Bai Vajia (Dead) By Lrs.

Vs

Thakorbhai Chelabhai and Others

Civil Appeal No. 2434(N) of 1977

(P. S. Kailasam, D. A. Desai, A. D. Koshal JJ)

20.02.1979

JUDGMENT

KOSHAL J.

1. The facts giving rise to this appeal by special leave against a decree dated November 5, 1976 of the High Court of Gujarat may be better appreciated with reference to the following pedigree-table :

NARANJI | |----------|----------|----------| | | |Dahyabhai Haribhai Gulabhai Vallabhai | | | |Ranchhodji | Motabhai | | | | |----------| | |----------| | | | | Bhimbhai Mohanbhai | Nichhabhai Surbhai-Bai(died childless in 1913) | | Amba Bai Vajia | |-------| (Defendant 1) |----------|----------| | | | Parvatiben-Dayalji Dahyabhai |----------| (Plaintiff 8) (Plaintiff 7) | | | | | |----------|----------|----------| | | | | |Bhikhubhai Thakorbhai Nirmalaben Padmaben |(Plaintiff 5) (Plaintiff 6) (Plaintiff 9) (Plaintiff 10) | | | |----------| | | |----------|----------|----------| | | |Chelabhai Lallubhai Chhotubhai Manibhai | (Plaintiff 3) (Plaintiff 4) | |---------| | | |---------|---------| | |Thakorbhai Ramanbhai(Plaintiff 1) (Plaintiff 2)##

2. In the year 1908 Ranchhodji son of Dahyabhai instituted Civil Suit No. 403 of 1908, against Bhimbhai son of Haribhai, Dayalji and Dahyabhai sons of Mohanbhai. Motabhai son of Gulabbhai, Bai Amba widow of Nichhabhai and Bai Vajia widow of Surbhai, for a partition of the joint Hindu family properties belonging to the parties. The suit resulted in a decree dated August 18, 1909 which provided, inter alia, that Dayalji and Dahyabhai sons of Mohanbhai, and Motabhai sons of Gulabbhai would be full owners of Survey Nos. 31 and 403 and also owners of a half share in Survey Nos. 31 and 403 and also owners of a half share in Survey Nos. 591, 611, 288 and 659/3. These persons were burdened by the decree with the responsibility to pay an yearly maintenance allowance of Rs. 42 to Bai Vajia on Magsher Sub 2 of every year and the decree further provided that in the event of default in payment of such allowance continuing for a period of a month after the due date, Bai Vajia would be entitled to take possession of the land above-mentioned in lieu of the maintenance awarded to her and would enjoy the income thereof without however being competent to sell, mortgage, bequeath, gift or otherwise transfer the same. The decree declared that any alienation made by Bai Vajia in contravention of the direction given by the decree in that behalf would be void. By Clause 8 of the decree sons of Mohanbhai as well as Motabhai were also deprived of the right of alienation of the land during the lifetime of Bai Vajia.

3. Default having been made in the payment of maintenance to Bai Vajia according to the terms of the decree, the took out execution and obtained possession of the land above detailed. Thereafter Dayalji and Dahyabhai sons of Mohanbhai deposited in court the arrears of maintenance and filed an application with a prayer that the land of which possession had been given to Bai Vajia in

execution of the decree be restored to them. That application was dismissed on March 8. 1921 and more than 2 1/2years later i.e. on October 27, 1914, Dahyabhai son of Mohanbhai instituted Civil Suit No. 576 of 1914 in the Court of the Additional Sub-Judge, Valsad, for a declaration that the dismissal of his application was null an void and for recovery of possession of the land which Bai Vajia had taken in execution of the decree. The suit was decreed by the trial Court but was dismissed in first appeal on March 13, 1918.

