

PETITIONER:
MAHARAJA PILLAI LAKSHMI AMMAL

Vs.

RESPONDENT:
MAHARAJA PILLAI THILLANAYAKOM PILLAI AND ANOTHER

DATE OF JUDGMENT 03/11/1987

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
RAY, B.C. (J)

CITATION:
1988 SCR (1) 780 1988 SCC (1) 99
JT 1987 (4) 281 1987 SCALE (2) 933

ACT:

Hindu Succession Act, 1956 Right of widow to property-
Whether absolute right under section 14(1) or restricted
right under section 14(2) of the Act.

HEADNOTE:

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Under a family partition deed (Ex. 1), the properties under 'A' schedule were allotted to Maharaja Pillai, and after his death, his widow was given the right to take the income from the properties.

One of the sons of Maharaja Pillai filed a suit claiming his right to 1/3rd share in the properties above-said. The trial court held that the widow got absolute right over the properties in dispute under section 14(1) of the Hindu Succession Act. On appeal, the appellate court held that the widow got only a restricted right under section 14(2) of the Act. On further appeal, the High Court mainly upheld the view of the first appellate court. Against the judgment of the High Court, appeal was filed to this Court by special leave.

Allowing the appeal and restoring the judgment of the trial court, the Court,

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HELD: The question to be decided is whether the widow got an absolute right or a restricted right over the properties in the 'A' schedule after the coming into force of the Hindu Succession Act. During the life time of Maharaja Pillai, his wife (The widow in the case) was maintained by him. After his death, the widow was in exclusive possession of the 'A' schedule properties and was taking the income from those properties. She had a right to utilise that income for her maintenance. That right was conferred on her under Ex. D. 1. The properties possessed by the widow fairly and squarely fall under Section 14(1) of the Act. The property mentioned in section 14(1) may be acquired by a female by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance, etc. The right to maintenance of a Hindu female is a personal obligation of the husband. If the wife is put in exclusive possession of property with the right to take

income for her maintenance, it must be presumed that the property is given to her in lieu of maintenance. The property under 'A' schedule was allotted against the share of Maharaja Pillai. That property was given to the possession of the widow with a right to take income for her maintenance, and this is sufficient to get the protection of section 14(1) of the Act. [782B; 783D-E; 784C-D; 786G]

Gulwant Kaur & Anr. v. Mohinder Singh & Ors., Civil Appeal No. 112 of 1980, date 20.7.87; Bai Vajia v. Thakorbhai Chelabhai & Ors., [1979 3 SCR 291; V. Tulsamma v. Sesha Reddi, [1977] 3 SCR 261 at 310. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 266 of 1974. C

From the Judgment and order dated 7.2.1973 of the Kerala High Court in S.A. No. 763 of 1970.

S. Padmanabhan and N. Sudhakaran for the Appellant.

G. Vishwanatha Iyer and Miss Lily Thomas for the Respondent N and 5.

D.M. Nargolkar for the Respondent No. 1.

The Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. This appeal by special leave has been preferred against the judgment and decree dated February 7, 1983 passed by the High Court of Kerala in Second Appeal No. 763 of 1970.

Under the family partition deed Ex. 1 executed on August 2, 1950, the properties under 'A' schedule were allotted to Maharaja Pillai and after his death his widow was given the right to take the income therefrom. One of the sons of Maharaja Pillai filed a suit claiming his right to take 1/3rd share in those properties. The trial court while construing the terms of Ex. 1 held that the widow got absolute right over 'A' schedule under section 14(1) of the Hindu Succession Act. The appellate court, however, took a different view. The appellate court held that the widow could get only a restricted right under Section 14(2) of the Hindu Succession Act. Upon further appeal, the High Court agreed with the view taken by the appellate court. The

High Court, however, granted a small share to the widow stating that according to law in force in the erstwhile Travancore State, the widow would have inherited the share which would have fallen to any of the sons.

The question for our consideration is whether the widow got absolute right or only a restricted right over the 'A' schedule after the coming into force of the Hindu Succession Act. The answer to the question turns upon the scope and meaning to be given to the terms of Ex. 1, the relevant portion of which is extracted hereunder:

"... 3. As it was decided by us to partition our family properties providing to maintain Kothamachiyar Ammal, who is the wife of executant No. 1 and mother of others and the aforesaid Lakshmi Ammal, this partition deed is written with the stipulation mentioned below and it is fully agreed by us to abide by the provisions contained herein.

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9. During the life time of the 1st executant as and when the marriage of the said Lakshmi Ammal is decided to be conducted the first executant himself shall meet the expense in connection with

that and conduct her marriage and if her marriage happened to be conducted after the death of 1st executant, executants Nos. 2 and 3 shall have right to encumber the 'A' schedule property for an amount up to Rs.2, to meet the expenses for marriage ceremonies and for dowry and gold ornaments and the A schedule properties shall be liable for so much amount. 10. Kothamachi kyar Ammal, the wife of first executant and mother of other executants may reside in the building included in the A Schedule during her life time and take the income of the properties included in the A schedule after the death of the 1st executant; after the death of the 1st executant the successor-in-interest of the 1st executant shall have no right to create any document, except in the manner stated in paragraphs 9 above encumbering A schedule properties so as not to affect the right of enjoyment of the said person but this provision will not be binding on the 1st executant as regards his absolute right over the A schedule properties.

