DWELLING HOUSE AND FEMALE HEIRS : A COMMENT ON *NARASHIMAHA MURTHY* v. *SUSHEELABAI*

THE JUDGMENT of the apex court in *Narashimaha Murthy* v. *Susheelabai*[1] seeks to settle an important issue in the context of female heirs' right to claim their share in the dwelling house left by the intestate. It may be recalled that the enactment of the Hindu Code[2] revolutionised the status of Hindu women in various aspects. The Hindu Succession Act,1956 (hereinafter referred to as the Act) has considerably enlarged her property rights by giving her absolute and equal rights along with males. Section 23[3] of the Act, however, is an exception and puts a rider on a female heirs right in respect of property which is a dwelling house in occupation by the male heir's. Her right to succeed as an equal heir with the male heirs is not extinguished but is kept in abeyance till the happening of a contingency - *viz.*, till the male heirs divide their own share. The idea of this provision is to prevent fragmentation and disintegration of the family dwelling house at the instance of the female heirs to the detriment of the male heirs in occupation of the house. As stated by Chief Justice Ramaprasada Rao in *Mookamonal* v. *Chitravadivammel*,[4] the intention of Parliament was to safeguard the family dwelling house against division at the instance of female heirs. The interest of the female heir during this period, however, has not been totally ignored as, according to the court, they have been given a right of residence in the dwelling house until they get their share in division therein. This right, however, has been considerably "watered down" in the case of daughters as is clear from the proviso to section 23.

This section has come up for adjudication in various cases during the last twenty five years. The most significant issue raised in the context has been whether a female heir can ask for partition of her share when there is only one male heir. Opinions and interpretations have been divergent until the Supreme Court order in *Narashimaha Murthy*.[5]

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1. AIR 1996 SC 1826.

2. Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Guardianship and Minority Act, 1956 and Hindu Succession Act, 1956.

3. S.23 : Special provision respecting dwelling house - Where a Hindu intestate has left behind him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling house wholly occupied by members of his or her family, then notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein, but the female heir shall be entitled to a right of residence therein.

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

The class I heirs under the Schedule are "son; daughter; widow; mother; son of predeceased son; daughter of a predeceased son; son of predeceased daughter; daughter of predeceased daughter; widow of predeceased son; son of predeceased son of a predeceased son; daughter of predeceased son of predeceased son; widow of predeceased son of a predeceased son.

4. AIR 1980 Mad 243 at 244.

5. *Supra* note 1.

In *Arun Kumar* v. *Jnanendra*[6] where a transferee of a female heir sought partition of a dwelling house, the court held that the restriction imposed by the section on a female heir applies also to her transferee. The issue of whether the position would be different if there was only one male heir was also discussed.

Ascertaining the intention of the legislature the court came to the following conclusion:[7]

> It may be that there is one male heir and one female heir and there may not be any chance of that contingency [division amongst male heirs] to happen but that will be no ground to say that the section is inapplicable.

Likewise in *Janabai Ammal* v. *T.A.S.Palani Mudaliar*,[8] the court held that if Parliament had intended to make the section inapplicable to a case where there was only one male heir, it would have added a proviso to that effect. The court conceded as follows:[9]

> Such right would practically be defeated and frustrated since there is no possibility of the single male heir choosing to divide the shares in the property of the intestate, and thus the right of the female co-heirs to have a partition of their shares is likely to be frustrated for ever. In such cases, the right to demand partition, vested in the female heir, will be permanently postponed and ultimately frustrated. Such hard contingencies would cause great hardship to the female heirs, but that cannot be avoided.

The court suggested amendment of the section so that difficulties arising out of divergent interpretations could be avoided.

On the other hand, some courts have taken the view that where there is a single male heir, there is no point in keeping the right of the female heirs to seek their share, in abeyance because there is no possibility of that male heir claiming any partition against another male heir (since there is none). In *Anant* v. *Jankibai*,[10] there was only one male heir and four married daughters, one unmarried daughter and a widow. The widow claimed partition of her share which was opposed by the son invoking section 23. It was contended that *vide* section 13(2) of the General Clauses Act 1897 (GCA) "words in singular shall include the plural and vice versa" and so the words "male heirs" would include "male heir" also for purposes of restricting the right of the female heirs. The court rejected this contention on the ground that section 13 of the GCA opens with the words "unless there is anything repugnant in the subject or context"; and the expression "respective" in section 23 cannot be given effect if "male heirs" were to be construed to include "male heir", it being beyond the purview of the court to omit the word for purposes of giving effect to section 13(2) of the GCA. The court accordingly, held:[11]

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6. AIR 1975 Cal 232.
7. *Id.* at 234.
8. AIR 1981 Mad 62.
9. *Id.* at 74.
10. AIR 1984 Bom 319; see also, *Hemlata* v. *Umasankari*, AIR 1975 Ori 208.
11. *Id.* at 322.