4. Bai Vajia continued to enjoyed the land till October 21, 1963 when she made a sale of Survey No. 31 in favour of one Dhirubhai Paragji Desai. The sale was challenged in Civil Suit No. 110 of 1966 by 10 persons being the heirs of Mohanbhai and Motabhai as shown in the pedigree-table above, the defendants being Bai Vajia and the said Dhirubhai Paragji Desai. It was claimed by the plaintiffs that Bai Vajia had no right to alienate in any manner the land obtained by her in execution as per the terms of the decree, that sub-section (1) of Section 14 of the Hindu Succession Act (hereinafter referred to as the Act) had no application to her case which was covered by sub-section (2) of that section and that the sale by her in favour of defendant 2 was null and void. Bai Vajia contested the suit and contended that the sale was good in view of the provisions of sub-section (1) above-mentioned which enlarged her limited ownership into full and absolute ownership and that sub-section (2) aforesaid did not cover her case. The suit was decreed by the trial Court and Bai Vajia remained unsuccessful in the appeal which she instituted in the Court of District Judge, Bulsar. A second appeal was filed by her before the High Court of Gujarat and during pendency thereof she expired when one Dhirubhai Dayalji Desai was substituted for her as her sole heir and legal representative. The appeal came up for hearing before a learned Single Judge of the High Court who by his judgment dated November 5, 1976 dismissed it holding that the decree passed in Civil Suit No. 403 of 1908 did not recognise any "pre-existing" right of Bai Vajia in the property in dispute. In coming to this conclusion, the learned Judge followed Naraini Devi v. Smt. Ramo Devi ((1976) 1 SCC 574 : (1976) 3 SCR 55 : AIR 1976 SC 2198).

5. The legal representative of Bai Vajia is the sole appellant in the appeal before us, the respondents thereto being nine of the plaintiffs and six legal representatives of plaintiff 5 as also the purchaser from Bai Vajia who is arraigned as respondent 11.

6. At the outset it was pointed out by Mr. I. N. Shroff, learned Counsel for the appellant that Naraini Devi case (supra) has since been overruled by the decision of this Court in V. Tulasamma v. V. Sesha Reddi ((1977) 3 SCC 99 : (1977) 3 SCR 261 : AIR 1977 SC 1944) and we find that this is so. In the case last mentioned, the facts were these. The husband of Tulasamma died in the year 1931 in a state of jointness with his step-brother V. Sesha Reddi A decree for maintenance was passed in favour of Tulasamma against V. Sesha Reddi on June 29, 1946. On July 30, 1949, a compromise between the contending parties was certified by the Court executing that decree. Under the Compromise. Tulsamma was allotted certain properties in lieu of maintenance, her right being limited to enjoyment thereof coupled with the specific condition that she would not have any right of alienation whatsoever. Tulasamma took possession of those properties and continued to enjoy them till the early sixties. On April 12, 1960 she leased out some of the properties to two persons and on May 26, 1961 made sale of some others to another person V. Sesha Reddi filed a suit on July 31, 1961 for a declaration that the alienations made by Tulasamma were not binding on him and could remain valid only so long as she was alive. The basis of the action was that Tulasamma acquired a restricted estate under the terms of the compromise and that her interest could not be enlarged under sub-section (1) of Section 14 of the Act in view of sub-section (2) of that section. The suit was decreed by the trial Court whose decision however was reversed in appeal by the District Judge with a finding that the allotment of properties to Tulasamma by the terms of the

compromise had been made in recognition of a "pre-existing" right - a finding which was reversed by the High Court, who resorted the decree passed by the trial Court. The matter came up to this Court in appeal by Special leave and Fazal Ali, J., who wrote an exhaustive judgment this formulated the two points falling falling for determination; (SCC P. 105, para 4)

> (1) Whether the instrument of compromise under which the properties were given to the appellant Tulasamma before the 1956 Act (Hindu Succession Act) in lieu of maintenance falls within Section 14(1) or is covered by Section 14(2) of that Act.
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> (2) Whether a Hindu widow has a right to property in lieu of her maintenance and if such a right is conferred on her subsequently by way of maintenance it would amount to mere recognition of a per-existing right or a conferment of new title so as to fall squarely within Section 14(2) of the 1956 Act (Hindu Succession Act).

Fazal Ali, J., was of the opinion that the resolution of the dispute made it necessary that the real legal nature of the incidents of a Hindu Widow's right to maintenance to considered. He referred to various works by celebrated authors on Hindu Law and in doing so cited passages form 'Digest of Hindu Law' by Colebrooke, 'Hindu Law' by ? G. S. Sastri, 'Hindu Law and Usage' by Mayne and 'Principles of Hindu Law' by Mulla and came to the conclusion that the widow's right to maintenance, though not an indefeasible right to property, is undoubtedly a "pre-existing" right. A survey of various judicial pronouncements was then undertaken by Fazal Ali, J., and as a consideration thereof he arrived at the following propositions; (SCC pp. 113 114 para 20)

> (1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property, If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;
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> (2) though the widow's right to maintenance is not right to property but it is undoubtedly a pre-existing right in property, i.e. it is jus ad ram, not jus in rem, and and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court;
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> (3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;
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> (4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 (The Hindu Women's Right to property Act) or the Act of 1946 (The Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946) and is therefore, a pre-existing right;
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> (5) that the right to maintenance flows form the social and temporal relationship between the husband and the wife by virtue of which the becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and
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> (6) that where a Hindu widow is in possession of the property of her husband, she is

entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in position to make arrangements for her maintenance.

