REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3162-3163 OF 2010

SHREYA VIDYARTHI ...APPELLANT

VERSUS

ASHOK VIDYARTHI & ORS. ...RESPONDENTS

J U D G M E N T

RANJAN GOGOI, J.

1. The appellant before us is the 8th Defendant in Suit No. 630 of 1978 which was instituted by the first-respondent herein as the plaintiff. The said suit filed for permanent injunction and in the alternative for a decree of partition and separation of shares by metes and bounds was dismissed by the learned Trial Court. In appeal, the High Court reversed the order of the Trial Court and decreed the suit of the respondent-plaintiff with a further

declaration that he is entitled to 3/4th share in the suit property, namely, House No. 7/89, Tilak Nagar, Kanpur whereas the appellant (defendant No. 8 in the suit) is entitled to the remaining 1/4th share in the said property. Aggrieved, these appeals have been filed.

2. The relevant facts which will have to be noticed may be enumerated hereinunder.

In the year 1937 one Hari Shankar Vidyarthi married Savitri Vidyarthi, the mother of the respondent-plaintiff. Subsequently, in the year 1942, Hari Shankar Vidyarthi was married for the second time to one Rama Vidyarthi. Out of the aforesaid second wedlock, two daughters, namely, Srilekha Vidyarthi and Madhulekha Vidyarthi (defendants 1 and 2 in Suit No. 630 of 1978) were born. The appellant-eighth defendant Shreya Vidyarthi is the adopted daughter of Srilekha Vidyarthi (since deceased) and also the legatee/ beneficiary of a Will left by Madhulekha Vidyarthi.

3. The dispute in the present case revolves around the question whether the suit property, as described above, was purchased by sale deed dated 27.9.1961 by Rama Vidyarthi from the joint family funds or out of her own personal funds. The suit property had been involved in several previous litigations between the parties, details of which may now require a close look.

4. In the year 1968 Suit No. 147/1968 was instituted by Savitri Vidyarthi (mother of the respondent-plaintiff) contending that the suit property being purchased from the joint family funds a decree should be passed against the daughters of Rama Vidyarthi from interfering with her possession. This suit was dismissed under the provisions of Order VII Rule 11 CPC on account of failure to pay the requisite court fee. In the said suit the respondent-plaintiff had filed an affidavit dated 24.2.1968 stating that he had willfully relinquished all his rights and interests, if any, in the suit property. The strong reliance placed on the said affidavit on behalf of the appellant in the course of the

arguments advanced on her behalf needs to be dispelled by the fact that an actual reading of the said affidavit discloses that such renunciation was only in respect of the share of Rama Devi in the suit property and not on the entirety thereof. Consistent with the above position is the suit filed by the respondent-plaintiff i.e. Suit No. 21/70/1976 seeking partition of the joint family properties. The said suit was again dismissed under the provisions of Order VII Rule 11 CPC for failure to pay the requisite court fee. It also appears that Rama Vidyarthi the predecessor-in-interest of the present appellant had filed Suit No. 37/1969 under Section 6 of the Specific Relief Act for recovery of possession of two rooms of the suit property which, according to her, had been forcibly occupied by the present respondent-plaintiff. During the pendency of the aforesaid suit i.e. 37/1969 Rama Vidyarthi had passed away. The aforesaid suit was decreed in favour of the legal heirs of the plaintiff-Rama Vidyarthi namely, Srilekha and Madhulekha Vidyarthi on 4.2.1976.

5. It is in the aforesaid fact situation that the suit out of which the present appeals have arisen i.e. Suit No. 630 of 1978 was filed by the present respondent-plaintiff impleading Srilekha Vidyarthi (mother of the appellant) and Madhulekha Vidyarthi (testator of the Will in favour of the appellant) as defendants 1 and 2 and seeking the reliefs earlier noticed.

6. The specific case pleaded by the plaintiff in the suit was that the plaintiff's father, Hari Shankar Vidyarthi, died on 14.3.1955 leaving behind his two widows i.e. Savitri Vidyarthi (first wife) and Rama Vidyarthi (second wife). According to the plaintiff, the second wife i.e. Rama Vidyarthi had managed the day to day affairs of the entire family which was living jointly. The plaintiff had further pleaded that Rama Vidyarthi was the nominee of an insurance policy taken out by Hari Shankar Vidyarthi during his life time and that she was also receiving a monthly maintenance of a sum of Rs. 500/- on behalf of the

