

Jagannathan Pillai

Vs

Kunjithapadam Pillai and Others

Civil Appeal No. 1196 of 1973

(M. P. Thakkar, B. C. Ray JJ)

21.04.1987

JUDGMENT

THAKKAR, J. -

1. Under the same law (Section 14(1) of Hindu Succession Act of 1956) in an identical fact-situation, a Hindu widow who has inherited property in Orissa or Andhra Pradesh would be a 'limited owner' and would not become an 'absolute owner' thereof whereas if she has inherited property in Madras, Punjab, Bombay or Gujarat she would become an 'absolute owner'. That is to say, in a situation where a Hindu widow regains possession of a property (in which she had a limited ownership) subsequent to the commencement of the Act (The Act came into force on June 17, 1956) upon the retransfer of the very same property to her by the transferee in whose favour she has transferred it prior to the commencement of the Act. This incongruous situation has arisen because of an interpretation and application of Section 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 therefore 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, 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.), of the Hindu Succession Act (Act). In the context of the aforesaid fact-situation the High Courts of Orissa (Ganesh Mahanta v. Sukria Bewa, AIR 1963 Ori 167 : 39 Cut Lt 474) and Andhra Pradesh (Venkatarathnam v. Palamma, (1970) 2 Andh WR 264) have proclaimed that she would be only a 'limited owner' of such property on such retransfer whereas the High Courts of Madras (Chinnatarathnam Goundan v. Thanji Gounder, ILR (1966) 1 Mad 326 : AIR 1965 Mad 497 : (1965) 2 MLJ 247), Punjab (Teja Singh v. Jagat Singh, AIR 1964 Punj 403), Bombay (Ramgowda Aungowda v. Bhausahab, ILR 52 Bom 1 : AIR 1927 PC 227) and Gujarat (Bai Champa v. Chandrakanta Hirala Dalyabhai Sodagar, Air 1973 Guj 227) have taken a contrary view and have pronounced that she would become an 'absolute owner' of such a property in the aforesaid situation. We have therefore to undertake this exercise to remove the unaesthetic wrinkles from the face of law to ensure that a Hindu widow has the same rights under the same law regardless of the fact as to whether her property is situated within the jurisdiction of one High Court or the other.

2. The appellant who unsuccessfully canvassed before the High Court of Madras that the view propounded by the Orissa and Andhra Pradesh High Courts deserved to be preferred to the view taken by the other four High Courts, has approached this Court by way of the present appeal by a

certificate granted under Article 133(1)(a) of the Constitution of India that the matter involves a substantial question of law.

3. The typical facts in the backdrop of which the problem has to be viewed are :

- (1) A Hindu female acquired a property, say by reason of the death of her husband, before the commencement of the Act (i.e. before June 17, 1956).
- (2) What she acquired was a widow's estate as understood in shastric or traditional Hindu law.
- (3) She lost the possession of the property on account of a transaction whereby she transferred the property in favour of an alienee by a registered document of 'sale' or 'gift'.
- (4) The property in question was retransferred to her by the said alienee 'after' the enforcement of the Act by a registered document thus restoring to the widow the interest (such as it was) which she had parted with earlier by reversing the original transaction.

It is in this factual background that the question will have to be examined as to whether upon the reconveyance of the very property which she had alienated after enforcement of the Act, she would become a full owner in respect of such a property by virtue of Section 14(1) of the Hindu Succession Act, 1956. Be it realized that the law has been settled by this Court that the limited estate or limited ownership of a Hindu female would enlarge into an absolute estate or full ownership of the property in question in the following fact-situation :

- (1) Where she acquired the limited estate in the property before or after the commencement of the Act provided she was in possession of the property at the time of the coming into force of the Act on June 17, 1956.
- (2) Even if the property in question was possessed by her in lieu of her right to maintenance as against the estate of her deceased husband or the joint family property, she would be entitled to become a full or absolute owner having regard to the fact that the origin of her right was traceable to the right against her husband's estate.

4. The problem which has arisen in the present appeal is in the context of a fact-situation where while the widow acquired a limited estate from her husband she was not in possession on the date of the enforcement of the Act viz. June 17, 1956. But the possession was restored to her upon the original alienee reconveying the property to her.