7. Fazal Ali, J., then embarked on a consideration of the scope and meaning of Section 14 of the Act in the light of various pronouncements made by this Court as also of the decisions rendered by various High Court in relation to the points in dispute. During the course of the discussion he made the following pertinent observations : (SCC P. 128, para 49)

It is true that a widow's claim for maintenance does not ripen into a full-fledged right to property, but nevertheless it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existing right. The claim to maintenance, as also the right to claim property in order to maintain herself, is an inherent right conferred by the Hindu Law and therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It is cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document the widow had no vestige of a claim or right at all. Once it is established that the instrument merely recognised the per-existing right, the widow would acquire absolute interest. Secondly, the Explanation to Section 14(1) merely mentions the various modes by which a widow can acquire a property and the property given in lieu of maintenance is one of the modes mentioned in the Explanation. Sub-section (2) is merely a proviso to Section 14(1) and it cannot be interpreted in such a manner as to destroy the very concept of the right conferred on a Hindu woman under Section 14(1). Sub-section (2) is limited only to those cases where by virtue of a certain grant or disposition a right is conferred on the widow for the first time and said right is restricted by certain conditions. In other words, even if by a grant or dispositions a property is conferred on a Hindu mala under certain conditions, the same are binding on the male. The effect of sub-section (2) is merely to equate male and female in respect of grant conferring a restricted estate.

8. Finally, Fazal Ali J., made a reference to Naraini Devi case (supra) to which he himself was a party (apart from Sarkaria, J., who delivered the judgment of the Court) and in relation thereto made the following observations; (SCC 134, 135, para 60)

This case is no doubt directly in point and this Court by holding that where under an award an interest is created in favour of a widow that she should be entitled to rent out the property for her lifetime, it was held by this Court that this amounted to a restricted estate under Section 14(2) of the 1956 Act. unfortunately the various aspects. Namely, the nature an extent of the Hindu women's right to maintenance, the limited scope of sub-section (2) which is a proviso to sub-section (1) of Section 14 and the effect of the Explanation, etc., to which we have adverted in this judgment, were neither brought to our notice nor were argued before us in that case. Secondly, the ground on which this court distinguished the earlier decisions of this Court in Badri Parshad v. Smt. Kanso Devi ((1969) 2 SCC 586 : (1970) 2 SCR 95 : AIR 1970 SC 963) was that in the aforesaid decisions the Hindu widow had a share or interest in the house of her husband under the Hindu law as it was applicable then, and therefore, such a share amounted to a pre-existing right. The attention of this Court, however, was not drawn to the language of the Explanation to Section 14(1) where a property given to a widow at a partition or in lieu of maintenance had been placed in the same category, and therefore, the reason given by this Court does not appear to be sound. For the reasons that we have already given, after taking an overall view of the situation, we are satisfied that the

Division Bench decision of this Court, in Naraini Devi case (supra) was not correctly decided and is, therefore, overruled.

Summarising the conclusions of law which Fazal Ali, J. reached after an exhaustive consideration of the texts and authorities, mentioned by him, he enumerated them thus : (SCC pp. 135, 136 para 62)

> (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 enjoyed 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 right against 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 right.
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> (2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of 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.
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> (3) Sub-section (2) of Section 14 is in the nature of a proviso and has a filed 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 in consistent with the main provision.
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> (4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc., which create independent and new titles in favour of 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 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 restriction placed, if and, 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.
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> (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 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 hand 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 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.

9. Applying these principles Fazal Ali, J., held (SCC PP. 136, 137, para 63)

(i) that the properties in suit were allotted to the appellant Tulasamma on July 30, 1949 under a compromise certified by the Court :

(ii) that the appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties :

(iii) that despite these restrictions, she continued to be in possession of the properties till 1956 when Act of 1956 came into force; and

(iv) that the alienations which she had made in 1960 and 1961 were after she had acquired an absolute interest in the properties.

