

Thota Sesharathamma and Another

Vs

Thota Manikyamma (dead) by Lrs. and Others

Civil Appeal No. 630 of 1981

(N.M. Kasliwal, K. Ramaswamy JJ)

23.08.1991

JUDGMENT

KASLIWAL, J.

1. In the above appeal and special leave petitions question has been raised about the ambit and scope of Sections 14(1) and 14(2) of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act'). Before advertng to the legal question, to would be proper to narrate in short the facts of each case.

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2. Thota Madhav Rao, the plaintiff filed a suit against Thota Manikyamma on the allegation that the plaintiff's father Yellamanda and the defendant's husband late Venkata Subbayya were brothers. As the defendant and her husband had no issue they brought up the plaintiff as their foster son from the age of eight years and thereafter the plaintiff continued to live with them and was brought up treating him as their own son. Venkata Subbayya died on January 14, 1932 and before his death he executed a will bequeathing the suit properties in favour of his wife Smt. Thota Manikyamma for her life with a vested remainder in favour of the plaintiff. Both the parties lived together with perfect understanding but after some time there was misunderstanding and the defendant assumed hostile attitude towards the plaintiff and began to claim the suit property as her absolute property. The defendant also executed a registered will on October 26, 1969 bequeathing the suit properties in favour of one Ramiseti Koteswar Rao. The plaintiff in these circumstances claimed absolute right in the suit properties after the lifetime of the defendant and challenged the right of the defendant to execute any will in respect of the suit properties. The defendant took the plea that her husband died issueless and intestate and did not execute any will at any time. Neither she nor her husband brought up the plaintiff as their son nor did they educate him. The defendant had brought up Ramiseti Koteswar Rao, who is her nephew, from his childhood and performed his marriage. On account of love and affection for him and his children, the defendant executed a registered will on October 26, 1969 bequeathing all her properties in his favour. The trial court held the will dated January 14, 1932 proved and decreed the plaintiff's suit. The first appellate court upheld the judgment and decree of the trial court. The defendant preferred a second appeal in the High Court. During the pendency of the second appeal in the High Court the plaintiff died and his legal representatives were brought on record. The High Court by judgment dated August 24, 1979 allowed the second appeal and dismissed the suit with costs throughout. The legal representatives of the plaintiff have come to this Court by grant of special leave. The question involved is whether the life interest in the property acquired by Thota Manikyamma under the will executed by her husband and continued to be in her possession became her absolute property under Section 14(1) of the Act.

Special Leave Petition (C) No. 438 of 1979

3. One Meenammal is the wife of Ovi Reddiar. Married life between Ovi Reddiar and his wife was not happy and cordial. Ovi Reddiar executed a registered will Ex. A-4 dated March 21, 1921 bequeathing all his properties including the suit properties in favour of his mother and sister for their lifetime and thereafter in favour of Ramalinga Reddiar and Dhanush Koti Reddiar, the two sons of his sister and their issues. In the said will reference was made regarding the conduct of Meenammal in deserting him and in any event if she changed her mind and agreed to live under the protection of the legatees she was allowed to enjoy the income from Item I of the suit properties and that she should construct a house in item referred to in the will and to live there during her lifetime and after her death the said Item I and the house site with the house shall go to the abovementioned Ramalinga Reddiar and Dhanush Koti Reddiar.

4. Ovi Reddiar died in 1922 and thereafter the legatees under the will entered into possession of all the properties. Smt. Meenammal put obstruction to the legatees in getting possession.

5. There was some criminal litigation between Smt. Meenammal and the legatees under Section 145 CrPC which resulted in favour of the legatee (Ex. A-1). Smt. Meenammal then filed a suit in 1923 praying for a declaration that the will made by her husband was not valid and as such be cancelled and for possession and mesne profits and in the alternative she claimed for maintenance both past and future. In the said suit the parties entered into a compromise and a compromise decree was passed on March 5, 1924, (vide Ex. A-1). Under the terms of the said compromise the execution of the will was accepted and the same was made subject to the terms of the compromise decree. Under the compromise decree it was agreed that Smt. Meenammal would enjoy Items 1 and 2 of the properties mentioned in the will and also 50 cents of land during her lifetime. She would also have an enjoyment of the house site during her lifetime without any right of alienation. Dhanush Koti died unmarried in 1930 but during his lifetime he sold his interest in the properties in favour of Ramalinga Reddiar. Ramalinga Reddiar died in 1962. On his death the petitioners before this Court being the sons and daughters of Ramalinga Reddiar claimed to have become entitled to all the properties of Ramalinga Reddiar including the rights in. The suit property. Smt. Meenammal during her lifetime executed a settlement deed in favour of the respondents before this Court giving absolute rights in the suit properties. The petitioners before this Court filed a suit against Smt. Meenammal and the respondents for declaration that the settlement deed (Ex. A-10) executed by the Smt. Meenammal will not enure beyond the lifetime of Smt. Meenammal. Smt. Meenammal contested the suit and took the plea that the limited interest given to her under the compromise decree had become enlarged into absolute right by virtue of Section 14(1) of the Act. The trial court decreed the suit and it was affirmed in first appeal. Smt. Meenammal having died, the respondents in this Court preferred a second appeal in the High Court of Judicature at Madras. The High Court allowed the second appeal and dismissed the suit filed by the petitioners. The petitioners in these circumstances have filed the SLP under Article 136 of the Constitution of India.