783

The first executant referred to above was Maharaja Pillai. The widow we are concerned was his wife. On August 31, 1955 Maharaja Pillai died. There-after 'A' schedule items in the partition deed were being enjoyed by the widow. While she was in possession of those properties the Hindu Succession Act of 1956 came into force. Subsequently, the widow had gifted those properties in favour of her daughter. The case of the plaintiff was that after the death of Maharaja Pillai, the said properties would devolve upon his heirs and he would be entitled to 1/3rd share. It has been urged by Mr. Vishwanath Iyer, learned counsel for the respondents that the properties in A schedule would remain in possession of the widow with the right to utilise the income therefrom for her maintenance but the properties were not given to her in lieu of maintenance. It was also urged that Maharaja Pillai had absolute power of disposal over the properties during his life time, and it would be therefore not proper to hold that the widow got the properties in lieu of her maintenance.

We are unable to agree with these contentions. It is not necessary for us to examine what would have happened to the rights of the wife if Maharaja Pillai had disposed of the 'A' schedule. The fact remains that he did not. During the life time of Maharaja Pillai, the wife was residing in the house allotted to her husband. She was being maintained by her husband. After the death of husband, she was in exclusive possession of the 'A' schedule. She was taking the income from those properties. She had a right to utilise that income for her maintenance. That right was conferred on her under Ex. D1. The children also were, allotted separate properties under Ex. D1. They had taken their respective shares from the family properties. In our opinion the properties possessed by the widow fairly and squarely fall under Section 14(1) of the Hindu Succession Act. Section 14 provides:

" 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 movable and immovable property acquired by a female Hindu by inheritance or

device 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 her marriage or by her own skill or exertion, or by purchase or by prescription or any other manner what so

784

ever, and also any such property held by her as stridhan A 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 state in such property."

The property possessed by a female referred to under Section 14(1) includes property both movable and immovable, property. It may be acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance etc. The deed or any other arrangement by which the husband gives the property to his wife for maintenance need not specifically state that it is given in lieu of maintenance. It is not an act of charity the husband does. It is out of his personal obligation to maintain her. The right to maintenance of a Hindu woman is a personal obligation of the husband. If, therefore, the wife is put in exclusive possession of the property with the right to take the income for her maintenance, it must be presumed that the property is given to her in lieu of maintenance. The very right to receive maintenance which is inherent in her, is itself sufficient to enable the ripening of possession of any property into full ownership under Section 14(1) of the Hindu Succession Act.

It was, however, urged for the respondents that Section 14(1) does not take within its fold every property that comes into possession. Of the widow. It must be a limited estate in the sense of ownership without the right of disposal. It should be a specific property given to her in lieu of her right to maintenance.

Similar contentions have been considered and rejected in a recent decision of this Court in *Gulwant Kaur & Anr. v. Mohinder Singh & Ors.*, Civil Appeal No. 112 of 1980 date 20.7.87 (to which one of us was a party, K. Jagannatha Shetty, J.). There it was observed:

"It is obvious that Section 14 is aimed at removing restriction no limitation on the right of a female Hindu to enjoy, as a full owner property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a

785

partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to

receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Subsection (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedents right."

It was urged that the view taken in above case was contrary to the decision in Bai Vajia v. Thakorbbhai Chelabhai & Ors., [1979] 3 SCR 291. We do not agree with this contention also. Indeed a similar contention was urged in Gulwant Kaur's case and it was rejected by observing:

"We do not understand that court as laying down that what was enlarged by sub-section 1 of Section 14 into a full estate was the Hindu women's estate known to Hindu law. When the Court uses the word limited estate, the words are used to connote a right in the property to which the possession of the female Hindu may be legitimately traced, but which is not a full right of ownership. If a female Hindu is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired a limited right or interest in the property and once that position is accepted it follows that the right gets enlarged to full ownership under Sec. 14(1) of the Act. That seems to us to follow clearly from the language of Sec. 14(1) of the Act."

Bai Vijia's case, has not laid down any different principle. It has expressly accepted the view taken in V. Tulsamma v. Sesha Reddi, [1977] 3 SCR 261 at 310 this Court summarised the scope of Section 14 as follows:

786

"(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 jurist 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 term and must be liberally construed in favour of the female so as to advance the object of 1956 Act and promote the socio economic ends sought to be achieved by this long need legislation.

(3) Sub-section (2) of S. 14 is in the nature of a

proviso and has a field of its own without interfering with the operation of S. 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 S. 14(1) or in a way so as to become totally inconsistent with the main provision.

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In the instant case the property under A Schedule was allotted against the share of Maharaja Pillai. The same property was given to the possession of the widow with a right to take the income for her maintenance. This is sufficient to call into aid Section 14(1) of the Hindu Succession Act.

In the result, we allow the appeal, set aside the judgment OF the High Court and also the lower appellate court and restore that of the trial court.

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Appeal allowed.