In this view of the matter Fazal Ali, J., allowed the appeal of Tulasamma's legal representatives.

10. Bhagwati, J., wrote a separate judgment in Tulsamma case and A. C. Gupta, J., agreed with him. He also allowed the appeal substantially for the same reasons as had weighed with Fazal Ali, J., and in doing so observed : (SCC p. 140, para 69)

Now, sub-section (2) of Section 14 provides that 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 prescribed a restricted estate in such property. This provision in more is the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in Badri Pershad v. Smt. Kanso Devi (supra). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in manner which would rob sub-section (1) of its efficacy and deprive a hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide enough to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree order or award prescribed a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu

female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under a instrument, order or award would be excluded from the operation of the beneficent provision enacted in sub-section (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act. There would be a provision, in consonance with the old Sastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub-section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance, would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub-section (2).

11. Bhagwati, J., laid down the nature of the right which a Hindu widow has to be maintained out of the joint family estate in the following terms : (SCC pp. 143, para 71)

It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether that estate may be in the hands of his male issue or it may be in the hands of his co-parceners. The joint family estate in which her decreased husband has a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though, as pointed out by this Court in Rani Bai v. Shri Yadunandan Ram ((1969) 1 SCC 604 : (1969) 3 SCR 789 : AIR 1969 SC 1118) her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a Court, her right is "not liable to be defeated except by transfer of a bona fide purchase for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right'. The widow can for the purpose of her maintenance follow the joint family property "into the hands of any one who takes it as a volunteer or with notice of her having set up a claim for maintenance." The courts have even gone to the length of taking the view that where a widow is in possession of any specific property for the purpose of her maintenance, a purchase buying with notice of her claim is not entitle to possession of that property without first securing proper maintenance for her, vide Rachawa v. Shivavanappa (ILR 18 Bom 679) cited with approval in Rani Bai case (supra). It is, therefore, clear that under the Sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged in the joint family property and even if no specific charge is created, this right would be enforceable against joint property in the hands of a volunteer or a purchaser taking it with notice of her claim. The right of the widow to be maintained is of course not a jus in rem, since it does not give her any interest in the joint family property but it is certainly jus ad rem. i.e., a right against the family property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her jus ad rem, namely, the right to be maintained out of the joint family property. It would not be a grant for the first time without any pre-existing right in the widow. The widow be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time

without any antecedent right or title. There is also another consideration which is very relevant to this issue and it is that, even if the instrument were silent as to the nature of the interest given to the widow in the property and did not, in so many terms, prescribe that she would have a limited interest, she would have no more than a limited interest in the property under the Hindu Law as it stood prior to the enactment of the Act and hence a provisions in the instrument prescribing that she would have only a limited interest in the property would be, to quote the words have only a limited interest in the property would be, to quote the words of this Court in Nirmal Chand case (supra), "merely recording the true legal position "and that would not attract the applicability of sub-section (2) but would be governed by sub-section (1) Section 14.

12. All the three Judges were thus unanimous in accepting the appeal on the ground that Tulsamma's right to maintenance was a pre-existing right, that it was in recoginition of such a right she obtained property under the compromise and that the compromise therefore did not fall within the ambit of sub-section (2) of Section 14 of the Act but would attract the provisions of sub-section (1) thereof couple with the Explanation thereto. With respect we find ourselves in complete agreement with the conclusions arrived at by Bhagwati and Fazal Ali, JJ., as also the reasons which weighed with them in coming to those conclusions.

13. Mr. S. T. Desai, learned Counsel for the plaintiffs-respondents, and Mr. U. R. Lalit who very ably assisted the Court at its request, contended that for a Hindu female to be given the benefit of sub-section (1) of Section 14 of the Act she must first be an owner, albeit a limited owner, of the property in question and that Tulasamma not being an owner at all, Bench presided over by Bhagwati, J., did not reach a correct decision in holding that the sub-section aforesaid covered her case. We find that only that part of this argument which is interpretative of sub-section (1) is correct, namely, that it is only some kind of "limited ownership" that would get enlarged into full ownership and that where no ownership at all vested in the concerned Hindu female no question of the applicability of the sub-section would arise. We may here reproduce in extenso Section 14 of the Act with advantage :

14. (1) Any property possessed by a female Hindu, where 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 devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, where 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.