SLP (C) No. 2113 of 1980

6. The suit properties as well as some other properties originally belonged to one Ramalinga Udayar. He had two wives, namely, Alamolu and Sarasvati. The first wife Alamolu was living away from her husband. Ramalinga did not have any issue from both the wives. Ramalinga being attached with one Siva Subramania the petitioner before us executed a will on July 2, 1945 bequeathing his properties in favour of his second wife Sarasvati for her lifetime and thereafter, absolutely in favour of Siva Subramania. A provision was also made for the payment of Rs 68 and a direction to make

available 18 kalams of paddy in favour of Alamolu for her lifetime. In order to ensure the payment of the maintenance and delivery of paddy a charge was also created over the properties to go ultimately in favour of Siva Subramania Udayar. As Siva Subramania Udayar was a minor at that time the second wife Smt. Sarasvati was appointed as his guardian. Ramalinga died on July 8, 1945 and subsequently his first wife Alamolu was awarded 50 kalams of paddy and a sum of Rs 250 in case per annum by way of maintenance. On appeal the High Court modified the decree of the trial court and enhanced the maintenance to Rs 480 per annum and directed Siva Subramania the legatee under the will to give one building for the residence of Alamolu. Thereafter in 1951 Alamolu sought the recovery of possession of one of the buildings and the executing court allotted to her the eastern house backyard and the shops. The second wife Sarasvati preferred an appeal to the High Court against the above order of the executing court. A compromise was entered into between the parties in the High Court. According to the terms of compromise Alamolu was permitted to occupy the eastern house together with the two shops but the backyard portion was not given. Alamolu, however remained in possession of that portion as well, where some coconut trees were standing. Later on Sarasvati was removed from the guardianship of Siva Subramania Udayar, and natural father was appointed as his guardian. Alamolu died on February 2, 1966. The respondents before us are brother's grandsons of Alamolu. Alamolu settled the suit properties in favour of one Chandrashekhar Udayar claiming title to the same in pursuance to a compromise in A.A.O. 567 of 1950. Ramayya Mudaliar another respondent before us initially took on lease the properties from Chandrashekhar and later on purchased the eastern half of the building and backyard portion. Siva Subramania Udayar challenged these transactions on the grounds that Alamolu was given a right of residence only in the building and the same lasted till her lifetime and such right could never be enlarged into an absolute right. The settlement deed made by her in favour of Chandrashekhar Udayar and the sale made by Chandrashekhar in favour of Ramaiah were invalid and no title could be conveyed by Alamolu in their favour. Siva Subramania Udayar as such filed a suit for recovery of possession of the suit properties with mesne profits. The trial court held that Alamolu was not the absolute owner of the suit properties as contemplated under Section 14(2) of the Act. The suit as such was decreed in favour of the plaintiff Siva Subramania Udayar. Learned Single Judge of the High Court dismissed the appeal. On a Letters Patent Appeal the Division Bench of the High Court allowed the appeal and dismissed the suit. The plaintiff Siva Subramania Udayar has filed the SLP under Article 136 of the Constitution of India.

7. The controversy raised in these cases is almost settled by a number of decisions of this Court. However, learned counsel for the appellant in the appeal as well as learned counsel for the petitioners in the special leave petitions have raised an argument, placing reliance on *Mst. Karmi v. Amru* ((1972) 4 SCC 86 : AIR 1971 SC 745) that the life estate given to a widow under the will of her husband cannot become an absolute estate under the provisions of the Hindu Succession Act, as such we consider it proper to deal with this case in the light of other cases decided by this Court. Section 14 of the Hindu Succession Act, 1956 reads as under :

"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.

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 the 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."

The contention raised is that if a female Hindu acquires any property under a will which gives her a restricted estate in such property then provisions of sub-section (2) will override the provisions of sub-section (1) of Section 14 of the Act which makes a female Hindu as full owner.

8. In *Badri Pershad v. Smt. Kanso Devi* ((1969) 2 SCC 586 : (1970) 2 SCR 95 : AIR 1970 SC 963) a bench of three Judges considered the question in detail. In the above case a Hindu having self-acquired properties, died in 1947 leaving five sons and a widow. On a dispute between the parties an arbitrator was appointed in 1950. The arbitrator gave an award and a decree was passed in terms of award. Under the award the widow was given widow's estate. It was held that the widow inherited the property under Section 3(1) of the Hindu Women's Right to Property Act, 1937 and was in possession of it within the meaning of the word possession if Section 14(1) of the Act and when by an award her share was separated by metes and bounds, she also acquired the property within the meaning of that section. It was held that she had become full owner of the property in her possession under Section 14(1) on the coming into force of the Hindu Succession Act, even though previously she was a limited owner.

