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ITEM NO.4

COURT NO.3

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013
CC 9253-9255/2013

(From the judgement and order dated 11/01/2010 in RFA No.935/2003,RFA No.1012/2003 dated 06/01/2012 in RP No.2516/2011, of The HIGH COURT OF KARNATAKA AT GULBARGA)

MAHESH & ORS.

Petitioner(s)

VERSUS

SIDRAM (D) TR.LRS.& ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP,c/delay in refiling SLP and office report))

Date: 01/05/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s)

Mr. P.Vishwanatha Shetty, Sr. Adv.
Mr. Sharan Thakur, Adv.
Mr. V. Lakshim Naryana, Adv.
Mr. Ramesh Babu M.R.,AOR

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

In one of these petitions, the petitioners have questioned correctness of judgment dated 11.1.2010 passed by the Division Bench of the Karnataka High Court in RFA Nos.935/2003 and 1012/2003. In the other petition, the petitioners have challenged order dated 6.1.2012 passed by the Division Bench of the High Court in Review Petition No.2516/2011.

The suit filed by the petitioners for partition and separate possession was partly decreed by the trial Court vide judgment dated 19.11.2002, the operative portion of which reads as under:

" Suit of the plaintiffs No.1 to 3 is decreed partly.

Plaintiffs 1 to 3 together entitled for partition and separate possession of 1/2 share in plaint para 7A and plaint Schedule B Properties.

Defendant No. 2 is entitled of 3/16 share in plaint Para 7A and Schedule B Properties.

Defendant No. 3 is entitled for 1/16 share in those properties.

Defendant No. 4 and 5 are each entitled for 1/8 share in those properties (Para 7A and Schedule B of the Plaint)."

The regular first appeals filed by the parties were disposed of by the Division Bench of the High Court in the following terms:

"(b) The finding of the trial court that Schedule "A" and "B" properties are joint family properties, in which, the plaintiff are entitled to a share is affirmed.

(c) Plaintiff "C" schedule property is declared as the joint family property, in which, the plaintiffs are entitled to share.

(d) The decree of the trial court in respect of "D" schedule properties is upheld and the plaintiffs are not entitled to a share.

(e) In substitution of the shares allotted by the trial court, it is held that the plaintiffs together and defendants 4 and 5 each one of them are entitled to 1/3rd in the remaining schedule properties.

(f) Parties to work out their respective share in the final decree proceedings including mesne profits from the date of the suit."

The review petition filed by the petitioners in RFA No.1012/2003 was dismissed by the Division Bench of the High Court by observing that the amendment made in the Hindu Succession Act, 1956 by Karnataka Legislature was retrospective and the daughters who were married prior to the amendment were entitled to share in the property of their father.

We have heard Shri P. Vishwanatha Shetty, learned senior counsel appearing for the petitioners and perused the record.

The question whether the Karnataka Amendment in the Hindu Succession Act is retrospective is no longer res integra and must be treated as settled by the judgment of this Court in *Prema v. Nanje Gowda and others* (2011) 6 SCC 462. After noticing the relevant provisions of the Hindu Succession Act and the amendments made by the State Legislature, this Court observed:

"15. In the present case, the preliminary decree was passed on 11-8-1992. The first appeal was dismissed on 20-3-1998 and the second appeal was dismissed on 1-10-1999 as barred by limitation. By the preliminary decree, shares of the parties were determined but the actual partition/division had not taken place. Therefore, the proceedings of the suit instituted by Respondent 1 cannot be treated to have become final so far as the actual partition of the joint family properties is concerned and in view of the law laid down in *Phoolchand v. Gopal Lal* AIR 1967 SC 1470 and *S. Sai Reddy v. S. Narayana Reddy* (1991) 3 SCC 647, it was open to the appellant to claim enhancement of her share in the joint family properties because she had not married till the enforcement of Karnataka Act 23 of 1994. Section 6-A of Karnataka Act 23 of 1994 is identical to Section 29-A of the Andhra Pradesh Act. Therefore, there is no reason why ratio of the judgment in *S. Sai Reddy v. S. Narayana Reddy* (1991) 3 SCC 647 should not be applied for deciding the appellant's claim for grant of share on a par with male members of the joint family. In our considered view, the trial court and the learned Single Judge were clearly in error when they held that the appellant was not entitled to the benefit of Karnataka Act 23 of 1994 because she had not filed an application for enforcing the right

accruing to her under Section 6-A during the pendency of the first and the second appeals or that she had not challenged the preliminary decree by joining Defendants 1, 4 and 5 in filing the second appeal.

16. We may add that by virtue of the preliminary decree passed by the trial court, which was confirmed by the lower appellate court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the court to take cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the court seized with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order.

17. In this case, the Act was amended by the State Legislature and Sections 6-A to 6-C were inserted for achieving the goal of equality set out in the Preamble of the Constitution. In terms of Section 2 of Karnataka Act 23 of 1994, Section 6-A came into force on 30-7-1994 i.e. the date on which the amendment was published. As on that day, the final decree proceedings were pending. Therefore, the appellant had every right to seek enlargement of her share by pointing out that the discrimination practised against the unmarried daughter had been removed by the legislative intervention and there is no reason why the court should hesitate in giving effect to an amendment made by the State Legislature in exercise of the power vested in it under Article 15(3) of the Constitution."

In view of the aforesaid judgment, there is no escape from the conclusion that the special leave petitions are meritless and are liable to be dismissed as such. Ordered accordingly.

| (Parveen Kr.Chawla)
| Court Master
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| | (Phoolan Wati Arora)
| | Court Master
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