> (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 Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property.

14. A plain reading of sub-section (1) makes it clear that the concerned Hindu female have limited ownership in property, which limited ownership would get enlarged by the operation of that sub-section. If it was intended to enlarge any sort of a right which could in no sense be described as ownership, the expression "and not as a limited owner" would not have been used at all and becomes redundant, which is against the well recognised principle of interpretation of statutes that

the Legislature does not employ meaningless language. Reference may also be made in this connection to Eramma v. Verrupanna ((1966) 2 SCR 626, 630, 631 : AIR 1966 SC 1879) wherein Ramaswami, J., speaking on behalf of himself, Gajendra gadkar, C.J., and Hidayatullah. J., interpreted the sub-section thus :

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 Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of tile, 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 subs-section (1) of Section 14 clearly suggest that the Legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 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 woman, who under the old law would have been only 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. It does not in any way confer a title on the females Hindu where she did not in fact possess any vestige of title. 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 Section 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.

15. This interpretation of sub-section (1) was cited with approval in Mangal Singh v. Shrimati Rattno ((1967) 3 SCR 454, 465 : AIR 1967 SC 1786) by Bhargava, J., who delivered the judgment of the Court and observed :

This case also, thus clarified 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 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.

16. Limited ownership in the concerned Hindu female is thus a sine qua non for the applicability of sub-section (1) of Section 14 of the Act but then this condition was fully satisfied in the case of Tulasamma to whom the property was made over in lieu of maintenance with full rights of enjoyment thereof minus the power of alienation. These are precisely the incidents of limited ownership. In such a case the Hindu female represents the estate completely and the reversioners of her husband have only a spes successions, i.e., a mere chance of succession, which is not a vested interest and a transfer of which is a nullity. The widow is competent to protect the property from all kinds of trespass and to sue and be sued for all purposes in relation thereto so long as she is alive.

Ownership in the fullest sense is a sum-total of all the rights which may possibly flow from title to property, while limited ownership in its very nature must be a bundle of rights constituting in their totality not full ownership but something less. When a widow holds the property for her enjoyment as long as she lives, nobody is entitled to deprive her of it or to deal with the property in any manner to her detriment. The property is for the time being beneficially vested in her and she has the occupation, control and usufruct of it to the exclusion of all others. Such a relationship to property in our opinion falls squarely within the meaning of the expression "limited owner" as used in sub-section (1) of Section 14 of the Act. In this view of the matter the argument that the said sub-section did not apply to Tulasamma case (supra) for the reason that she did not fulfill the condition precedent of being a limited owner is repelled.

17. The next contention raised by Mr. Desai and Mr. Lalit also challenged the correctness of the decisions in Tulasamma case. They argued that in any case the only right which Tulasamma had prior to the compromise dated July 30, 1949 was a right to maintenance simpliciter and not at all a right to or in property. For the reasons which weighed with Bhagwati and Fazal Ali, JJ., in rejecting this argument we find no substance in it as we are in full agreement with those reasons and the same may not be reiterated here. However we may emphasize one aspect of the matter which flows form a scrutiny of sub-section (1) of Section 14 of the Act and the Explanation appended thereto. For the applicability of sub-section (1) two conditions must co-exist, namely :

(1) the concerned female Hindu must be possessed of property, and

(2) such property must be possessed by her a limited owner.

18 If these two conditions are fulfilled, the sub-section gives her the right to hold the property as a full owner irrespective of the fact whether she acquired it before or after the commencement of the Act.

19. The Explanation declares that the property mentioned in sub-section (1) includes both movable and immovable property and then proceeds to enumerate the modes of acquisition of various kinds of property which the sub-section would embrace such modes of acquisition are :

(a) by inheritance,

(b) by devise,

(c) at a partition,

(d) in lieu of maintenance or arrears of maintenance,

(e) by gift from any person, whether a relative or not, before, at or after her marriage,

(f) by her own skill or exertion,

(g) by purchase,

(h) by prescription,

(i) in any other manner whatsoever, and

(j) any such property held by her as "Stridhana" immediately before the commencement of this Act.