9. It was clearly held in the above case that Section 14(2) of the Act is in the nature of a proviso or an exception to Section 14(1) and comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female Hindu to the property. The Bench consisted of Hon. J.C. Shah, V. Ramaswamy and A.N. Grover, JJ.

10. The case of *Mst. Karmi v. Amru* ((1972) 4 SCC 86 : AIR 1971 SC 745) on which a reliance has now been placed by learned counsel for the appellant and petitioners was also decided by a bench of three Judges Hon. J.C. Shah, K.S. Hegde and A.N. Grover, JJ. It may be noted that two Hon'ble Judges, namely, J.C. Shah and A.N. Grover were common to both the cases. In *Mst. Karmi v. Amru* ((1972) 4 SCC 86 : AIR 1971 SC 745), one Jaimal died in 1938 leaving his wife Nihali. His son Ditta predeceased him. Appellant in the above case was the daughter of Ditta and the respondents were collaterals of Jaimal. Jaimal first executed a will dated December 18, 1935 and by a subsequent will dated November 13, 1937 revoked the first will. By the second will a life estate was given to Nihali and thereafter the property was made to devolve on Bhagtu and Amru collaterals. On the death of Jaimal in 1938, properties were mutated in the name of Nihali. Nihali died in 1960/61. The appellant Mst. Karmi claimed right on the basis of will dated April 25, 1958 executed by Nihali in her favour. It was held that the life estate given to a widow under the will of her husband cannot become an absolute estate under the provisions of the Hindu Succession Act. Thereafter, the appellant cannot claim title to the properties on the basis of the will executed by the widow Nihali in her favour. It was a short judgment without adverting to any provisions of Section 14(1) or 14(2) of the Act. The judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in *Badri Pershad v. Smt. Kanso Devi* ((1969) 2 SCC 586 : (1970) 2 SCR 95 : AIR 1970 SC 963). The decision in *Mst. Karmi* ((1972) 4 SCC 86 : AIR 1971 SC 745) cannot be considered as an authority on the ambit and scope of Section 14(1) and (2) of the Act.

11. The controversy regarding sub-sections (1) and (2) of Section 14 of the Act again came up for consideration in *V. Tulasamma v. V. Sessa Reddi* ((1977) 3 SCC 99 : (1977) 3 SCR 261). This case was also decided by a bench of three Judges. In this case the controversy now raised before us was considered in detail. All the earlier cases were considered including *Badri Prasad v. Smt. Kanso Devi* ((1969) 2 SCC 586 : (1970) 2 SCR 95 : AIR 1970 SC 963) and the ratio of this case was followed and approved in *V. Tulasamma case* ((1977) 3 SCC 300 : (1979) 3 SCR 291). Hon'ble Bhagwati, J. who wrote the leading judgment dealt with the question in detail and after applying the mind to the controversy decided the same in a well considered manner. *V. Tulasamma case* ((1977) 3 SCC 99 : (1977) 3 SCR 261) again was discussed in extenso and followed in *Bai Vajia v. Thakorbhai Chelabhai* ((1979) 3 SCC 300 : (1979) 3 SCR 291) by a bench of three Judges. The same view has been consistently adopted in long series of cases of this Court and to mention a few of them are *Jagannathan Pillai v. Kunjithapadam Pillai* ((1987) 2 SCC 572), *Gopal Singh v. Dile Ram* ((1988) 1 SCC 47), *Gulwant Kaur v. Mohinder Singh* ((1987) 3 SCC 674 : (1989) 10 ATC 599) and *Jaswant Kaur v. Major Harpal Singh* ((1989) 3 SCC 572).

12. A mention of all the above cases shows that this Court in a long series of cases has taken a consistent view that Section 14(2) of the Act is in the nature of a proviso or an exception to Section 14 and comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female Hindu to the property. If the case falls under the provisions of Section 14(1) of the Act then the female Hindu shall be held to be full owner of the property and sub-section (2) of Section 14 will only apply where the property is acquired without there being any pre-existing right of the female Hindu in such property. Thus we affirm and reiterate that sub-section (2) of Section 14 will be construed more in the nature of a proviso or an exception to sub-section (1) of Section 14 of the Act. This view lends support to the object of the section which was to remove the disability on women imposed by law and to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society.

