986) Act Every female also entitle to the fathers property so no body can object this. But in this case the male heirs are objected to her. She filed a petition for entitle shop.

In this case the court gave the judgment in favour of his daughter. The court held that under constitutional validity of S.6-A inserted by the Act of 1994 where a daughter becomes a co-paraner and is entitle to co-parcenary property.

My contention for the Next issue :

II. Whether daughter has entitle to possess the property under section 28 & 29 of the Hindu succession amendment act of 1986?

Here section 29(A) provides that in a join Hindu family governed by mitakhara law. The daughter of a co-partner in her own right in the some manner as the son. She will have the same right on the fathers property including the right survivorship. The benefit is not extended to a daughter married before commencement. But in this case the daughter was married after commencement of this act. so under the section 29(A) shows, the daughter has equal right to share in the fathers property.

Section 6 of the principle act which deafs with devolution the interest of the female co- partner and rule of survivorship. From the commencement of the Hindu secession amendment act of 2005 the daughter becomes a co-partner by birth and has all rights in the same manner as the son. So she has the same rights and Liabilities in the said co-partner property as that of a son.

So, under section 29(A) of Hindu succession amendment act of 1986 shows, The daughter has equal right to share in the fathers property among the sons.

That too in this case Ramaiah gave a clear clarification in the will. He made a will his own self, infavour of his daughter. So this is enough to her for possessing the property.

Here I would like to relay upon one case:-

In Ramesh Verma

Vs

Smt. Lajesh Saxena,[AIR 1998 MP 46]

Gwalior Bench of Madhya Pradesh High court held that on the death of male hindu after the commenment of this act, his widow, son, and daughter (Thought married) being in class I are entitled to succession.

So, in this case also done the samw thing. Natuarally being on that out agter fathers death daughter also entitle the fathers property. But in this (will) case the testator gave the full clarification on that will, that property is belongs to his daughter. So she had the right to possess the property.

My contention for the Next issue

III. Whether that will is a valid or not?

No doubt that will is a valid will. How gam telling that when the made that will on that time. He is sound and disposing the state of mind. and also he is fully conscious mind he made that will. That too that will is attested by the two persons. So, that will a valid will.

Ramaiah was 68 years old. He has the two children one is son is Praveen and daughter is Prasanti. He had suffered with Consinonia disease. On that time two children have the responsibility on him but here his son was not to take any care on him even last slage also he did't come to his father. His daughter Prasanti only looked after him. She take the proper care on him in the final stage. So on that time Ramaiah getting the knowledge

what is the daughter, and what is the son. So he made a will in favour of his daughter. So that will is valid will.

Here I would like to explain definition of a will :

Will has been defined by section 3 of the Indian succession Act 1925 as the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death.

I will give the ingredients of the valid will :

- 1) Person capable of making a will
- 2) Property belongs to the testator
- 3) Will should be attested by the two persons.

So there all ingredients are satisfied in this case so no doubt that will as a valid will.

Here I would like to rely upon one case :

Raman Nadar Viswanathan Nadar

Vs.

Snehapoo Rasamma (AIR 1970 S.C. 1759)

In this case testator wrote a will in favour of the sons. So it was contended that the bequest in favour of sons was in the nature of a family provision therefore fell outside the principle laid down in the Tagore's case. So this contention was rejected by the Supreme Court. Why because (1) in this case the testator neglected the female heirs.

My Contention for the Next Issue

4. Whether plaintiff is entitled for declaration of title over the property and whether the plaintiff is entitled for relief of permanent injunction.

Here declaration means :

Any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying or interested to deny, his title to such character or right and the court may in its discretion make there is a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.

In this case she filed a petition of declaration for title ship owner the property basing on that will she was entitle to get the titleship over the property under section 34 of declaratory decrees.

Here the daughter filed another petition for injection that injection is a permanent injunction under section 38 of specific relief act.

Section 38 applies only to permanent injection which are governed by order xxxxx of Civil procedure code. There can be no suit for injection except under section 38 of C.P.C. (Civil Procedure Code)

So here she had the title ship over the property basing on that will naturally the daughter has entitle to get the share of the fathers property under the Hindu succession (Amendment Act of 1986) Act and also she has the right to possess the property under section 29(A) of Hindu succession Act so the court may grant the injection in favour of the daughter.

Here I would like to relay upon one case plaintiff right should be established :-

Imperial Gas light & coke co.

Vs Broodbent (1859 followed in ILR 47 Cal. 733)

In this case the plaintiff applies for an injunction to restrain the violation of an alleged right, if the existence right be disputed. He must establish that right before he gets the injunction to prevent the recurrence of its violation.

Prayer :

May I please your lordship, I pray the hon'ble court, please declare the titleship over the property to the plaintiff basing on that will and also grant the (injection) permanent injection in favour of the daughter (or) plaintiff (or) petitioner.