family from the "Pratap Press Trust, Kanpur" of which Hari Shankar Vidyarthi was the managing trustee. In the suit filed, it was further pleaded that Rama Vidyarthi received a sum of Rs. 33,000/- out of the insurance policy and also a sum of Rs. 15,000/- from Pratap Press Trust, Kanpur as advance maintenance allowance. It was claimed that the said amounts were utilized to purchase the suit property on 27.9.1961. It was, therefore, contended that the suit property is joint family property having been purchased out of joint family funds. The plaintiff had further stated that all members of the family including the first wife, the first respondent and his two step sisters i.e. Srilekha and Madhulekha Vidyarthi had lived together in the suit property. As the relationship between the parties had deteriorated/changed subsequently and the plaintiff-respondent and his mother (Savitri Vidyarthi) were not permitted to enter the suit property and as a suit for eviction was filed against the first respondent (37 of 1969) by Rama Vidyarthi the instant suit for permanent injunction

and partition was instituted by the respondent-plaintiff.

7. The plaintiff's suit was resisted by both Srilekha and Madhulekha, primarily, on the ground that the suit property was purchased by their mother Rama Vidyarthi from her own funds and not from any joint family funds. In fact, the two sisters, who were arrayed as defendants 1 and 2 in the suit, had specifically denied the existence of any joint family or the availability of any joint family funds.

8. The Trial Court dismissed the suit by order dated 19.8.1997 citing several reasons for the view taken including the fact that respondent-plaintiff was an attesting witness to the sale deed dated 27.9.1961 by which the suit property was purchased in the name of Rama Vidyarthi; there was no mention in the sale deed that Rama Vidyarthi was representing the joint family or that she had purchased the suit property on behalf of any other person. The learned Trial Court further held that in the year 1955 when Hari Shankar Vidyarthi had died there was no joint family in

existence and in fact no claim of any joint family property was raised until the suit property was purchased in the year 1960-61. The Trial Court was also of the view that if the other members of the family had any right to the insurance money such a claim should have been lodged by way of a separate suit. Aggrieved by the dismissal of the suit, the respondent-plaintiff filed an appeal before the High Court.

9. Certain facts and events which had occurred during the pendency of the appeal before the High Court will require a specific notice as the same form the basis of one limb of the case projected by the appellant before us in the present appeal, namely, that the order of the High Court is an ex-parte order passed without appointing a legal guardian for the appellant for which reason the said order is required to be set aside and the matter remanded for a *de novo* consideration by the High Court.

10. The first significant fact that has to be noticed in this regard is the death of Madhulekha Vidyarthi during the

pendency of the appeal and the impleadment of the appellant as the 8th respondent therein by order dated 31.08.2007. This was on the basis that the appellant is the sole legal heir of the deceased Madhulekha. The said order, however, was curiously recalled by the High Court by another order dated 10.10.2007. The next significant fact which would require notice is that upon the death of her mother Srilekha Vidyarthi, the appellant-defendant herself filed an application for pursuing the appeal in which an order was passed on 16/18.05.2009 to the effect that the appellant is already represented in the proceedings through her counsel (in view of the earlier order impleading the appellant as legal heir of Madhulekha). However, by the said order the learned counsel was given liberty to obtain a fresh vakalatnama from the appellant which, however, was not so done. In the aforesaid fact situation, the High Court proceeded to consider the appeal on merits and passed the impugned judgment on the basis of consideration of the arguments advanced by the counsel appearing on behalf of

the appellant at the earlier stage, namely, one Shri A.K. Srivastava and also on the basis of the written arguments submitted on behalf of the deceased Srilekha Vidyarthi. It is in these circumstances that the appellant has now, inter alia, contended that the order passed by the High Court is without appointing any guardian on her behalf and contrary to the provisions of Order XXXII Rules 3, 10 and 11 of the CPC.

11. Insofar as the merits of the appeal are concerned, the High Court took the view that on the facts before it, details of which will be noticed in due course, there was a joint family in existence in which the second wife Rama Vidyarthi had played a predominant role and that the suit property was purchased out of the joint family funds namely the insurance money and the advance received from the Pratap Press Trust, Kanpur. Insofar as the devolution of shares is concerned, the High Court took the view that following the death of Hari Shankar Vidyarthi, as the sole surviving male

heir, the respondent-plaintiff became entitled to 50% of the suit property and the remaining 50% was to be divided between the two wives of Hari Shankar Vidyarthi in equal proportion. Srilekha and Madhulekha Vidyarthi, i.e. defendants 1 and 2 in the suit, as daughters of the second wife, would be entitled to share of Rama Vidyarthi, namely, 25% of the suit property. On their death, the appellant would be entitled to the said 25% share whereas the remaining 25% share (belonging to the first wife) being the subject matter of a Will in favour of her minor grand-children (sons of the respondent-plaintiff), the respondent-plaintiff would also get the aforesaid 25% share of the suit property on behalf of the minors. Accordingly, the suit was decreed and the order of dismissal of the suit was reversed.