13. In the result we find no force in all the above cases and the same are dismissed with cost.

K. RAMASWAMY, J. (supplementing Ed.) :

Justice Ramaswamy has also signed the judgment by Justice Kasliwal) - I have had the advantage to read the draft judgment of my learned brother. I fully agree with the reasoning and conclusions. The repeated attempts to reopen the ratio in *Tulasamma case* ((1977) 3 SCC 99 : (1977) 3 SCR 261), in particular, from its proponent i.e. Sri Krishnamurthy Iyer made me to tread the route through which I reached the same result thus :

15. Sir Henry Maine in his *Earlier History of Institutions* at p. 339 stated that, : the degree in which personal immunity and proprietary capacity of women are recognised in a particular state or community is a test of the degree of the advance of its civilisation." It is, therefore, clear that the esteem in which woman is held, the status occupied by her in society and the treatment meted out to her are regarded as index to the degree of civilisation and culture attained in country. Manu in his *Smriti*, Chapter III verses 55 to 57 stated that where women are honoured and adorned there Gods are pleased, but where women are not honoured no sacred fire yields rewards. What is the status held by women in the Hindu society is a matter of history reflected from Vedic culture, *Smritis*, the *Shastric law*, the statutory provision and ultimately converged and recognised in the supreme law of the land, i.e. egalitarian socialist Indian Constitution.

16. E.S. Shivaswamy Iyer in his *Revolution of Hindu Women*, (1935 edn. p. 64) stated that the ideals of the society as to womanhood includes not merely the relations of husband and wife or mother and children or the other intimate relationship of family life, but also the notions we find about her capacity, her character, her claim to equality, independence and freedom for developing, her rights to personal ownership and control of property, to the choice of her vocation and other rights as well as duties as a member of the society. Status and rights of Hindu woman fluctuated and swung like a pendulum with ups and downs from period to period starting from 400 B.C. till date. However esteem for women remained constantly high in the society.

17. In Vedic society woman enjoyed equal status economically, socially and culturally with men, vide pp. 335, 339 and 409 of *The Position of Women in Hindu Civilization*, (1955 edn.) by Altakar. He stated that initiation to education upanishad was performed in Vedic period to the girls as well as boys. Women studied the vedas, even composed vedic rhymes. They participated in public life freely. Vishvavara, Apala, Lopamudra and Shashayasi are only few examples in the initial vedic period. Thereafter Ghosha, Maitrai and Gargi occupied pride of place for equality in intellectual excellence and equal status with men. Selfishness and male chauvinism made women to be gradually degraded and were given no voice even in the settlement of their marriages or so on. She was denied participation in public affairs. Though Yajnavalkya was a proponent to her economic status but ultimately Manu Smriti took firm hold and in Chapter IX verse 18, Manu stated that women had no right to study the vedas. Thereby, women were denied the right to education, fundamental human right to acquire knowledge and cultural and intellectual excellence. In Chapter IX verse 149, he stated that woman must not seek separation from father, husband or son and bonded her forever. In Chapter IX verse 45, the husband was declared to be one with the wife that the wife can seek no divorce but allowed impunity to a male to discard an unwanted wife. All though the ages till Hindu Marriage Act was made a male was allowed polygamy. In Chapter IX verse 416, he stated that a wife, a son and slave are declared to have no property and if they happened to acquire it would belong to male under whom she is in protection. Thus she was denuded of her right to property or incentive to decent and independent living and made her a dependant only to rear children and bear the burdens. When she became a widow, she was declared to have only maintenance and if in possession of her husband's property or coparcenary, to be (sic have) a widow's estate with reversionary right to the heirs of last male holder. Fidelity was a condition precedent to receive maintenance. In Chapter IX verse 299, he prescribed corporal punishment to a wife who commits faults and she should be beaten with a rope or a split bamboo. If she was murdered it was declared to be an upapattaka that is a minor offence vide Chapter XI verse 67. I did not adhere to literal translation but attempted to portray their sweep and deep incursion on social order. Thus he laid a firm foundation to deny a Hindu female equality of status, opportunity and dignity of person with no independent right to property and made her a subservient, socially, educationally and culturally. Widows were murdered by inhuman sati and now by bride burnings.

18. Gautam Buddha gave her equality of status and opportunity. Efforts of social reformers like Raja Ram Mohan Rai, Kandukuri Veeresalingam and a host of other enlightened made the British Rulers gradually to make statute law, giving her right to separate residence and maintenance and a right over property of her husband or joint family for maintenance and charge by a decree of court. Mahatma Gandhiji, the father of the nation, in *Young India* on October 17, 1929 had written thus : "I am uncompromising in the matters of women's rights. In my opinion she should live under no legal disability, no suffering by men, we should treat the daughters and sons on the footing of perfect equality." Shri Rabindra Nath Tagore, the Noble laureate in his speech in 1913 reprinted in "To the Women" at page 18 stated that "woman is the champion of man, gifted with equal mental capacity. She has a right to participate in any minutest activity of men and she has equal right of

freedom and liberty with him."

