

Gulwant Kaur and Another

Vs

Mohinder Singh and Others

Civil Appeal No. 1112 of 1980

(O. Chinnappa Reddy, K. Jagannatha Sehtty JJ)

20.07.1987

JUDGMENT

CHINNAPPA REDDY, J. -

1. Major General Gurbux Singh and his wife Gulwant Kaur were estranged and were living apart. Their son and daughter-in-law were living with Gulwant Kaur at Chandigarh. Gulwant Kaur was apparently complaining that Major General Gurbux Singh was not providing her with adequate maintenance. Therefore, On July 28, 1958, he wrote her a letter, the relevant parts of which are as follows :

To

Srimati Gulwant Kaur,

You have been complaining that I have not paid even a penny for maintenance for the last seven/eight months. Here is an account from November 1957 to July 1958, the details of which run as under :

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Now, so far as the question of future expenses is concerned, the maintenance shall be like this :

For Yourself,

1. The land and house situated at Mangwal, which was constructed with the earning of my whole life, is entrusted to you, the half portion of which already stands in your name and in lieu of the produce thereof Madanjit shall provide to you, if not more, free lodging and boarding (expenses for maintenance). You stay in your own home.
2. The land at Khurana is also entrusted to you. Its produce, lease money, etc. will fetch you a minimum of Rs. 1200 annually i.e. Rs. 100 per month for maintenance.
3. It shall pay Rs. 100 every month for maintenance.

The letter of Gurbux Singh suggested that he was making adequate provision for meeting the expenses of Gulwant Kaur even at the cost of great inconvenience and discomfort to himself and so Gulwant Kaur was not entitled to complain. Gulwant Kaur apparently felt disgusted and frustrated

at the tone of the letter and by her letter dated August 5, 1958, she queried if she was not to take maintenance from Gurubux Singh who else was she to get any maintenance. She said that she was not demanding anything and made no claim on him and that everything including the land and kothi belonged to him. That Khurana land also belonged to him. He might give her maintenance or not give her maintenance as he chose. She said that she was nothing more than a heap of dust and her life was not worth living. In another portion of the letter, she mentioned that the Khurana land had not yet been leased and that there had been some delay. Other correspondence passed between the parties which is not important for the present case. Later, after a few years, Gurbux Singh conceived the idea of selling the Khurana land. The wife protested. Her letter dated January 15, 1966 was as follows :

Most respected husband,

Sat Siri Akal,

Previously in the summer, Col. Gurcharan Singh told us that you want to sell the land of Khurana. Now, on the day you visited Sangrur, it was learnt from you that you were interested in selling the land. I also told you that we depend upon only that. This land was given to me by you voluntarily. You had written letters to me and Madanjit on July 28, 1958 copy whereof is being sent to you by me. Therein, it was decided that I would continue enjoying the produce thereof till my life. Now on hearing that you want to sell it, I was very much shocked ..... Now this letter is being written to you in order to impress upon you not to sell the land of Khurana because Madanjit and I depend upon it. You are very well aware that we do not possess anything else ... I fully hope that you will continue giving me this land and the maintenance grants to me as per your decision and will not think of selling this land. You are aware how we are hardly maintaining ourselves. I have made this prayer to you. I have full right over it. I hope that you will reply soon.