12. The aforesaid order of the High Court dated 12.08.2009 was attempted to be recalled by the appellant-8th defendant by filing an application to the said effect which was also dismissed by the High Court by its order dated

24.11.2009. Challenging both the abovesaid orders of the High Court, the present appeals have been filed.

13. Having heard learned counsels for the parties, we find that two issues in the main arise for determination in these appeals. The first is whether the High Court was correct in passing the order dated 24.11.2009 on the recall application filed by the appellant and whether, if the appellant had really been proceeded ex-parte thereby rendering the said order untenable in law, as claimed, should the matter be remitted to the High Court for reconsideration. The second question arising is with regard to the order dated 12.08.2009 passed by the High Court in First Appeal No. 693 of 1987 so far as the merits thereof is concerned.

14. The detailed facts in which the appellant-8th defendant came to be impleaded in the suit following the death of Madhulekha Vidyarthi (defendant No. 2) and thereafter on the death of Srilekha Vidyarthi (defendant No. 1) has already been seen. From the facts recorded by the High Court in its order dated 24.11.2009 it is clear and evident

that the appellant had participated in the proceeding before the High Court at various stages through counsels. Therefore, there is no escape from the conclusion that the order passed in the appeal was not an ex-parte order as required to be understood in law. The appellant was already on record as the legal heir of Madhulekha Vidyarthi (defendant No. 2) and was represented by a counsel. The High court had passed its final order after hearing the said counsel and upon consideration of the written arguments filed in the case. In its order dated 24.11.2009 the High Court has observed that full opportunity of hearing on merits was afforded to the appellant. Even before us, the appellant has been heard at length on the merits of the case. In these circumstances there can hardly be any justification to remand the matter to the High Court for a fresh consideration by setting aside the impugned order.

15. Insofar as the merits of the order of the High Court is concerned, the sole question involved is whether the suit property was purchased by Rama Vidyarthi, (defendant

No.1) out of the joint family funds or from her own income. The affidavit of Rama Vidyarthi in Suit No. 147 of 1968 filed by Savitri Vidyarthi discloses that she was looking after the family as the Manager taking care of the respondent No.1, her step son i.e. the son of the first wife of Hari Shankar Vidyarthi. In the said affidavit, it is also admitted that she had received the insurance money following the death of Hari Shankar Vidyarthi and the same was used for the purchase of the suit property along with other funds which she had generated on her own. The virtual admission by the predecessor-in-interest of the appellant of the use of the insurance money to acquire the suit property is significant. Though the claim of absolute ownership of the suit property had been made by Rama Vidyarthi in the aforesaid affidavit, the said claim is belied by the true legal position with regard to the claims/entitlement of the other legal heirs to the insurance amount. Such amounts constitute the entitlement of all the legal heirs of the deceased though the same may have been received by Rama Vidyarthi as the

nominee of her husband. The above would seem to follow from the view expressed by this Court in ***Smt. Sarbati Devi & Anr. vs. Smt. Usha Devi***[1] which is extracted below. (Paragraph 12)

> "12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* and in *Uma Sehgal case* do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the

[1] 1984 (1) SCC 424

> effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

16. The fact that the family was peacefully living together at the time of the demise of Hari Shankar Vidyarthi; the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961; that there was no discord between the parties and there was peace and tranquility in the whole family were also rightly taken note of by the High Court as evidence of existence of a joint family. The execution of sale deed dated 27.9.1961 in the name of Rama Vidyarthi and the absence of any mention thereof that she was acting on behalf of the joint family has also been rightly construed by the High Court with reference to the young age of the plaintiff-respondent (21 years) which may have inhibited any objection to the

dominant position of Rama Vidyarthi in the joint family, a fact also evident from the other materials on record. Accordingly, there can be no justification to cause any interference with the conclusion reached by the High Court on the issue of existence of a joint family.

17. How could Rama Vidyarthi act as the Karta of the HUF in view of the decision of this Court in ***Commissioner of Income Tax vs. Seth Govindram Sugar Mills Ltd.***[2]– holding that a Hindu widow cannot act as the Karta of a HUF which role the law had assigned only to males who alone could be coparceners (prior to the amendment of the Hindu Succession Act in 2005). The High Court answered the question in favour of the respondent-plaintiff by relying on the decision of this Court in ***Controller of Estate Duty, Madras Vs. Alladi Kuppuswamy***[3] wherein the rights enjoyed by a Hindu widow during time when the Hindu Women's Rights to Property Act, 1937 remained in force were traced and held to be akin to all rights enjoyed by the

[2] AIR 1966 SC 24
[3] [1977 (3) SCC 385]

deceased husband as a coparcener though the same were bound by time i.e. life time of the widow (concept of limited estate) and without any authority or power of alienation. We do not consider it necessary to go into the question of the applicability of the ratio of the decision in ***Controller of Estate Duty, Madras (supra)*** to the present case inasmuch as in the above case the position of a Hindu widow in the co-parcenary and her right to co-parcenary property to the extent of the interest of her deceased husband was considered in the context of the specific provisions of the Estate Duty Act, 1953. The issue(s) arising presently are required to be answered from a somewhat different perspective.

