Mangal Singh & Ors.

Vs

Shrimati Ratino & Anr.

Civil Appeal No. 51 of 1964

(K. N. Wanchoo, V. Bhargava, G. K. Mitter JJ)

06.04.1967

JUDGEMENT

BHARGAVA, J.

This appeal arises out of a suit brought for possession of some land which was admittedly owned at one time by one Labhu. Labhu died in the year 1917 and, on his death his widow, Smt. Harnam Kaur, who filed the suit as plaintiff, came into possession of the land. She continued in possession of the land until the year 1954 when, on an application made by the collaterals of Labhu, the Naib Tehsildar, by his order dated 26th June, 1954, effected mutation in favour of these collaterals. These collaterals were defenders 1 to 4, Mangal Singh, Amer Singh, Santa Singh and Ishar Singh. These collaterals, on the basis of the order of the Naib Tehsildar, dispossessed Smt. Harnam Kaur's appeal against the order of the Collector. The claim of these collaterals was that Smt. Harnam Kaur had entered into karewa marriage with one of these collaterals, Ishar Singh, defendant No. 4 and consequently, she had lost her right to hold the land of her first husband Labhu. Smt. Harnam Kaur denied that she had entered into any karewa marriage with Iswar Singh and, on the basis of this denial, instituted the suit claiming possession of that land. She pleaded that the four defendants had no right to this land and had wrongfully dispossessed her, so that they were mere trespassers. This suit was instituted on 1st March, 1956. After the institution of the suit, the Hindu Succession Act, 1956 (No. 30 of 1956) hereinafter referred to as "the Act" came into force on 17th June, 1956. The suit was, at that time, pending and it continued to remain pending until the year 1958 when Smt. Harnam Kaur died. Thereupon, Smt. Rattno applied to be substituted as plaintiff in place of Smt. Harnam Kaur as her legal representative. This application was allowed, though it was opposed by defendants 1 to 3. In the trial of the suit defendants 1 to 3 took the plea that Smt. Harnam Kaur, the original plaintiff had lost her right to the land because of her karewa marriage with Ishar Singh defendant No. 4. Defendant No. 4, however admitted the claim of Smt. Harnam Kaur in his written statement, denied that he had dispossessed her and also denied the allegation of her karewa marriage with him. In these circumstances two main questions came up for decision by the trial court. The first question was whether Smt. Harnam Kaur had entered into a karewa marriage with Ishar Singh, defendant No. 4 so as to lost her right to the disputed land as widow of the previous male owner Labhu? The second question that arose was whether Smt. Rattno, who was substituted as the legal representative of Smt. Harnam Kaur, was entitled to succeed to the property of Smt. Harnam Kaur? This second question depended on whether Smt. Harnam Kaur had, or had not, become full owner of the land under s. 14 of the Act. The trial court held that Smt. Harnam Kaur had contracted karewa, marriage with Ishar Singh, defendant No. 4, and had lost her rights. The further finding of the trial court was that Smt. Harnam Kaur had been dispossessed before the Act came into force and, consequently. s. 14 of the Act did not apply, with the result that Smt. Rattno could not claim succession to Smt. Harnam Kaur under that provision of law. On these findings, the trial court

dismissed the suit.

On appeal, the Additional District Judge, Patiala, recorded the finding that Smt. Harnam Kaur had not entered into karewa marriage with Ishar Singh, defendant No. 4 and, further, that s. 14 of the Act was applicable to the present case, as the land in suit was possessed by Smt. Harnam Kaur so as to make her full owner of this land under that provision of law. On these findings, the first appellate Court decreed the suit against defendants 1 to 3 with costs in both courts, after making a comment that Ishar Singh, defendant No. 4, was a proforma defendant. Defendants 1 to 3, thereupon, came up in second appeal to the High Court of Punjab and impleaded as respondents Smt. Rattno as well as Ishar Singh. The High Court dismissed the appeal and, thereupon, defendants 1 to 3 have come up to this Court in appeal under special leave granted to them. In this appeal also, defendants 1 to 3 impleaded both Smt. Rattno and Ishar Singh as respondents.