Gulwant Kaur's letter did not have any effect on Major General Gurbux Singh. Instead of replying her, he sold the Khurana land to the plaintiff respondents on June 18, 1968. The purchaser instituted the present suit out of which the appeal arises for an injunction restraining Gulwant Kaur and Madanjit Singh from interfering with the possession. The defendants contested the suit initially on the ground that the land had been gifted to Gulwant Kaur orally by Major General Gurbux Singh. It was also claimed that Gulwant Kaur acquired title by adverse possession. Later the written statement was amended and a further plea was taken that the land in dispute had been given to Gulwant Kaur in lieu of maintenance and she had become the absolute owner of the land under Section 14 of the Hindu Succession Act. All the courts found that there was no oral gift. A learned Single Judge of the High Court who heard the second appeal held that the Khurana land was given to Gulwant Kaur by her husband Major General Gurbux Singh in lieu of maintenance and that by virtue of Section 14 of the Hindu Succession Act, she had become full owner of the property. On an appeal under the Letters Patent, a Division Bench of the High Court of Punjab and Haryana held that Gulwant Kaur was merely allowed to receive the proceeds of the land in dispute in order to meet her day-to-day expenses and that she did not at all acquire any such right or interest in the property as could be termed 'limited ownership' so as to permit her to take the benefit of the provisions of Section 14(1) of the Hindu Succession Act. According to the learned Judges : "if the General had given over the land in dispute completely to the lady then the question of sending more money could not have arisen .... The reading of the letter leaves no manner of doubt that there was never any intention on the part of the General to give away the land of village Khurana to the lady and that instead of sending the total amount in cash, the General allowed her to utilise the amount of ckakota for meeting her day-to-day expenses". The Division Bench reversed the judgment of the

learned Single Judge.

2. We are unable to agree with the conclusions of the Division Bench of the High Court. The question was not whether Major General Gurbux Singh intended to give away the Khurana land absolutely to Gulwant Kaur but whether the land was given to her in lieu of maintenance. A perusal of the letter dated July 28, 1958 from Major General Gurbux Singh to Gulwant Kaur and the letter dated January 15, 1966 clearly establish that the Khurana land was given to Gulwant Kaur by Gurbux Singh in lieu of her maintenance. We are unable to understand the distinction made by the High Court between day-to-day expenses and maintenance. It was argued by Shri Tarkunde, learned counsel for the respondents that even if the land was given to Gulwant Kaur in lieu of maintenance, it must be established that what was given to her was a limited estate in the sense of ownership without the right of alienation and that under Section 14 of the Hindu Succession Act only such a limited estate would blossom into an absolute estate. We are unable to agree with the submission of Shri. Tarkunde. Shri. Tarkunde invited our attention to some decisions of this Court as supporting the proposition stated by him. We will presently refer to all of them.

3. Section 14 of the Hindu Succession Act is as follows :

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

Explanation - In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative for 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 a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

4. It is obvious that Section 14 is aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Sub-section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedent right.

5. In *Eramma v. Verrupanna* ((1966) 2 SCR 626 : AIR 1966 SC 1879) on the death of the last male

holder, his two step-mothers who had no vestige of title to the properties got possession of the properties and in answer to a suit by the rightful heirs, one of them claimed that she had become full owner of the property under Section 14 of the Hindu Succession Act. The Supreme Court pointed out that the object of Section 14 was to extinguish the estate called limited estate and to make a Hindu woman who would otherwise be a limited owner, a full owner of the property but it was not to confer a title on a female Hindu, who did not in fact possess any vestige of title. The case did not deal with the case of a Hindu woman who was given property in lieu of maintenance and in whom therefore a right or interest was created in the property.

6. In *Badri Pershad v. Kanso Devi* ((1970) 2 SCR 95 : (1969) 2 SCC 586 : AIR 1970 SC 963) the court pointed out that a Hindu widow who after the death of her husband obtained properties under a partition award between herself and her sons, would be entitled to an absolute estate under Section 14(1) of the Act and that merely because the partition was by means of an arbitration award, Section 14(2) would not be attracted. It was made clear that Section 14(2) was in the nature of a proviso or an exception to Section 14(1) and that it came into operation only if the Hindu woman acquired the property in any of the methods indicated therein for the first time without there being any pre-existing right in her to the property. The principle of the case far from supporting Shri Tarkunde's submission supports the submission of the appellants.

7. In *Naraini Devi v. Smt. Ramo Devi* ((1976) 3 SCR 55 : (1976) 1 SCC 574 : AIR 1976 SC 2198) the case of *Badri Pershad v. Smt. Kanso Devi* ((1970) 2 SCR 95 : (1969) 2 SCC 586 : AIR 1970 SC 963) was distinguished on the ground that the widow had no pre-existing right in the property which she obtained under an award and therefore, the case fell squarely within Section 14(2) of the Hindu Succession Act.