5. On an analysis of Section 14(1) of the Hindu Succession Act of 1956, it is evident that the legislature has abolished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her full owner. Section 14(1) would come into operation if the property (sic) at the point of time when she has an occasion to claim or a title thereto. Or, in other words, at the point of time when her right to the said property is called into question. The legal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner. [We are for the moment not concerned

with the fact that sub-section (2) of Section 14 which provides that Section 14(1) will not prevent creating a restricted estate in favour of a Hindu female either by gift or will or any instrument or decree of a civil court or award provided the very document creating title upto her confers a restricted estate on her.] There is nothing in Section 14 which supports the proposition that a Hindu female should be in actual physical possession or in constructive possession of any property on the date of the coming into operation of the Act. The expression 'possessed' has been used in the sense of having a right to the property or control over the property. The expression 'any property possessed by a Hindu female whether acquired before or after the commencement of the Act' on an analysis yields to the following interpretation :

1. Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner.
- (2) Any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as a limited owner.

Since the Act in terms applies even to properties possessed by a Hindu female which are acquired 'after' the commencement of the Act, it is futile to contend that the Hindu female shall be in 'possession' of the property 'before' the commencement of the Act. If the property itself is acquired 'after' the commencement of the Act, there could be no question of the property being either in physical or constructive possession of the Hindu female 'before' the coming into operation of the Act. There is, therefore, no escape from the conclusion that possession, physical or constructive or in a legal sense, on the date of the coming into operation of the Act is not the sine qua non for the acquisition of full ownership in property. In fact, the intention of the legislature was to do away with the concept of limited ownership in respect of the property owned by a Hindu female altogether. Section 4 of the Act (it needs to be emphasized) provides that any text, rule or interpretation of Hindu law or custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect of any matter for which provision is made in the Act. The legislative intent is therefore, abundantly loud and clear. To erase the injustice and remove the legal shackles by abolishing the concept of limited estate, or the women's or widow's estate once and for all. To obviate hair-splitting, the legislature has made it abundantly clear that whatever be the property possessed by a Hindu female, it will be of absolute ownership and not of limited ownership notwithstanding the position obtaining under the traditional Hindu law. Once it is shown that at the point of time when the question regarding title to property held by a Hindu female arises, she was 'possessed' of the property on that date, in the eye of law, the property held by her would be held by her as 'full owner' and not as 'limited owner'. In other words, all that has to be shown by her is that she had acquired the property and that she was 'possessed' of the property at the point of time when her title was called into question. When she bought the property from the alienee to whom she had sold the property prior to the enforcement of the Act, she 'acquired' the property within the meaning of the explanation of Section 14(1) of the Act. The right that the original alienee had to hold the property as owner (subject to his right being questioned by the reversioner on the death of the female Hindu from whom he had purchased the property) was restored to her when she got back the right that she had parted with. Whatever she had lost 'earlier', was 'now' regained by her by virtue of the transaction. The status quo ante was restored in respect of her interest in the said property. In the eye of law, therefore, the transaction by which the vendee of the Hindu female acquired an interest in the said property was 'reversed' and the Hindu female was restored to the position prevailing before the transaction took place. In other words, in the eye of law the transaction stood obliterated or effaced. What was 'done' by virtue of the document executed in favour of the transferee was 'undone'. Such would be the consequence of a retransfer by the alienee

in favour of a Hindu female from whom he had acquired an interest in the property in question. Thus on the date on which her right to the property was called into question, she was 'possessed' of the property which she had inherited from her husband she having by then re-acquired and regained what she had lost. Any by virtue of the operation of Section 14(1) of the Act the limitation which previously inhered in respect of the property disappeared upon the coming into operation of the Act. It is no longer open to anyone now to contend that she had only a 'limited' ownership in the said property and not a 'full' ownership, the concept of limited ownership having been abolished altogether, with effect from the coming into operation of the Act.

6. Whether a challenge was made during her lifetime or it was made after her death, if the question arose as to what was the nature of interest in the property held by the concerned Hindu female after the reversal of the transaction the answer would be that she had a 'full' ownership and not a 'limited' ownership. It would have been a different matter if the transferee from the concerned Hindu female had transferred his right, title and interest in the property to a third person instead of transferring it back to her. In that event the principle that the transferor cannot transmit a better title or a title higher than that possessed by the transferor at the given time would come into play. Not otherwise. When the transaction was reversed and what belonged to her was retransmitted to her, what the concerned Hindu female acquired was a right which she herself once possessed namely, a limited ownership (as it was known prior to the coming into force of the Act) which immediately matures into or enlarges into a full ownership in view of Section 14(1) of the Act on the enforcement of the Act. The resultant position on the reversal of the transaction would be that the right, title and interest that the alienee had in the property which was under 'eclipse' during the subsistence of the transaction had re-emerged on the disappearance of the eclipse. In other words, the right which was under slumber came to be awakened as soon as the sleep induced by the transaction came to an end. By the reversal of the transaction no right of the reversioner was affected, for he had merely a spes successionis in the property and nothing more. His possible chance of succeeding upon the death of the Hindu female disappeared from the horizon as soon as what she had temporarily parted with was restored to her.