During the pendency of this appeal, one of the defendants appellants died and his legal representatives were brought on the record as appellants, Smt. Rattno also died and her legal representatives were impleaded as respondents. Further, Ishar Singh, defendant No. 4, who was a respondent in this appeal, also died. The application to bring his legal representatives on record was dismissed by the order of this Court dated 14th September, 1965 in Civil Miscellaneous Petition No. 1589 of 1965. In view of this order, a preliminary objection was raised at the time of hearing of this appeal by learned counsel for the respondents, who had been impleaded as legal representatives of Smt. Rattno, that the appeal had abated on account of the failure of the appellants to implead the legal representatives of Ishar Singh respondent. It, however, appears that, on the, pleadings of parties and the nature of the dispute that came to be settled by the lower courts, it cannot be held that this appeal must abate as a whole, or must fail because of its abatement against Ishar Singh on his death. We have already mentioned that, though the plaintiff, Smt. Harnam Kaur had come forward with the allegation that she had been dispossessed by all the four defendants 1 to 4, Ishar Singh, defendant No. 4 in the within statement repudiated this claim. He out forward the plea that he had not dispossessed the plaintiff and further, supported the claim of the plaintiff by pleading that there had been no karewa marriage between them. The suit was dismissed by the trial court. It was decreed by the first appellate Court only against defendants 1 to 3, treating Ishar Singh as a proforma defendant. In these circumstances, it is obvious that, when the case came up before the High Court the dispute was confined between Smt. Rattno, legal representative of the original plaintiff on the one side, and defendants 1 to 3 on the other. Defendants 1 to 3 sought vacation of the decree for possession which had been granted against them in favour of Smt. Rattno. Ishar Singh against whom the suit had not been decreed at all, thus became an unnecessary party. In these circumstances even if Ishar Singh, had not been impleaded as respondent in the High Court, the relief claimed by defendants 1 to 3 in that Court against Smt. Rattno could have been granted, without bringing into effect any contradictory decrees. In the appeal in this court also, in these circumstances, Ishar Singh was an unnecessary party and, consequently, the failure to implead his legal representatives as respondents the appeal after his death does not affect the right of defendants 1 to 3 to claim the relief for which they have come up to this Court in appeal. The preliminary objection, therefore, fails and is rejected.

On merits, we are of the opinion that the decision given by the High Court against the defendant appellants must be upheld. The first appellate Court, which was the final Court for the question of fact, clearly recorded a finding that the karewa marriage alleged to have been entered into by the plaintiff. Smt. Harnam Kaur, with Ishar Singh, defendant No. 4 was not proved. That finding of fact was binding on the High Court and was rightly accepted by if. It is no longer open to the until her death, and that her dispossession by defendants 1 to 3 in the year 1954 was illegal. They had no

right to this land in preference to Smt. Harnam Kaur.

It was, however, urged on behalf of the appellants that, when Smt. Harnam Kaur dies, she was not in actual possession of this land. She had been dispossessed in the year 1954 and, at the time of her death in 1958, this suit instituted by her for possession of that land was still pending. In the suit, her own pleading was there that the land was in actual possession of defendants 1 to 3 as trespassers, and, in such circumstances, it should be held that the land was not possessed by Smt. Harnam Kaur at any time after the Act came into force, so that s. 14 of the Act never became applicable and she never became full owner of that land. It may be mentioned that there was no dispute in the High Court nor was it disputed before us, that, if it be held that s. 14 of the Act had become applicable and Smt. Harnam Kaur became full owner of this land, her rights would pass on her death to Smt Rattno and, subsequently, on the latter's death, to the present respondents in this appeal. The only question for decision in this appeal, therefore, is whether it can be held that this property was possessed by Smt. Harnam Kaur as envisaged by s. 14 of the Act, so that she became full owner of this land.

Section 14(1) of the Act is as follows :-

> "14. (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.
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> Explanation-In this sub-section, "property" includes both movable and immovable, "property acquired" includes both movable 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 her 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."

The dispute in the case has arisen, because this section confers the right of full ownership on a Hindu female only in respect of property possessed by her, whether acquired before or after the commencement of the Act; and, in the present case, admittedly, the plaintiff had been dispossessed in the year 1954 and was not able to recover possession from the defendants-appellants until her death in the year 1958. It was urged on behalf of the appellants that, in order to attract the provisions of s. 14(1) of the Act, it must be shown that the female Hindu was either in actual physical possession, or constructive possession of the disputed property. On the other side, it was urged that, even if a female Hindu be, in fact, out of actual possession, the property must be held to be possessed by her, if her ownership rights, in that property still exist and, in exercise of those ownership rights. she is capable of obtaining actual possession of it. It appears to us that, on the language used in s. 14(1) of the Act, the latter interpretation must be accepted.

