Ram Kali (Smt)

Vs

Choudhri Ajit Shankar and Others

Civil Appeal No. 192 of 1987

(Dr. A. S. Anand, K Venkataswami JJ)

28.02.1997

JUDGMENT

VENKATASWAMI J

The question that falls for consideration in this civil appeal can be framed as follows :

> "Whether the limited estate (including the suit house) given by the father-in-law under a registered Will dated 5-1-1921 to his widowed daughter-in-law enlarges into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956 on the facts of this case."

2. It is surprising that in spite of a three-Judge Bench judgment of this Court in V. Tulasamma v. Sesha Reddy ((1977) 3 SCC 99) clearly explaining in detail the scope and ambit of sub-sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956, the High Court without referring to that case has reached a 3 palpably erroneous conclusion on the scope of Section 14(1) of the said Act.

3. This appeal by special leave arises out of a suit filed by one Ch. Rajendra Shankar, the predecessor-in-title of the respondents herein, seeking a declaration that the sale in favour of the appellant herein will not bind him as he was the absolute owner of the suit house. One Kamlawati, widowed daughter-in-law of Babu Ram Ratanlal, sold the suit house to the appellant under a registered sale deed dated 18-10-1965 for a valid consideration. That sale was challenged by Rajendra Shankar, grandson of Babu Ram Ratanlal through his daughter, (predecessor-in-title of the respondents) on the ground that his grandfather by the Will dated 23-12-1920 registered on 5-1-1921 had given only a limited interest in the suit house to the said Kamlawati and, therefore, the sale will not be binding on him after the death of the said Kamlawati. Ch. Rajendra Shankar died pending suit. His legal representatives continued the suit.

4. To appreciate the facts, minimal genealogy and relevant clauses in the Will are necessary which are given below :

> # Ram Ratanlal (died in 1921) | ---------- | | Shitla Prasad Smt. Dulari (died in 1920) d/o Ram Ratanlal | (died in 1918) | | | ---------- | | | Smt. Kamlawati Prahalad Singh Ch. Rajendra (Defendant 2) (died in 1922) Shankar (Plaintiff) | Smt. Bittan w/o Prahalad Singh (died in 1966)##

5. The relevant clauses (English translation) of the Will executed by the said Babu Ram Ratan Lal are extracted below :

"Whereas I had a son named Shri Babu Shitla Prasad Singh. He was studying in B.A. class but due to my bad luck he died issueless on 20-1-1920. He was married in his childhood and his wife Mst. Kamlawati is alive and my wife is also alive and my daughter's sons, namely, Prahalad Singh and Rajendra Shankar alias Sat Gur Saran, sons and one daughter's daughter Savitri Devi, daughter of late Babu Ambika Buksh, advocate of Lucknow. Their parents had put them into my care for education and they are under my guardianship. I am the exclusive owner of my property with right of alienation and it is necessary for me to make arrangements of the property for the aforesaid persons so that there may not arise any dispute after my death and I had executed a Will which was certified and registered on 1-3-1920/2-3-1920 and in that I had given instructions for installation of an idol of Sri Thakurji. Now by the grace of God I have installed idols of Sri Thakur Ram Chanderji and Sri Janakji in the drawing room of my beloved Babu Shitla Prasad Singh, the deceased. And I had also directed my daughter's sons to pay a sum of Rs. 35 per month to my daughter-in-law for maintenance which amount is insufficient keeping in view the high prices and the family status. Instead of me, my daughter's sons will have the liability of maintenance. For this reason, I desire to give my entire share in the Zamindari property valued at 16 Annas Mohaal Babu Ram Rattanlal, Mauza Rasool Pargana and Tehsil Purwa, District Unnao, in lieu of maintenance allowance to my daughter-in-law. For the reasons stated above this present Will has been executed cancelling the previous one. Therefore, I, while in my all senses, sound health, intellect, of my own accord and free will without coercion and compulsion from any person I do hereby make my Will as under and direct that it be acted upon after my death."

In clause 2 of the said Will, the testator has stated :

"My wife of her own is not desirous to get any share in the property but it is my duty to make arrangement for her also. Therefore, my entire moveable property and household effects which are owned by me or will be owned in future, after my death shall be owned and possessed by my wife Mst. Prayag Devi and residential house bearing municipal No. 69, situated at Mohalla Kharan Sarai, Town Unnao along with the courtyard and bounded as detailed hereunder will also be owned and possessed by my wife. But my daughter-in-law Mst. Kamlawati during the lifetime of my wife, shall be entitled to reside in the said house and nobody shall be entitled to turn her out. After the death of my wife, Mst. Kamlawati shall become the owner of the said house and remain in possession thereof. But both these ladies shall have no right to alienate the aforesaid residential houses. The sale deed of this residential house, the date of execution of which is not remembered by me, is in the name of my father-in-law Munshi Beni Madhav Prasad, but in reality I am the owner of the same, and I have already spent a considerable amount on the construction of the house from the day of execution of the sale deed. Therefore, I have a right to make a Will in respect thereof."