19. The Constitution of India accords socio-economic and political justice, equality of status and of opportunity assuring the dignity of person with stated freedoms. Article 14 guarantees equality. In other words it frowns upon discrimination on any ground. Article 15(1) abolishes discrimination and removes disability, liability or restriction on grounds of sex and ensures equality of status. Article 29(2) gives equal right to education. In the earliest decision this Court upheld it in *State of Madras v. Champakam Dorairajan* (1951 SCR 525 : AIR 1951 SC 226). Article 16(1) accords equality of opportunity in public service for an appointment or employment to an office or post under the State and prohibits gender discrimination. Marriage as a disability for appointment to Indian Foreign Service was declared unconstitutional in *C.B. Muthamma v. Union of India* ((1979) 4 SCC 260 : 1979 SCC (Cri) 366 : (1980) 1 SCR 668). Pregnancy as a disqualification to continue in public employment was held to be an affront to equality of status, dignity of person and equal opportunity violating Articles 14 and 16(1) in *Air India v. Nergesh Meerza* ((1981) 4 SCC 335 : 1981 SCC (L&S) 599 : (1982) 1 SCR 438). It abhors or is loathe to civility. These are few classic illustrations. Article 15(3) treats women as a class, mitigates the rigour of absolute equality enshrined in Article 14 and its species Articles 15(1) and 16(1) and enjoins the State to make any special provision to remedy past injustice and to advance their status, socio-economic and political. Article 21 assures protection of life which includes right to livelihood. Article 38(1) obligates the State to promote the welfare of the people by securing social order in which social, economic and political justice shall inform all the institutions of the national life. Sub-Article (2) thereof further enjoins the State to minimise the inequalities in income and to eliminate inequalities in status by providing facilities and opportunities to all individuals. Women should have adequate means of livelihood on par with men, (Article 39(a)); should have equal pay for equal work, (Article 39(d)); health and strength of working women are not abused, (Article 39(e)). Economic necessity is not a sanctuary to abuse her person or she should not be forced to an unsuited avocation, (Article 39(e)); State shall provide just and human conditions of work and maternity relief (Article 42). Article 46 mandates the State to promote with special care the economic and educational conditions of the weaker sections of the people. It also enjoins to protect them from social injustice and all forms of exploitation.

20. To enliven and alongate this constitutional goal to render socio-economic justice, to relieve Hindu female from degradation, disabilities, disadvantages and restrictions under which Hindu females have been languishing over centuries and to integrate them in national and international life, Bharat Ratna Dr Baba Saheb Ambedkar, the first Law Minister and founding father of the Constitution drafted the Hindu Code Bill. The Hindu Marriage Act, Adoption and Maintenance Act; Minority and Guardianship Act and Succession Act, 1956, for short 'the Act' became a part of this package. They ensure equal status and socio-economic justice to Hindu female. In a socialist democracy governed by rule of law, law as a social engineering should bring about transformation in the social structure. Wherever a socio-economic legislation or the rule or instruments touching the implementation of welfare measures arise for consideration, this historical evidence furnishes the foundation and all other relevant material would be kept at the back of the court's mind.

21. Section 14(1) of the Act declares that any property, movable or immovable, possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner irrespective of the time when the acquisition was made, i.e., whether it was before or after the Act. Undoubtedly as contended by Sri Krishnamurthy Iyer, a Hindu male has freedom of testamentary disposition of his property or by contract and Section 14(1) stands an impediment in his way. Freedom of contract would yield place to public policy envisaged above. Its effect must be tested on the anvil of socio-

economic justice, equality of status and to oversee whether it would subserve the constitutional animation or frustrate it. Article 15(3) relieves from the rigour of Article 15(1) and charges the State to make special provision to accord to women socio-economic equality. The court would, therefore, endeavour to find whether terms of the disposition or clauses in the instruments, will etc. enumerated in Section 14 would permeate the aforesaid constitutional conscience to relieve the Hindu female from the Shastric bondage of limited estate. Both sub-sections (1) and (2) of Section 14 attract the conferment of restricted estate held by a Hindu female under an instrument, i.e. gift, will, decree or order of a civil court or an award. Section 14 and the impugned document must be read harmoniously as an integral scheme. The disability attached to Hindu female by Shastric law was removed by statutory provisions in Hindu Succession Act. Section 14(1) thereof was thought to be a tool to remove disabilities or restrictions imposed by customary or Shastric law on Hindu women. Section 14(1) declares in unequivocal terms that the property whether movable or immovable held by a Hindu female acquired either before or after the Act shall be her absolute property, abolishing the limited estate known to Shastric law. Hindu women as a class are declared as class I heirs entitling them to intestate succession of Hindu male. This Court in *Pratap Singh v. Union of India* ((1985) 4 SCC 197 : 1985 Supp 2 SCR 773), held that Section 14 of the Act does not discriminate on grounds of sex and is intra vires Article 15(3). The preferential treatment accorded, thereby, was held to be not violative of Articles 14 and 15(1). Sub-section (2) of Section 14 of the Act attempts to denude the object of sub-section (1) and emasculates its efficacy. It should, therefore, be read as an exception or a proviso to sub-section (1) of Section 14. The interpretation of the proviso or an exception should not be to allow to eat away the vital veins of full ownership accorded by sub-section (1) of Section 14. When this Court upheld the validity of Section 14(1) on the anvil of Article 15(3) what should be the message thus intended to be conveyed? It would mean that the court would endeavour to give full effect to legislative and constitutional vision of socio-economic equality to female citizen by granting full ownership of property to a Hindu female. As a fact Article 15(3) as a forerunner to common a code does animate to make law to accord socio-economic equality to every female citizen of India, irrespective of religion, race, caste or region.