18. While there can be no doubt that a Hindu Widow is not a coparcener in the HUF of her husband and, therefore, cannot act as Karta of the HUF after the death of her husband the two expressions i.e. Karta and Manager may be understood to be not synonymous and the expression "Manager" may be understood as denoting a role distinct

from that of the Karta. Hypothetically, we may take the case of HUF where the male adult coparcener has died and there is no male coparcener surviving or as in the facts of the present case, where the sole male coparcener (respondent-plaintiff - Ashok Vidyarthi) is a minor. In such a situation obviously the HUF does not come to an end. The mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian. Such a situation has been found, and in our opinion rightly, to be consistent with the law by the Calcutta High Court in ***Sushila Devi Rampuria v. Income Tax Officer and Anr.***[4] rendered in the context of the provisions of the Income Tax Act and while determining the liability of such a HUF to assessment under the Act. Coincidently the aforesaid decision of the Calcutta High Court was noticed in ***Commissioner of Income Tax vs. Seth Govindram Sugar Mills Ltd. (supra).***

[4] AIR 1959 Cal 697

19. A similar proposition of law is also to be found in decision of the Madhya Pradesh High Court in **Dhujram v. Chandan Singh & Ors.**[5] though, again, in a little different context. The High Court had expressed the view that the word 'Manager' would be consistent with the law if understood with reference to the mother as the natural guardian and not as the Karta of the HUF.

20. In the present case, Rama Vidyarthi was the step mother of the respondent-plaintiff -Ashok Vidyarthi who at the time of the death of his father - Hari Shankar Vidyarthi, was a minor. The respondent plaintiff was the only surviving male coparcener after the death of Hari Shankar Vidyarthi. The materials on record indicate that the natural mother of Ashok Vidyarthi, Smt. Savitri Vidyarthi, had played a submissive role in the affairs of the joint family and the step mother, Rama Vidyarthi i.e. second wife of Hari Shankar Vidyarthi had played an active and dominant role in managing the said affairs. The aforesaid role of Rama

[5] 1974 MPL J554

Vidyarthi was not opposed by the natural mother, Savitri Vidyarthi. Therefore, the same can very well be understood to be in her capacity as the step mother of the respondent-plaintiff-Ashok Vidyarthi and, therefore, consistent with the legal position which recognizes a Hindu Widow acting as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a Karta which position the Hindu widow cannot assume by virtue of her dis-entitlement to be a coparcener in the HUF of her husband. Regrettably the position remain unaltered even after the amendment of the Hindu Succession Act in 2005.

21. In the light of the above, we cannot find any error in the ultimate conclusion of the High Court on the issue in question though our reasons for the aforesaid conclusion are somewhat different.

22. Before parting we may note that the history of the

earlier litigation between the parties involving the suit property would not affect the maintainability of the suit in question (630 of 1978). Suit No.37 of 1969 filed by Rama Vidyarthi was a suit under Section 6 of the Specific Relief Act whereas Suit No.147 of 1968 and Suit No. 21/70/1976 filed by first wife Savitri Vidyarthi and Ashok Vidyarthi, respectively, were dismissed under Order VII Rule 11 CPC on account of non-payment of court fee. In these circumstances, the suit out of which the present appeal has arisen i.e. Suit No. 630 of 1978 was clearly maintainable under Order VII Rule 13 CPC.

23. The apportionment of shares of the parties in the suit property made by the High Court, in the manner discussed above, also does not disclose any illegality or infirmity so as to justify any correction by us. It is our considered view that having held and rightly that the suit property was a joint family property, the respondent-plaintiff was found entitled to seek partition thereof and on that basis the

apportionment of shares in the suit property between the plaintiff and the contesting eighth defendant was rightly made by the High Court in accordance with the reliefs sought in the suit.

24. For the aforesaid reasons, we do not find any merit in these appeals, the same are being accordingly dismissed. However, in the facts of the case we leave the parties to bear their own costs.

.....,J.
(RANJAN GOGOI)

.....,J.
(N.V. RAMANA)

NEW DELHI
DECEMBER 16, 2015.