It is significant that the Legislature begins s. 14(1) with the words "any property possessed by a female Hindu" and not "any property in possession of a female Hindu". If the expression used had been "in possession of" instead of "possessed by", the proper interpretation would probably have been to hold that, in order to apply this provision, the property must be such as is either in actual possession of the female Hindu or in her constructive possession. The constructive possession may be through a lessee mortgagee, licensee, etc. The use of the expression "possessed by" instead of the expression "in possession of", in our opinion, was intended to enlarge the meaning of this

expression. It is commonly known in English language that a property is said to be possessed by a person if he is its owner, even though he may for the time being, be out of actual possession or even constructive possession. The expression "possessed by" is quite frequently used in testamentary documents, where the method of expressing the property, which is to pass to the legatee, often adopted is to say that "all property I die possess of shall pass to..... " In such documents, wills, etc., where this language is used, it is clear that whatever rights the testator had in the property would pass to the legatee, even though, at the time when the will is executed or when the will becomes effective, the testator might not be in actual, physical or constructive possession of it. The legatee will, in such a case, succeed to the right to recover possession of that property in the same manner in which the testator could have done. Stroud in his Judicial Dictionary of Words and Phrases, Vol. 3, at p. 2238, has brought out this aspect when defining the scope of the words "possess" and "possessed". When dealing with the meaning of the word "possession", Stroud defines "possession" as being in two ways, either actual possession or possession in law. He goes on to say that "actual possession is when a man enters in deed into lands or tenements to him descended, or otherwise. Possession in law is when lands or tenements are descended to a man, and he has not as yet really, actually, and in deed, entered into them. " In Wharton's Law Lexicon 14th Edn. at p. 777, the word "possession" is defined as being equivalent to "the state of owning or having a thing in one's own hands or power. " Thus, three different meanings are given; one is the state of owning the second is having a thing in one's own hands, and the third is having a thing in one's own power. In case where property is in actual physical possession, obviously it would be in one's own hands. If it is in constructive possession, it would be in one's own power. then, there is the third case where there may not be actual, physical or constructive possession and, yet the person still possesses the right to recover actual physical possession or constructive possession; that would be a case covered by the expression "the state of owning". In fact, elaborating further the meaning of the word "possession". Wharton goes on to say that "it is either actual, where a person enters into lands or tenements descended or conveyed to him; apparent, which is a species of presumptive title where land descended to the their of an abator, intruder, or disseisor, who died seised; in law, when lands, etc. have descended to a man, and he has not actually entered into them, or naked, that is, mere possession, without colour right. " It appears to us that the expression used in s. 14(1) of the Act was intended to cover cases of possession in law also, where lands may have descended to a female Hindu and she has not actually entered into them. It would of course, cover the other cases of actual or constructive possession. On the language of s. 14(1), therefore, we hold that this provision will become applicable to any property which is owned by a female Hindu, even though she is not in actual, physical or constructive possession of that property.

Section 14(1) came up for interpretation in various cases before a number of High Courts, and was considered by this Court also in several cases. In none of those cases, however, did the question directly arise as to whether s. 14(1) will be applicable, if the female Hindu is out of actual, physical or constructive possession and the property happens to have been wrongfully taken into possession by a trespasser. Most of those cases were cases where the female Hindu had made a gift, and it was only incidentally that, in some of those cases, comments were made on the question where s. 14(1) of the Act will be attracted or not in cases the female Hindu had been dispossessed by a trespasser.

So far as this Court is concerned, the earliest case is that of Gummalpura Taggina Matada Kotturuswami v. Setra Veeravva and others(1). Dealing with the scope of s. 14(1) of the Act in that case this Court cited from a decision of Vishwanatha Sastri, J. in Gaddam Venkayamma v. Gaddam Veerayya(2), and noticed the fact that in that case it was held that the word "possessed" is used in s. 14 in a broad sense and in the context, possession means the state of owning or having in one's hands or power. It was also noticed that the learned Judges of the Andhra Pradesh High Court in that