22. In *Seth Badri Pershad v. Smt. Kanso Devi* ((1972) 4 SCC 86 : AIR 1971 SC 745), in an injunction suit against the respondent, the appellant contended that the respondent was given limited estate in a decree passed in an award and that, therefore, Section 14(2) applies. Negating that contention, this Court held that sub-section (2) of Section 14 is more in the nature of a proviso or an exception to sub-section (1). It can come into operation only if the acquisition is in any of the methods indicated in sub-section (2) without there being any pre-existing right in the female Hindu who is in possession of the property. Section 14(1) removes the disability of the woman. It was accordingly held that though she came into possession by virtue of decree passed in an award as limited estate, she acquired the absolute ownership under sub-section (1) of Section 14.

23. Section 14 was the subject of critical consideration in *V. Tulasamma v. V. Sessa Reddi* ((1977) 3 SCC 99 : (1977) 3 SCR 261) and its ratio has become a *Tulsidalam* to Hindu women as *locus classicus* giving forward thrust to constitutional goal according full ownership in the property, movable or immovable, held by her as full owner thereof; redeemed her from the shackles of women's estate known to Shastric law. *Fazal Ali, J.* undertook extensive survey into sources of Hindu law and found that Hindu widow's right to maintenance is a personal obligation of the husband and he has a duty to maintain her even if he has no property. Her right to maintenance would become an equitable charge on her husband's property though no charge was created by a decree of civil court as "*jus ad rem*", i.e. right over property though not right to property "*jus in rem*" and any person who succeeds to the property carries with it a legal obligation to maintain the wife from her husband's estate. Only bona fide purchaser for value without notice alone was

relieved of this obligation. The right to maintenance is a pre-existing right preceding Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. Section 14(1) recognises her pre-existing right. Any property acquired by Hindu female by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person whether 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 such property held by her as stridhana immediately before the commencement of this Act, movable or immovable property shall be held by her as full owner thereto and not as a limited owner. Sub-section (2) thereto shall be construed as an exception or a proviso which cannot be read to emasculate the purpose enunciated under sub-section (1).

Therefore, the property held by her or property given to her at a partition, or under a compromise decree, gift or in lieu of maintenance and held by her on the date when the Act came into force, namely, June 17, 1956 shall be her absolute property as full owner. Bhagwati, J. (as he then was) speaking for himself and Gupta, J. while pointing out the faulty drafting of Section 14, held that Section 14(1) seeks to do away with the traditional limitation of her power of disposition which were regarded under the Hindu law as inherent in her estate. The words "possessed of" means the state of owning or having in one's hand or power which need not be actual or physical possession of personal occupation of the property by the Hindu female. It may be actual or constructive or in any form recognised by law. Sub-section (1) of Section 14 cannot be interpreted in a manner which would deprive the Hindu woman of the protection sought to be given to her by sub-section (1). The social purpose of the law would be frustrated and reformist zeal underlying the statutory provision would be chilled. It was not the intention of the legislature is enacting sub-section (2) which must be construed as an exception or a proviso to sub-section (1). No provision should be construed in isolation and should be read in the context so as to make a consistent enactment of the whole statute. Sub-section (2) must be read in the context of sub-section (1) of Section 14 and if so read sub-section (2) must be confined to cases where the Hindu female acquires the property for the first time as a grant without any pre-existing right to the property under a will or by way of gift or in any other instruments or a decree or order of the civil court or an award, the terms of which prescribe a restricted estate in the property. Sub-section (2) must be read as an exception or proviso to sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) of Section 14. It was, therefore, held that the property given to Tulasamma in a compromise decree in lieu of her maintenance with restricted estate known as widow's estate in Hindu law was enlarged and she became an absolute owner under the Act. She had the right to alienate the property in favour of others.

24. An attempt to reopen the ratio was thwarted by this Court in *Bai Vajia v. Thakorbbhai Chelabhai* ((1979) 3 SCC 300 : (1979) 3 SCR 291). While reaffirming the ratio of *Tulasamma case* ((1977) 3 SCC 99 : (1977) 3 SCR 261) as correct law, this Court further held that limited ownership is *sine qua non* for the applicability of sub-section (1) of Section 14 of the Act. When a widow holds a property for her enjoyment, as long as she lives, nobody is entitled to deprive her 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 relationship to property falls squarely within the meaning of expression of "limited owner" as under Section 14(1) of the Act. In that context this Court approved the dictum of Bhagwati, J. that Section 14(1) aimed to achieve a social purpose to bring about change "in the social and economic position of women in Hindu society." It was a step to accord equality of sex, elevating women from subservient position in the economic field to higher pedestal with full ownership untrammelled by artificial limitation of women's estate created by male dominance to subjugate her.