Clause 3 : My daughter's sons shall continue to reside in the residential house referred to in clause 2 along with their maternal grandmother and Mami (maternal uncle's wife). In case, my wife or daughter-in-law feel unhappy with my daughter's sons or their dependants or they decline to obey or serve them (wife and daughter-in-law) then they (daughter's sons) shall have no right to live in my residential house and they as per the desire of my wife and daughter-in-law will have to leave the house and in that condition, they will reside in the other house bearing municipal No. 70, but the

outer big room adjacent to Phatak facing South of the residential house shall in any case remain under the use of my daughter's sons and after the death of my daughter-in-law, my daughter's sons shall be the owner of my residential house but they in any case shall have no right to alienate the same. Because it is my desire that after my death in my residential house referred to in clause 2 above my daughter's sons and their descendants should continue to reside so that worship of Sri Thakurji may continue accordingly and the memories of mine and of my deceased son may perpetuate."

6. Placing reliance on certain clauses in the Will and in particular on clause 2 above, the suit was laid as stated earlier.

7. The suit was resisted by the appellant inter alia contending that his vendor got the property absolutely in view of Section 14(1) of the Hindu Succession Act and not merely a life estate as assumed by the plaintiff in the suit.

8. The trial court however dismissed the suit observing as follows :

> "I am of the view that Defendant 21 Kamlawati derived only life interest in the suit property under the Will in question and that she had no right to execute the sale deed in favour of Defendant 1 as this right had been specifically excluded by the terms of the Will in question.

Once it is proved that the Will in question was executed by Ram Rattanlal then it is abundantly clear by terms laid down in the Will in question that the deceased plaintiff Rajendra Shanker was given interest in his property in suit which could come in play only after the death of Smt. Kamlawati and as such deceased Plaintiff 1 had been given a right and interest over the property in suit of the terms of Will and that after his death the same have not devolved to the present plaintiffs as Plaintiff 1 Rajendra Shanker has died before Smt. Kamlawati. And as I hold that the deceased Plaintiff 1 Rajendra Shanker had rights and interests to property in suit but as he has died in the lifetime of Kamlawati and as such present plaintiffs claiming through deceased Plaintiff 1 have no interest and right to the property in suit as now the absolute rights have reverted and have vested with Smt. Kamlawati."

9. The respondent preferred an appeal to the District Court and the learned First Additional District and Sessions Judge, Unnao held that the vendor of the appellant, namely, Kamlawati was given only a life interest under the Will and that the original plaintiff Rajendra Shanker had a vested interest in the suit property in view of Section 19 of the Transfer of Property Act read with Section 119 of the Indian Succession Act. The learned Additional District Judge, also held that Section 14(1) of the Hindu Succession Act will not come to the aid of the appellant herein as his vendor got only life interest which will not enlarge into absolute estate in view of the exception provided in Section 14 of the Hindu Succession Act. On that basis, he held that the sale in favour of the appellant will not bind the original plaintiff and his successors-in-interest. Accordingly, he decreed the suit reversing the judgment of the trial court.

10. On further appeal to the High Court by the appellant herein, the High Court after appreciating clauses 1 and 2 in the Will, on the scope of Section 14 of the Hindu Succession Act held as follows :

> "The reading of the Will, as observed above, clearly shows that Smt. Kamlawati was only given a right to reside in the house during her lifetime and she was clearly

> debarred from alienating this property in any way. Smt. Kamlawati, therefore, had a limited estate and had no right of alienation and it was Choudhri Rajendra Shanker who was vested with the interest in the estate as envisaged by Section 19 of the Transfer of Property Act and Section 119 of the Indian Succession Act. It may be mentioned that under Section 14 of the Hindu Succession Act the property possessed by a Hindu female, no doubt, has now become her absolute property. This provision makes an exception in the case where the property is being held under a Will or a gift or any other instrument or under a decree or order of a civil court. The character of such property was not changed by the introduction of Section 14 of the Hindu Succession Act. Therefore, it cannot be said that the house in suit in which the right of residence was given to Smt. Kamlawati by virtue of the Will vested in an absolute proprietary right. Her rights would remain the same as were prior to the enforcement of the Hindu Succession Act."

11. It is under these circumstances that the appellant moved this Court and got leave to file this appeal. Now, this appeal has come up for final disposal.

12. Mr. Anil Kumar Gupta, learned counsel for the appellant, invited our attention to a number of decisions of this Court and one decision of the Privy Council too to support his submission based on Section 14(1) of the Hindu Succession Act, 1956. We do not think it necessary to refer to all the decisions cited in view of the three-Judge Bench judgment of this Court in Tulasamma v. Sesha Reddy as ((1977) 3 SCC 99) the other cases cited by the learned counsel for the appellant are either referred to in this case or apply the ratio laid down in this case.

