
CASE COMMENT: K SIVANANDAM V. MARAGATHAMMAL

Rishika Gupta, Jindal Global University

INTRODUCTION

The case of *K Sivanandam v Maragathammal* is a pivotal judgement that addresses the common question of law- what happens to the inherited property of a Hindu widow upon conversion to another religion¹? The case deals with the right to ownership of property of the deceased husband of a Hindu woman who converted to Christianity to marry another man. It affirms that a Hindu widow, upon being converted to Christianity and marrying a Christian, would not lose her right of inheritance to her deceased husband's property. The judgement throws light upon multiple socio-legal discourses such as the right to religion, gender equality in property rights, absolute and partial right, property as a natural right and 'bundle of rights,' the validity of UCC, the scope of judicial interference with personal laws, etc. This paper will discuss the extent to which the *K. Sivanandam v Maragathammal* case does justice to the promulgation of these significant questions of law and critically analyse the reasoning employed and rationale suggested in the judgement.

RELEVANT FACTS

The case concerns a dispute over the ownership and sale of a property. The plaintiff was in possession of the suit property, purchased from Poosammal via a sale deed. The plaintiff alleged that the defendants were interfering with the rightful enjoyment of her property and pleaded that her rights be safeguarded by way of permanent injunction against the defendants. The defendants however argued that the vendor of the suit property - Poosammal did not have the right to transfer the property. The property was purchased by her late husband. His mother, who also held a share in the property, lived in it. Upon her death, her share of the property was succeeded by her daughter- the mother of Poosammal. Meanwhile, Poosammal shifted

¹ *K.Sivanandam vs Maragathammal* [2012] Appeal No.221 of 2006.

elsewhere and converted to Christianity and got married to and had kids with a Christian. The defendants contended that by doing so she had foregone her rights in the property and that she never claimed it either, when the other portions of the property were divided and allotted to the defendant and the plaintiff's husband. Thus, according to the defendants, the plaintiff cannot file a suit for injunction as the sale deed was invalid since Poosammal was never the absolute owner of the suit property. The trial court, upon consideration of evidence of both parties, decreed the suit in favour of the plaintiff and held that the sale deed was valid. It was further argued by the defendants in their appeal that the plaintiff cannot convey saleable right as her conversion to Christianity amounted to her foregoing her share in her deceased husband as well as her mother's property, as they were Hindus. The first appellate court however concurred with the judgement of the trial court and affirmed that the conversion of a Hindu to Christianity will not disentitle the convert from the right to inheritance of the property. It further held that Poosammal had the right and title to the suit property to convey the same in favour of the plaintiff. The defendants insisted in their second appeal that Poosammal had been disentitled from her share in the property due to her conversion and failure to claim it and that she would not be the absolute owner irrespective, invalidating the sale deed. The appeal was however dismissed and the judgements of both the courts were affirmed.

CORE ISSUES

1. Whether Poosammal had forfeited her rights in the property by converting to Christianity and not claiming her share during the division.
2. Whether Poosammal had the right to sell the property to the plaintiff via the sale deed.
3. Whether the plaintiff is entitled to get permanent injunction.
4. Whether conversion to Christianity disentitles one from inheritance rights in Hindu property.

RELEVANT LAWS AND LEGAL PRINCIPLES

Hindu Succession Act, 1956 (HSA)

- 1- S4(1)(b) : Any law that was in effect before the implementation of this Act will no

longer be applicable to Hindus if it contradicts any of the provisions outlined in this Act².

- 2- S14(1): As per this section a Hindu woman would be the absolute owner of any property in her possession, that she acquires by any means either before or after the commencement of the act³.
- 3- S26: In the event that a Hindu converts to another religion before or after the implementation of this Act, any children born to them after the conversion and their offspring will not be eligible to inherit the property of their Hindu relatives unless they have reverted back to Hinduism at the time when the succession is due to take place⁴.

Caste Disabilities Removal Act, 1850 Act 21 (CDRA)

- 1- S1: Any law or custom in India that results in the loss of rights or property, or impacts any inheritance rights of a person who renounces their religion, is excluded from the religious community or loses their caste, shall not be enforced by any court. This includes any law or custom that is presently in effect in India⁵.