7. The proponents of the view canvassed by the appellant placed strong reliance on the decision rendered by a learned Single Judge of the Orissa High Court in *Ganesh Mahanta v. Sukriya Bewa* (*Ganesh Mahanta v. Sukria Bewa*, AIR 1963 Ori 167 : 39 Cut LT 474) and the decision of the Andhra Pradesh High Court in *Medicherla Venkatarathnam v. Siddani Palamma* (*Venkatarathm v. Palamma*, (1970) 2 Andh WR 264), wherein the Andhra Pradesh High Court has concurred with the view of the Orissa High Court. The basis of the reasoning is reflected in the following passage from *Ganesh Mahanta* case (*Ganesh Mahanta v. Sukria Bewa*, Air 1963 Ori 167 : 39 Cut LT 474) :

Section 14(1) does not purport to enlarge the right, title or interest of the alienee from widow with regard to the transfers effected prior to the commencement of the Act. A donee from a widow prior to the commencement of the Act acquires only a widow's estate in the gifted property and even if the donee retransfers the property in favour of the widow after the commencement of the Act, the widow would acquire only a limited interest and not an absolute interest in the property as the donee cannot transmit any title higher than what he himself had.

It appears that the Orissa and the Andhra Pradesh High Courts have been carried away by the argument that the donee or the transferee who retransfers the property to the widow cannot transmit a title higher than the title that they themselves had in the property. In substance, the argument is that as the transferee or the donee had only a limited interest, what he can transmit to the widow is a

limited interest. This argument postulates that Section 14(1) of the Act does not come into play in the case of a retransfer (by the donee or the transferee as the case may be), to the widow subsequent to the commencement of the Act. There is a basic fallacy in proceeding on the assumption that Section 14(1) has no impact or that the provision has no role to play in case of such a retransfer. This line of reasoning overlooks the fact that upon retransfer to the widow, the original transaction is obliterated and what transpired by virtue of the consequence of the original transfer stands reversed. The resultant position is that the widow is restored to the original position. Section 14(1) would not be attracted if the widow was not possessed of the property after the coming into force of the Act. But in view of the reversal of the transaction, the widow becomes possessed of the property which she had possessed prior to the transfer to the original alienee or the donee. And Section 14(1) straightway comes into play. By virtue of the reversal of the original transaction, her rights would have to be ascertained as if she became possessed of the property for the first time, after the commencement of the Act. It is now well settled that even if the widow has acquired the interest in the property and is possessed of the property after the commencement of the Act, her limited right would ripen or mature into an absolute interest or full ownership. The question that has to be asked is as to whether the widow became possessed of the property by virtue of the acquisition of interest subsequent to the operation of the Act and whether such interest was a limited interest. The whole purpose of Section 14(1) is to make a widow who has a limited interest a full owner in respect of the property in question regardless of whether the acquisition was prior to or subsequent to the commencement of the Act. On the date on which the retransfer took place, she became possessed of the property. She became possessed thereof subsequent to the commencement of the Act. In the result her limited interest therein would enlarge into an absolute interest, for, after the commencement of the Act any property possessed of and held by a widow becomes a property in which she has absolute interest and not a limited interest, the concept of limited interest having been abolished by Section 14(1) with effect from the commencement of the Act. The Orissa High Court and the Andhra Pradesh High Court have fallen in error in testing the matter from the standpoint of the alienee or the donee who retransfers the property.

The High Court posed the question as to whether they would be entitled to full ownership in view of Section 14(1), instead of posing the question as to whether the widow who becomes possessed of the property after the commencement of the Act would be entitled claim that her limited interest had enlarged into an absolute interest. Of course, Section 14(1) is not intended to benefit the alienee or the donee, but is intended and designed to benefit the widow. But the question has to be examined from the perspective of the widow who becomes possessed of the property by virtue of the acquisition pursuant to the retransfer. The Andhra Pradesh High Court has also fallen in error in accepting the fallacious argument that the widow would be in the position of a stranger to whom the property was reconveyed or retransferred. This fallacy is reflected in the following passage :

... Therefore reconveyance will not revive her original right in the property and she will be holding the estate reconveyed just like any other stranger alienee, for the lifetime of the alienor widow, though she happens to be that widow, and there can be no question of one alienation cancelling the other and the status quo ante, the widow's alienation being restored.