> [T]o construe this section to mean that the restriction applies even in cases where there is only one [male] heir of the intestate would be to construe it beyond the purpose plainly indicated and to forefeit, verily, the established and vested rights of the female heirs, when they take as tenants-in-common with the single male heir.

And more recently in *Mahanti Matyalu* v. *Oluru Appanama*[12] where there was only one male heir living in a family dwelling house, the Full Bench of the Orissa High Court held that in case of a single male heir inheriting with one or more female heirs, it would not be postponement of a right to claim partition at the instance of female heirs but a complete denial of such a right as there would be no occasion for the male heir to claim share against any other male heirs. The court observed:[13]

> The legislature having given the female heirs absolute right by inheritance on the one hand could not have taken away the same by the other.

There was thus, a see-saw of opinions and interpretations and one was hoping that the issue would be settled by the apex court. Ultimately in 1996 the Supreme Court got an occasion to deliberate on this issue in *Narashimaha Murthy*[14]. Surprisingly, the latest judgment on the point in *Mahanti Matyalu*[15] was not even referred to though all other cases prior to that were discussed. Also, the court took a restrictive view of the section. This was a case where there was only one male heir and three female heirs. In view of the peculiar facts of the case the female heir was granted the relief of seeking partition of the dwelling house against the only male heir because he had lost *animus possedendi* and exhibited *animus dessidendi* by letting out the property to a stranger. However, as to the general principle, the court held that the restrictions imposed in section 23 apply even when there is one male heir. In the words of Justice Ramaswamy:[16]

> The right of residence to the male member in the dwelling house of the Hindu intestate should be respected and the dwelling house may be kept impartible during the life time of the sole male heir of the Hindu intestate until he chooses to divide and gives a share to his sister or sisters or alienates his share to a stranger or lets it out to others.

Traditional ethos of male superiority is evinced in the following observation of Justice Punchhi:[17]

> It cannot be forgotten that in the Hindu male-oriented society where begetting of a son was a religious obligation for the fulfillment of which

12. AIR 1993 Ori 36.
13. *Id.* at 40.
14. *Supra* note 1.
15. *Supra* note 12.
16. *Supra* note 1 at 1833-34.
17. *Id.* at 1837.

Hindus have even been resorting to adoptions, it could not be visualised that it was intended that the single male heir should be worse off unless he had a supportive second male heir as class I heir.

Several hypothetical situations were analysed by the court to indicate the difficulties a male heir might be confronted with if the sister "demands her pound of flesh... to see that the brother and his family are thrown into the streets to satisfy her ego..."[18]

Though one may not be unoblivious of the rationale behind the restriction imposed by section 23, yet, its strict interpretation without regard to the circumstances of the female heir is not fair; and all female heirs are not a Shylock! For instance, in the case of the widow of the intestate, she may not wish to stay with her sons but stay on her own or with some other relative, for whatever reasons. Postponing her right to get a share till the male heirs divide their own share would be practically denying her right forever for she may not even survive long enough to exercise her right. Besides, the interpretation that the restriction applies even when there is one male heir also seems to be harsh as the single male heir has no male co-heir to divide his share from. Though according to the apex court in *Narashimaha Murthy*[19] "the provision silences them [female heirs] in seeking partition but not their ownership extinct", the observation of the court in *Anant* v. *Jankibai*[20] that "apparantly in such a case the female heir has not the ghost of a chance to take her share" appears to be more apt.

It is submitted that each case needs to be decided keeping in mind the facts and circumstances of the case and applying the principles of justice, equity and good conscience. A balance has to be maintained between the right and even convenience of the male heir living in the house with his family, and the right of female heirs. While the former should definitely be not "thrown into the streets", the latter's right should also not be indefinitely postponed so as to be practically destroyed. Judicial or legislative intervention should ensure that while the provision should not cause injustice to any heir, legislative intent behind the statute is not given a go-by either.

*Kusum**

18. *Id.* at 1832.
19. *Id.* at 1837.
20. *Supra* note 10 at 321.

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