Transfer of Property Act, 1882 (TOPA)

- 1- S7 : Any individual who is capable of entering into a legally binding agreement and has the right to transfer a property, either entirely or partially, can do so within the limits and guidelines set by the currently applicable law⁶.
- 2- S11: When an absolute interest in the property has been transferred, there can be no restrictions on how one can enjoy their property⁷.

Indian Constitution (IC)

- 1- Art 25: All individuals have the right to freely profess, practice, and propagate any religion of their choice, subject to public order, morality, and health. The state cannot

² Hindu Succession Act 1956, s4(1)(b)

³ Hindu Succession Act 1956, s14(1)

⁴ Hindu Succession Act 1956, s26

⁵ Caste Disabilities Removal Act 1850, act 21, s1

⁶ Transfer of Property Act 1882, s7

⁷ Transfer of Property Act 1882, s11

discriminate against any individual or community on the basis of religion, and it is required to ensure equal treatment for all citizens irrespective of their religious beliefs⁸.

- 2- Art 15 (1)(b): No individual, based on their religion, race, caste, sex, or place of birth, shall be subject to any discrimination. The State is required to uphold and promote equality, ensuring that no citizen is denied equal treatment and opportunities due to their background⁹.

DISCUSSION

The defendants contended that the Hindu women's right to property act, 1937 delves limited interest to the property of the deceased husband on to a widow, which essentially restricts the widow's right to alienate the property¹⁰. However, as per section 14(1) HSA- the Hindu widow would become the absolute owner of the property delved on her¹¹. This contradiction is resolved by S4(1)(b) of HSA, according to which the provision of the HSA would supersede the former provision¹². This establishes that Poosammal was the absolute owner of the property upon the death of her husband and mother and that she had the right to alienate the property and she can do so under s7 TOPA¹³. Further, s26 HSA disentitles the offspring of a convert from inheriting the property of the Hindu relatives¹⁴. This means that Poosammal's children would not be eligible to inherit the property, but there is no restriction on the convert claiming it. Moreover, the CDRA dismisses the enforceability of any law or custom that restricts the inheritance rights of an individual on the grounds of conversion to another religion¹⁵. This is in pursuance of the right to freedom of religion guaranteed under article 25 of the Indian Constitution¹⁶. Restricting inheritance rights upon conversion to another religion would be counter-productive to the freedom of religion as well as the right against discrimination guaranteed under article 15(1)(b)¹⁷. Nevertheless, S11 TOPA ensures the unrestricted

⁸ Constitution of India 1950, art25

⁹ Constitution of India 1950, art15(1)(b)

¹⁰ Hindu Women's Right to Property Act 1937

¹¹ Ibid 3

¹² Ibid 2

¹³ Ibid 6

¹⁴ Ibid 4

¹⁵ Ibid 5

¹⁶ Ibid 8

¹⁷ Ibid 9

enjoyment of one's own property for which the plaintiff can seek a permanent injunction¹⁸.

The judgement was a progressive step in the direction of protecting a widow's right to inheritance. A Hindu widow's ownership over her deceased husband's property is a very contentious subject that has been in dispute and question for years. In India, the establishment of women's legal right to property more often than not focuses on their religious identity and locates their demand within the context of the family. As per the feminist theory of property, independent ownership of property gives women a sense of agency and has an impact on the gendered socio-economic relations¹⁹. In order to move past the limitations posed on women's ownership of property and locate her rights beyond her affiliation with her conjugal relation, it is imperative to place specific rights claims within a broader historical and political context to examine them critically within the legal system, taking into account women's lived experiences²⁰. This case would be an effective measure to protect the widow's rightful ownership.