The case of the widow who had temporarily lost the right in the property by virtue of the transfer in favour of the alienee or the donee cannot be equated with that of a stranger by forgetting the realities of the situation. Surely, the Act was intended to benefit her. And when the widow becomes possessed of the property, having regained precisely that interest which she had temporarily lost during the duration of the eclipse, Section 14(1) would come to her rescue which would not be the

matter in the case of a stranger who cannot invoke Section 14(1). A further error was committed in proceeding on the mistaken assumption that the decision in *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva* (AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : (1959) 1 MLJ 158 (SC)) supported the point of view which found favour with the Orissa and the Andhra Pradesh High Courts. In *Kotturuswami* case (AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : (1959) 1 MLJ 158 (SC)) the alienation had taken place before the commencement of the Act and the widow had 'trespassed' on the property and had obtained physical possession as a trespasser without any title. It was not a case where the widow had regained possession lawfully and become entitled to claim the benefit of Section 14(1) having become possessed of the property by way of a lawful acquisition subsequent to the commencement of the Act. It was overlooked that Section 14(1) in terms used the expression "whether acquired before or after the commencement of the Act". If the legislature had not contemplated a widow becoming possessed of a property by virtue of an acquisition after the commencement of the Act, the aforesaid expression would not have been used by the legislature. The Orissa and the Andhra Pradesh High Courts have failed to give effect to these crucial words and have also failed to apply the principle in *Kotturuswami* case (AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : (1959) 1 MLJ 158 (SC)) properly, wherein the widow obtained possession as a trespasser. In fact the expression "possessed of" pertains to the acquisition of a right or interest in the property and not to physical possession acquired by force or without any legal right. The ratio in *Kotturuswami* case (AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : (1959) 1 MLJ 158 (SC)) was therefore misunderstood and misconceived by the Orissa and the Andhra Pradesh High Courts. We agree with the reasoning of the Madras High Court in *Chinnakolandai v. Thanji* (*Chinnakolandai Goundan, v. Thanji Gounder*, ILR (1966) 1 Mad 326 : air 1965 Mad 497 : (1965) 2 MLJ 247) where in *Ramamurthi, J.* has made the point in a very lucid manner in the following passage :

With respect, I am unable to agree with this view, as the entire reasoning is based upon the view that there is no difference between a reconveyance in favour of the widow herself and alienation in favour of the stranger. In my opinion, there is all the difference between a case of annulment of a conveyance by consent of both the parties and a case of a subsequent alienation by the alienee in favour of a stranger. In the former case the effect of the alienation is completely wiped out and the original position is restored. This distinction has not been noticed in the decision of the Orissa High Court. The acceptance of the contention urged by learned counsel for the appellant would lead to startling results. Take for instance an unauthorized alienation by a guardian. If some cloud is cast on the validity of the alienation, and if the alienee, not willing to take any risk till the attainment of majority, by the minor, conveys back the property to the guardian, it would not be open to the guardian to contend that he had acquired the voidable title of the alienee. In other words, he cannot contend as against the quondam minor that the income from the property would be his, and that till the minor takes proceedings for setting aside the alienation the guardian should be deemed to have acquired the right, title and interest of the alienee. Such a contention on the fact of it is untenable.

The instance of an alienation by a trustee or an executor may also be considered. If after the alienation by the trustee or executor the beneficiary raises some objection about the validity of the alienation whether well-founded or ill-founded and if the alienee who is not prepared to take any risk conveys back the property to the trustee or the executor as the case may be it cannot possibly be contended that the trustee or the executor got back the property in any right or character other than in which it was originally alienated. As a result of the reconveyance the property would form part of the trust estate. In all these cases the alienor suffers under a legal disability from holding the

property in any other capacity. It is needless to multiply instances. I am therefore clearly of the opinion that there is nothing in law to prevent an alienation being completely nullified as if it never took effect provided the alienor and the alienee agree to such a course. The position is a fortiori where the title conveys to the alienee is a voidable one. It cannot be disputed that when the reversioner files the suit, it is open to the alienee to submit to a decree. After such a declaratory decree is passed, there is nothing in Hindu law which compels or obliges the alienee to retain and keep the property himself and hand it over to the reversioner. It is certainly open to him to respect the decree and convey back the property to the widow even before her death. It is obvious that what the alienee can do after the termination of the suit can equally be done during its pendency. Surely the alienee is not a trustee for the reversioner to keep the property in trust and deliver the property on the death of the widow.

8. Our own reasons we have already articulated. The reasoning unfolded in the foregoing passage, we fully and wholeheartedly endorse. In the result we uphold the view that in such circumstances the concerned Hindu woman is entitled to become an absolute owner of the property in question.

9. The appeal fails and is dismissed. No costs.

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