8. In *Tulasamma v. Sessa Reddy* ((1977) 3 SCR 261 : (1977) 3 SCC 99 : AIR 1977 SC 1944), it was clearly laid down that Section 14(1) would be applicable to property given to a female Hindu in lieu of maintenance. It was also made clear that Section 14(2) would apply only to cases where the acquisition of property was made by a Hindu female without any pre-existing right. It was said : (SCC pp. 139-40 and p. 144, paras 68, 69 and 71)

It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or subsequently acquired and possessed, she would become the full owner of the property.

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 instrument or under a decree or order of a civil court or under an award when the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property. This provision is more in the nature of a proviso or an exception to sub-section (1) and it was regarded as such by this Court in *Badri Pershad v. Smt. Kanso Devi* ((1970) 2 SCR 95 : (1969) 2 SCC 586 : AIR 1970 SC 963) ... It is, therefore, clear that under the Shastric 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 on the joint family property and even if no specific charge is created, this right would be enforceable against joint family 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 joint 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 would 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 provision in the instrument prescribing that she would have only a limited interest in the property would be, to quote the words of this Court in *Nirmal Chand v. Vidya Wanti*, (1969) 3 SCC 628, "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) of Section 14. The conclusion is, therefore, inescapable that where property is allotted to a widow under an instrument, decree, order or award prescribes a restricted estate for her in the property and sub-section (2) of Section 14 would have no application in such a case.

9. In *Bai Vajia v. Thakorbhai Chelabhai* ((1979) 3 SCR 291 : (1979) 3 SCC 300 : AIR 1979 SC 993), the court referred to the earlier judgment in *Tulasamma* case ((1977) 3 SCR 261 : (1977) 3 SCC 99 : AIR 1977 SC 1944) and said : (SCC p. 311, para 12)

All the three Judges were thus unanimous in accepting the appeal on the ground that *Tulasamma's* right to maintenance was a pre-existing right, that it was in recognition of such a right that 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 coupled with the Explanation thereto. With respect we find ourselves in complete agreement with the conclusions arrived at the *Bhagwati* and *Fazal Ali, JJ.*, as also the reasons which weighed with them in coming to those conclusions.

*Shri Tarkunde* particularly relied on the following passage in *Bai Vajia v. Thakorbhai* case ((1979) 3 SCR 291 : (1979) 3 SCC 300 : AIR 1979 SC 993) : (SCC p. 311, para 14)

A plain reading of sub-section (1) makes it clear that the concerned Hindu female must 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.

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

10. In *Sellammal v. Nellammal* (AIR 1977 SC 1265 : (1977) 3 SCC 145), the court held that property allotted to a Hindu widow in lieu of her maintenance in recognition of her pre-existing right became her absolute property.

11. In *Santhanam v. Subramanya* (AIR 1977 SC 2024 : (1977) 4 SCC 602 (II)), it was again held that property in the possession of a widow of the deceased coparcener which had been allotted to her for life in lieu of maintenance without power of alienation became her absolute property under Section 14(1) of the Act with powers of alienation.

12. In *Krishna Das v. Venkayya* (AIR 1978 SC 361 : (1978) 1 SCC 67), it was reiterated that where a widow was put in possession of joint family property in lieu of her right to maintenance, her right to the property became enlarged into an absolute estate under Section 14(1). We, therefore, think that it is rather late in the day for Shri Tarkunde to contend that the Khurana land which was given to Gulwant Kaur in lieu of maintenance did not vest in her absolutely.

13. We may finally refer to a recent decision of this Court in *Jagannathan Pillai v. Kunjithapadam Pillai* ((1987) 2 SCC 572) where Thakkar and Ray, JJ. Pointed out : (SCC pp. 576-77, para 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 as a 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 assert 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 of award provided the very document creating title unto 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.

14. In view of the foregoing discussion, we allow the appeal, set aside the judgment of the Division Bench of the High Court and restore that of the learned Single Judge.

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