Moreover, religion is a very sensitive and personal aspect of an individual's life and is very protected in India. Personal laws govern the intricacies of each religion and while conversion to another religion could be valid grounds for divorce, conversion resulting in disinheritance would go against the constitutional values. It hinders one's rights and freedoms protected by the constitution as the right to property is a natural right that resonates with the fundamental aspects of human nature²¹. The judicial non-interference with personal laws is a grey area, as most property and succession rights are covered within personal laws, and as long as religion is the principle governing these, one's property rights upon conversion would remain in dispute. In light of the misrepresented ideas of loss of rights upon conversion to another religion, this case also sparks a discussion on the implementation of the Uniform Civil Code. A blanket application of laws governing the private sphere would avoid red tapering in the pursuance of legal rights and foster the values of article 25²². The courts made a sound decision

¹⁸ Ibid 7

¹⁹ Lena Halldenius, 'Mary Wollstonecraft's Feminist Critique of Property: On Becoming a Thief from Principle' (2014) 29 *Hypatia* 942.

²⁰ Reena Patel, 'Hindu Women's Property Rights in India: A Critical Appraisal' (2006) 27 *Third World Quarterly* 1255 <<https://www.jstor.org/stable/4017753>>.

²¹ George B Newcomb, *Theories of Property*, vol. 1 (4th edn., Oxford University Press 1886) 595 595–611 <<https://www.jstor.org/stable/2139069>>.

²² Ibid 8

in pursuing a functionalist approach to interpreting the HSA to determine that the conversion would not amount to foregoing of the inherited property.

However, the court overlooks an important factor, which is- the statute of limitation. The Part IX of the Limitation Act allows for a window of 12 years to claim the property²³. The sale deed was made almost 50 years after the death of the husband, and in that period Poosammal never claimed her share in the property, or even intervened when a portion of property was divided and allotted to her brothers. This is antithetical to the rights of the defendants in possession of the property. It was held in *Prem Singh v Birbal* that the right to property shall be extinguished if the period prescribed for instituting a suit for possession of any property has expired²⁴. The defendants did have certain rights over the property which were disregarded by the court. The 'absolute' ownership of Poosammal should have been further scrutinized while deciding whether the transfer for valid. It must be taken into account that if there are co-sharers in a property, there must be a joint agreement for sale, without which the sale is void and ineffective²⁵. This was upheld in *Vimleshwar Nagappa Shet vs Noor Ahmad Sheriff*²⁶. A balance of rights of both parties is crucial for the purposes of adhering to the principles of natural justice.

Nevertheless, the courts, in validating the sale deed and approving the permanent injunction to the plaintiff, uphold the principle of property as a 'bundle of rights-' multiple rights co-existing with respect to a particular property²⁷. Thus, when the widow inherited the property, becoming the absolute owner of the suit property, she also inherited the right to alienate it as under s7 TOPA²⁸. On the implementation of the Sale Deed, this bundle of rights got transferred onto the plaintiff, and she got all the rights that come with property, including the right to peaceful enjoyment of the property, which the court protected by the passing of a permanent injunction against the defendants.

Thus, by a thorough analysis of the facts of the case, the contentions of the parties and the reasoning employed by the courts in laying down the judgement, it can be said that the decision

²³ The Limitation act 1963, part IX

²⁴ *Prem Singh & Ors vs Birbal & Ors* [2006] Appeal (civil) 2412 of 2006.

²⁵ Avtar Singh and Harpreet Kaur, *Textbook on the Transfer of Property Act* (Universal Law Publishing 2009).

²⁶ *Vimleshwar Nagappa Shet vs Noor Ahmad Sheriff And Ors* [2011] CIVIL APPEAL NOS. 4279-4280 OF 2011.

²⁷ Class Discussion

²⁸ *Ibid* 6

of the court was legally sound as well applaudable for exercising positive discrimination allowed in the case of Mamta Dinesh²⁹. The same can be seen in view of the feminist theory of property³⁰. While the courts erred in not taking into consideration certain factors that might change the trajectory of the application of certain rights, it also made its best attempt at accommodating the rights and freedoms guaranteed under the constitution. The judgement of K Sivanandam v Maragathammal was progressive in its approach and made way for future judgements to take into account the fundamental principles of the right to property, equality, religion, etc.

²⁹ *Mamta Dinesh Vakil vs Bansi S. Wadhwa* [2012] .

³⁰ *Ibid* 19