20. A reference to the Hindu law as it prevailed immediately before the commencement of the Act would lead one to the conclusion that the object of the Explanation was to make it clear beyond doubt that all kinds of property which fell within the ambit of the term "Stridhana" would be held by the owner thereof as a full owner and not as a limited owner. Reference may in this connection be made to the following enumeration of "Stridhana" in paragraph 125 of Mulla's Hindu Law :

(1) Gifts and bequests from relations.

(2) Gifts and bequests from strangers.

(3) Property obtained on partition.

(4) Property given in lieu of maintenance.

(5) Property acquired by inheritance.

(6) Property acquired by mechanical arts.

(7) Property obtained by compromise.

(8) Property acquired by adverse possession.

(9) Property purchased with stridhana or with savings of income of Stridhana.

(10) Property acquired from sources other than those mentioned above.

These heads of property are then dealt with at length by Mulla in paragraphs 126 to 135 of his treatise. Prior to the commencement of the Act, the Hindu female did not enjoy full ownership in respect of all kinds of "Stridhana" and her powers to deal with it further varied form school to school. There was a sharp difference in this behalf between Mitakshara and Dayabhaga. And then the Bombay. Benaras, Madras and Mithila schools also differed from each other on the point. Succession to different kinds of "Stridhana" did not follow a uniform pattern. The rights of Hindu female over "Stridhana" varied according to her status as a maiden, a married woman and a widow. The source and nature of the property acquired also placed limitations on her ownership and made a difference to the mode of succession thereto. A comparison of the contents of the Explanation with those of paragraph 125 of Mulla's Hindu Law would show that the two are practically identical. It follows that the Legislature in its wisdom took pains to enumerate specifically all kinds of "Stridhana' in the Explanation and declared that the same would form "property" within the meaning of that word as used in sub-section (1). This was done, in the words of Bhagwati, J., "to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society". It was a step in the direction of practical recognition of equality of the sexes and was meant to elevate women from a subservient position in the economic field to a pedestal where they could exercise full powers of enjoyment and disposal of the property held by them as owners, untrammelled by artificial limitations placed on their right of ownership by a society in which the will of the dominant male prevailed to bring about a subjugation of the opposite sex. It was also a step calculated to ensure uniformity in the law relating to the ownership of 'Stridhana'. This dual purpose underlying the Explanation must be borne in mind and given effect to when the section is

subjected to analysis and interpretation, and sub-section (2) is not be given a meaning which would defeat that purpose and negative the legislative intent, if the language used so warrants. A combined reading of the two sub-sections and the Explanation leaves no doubt in our minds that sub-section (2) does not operate to take property acquired by a Hindu female in lieu of maintenance or arrears of maintenance (which is property specifically included in the enumeration contained in the Explanation out of the purview of sub-section (1).

21. Tulasamma case (supra) having, in our opinion, been decided correctly, the appeal in hand must succeed as the facts in the latter are on all fours with those in the former. Mr. Desai did vehemently argue that this was not so inasmuch as by the decree dated August 18, 1909 the ownership of the land in dispute was vested in Dayalji and Dahyabhai sons of Mohanbhai and Motabhai on Bulabbhai while bai Vajia was only given the right to possess it for her life - the ownership remaining all along in the said three persons, but this argument does not find favour with us. It has to be noted that so long as she lives, Bai Vajia was to have full enjoyment of and complete control over the land, barring any right to alienate it. Such a right was also taken away from the said three persons. The arrangement meant that whatever rights existed in relation to the land during the lifetime of Bai Vajia, were exercisable by her alone and by body else. Not even the said three persons could deal with the land in any manner whatsoever, and if they did, Bai Vajia had the right to have their acts declared null and void during her lifetime. After the land was made over to her she became its owner for life although with a limited right and therefore only as a limited owner. Under the decree the land vested in the said three persons only so long as they were not dispossessed of it at the instance of Bai Vajia in accordance with the terms stated therein. As soon as Bai Vajia took possession of the land, no rights of any kind whatsoever in relation thereto remained with them and thus they ceased to be owners for the span of Bai Vajia's life.

22. Following Tulasamma case we hold that Bai Vajia became a full owner of the land in dispute under the provisions of sub-section (1) of Section 14 of the Act and that sub-section (2) thereof has no application to her case, the land having been given to her as a limited owner and in recognition of her pre-existing right against property. In the result therefore, the appeal succeeds and is accepted. The judgment and the decree of the High Court are set and the suit giving rise to this appeal is dismissed. In the circumstances of the case, however, we leave the parties to bear their own costs throughout.

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