

CASE NO.:
Appeal (civil) 5321 of 2007

PETITIONER:
Santhosh and others

RESPONDENT:
Saraswathibai and another

DATE OF JUDGMENT: 20/11/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
ARISING OUT OF SLP (C) NO. 5437 OF 2006

S.B. SINHA, J.

1. Leave granted

2. Application of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') calls for consideration in this appeal which arises out of a judgment and order dated 15th November, 2005 passed by a learned Single Judge of the Karnataka High Court at Bangalore in Regular Second Appeal No. 276 of 2003.

3 The short factual matrix involved may be noticed at the threshold.

4. For the said purpose, we may notice the genealogy of the family.

Shivaraya (Dead)
S/o. Hanumanthappa Patil

Trimukh Rao (Died in 1957)
= 1st wife Sundari Bai
(Died on 16.10.1992)

Manikappa (Dead)

=2nd wife Kashibai
(D-4)

|
Saraswathi
(P-1)

|
Sharadabai
(P-2)

|
Shantabai
Neelamma

|
Mallikarjun

|
Jagadevi

|
Mallamma

|
Neelamma

(Died in 1987)
= wife K Kamalabai
(D-3)

|
Santosh

|
Satish

(D-1)

(D-2)

5. Original Suit bearing No. 34 of 1964 was filed by Sundrabai, first wife of Trimukh Rao (respondent No.1 herein) against Mallikarjun (since deceased) and Kashibai (defendant No.4 therein). A consent decree was passed in that suit, the relevant clauses whereof were as under :-

\0231. The plaintiff and the defendant no.2 are the wives of deceased Trimbakrao. The defendant No.1 is the son of Trimbakrao. The plaintiff Sundrabai and Mallikarjun and his mother Kashibai resides separately.

2. That as per compromise the land Sy. No.73 Kh. No.145 to the extent of measuring 6 acres 33 guntas. R.A. Rs.9.00 situated at Khandala, on north side bounded in the east the land of Shivalingappa Biradar in the west public way. In the north the land of Shankarappa in the south remain land Sy. No.73, was given to the plaintiff for her maintenance. She is in possession of that portion of land since 5/6 years. The defendants will not interfere and obstruct in the peaceful possession of that portion of land which was given to the plaintiff for her maintenance, till her death. The defendants No.1 and 2 will remain in possession of remaining half portion of land Sy.No.73 on south side as owner. The plaintiff will not alienate (through gift or sale) land which was given for her maintenance.

3. That after the death of the plaintiff the land given to her will be reversed to the defendant No.1 and 2. The parties will bear their costs of the cost\024.\024

6. Mallikarjun died in the year 1987. Sundrabai died in 1992. Respondents herein who are heirs and legal representatives of Sundrabai filed Original Suit No.210 of 1993 claiming the said land admeasuring 6 Acres 33 guntas from the Northern side of Survey No. 73 on the ground that she had become owner thereof in terms of Section 14(1) of the Act. Appellants who were arrayed in the suit as defendants inter alia contended that Sundrabai was not the absolute owner of the said property having been allotted to her by reason of the consent decree. It was furthermore contended that the land in suit was allotted to her by way of maintenance which she could keep in possession only during her life time and, therefore, Section 14(2) of the Act and not Section 14(1) of the Act would apply.

7. The said suit was dismissed on the premise that the plaintiffs were not the owners and were not in possession of the suit property.

8. On an appeal having been preferred thereagainst, the Principal District Judge Bidar by his judgment and order dated 2nd January, 2003 allowed the said appeal opining that Section 14(1) of the Act being applicable, the plaintiffs became the owners of the suit property. By reason of the impugned judgment the second appeal preferred by the appellants has been dismissed.

9. Mr. Solashe, learned counsel appearing on behalf of the appellants, in support of this appeal inter alia would submit that the

High Court committed a serious error of law in so far as it failed to take into consideration that Sundrabai on partition could not have been allotted 6 Acres 33 guntas of land and in that view of the matter, although the land which could fall in her share would be covered by Section 14(1) of the Act, but according to the learned counsel the share of Sundrabai in the joint family being 7/24 in the total land of joint family being 12 acres 33 guntas, share of Sundrabai would come only to 3 acres 29 guntas. It was submitted that the word "possessed" contained in Section 14 (1) of the Act must be construed to mean ownership as has been held by this Court in [1959] Supp. 1 SCR 968 : Gummalapura Taggina Matada Kotturuswami vs. Setra Veeravva and others.