case had 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. Since in that case this Court was not concerned with a situation where a trespasser had actually dispossessed the female owner, the Court went on to hold : "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 s. 14 is used in a broad sense, and, in the context, means the State of owning or having in one's hand or power." Thus, in that case decided by this Court, the board meaning of the word "possessed" was accepted as even including cases, where the state of owning the property exists. Learned counsel for the appellants, when bringing to our notice the views expressed by this Court in that case, also drew our attention to another part of the judgment, where this Court remarked : "Reference to property acquired before the commencement of the Act certainly makes the provisions of the section retrospective, but even in such a case, the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. There is no question in the present case that Veeravva acquired the property of her deceased husband before the commencement of the Act. In order that the provisions of s. 14 may apply to the present case, it will have to be further established that the property was possessed by her at the time the Act came into force. " Learned counsel, from these words, tried to draw an inference that this Court had laid down that s. 14(1) will only apply to cases where the property was possessed by the Hindu female at the commencement of the Act. We do not think that any such interpretation can be placed on the words used by this Court. Section 14(1) covers any property possessed by a female Hindu, whether acquired before or after the commencement of the Act. On the face of it, property acquired after the commencement of the Act by a female Hindu could not possibly be possessed by her at the commencement of the Act. This Court, when it made the comments relied upon by learned counsel, was, in fact, concerned with a case of a female Hindu, who had acquired the right to the property before the commencement of the Act, but was alleged to be no longer possessed of it because of having adopted a son before the commencement of the Act. It was in these circumstances that the Court in that particular case was concerned with the question whether the female Hindu was possessed of the property in dispute or not at the time the Act came into force. The Court was not laying down any general principle that s. 14(1) will not be attracted at all to cases where the female Hindu was not possessed of the property at the date of the commencement of the Act. In fact, there are no words used in s. 14(1) which would lead to the interpretation that the property must, be possessed by the female Hindu at the date of the commencement of the Act. It appears to us that the relevant date, on which the female Hindu should be possessed of the property in dispute, must be the date on which the question of applying the provisions of s. 14(1) arises. If, on that date, when the provisions of this section are sought to be applied, the property is possessed by a female Hindu, it would be held that she is of owner of it and not merely a limited owner. Such a question may arise in her own life-time or may arise subsequently when succession to her property opens on her death. The case before us falls in the second category, because Smt. Harnam Kaur was a limited owner of the property before the commencement of the Act, and the question that has arisen is whether Smt. Rattno was entitled to succeed to her rights in this disputed property on her death which took place in the year 1958 after the commencement of the Act.

The next case in which s. 14 was considered by this Court was Brahmadeo Singh and Another v. Deomani Missir and Others(1). In that case, the female Hindu, who had succeeded to the property as the window of her husband, Ramdeo Singh, had transferred the property under two sale-deeds. It was held that the sale-deeds were not for legal necessity; and the question arose whether in those circumstances, when the Act came into force, it could be held that the widow was possessed of that

property. This Court, after citing the judgment in the case of Gummalapura Taggina Matada Kotturuswami(2) held that the conflict of judicial opinion on this question had already been resolved in that earlier case, where the Court had observed : "The provisions in s. 14 of the Act were not intended to benefit alienees who, with their eyes open, purchased the property from a limited owner without justifying necessity before the Act came into force and at a time when the vendor had only a limited interest of a Hindu women. " The Court further dealt with the contention that the possession of the allienees is the possession of the widow herself who is still alive, and well settled that an alienation made by a widow or other limited heir of property inherited by her, without legal necessity and without consent of the next reversioners, though not binding on the reversioners, is, nevertheless, binding on her so as to pass her own interest (i.e. life interest) to the alienee. " It was, thus made clear in that case that the property was held not to be possessed by the widow, because the alienation made by her being binding on her, she had no longer any legal right left in that property even in the sense of being in the state of owning it. The case thus, explains why, in cases of alienation or a gift made by a widow, even though that alienation or gift may not be binding on a reversioners, the property will not be held to be possessed by the widow, because the alienation or the gift would be binding on her for her life-time and she, at least, would not possess any such rights under which she could obtain actual or constructive possession from her transferee or donee. Having completely partted with her legal rights in the property, she could not be said to be possessed of that property any longer.