25. In *Jagannathan Pillai v. Kunjithapadam Pillai* ((1987) 2 SCC 572) this Court held that if the

question arises as to what was the nature of the widow's interest in the property and a challenge was made during her lifetime or after her death, all that has to be shown by the concerned Hindu female was 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. The question then was whether she became full owner? In that case the widow as a limited owner sold the property but later on re-purchased the selfsame property and was in possession at the date when the question of holding the property and the nature of the right held by her had arisen. It was held that she was in possession as limited owner and after the Act she became full owner and not limited owner of the property. It was further held that the legislative intent is 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 her absolute ownership and not of limited ownership, notwithstanding the position obtaining under the traditional Hindu law.

26. In *Gulwant Kaur v. Mohinder Singh* ((1987) 3 SCC 674 : (1989) 10 ATC 599) construing a letter written by the husband giving the property for wife's maintenance, this Court laid 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 title. It makes no difference whether the property was acquired by inheritance or devise, etc. The right to maintenance is not a grant made for the first time without any pre-existing right. Even if the instruments are 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 has a limited interest in the property, 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. Hence a provision in the instrument prescribing that she would have only a limited interest in the property, would be merely recording the true legal position and would not attract the applicability of sub-section (2), but would be governed by sub-section (1) of Section 14. The conclusion was, therefore, held inescapable that where the property is allotted to a widow under an instrument, decree, etc. for her maintenance, sub-section (2) of Section 14 had no application.

27. In *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai Thillanayakom Pillai* ((1988) 1 SCC 99 : (1988) 1 SCR 780) under a partition deed, limited estate in lieu of maintenance was created and this Court held that the deed or any other arrangement by which the husband gives property to his wife for maintenance need not specifically say that it was given in lieu of maintenance. The right to maintenance is a personal obligation of the husband. If the wife is put in possession of the property with the right to take the income for her maintenance, it must be presumed that the property was given to her in lieu of maintenance attracting Section 14(1) and the limited ownership ripened into full ownership. Accordingly it was held that Section 14(1) was attracted to the facts in that case.

28. In *Jaswant Kaur v. Major Harpal Singh* ((1989) 3 SCC 572) under a will executed by the husband the widow was given a life estate which was held to be enlarged into an absolute estate attracting Section 14(1), but not Section 14(2) as Hindu female acquired property under the instrument. Her title was traceable to her antecedent over her widow's estate by gift deed to 1954 to the appellant, one of her daughters. The widow died in 1968. The appellant filed a suit for injunction, based on gift deed, against the respondent, another sister claiming exclusive right, title and interest in the property and also pleaded adverse possession. The respondent filed a cross suit for partition into two shares and claimed half share pleading that their mother was not in possession of property on the date when the Act came into force. The appellant acquired only limited ownership of their mother and on her death as a reversioner of her father she was entitled to

partition. The High Court ultimately upheld the respondent's contention and held that the widow did not acquire absolute estate under Section 14(1). Being a limited owner, what was conveyed by her to the appellant was only a limited estate and the appellant would not get the benefit of full ownership as she herself was not the limited owner under Section 14(1). On demise of the mother as reversioner, the respondent was entitled to file the suit for partition. The appellant did not acquire title by adverse possession as she was a co-owner and there was no right. Therefore, sub-section (2) of Section 14 would not be attracted.

29. *Munshi Singh v. Smt. Sohan Bai* ((1989) 2 SCC 265 : (1989) 1 SCR 1012) was a case where limited owner gifted away the property and was parted with possession and the plea of repurchase was negated by all the courts. So this Court held that Section 14(1) does not apply. In *Pearey Lal v. Rameshwar Das* (1963 Supp 2 SCR 834 : AIR 1963 SC 1703) in construing a will vis-a-vis Sections 75, 82, 86 of the Indian Succession Act, 1925 this Court held that the limited estate is not enlarged into an absolute estate. In *Karmi v. Amru* ((1972) 4 SCC 86 : AIR 1971 SC 745) the attention of this Court to Section 14(1) was not drawn nor had an occasion to angulate in this perspective. Therefore, the ratio therein is of little assistance to the appellant.

30. In *Kalawatibai v. Soiryabai* ((1991) 3 SCC 410) the mother of the parties, a Hindu widow gifted adverse possession as against the other co-owner unless it was so asserted and acquiesced by the respondent. Therefore, the decree for partition was upheld and the suit for injunction was dismissed. The ratio therein does not assist the appellant.