10. Mr. Patil, learned counsel appearing on behalf of the respondents, on the other hand, would support the judgment. It was moreover contended that there is nothing on record to show that the total agricultural lands belonging to the joint family was only to the extent of 12 acres 33 guntas. In fact, Mr. Patil would urge that there were other properties of the joint family besides, the suit land.

11. Sub-sections (1) and (2) of Section 14 of the Act reads as under:-

14. Property of a female Hindu to be her absolute property (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation In this sub-section, "property" includes both moveable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

12. In Gummalapura Taggina Matada (supra) on which reliance has been placed by the learned counsel, this Court held that Section 14(1) of the Act has wide application. It not only takes within its sweep a land which was not only in possession of the female Hindu but also covers the land over which she has a right to possess stating:- Of course, possession referred to in section 14 need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of section 14. The word "possessed" is used in section 14 in a broad sense and in the context possession means the state of owning or having in one's hands or power. It includes possession by receipt of rents and profits. The learned

Judges expressed the view that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his title. We do not think that it is necessary in the present case to go to the extent to which the learned Judges went. It is sufficient to say that "possessed" in section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. In the case of *Gostha Behari v. Haridas Samanta*, P. N. Mookherjee, J., expressed his opinion as to the meaning of the words "any property possessed by a female Hindu" in the following words :-

"The opening words in "property possessed by a female Hindu" obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word "possession" in its widest connotation, when the Act came into force, the section would not apply."

(See also (2005) 5 SCC 390 : *Shakuntla Devi vs. Kamla and others* and 2006 (13) SCALE 408 : *Chandrika Singh (D) by L.Rs vs. Sarjug Singh and another*.)

13. Sundrabai's possession in respect of 6 acres 33 guntas of land even prior to the institution of the suit has been accepted in the said consent decree. Appellants herein undertook not to interfere in her peaceful possession thereover. Admittedly after the death of Trmukhrao who died after coming into force of the Act, Sundrabai became one of the co-owners of the property being one of his wives who had half share in the joint properties. Succession thereof was governed by Sections 6, 8 and 12 of the Act. It is, therefore, not a case where she had no right to possess the said land. If she had a right to possess the said land as a co-owner, the question of divesting her of the said right by invoking sub-section (2) of Section 14 of the Act would not arise.

14. The stipulations made in the consent decree dated 20th July, 1964 must thus be construed having regard to the well settled legal position. It is now a well settled principle of law that in considering a deed, the legal position obtaining in this behalf should be kept in mind.

15. Legal position in regard to the right of a female Hindu was laid down by this Court in (1977) 3 SCC 99 : *V. Tulasamma and others vs. Sesha Reddy (dead) by L.Rs.*, wherein the legal consequences were summarized as under :-

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly

stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored.

Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the

1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words "restricted estate" used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.

16. In *Nazar Singh and others vs. Jagjit Kaur and others* : (1996) 1 SCC 35, this Court following *Tulasamma* (supra) held as under :-

"The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. According to this decision, Sub-section (2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Sub-section (2) even if the instrument, decree, order or award allotting the property to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial Singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants accompanying the grant. (Also see the recent decision of this Court in *Mangat Mal v. Punni Devi* where a right to residence in a house property was held to attract Sub-section (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.)

According to Sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Succession Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was "possessed" by her. Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. This proposition follows from the words in Sub-section (1), which insofar as is relevant read : "Any property possessed by a female Hindu...after the commencement of this Act shall be held by her as full owner and not as a limited owner". In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in

her possession. So far as the expression "possessed" is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case.\024
(emphasis supplied)

17. In view of the aforementioned binding authoritative pronouncements of this Court, we are of the opinion that the pre-existing right of Sundrabai was crystallized by reason of the said consent decree. Furthermore there is nothing on record to show that 12 acres 33 guntas of land was the only property belonging to the joint family and thus, she had been granted more lands to which she was not entitled to.

18. In view of the matter, we do not find any infirmity in the impugned judgment. The appeal is accordingly dismissed with costs. Counsel\022s fees assessed at Rs.10,000/-.