The third case of this Court brought to our notice is that of S. S. Munna Lal v. S. S. Rajkumar and Others(1). In that case a Digamber Jain of the Porwal sect died in 1934 leaving behind his widow, his son and three grand-sons. His son died in 1939. In 1952, a son of one of the grandsons filed a suit for partition of the joint family properties, while the widow was still alive. While the suit was still pending, the widow died. Amongst other questions arising in the partition suit, one question that arose was whether the 1/4th share of the widow declared in the preliminary decree was possessed by her and whether, on her death, it descended to her grandsons in accordance with the provisions of section 15 and 16 of the Act. Dealing with this question, this Court explained the scope of s. 14(1) by stating that, by s. 14(1), the Legislature sought to convert the interest of a Hindu female which, under the Sastric Hindu law, would have been regarded as a limited interest into an absolute interest. It was held-that by s. 14(1), manifestly it was intended to convert the interest, which a Hindu female has in property, however restricted the nature of that interest under the Sastric Hindu law may be, into absolute estate. It was also noticed that "under the Sastric Hindu law, the share given to a Hindu widow on partition between her sons or her grandsons was in lieu of her right to maintenance, and she was not entitled to claim partition. But the Legislature, by enacting the Hindu women's Right to Property Act, 1937, made a significant departure in that branch of the law; the Act gave a Hindu widow the same interest in the property which her husband had at the time of his death and if the estate was partitioned, she became owner in severalty of her share, subject of course to the restrictions on disposition and the peculiar rule of extinction of the estate on death actual or civil. " Applying these principles to the facts of that case, it was remarked : "In the light of the scheme of the Act and its avowed purpose, it would be difficult, without doing violence to the language used in the enactment to assume that a right declared in property in favour of a person under a decree for partition is not a right to property. If, under a preliminary decree, the right in favour of a Hindu male be regarded as property, the right declared in favour of a Hindu female must also be regarded as property. The High Court was, therefore in our judgment in error in holding that the right declared in favour of Khilonabai was not possessed by her, nor are we able to agree with the sub-mission of the learned counsel for Rajkumar that it was not property within the meaning of s. 14 of the Act. " In that case, it will be noticed that the widow died, while the suit for

partition was still pending, and she was not in actual, physical or constructive possession of the property which was held to be possessed by her at the time of her death. Only a preliminary decree declaring her right to the share had been passed. That decree was passed before the Act came into force and the widow died after the Act came into force. On these facts, the Court came to the finding that the disputed property was possessed by the widow, and the finding was given depute the circumstance that she was not in actual possession or constructive possession of the property, but had merely obtained the right to the property under the preliminary decree. The principle laid down in that case, thus, supports the broader meaning given to the expression "possessed by" indicated by us earlier.

The last case of this Court brought to our notice is Eramma v. Verrupana and Others. That was a converse case in which the female Hindu, in fact, did not possess any legal right or title to the property thought she was actually in physical possession of it. It was held : "The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title, whether before or after the commencement of the Act. It may be noticed that the Explanation to s. 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicated that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of s. 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words s. 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called "limited estate" or widow's estate" in Hindu Law and to make a Hindu women, who, under the old law, would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. " In the concluding part it was held : "It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of s. 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property. " This case also, thus, clarifies that the expression "possessed by" is not intended to apply to a case of mere possession without title. and that the legislature intended this provision for cases where the Hindu female possesses the right of ownership of the property in question. Even mere physical possession of the property without the right of ownership will not attract the provisions of this section. This case also, thus, supports our view that the expression "possessed by" was used in the sense of connoting state of ownership and, while the Hindu female possesses the rights of ownership, she would become full owner if the other conditions mentioned in the section are fulfilled. The section will, however, not apply at all to cases where the Hindu female may have parted with her rights so as to place herself in a position where she could, in no manner, exercise her rights of ownership in that property any longer.

In this view that we have taken, it does not appear to be necessary for us to refer to the decision of the various High Courts which were cited before us by learned counsel for the appellants. The case mentioned were : Sansir Patelin and Another v. Satyabati Naikani and Another; Ganesh Mahanta and Others v. Sukria Bewa and Others; Harak Singh v. Kailash Singh and Another; Ram Gulam Singh and others v. Palakadhari Singh and Others; Nathuni Prasad Singh and Another v. Mst. Kachnar Kuer & Others; and Mst. Mukhtiar Kaur v. Mst. Kartar Kaur and Others. All these were cases relating to situations where the widow had made some alienation of her rights in the property

and none of them was concerned with a case where the female Hindu might have been dispossessed by a trespasser. The reasons given by the High Courts in those cases are, therefore, of no assistance in deciding the applicability of s. 14(1) of the Act to a case of the nature before us.

On the interpretation of s. 14(1) of the Act that we have accepted above, it must be held that the property involved in the present suit was possessed by Smt. Harnam Kaur when she died in the year 1958 and, consequently, Smt. Rattno and, after, her the present respondents must be deemed to have succeeded to those rights. We have already mentioned above that it was not disputed that, if it is held that Smt. Harnam Kaur had become full owner of this property, it would pass on her death to Smt. Rattno. As a result. the decision given by the High Court must be upheld. The appeal is dismissed with costs.

G. C. Appeal dismissed.

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