31. Thus I hold that the Act revolutionised the status of a Hindu female; used Section 14(1) as a tool to undo past injustice to elevate her to equal status with dignity of person or par with man; extinguished pre-existing limitation of woman's estate, or widow's estate known to Shastric law and removed all the fetters to blossom the same into full ownership. The discrimination suffered by Hindu female under Shastric law was exterminated by legislative fiat. The social change thus envisaged must be endeavoured to given full vigour, thrust and efficacy. Section 14(1) enlarges the restricted estate into full ownership when the Hindu female has pre-existing right to maintenance etc. Sub-section (2) operates when the grant was made for the first time under the document with no pre-existing right. Sub-section (2), therefore, must be read as an exception or a proviso to sub-section (1). Both the sub-sections read with the explanation to be pragmatically considered as a constituent integral scheme. The court would sit in the armchair of the testator or its maker and summon to its aid the attending circumstances to execute the instrument; the relationship of the parties and to see whether the Hindu female acquired the property with vestige of pre-existing right and the will, gift deed, order, decree or an award of the civil court or in any of the forms known to law was executed in recognition thereof or entitled under the existing law. If the findings is positive her limited estate, though created with restrictive covenants in instrument or an omission to expressly so mention in full particulars thereof in the instrument in that regard are of little consequence. Her limited estate gets blossomed into full ownership under Section 14(1) with a right to bequeath, gift over, alienate or to deal in any manner recognised by law. If on the other hand the Hindu female acquires for the first time the title therein as a grant with restrictive estate under the instrument with no pre-existing title or right, sub-section (2) of Section 14 gets attracted and the restrictive covenants contained in the instrument would bind her. She remains to be a limited owner in terms thereof. The subsequent alienee or transferee acquires no higher right thereunder than the legatee etc. The reversioner to the last male holder is not bound by such transfer and is entitled to succeed to the estate, on her demise, in terms of the instrument. It is too late in the day to take retrograde step to reopen *Tulasamma ratio* ((1977) 3 SCC 99 : (1977) 3 SCR 261).

32. In Civil Appeal No. 630 of 1981 of Thota Madhav Rao, Sri Narsimhulu, his learned counsel contended that Thota Manikyamma, the respondent, having come into position and in enjoyment of the lands bequeathed under a will with a vested remainder (sic remainder) in the appellant, her rights are circumscribed by the restrictions contained in the will and Section 14(1) does not apply. He also contended that application of Section 14(1) to the instruments executed anterior to the Act amounts to giving retrospective operation of Section 14(1). We find no substance in either contention. It is settled law that a legatee under a testamentary disposition is bound by the restrictive covenants contained therein. But distinction should be maintained between an ordinary legatee and a legatee/Hindu female coupled with vestige of pre-existing title to the property but with a limited estate known to Shastric law as reflected in the impugned deed etc. Undoubtedly Section 14 is not retroactive in its operation. Devolution of the property under the will would take effect after the demise of the testator and the legatee would be bound by the terms of gift over etc. The stranger legatee cannot take shelter under subsequent change of law to enlarge the operation of restrictive covenant to claim absolute ownership in the property bequeathed to her. But socio-economic amelioration under the Act engulfs an instrument under the sweep of Section 14(1) thereof; it extinguished the pre-existing limited estate or restrictive condition and confers absolute and full ownership of the property possessed by a Hindu female as on the date when the Act had come into force, namely, June 17, 1956. The courts are not giving retrospective operation to Section 14(1) or to the instrument. The courts only would be applying the law to the facts found as on the date when the question arose to find whether legatee has pre-existing vestige of title under law; and the nature of possession of the property held by her and whether the legatee would get the benefit of Section 149(1) of the Act. There need be no express recital even in the will of the enjoyment of the property devised under the will in lieu of maintenance as a limited owner for her life. Even if so mentioned, it would be a reflection or restatement of the law existing as in 1932 when the will was executed. The respondent, admittedly, being a widow of the testator who, under Shastric law, was obligated to provide maintenance to his wife, and it being personal obligation, the property bequeathed was in lieu of maintenance for her life. She was in enjoyment of the property and the beneficial interest therein stood vested in her. As per existing law as in 1932 the widow as a legatee was entitled to widow's estate and she remained in possession on the date the Act came into force and was in enjoyment of the income derived therefrom for her life. No one had a right to interdict it. The restrictive covenant, therefore, does not stand an impediment to Section 14(1) to have full play to extinguish the same and enlarge the limited estate of widow into an absolute ownership. The restrictions contained in the will, though falls both under sub-section (2) as well as sub-section (1), of Section 14, the right to maintenance being a pre-existing right over property "res ad rem" Section 14(1) would apply. The testamentary succession with restrictive conditions in the will was obliterated. She became an absolute owner on or after June 17, 1956. Accordingly I have no hesitation to hold that, though the will created a restrictive covenant, Section 14(2) does not apply. Section 14(1) enlarged the widow's limited estate held by Manikyamma into an absolute ownership as full owner with a right to disposition by testamentary instrument or otherwise. As regards the claim in SLP No. 2113 of 1980 admittedly the decree was granted with restrictive covenant to remain in possession of a portion of the house and enjoyment for life and by operation of the ratio in Tulasamma case ((1977) 3 SCC 99 : (1977) 3 SCR 261) the restrictive covenant has enlarged into absolute estate. The appeal and special leave petitions are accordingly dismissed with costs.

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