13. In Tulasamma case ((1977) 3 SCC 99) Fazal Ali, J. in his exhaustive judgment on the question of pre-existing right of a Hindu woman observed as follows : (SCC pp. 113-14, para 20)

> "Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance :
>
> (1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;
>
> (2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;
>
> (3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;
>
> (4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is,

therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

14. Thereafter, the learned Judge dealt with the scope of Section 14(1) and laid down the following principles : (SCC pp. 120-21, para 31)

"In the light of the above decisions of this Court the following principles appear to be clear -

(1) that the provisions of Section 14 of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;

(2) it is manifestly clear that the sub-section (2) of Section 14 does not refer to any transfer which merely recognises a pre-existing right without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Prasad case (Badri Prasad v. Kanso Devi, (1969) 2 SCC 586).

(3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long-felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;

(4) that sub-section (2) of Section 14 is merely a proviso to subsection (1) of Section 14 and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision."

Again reiterating the same principles, the learned Judge observed as follows : (SCC pp. 135-36, para 62)

"We would not (now) (sic) like to summarise the legal conclusions which we have reached after an exhaustive consideration of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Section 14(1) and (2) of the Act of 1956. These conclusions may be stated thus -

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been

strongly stressed even by the earlier Hindu jurists starting from it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser

without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

Bhagwati and Das Gupta, JJ. while concurring with Fazal Ali, J. held as follows : (SCC pp. 143-44, para 71)

"... It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether that estate may be in the hands of his male issue or it may be in the hands of his coparceners. The joint family estate in which her deceased husband had a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though, as pointed out by this Court in Rani Bai v. Yadunandan Ram ((1969) 1 SCC 604), her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a court, her right is 'not liable to be defeated except by transfer to a bona fide purchaser for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right. The widow can for the purpose of her maintenance follow the joint family property into the hands of anyone who takes it as a volunteer or with notice of her having set up a claim for maintenance. The courts have even gone to the length of taking the view that where a widow is in possession of any specific property for the purpose of her maintenance, a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her. Vide Rachawa v. Shivayogapa (ILR (1894) 18 Bom 679) cited with approval in Rani Bai case ((1969) 1 SCC 604). 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 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 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 case (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 subsection (2) of Section 14 would have no application in such a case."

15. In the light of the above-settled position which has been consistently followed and applied by this Court as late as in Nazar Singh v. Jagjit Kaur ((1996) 1 SCC 35), if we look into the relevant clauses extracted above from the Will in question, there can be no doubt that in view of Section 14(1) of the Hindu Succession Act, the property given to Kamlawati was in recognition of her a pre-existing right to maintenance and that property she was to hold absolutely notwithstanding the restrictions placed in the Will on her right to alienation.

16. The only argument raised before us by the learned counsel for the respondents was that on the facts of this case Section 14(2) of the Hindu Succession Act applies and not Section 14(1). According to the learned counsel for the respondents the Hindu women have no pre- existing right for maintenance and assuming she had so, that must be pursuant to Hindu Women's Right to Property Act, 1937 and not earlier. This argument is not available in view of the clear pronouncement to the contrary in Tulasamma case ((1977) 3 SCC 99).

17. After carefully going through the judgment of the High Court and relevant clauses in the Will, we find that the following facts were either admitted or were not disputed. The widow namely, Kamlawati was in possession of the suit house when the Hindu Succession Act, 1956 came into force. The testator bequeathed on the said Kamlawati apart from the suit house other properties recognising/conscious of her pre- existing right for maintenance. The clause in the Will restraining Kamlawati from alienating the bequeathed properties was in consonance with the law/custom then existing. Regarding bar on alienation forever not only by Kamlawati but also by the heirs of testators daughter relating to suit house, the High Court observed as follows :

> "It is no doubt true that the condition restraining alienation is clearly void in view of the provisions of the Transfer of Property Act. It may be mentioned that Section 138 of the Succession Act, 1928 is also on the same lines. There cannot be two opinions about it."

18. Having held as above, the High Court on a wrong understanding of Section 14 of the Hindu Succession Act held further that Kamlawati got under the Will only a limited interest in the suit house namely a right of residence till her death. In the light of the ruling of this Court in Tulasamma case', we have no doubt that the High Court went wrong in taking the view that Kamlawati, appellant's vendor, got only a limited estate in the suit house because of the terms of the Will. As pointed out earlier, Kamlawati had a pre-existing right and that she was in possession of the suit house when the Hindu Succession Act came into force and in view of Section 14(1) of the said Act, her limited estate enlarges into an absolute one. The reversioners have no right in the property till it comes to them by reversion because the widow is not a "trustee" of the interests of the reversioners after the coming into force of the 1956 Act. In that view, the appellant succeeds in this appeal.

19. In the result, we hold that the High Court went wrong in holding that the vendor of the appellant namely, Kamlawati had only a limited interest and she had no right to alienate the suit house under the Will. We hold that Kamlawati got absolute title to the suit house under the Will which is a

document effectuating a pre-existing right and not by itself making a grant.

20. Accordingly, the appeal is allowed and the judgment and order of the District Court as well as the High Court are set aside. The suit is dismissed. No costs.