

Naresh Kumari (Dead) by Lrs.

Vs

Shakshi Lal (Dead) By Lrs.

Civil Appeal No. 1798 of 1980

(K. Venkataswami, A.P. Misra JJ)

05.02.1999

### JUDGMENT

A.P. Misra, J

1. The question in issue is, whether a female Hindu buying a house from a widow, a widow's estate prior to the coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as 'the 1956 Act'), would become full owner of such house by virtue of Section 14(1) of the said Act ? In other words, it raises the question of interpretation of Section 14(1) and (2), as to, whether the transferee of such widow's estate, on the facts of this case, would fall under sub-section (1) or (2) of Section 14 ? In case it falls under sub-section (2), it would not mature her right in such property and thus it would revert back to the reversioners of the husband of the widow but if it falls under sub-section (1) she would become full owner of such property.

2. It is necessary to give some of the basic bare facts to appreciate and adjudicate the controversies of this case. One Smt. Kesri, widow of Radhakishan, sold the house in dispute to Smt. Naresh Kumar, the appellant No. 1, on 29th January, 1954 for Rs. 3,000/-. Sakshi Lal and Ashwani Kumar, the respondent, are reversioners of Radhakishan. Earlier, the said reversioners challenged the said sale and sought declaration of the title over the said house, by filing a suit for declaration, challenging the claim of the appellants. Their case was that Smt. Kesri had only a limited interest in the property and thus she had no right to sell the property without any legal necessity. On 13th June, 1955, this suit was decreed by the Trial Court holding that the transfer, by virtue of the said sale made by the widow was without any legal necessity and hence void against the reversioners interest. Aggrieved by this, Smt. Nirmal Kumari appealed before the first appellate court. During its pendency, on 17th June, 1956 the aforesaid Hindu Succession Act came into force and on 22nd May, 1957 Smt. Kesri died. Finally, on 11th June, 1958, the appeal was also dismissed. After conclusion of the first leg of litigation, thereafter on 10th June, 1959, the reversioners of Radhakishan, the respondents before us, filed another suit for possession of the house in dispute on the basis of the decree as aforesaid. The defendants, the appellants before us, have contested the suit on the ground that on the date Smt. Kesri died, namely, 22nd May 1957, since Hindu Succession Act came into force, Smt. Kesri became full owner of the said property and hence she being transferee from her and being in possession of this property became full owner. For such transfer she, in fact, invested Rs. 3,000/-. The Trial Court decreed the suit in favour of the plaintiff-respondents. The appeal was allowed by the Additional District Judge, Kangra Division, thus the suit of the plaintiff was dismissed. The second appeal by the plaintiff was allowed by the High Court by setting aside the judgment and decree of the first appellate court and restoring the decree of the trial court. Aggrieved by this order, the present appellants-Smt. Naresh Kumari & others have filed this appeal.

3. The relevant provision is Section 14 of the Act. Section 14 of the Act is quoted hereunder :-

"14. *Property of a female Hindu to be her absolute property.* - (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 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. Thus, Section 14(1) enshrines long awaited, cherished and socially desirable protective right to a Hindu widow when her limited right in the estate of her husband, in lieu of her maintenance flowered into full right. She is conferred as full owner in such estate. The right to the maintenance of wife by a husband is recognised from the very inception, recognised even in the ancient vedic scriptures. This obligation was cast on the husband even where he had no property. However, when such benevolent principle was not followed, the law created an equitable charge on the estate of the husband, whether self acquired or a share in the ancestral property, for her limited right of maintenance. This charge was to place an obligation on the person inheriting such property of her husband to maintain the widow even where such property goes in their hands. Even before this 1956 Act, to secure justice to such widows, The Hindu women's Rights to Property Act 1937 and The Hindu Married Women's Act to Separate Maintenance and Residence Act, 1946 were made. Each of these Acts did not give any new right to the widows but gave recognition of their pre-existing rights. This made explicit for a widow to claim her maintenance out of the estate or share in an estate of her husband. In *Kalishanker Das and another v. Dhirendra Nath Patra and others, 1955(1) SCR 467*, this Court recorded that what is the widow's right in widow's estate, including the right of reversioners in such estate under the Hindu Law what existed prior to the 1956 Act :-

"It is a well settled doctrine of Hindu law that nobody has a vested right so long as the widow is alive and the eventual reversioner does not claim through any one who went before him. The interest of a Hindu widow in the properties inherited by her bears no analogy or resemblance to what may be described as an equitable estate in English law and which cannot be followed in the hands of a *bona fide* purchaser for value without notice. A Hindu widow has got only qualified proprietorship in her estate which she can alienate only when there is justifying necessity and the restrictions on her powers of alienation are inseparable from her estate. For legal necessity she can convey to another an absolute title to the property vested in her. If there is no legal necessity the transferee gets only the widow's estate which is not even an indefeasible life estate for it can come to an end not merely on her death but on the happening of other contingencies like remarriage adoption, etc. If an alienee

from a Hindu widow succeeds in establishing that there was legal necessity for transfer, he is completely protected and it is immaterial that the necessity was brought about by the mismanagement of the limited owner herself. Even if there is no necessity in fact, but it is proved that there was representation of necessity and the alienee after making *bona fide* enquiries satisfied himself as best as he could that such necessity existed the actual existence of a legal necessity is not a condition precedent to the validity of the sale. Therefore, if there is no necessity in fact or if the alienee could not prove that he made *bona fide* enquiries and was satisfied about its existence, the transfer is not void but the transferee would get only the widow's estate in the property which does not in any way affect the interest of the reversioner."

4. It seems legitimately, wisdom of legislature thought that widows' limited right to maintenance though being recognised right from very inception under the Hindu Law, followed by recognition through legislations, yet widows in receiving such limited right, faced difficulties in the hands of reversioners thus enacted the 1956 Act. Under it their limited right matured into full right. By sub-section (1) of Section 14, right in any property, possessed by a female Hindu, whether such property was acquired before or after coming into force of the 1956 Act, is recognised to be held by her as full owner thereof and not as a limited owner. Thus, under it, the concept of limitation to the ownership right of a widow in such property dissolved. This was with an intention to eliminate the ordeal faced by widows for a long period of time. However, the periphery of such women's absolute right under Sub-section (1) is shrunk to a limited extent to what is contained under Sub-section (1) is shrunk to a limited extent to what is contained under Sub-section (2). So what is covered under sub-section (2) would not fall within the sphere of sub-section (1). Thus, it becomes necessary, while interpreting sub-sections (1) and (2) to keep in mind that this being a social and beneficial legislation for a female Hindu, its interpretation should not be such which curtails the benefit conferred under it. Thus, interpretation to sub-section (1) should not be restrictive but liberal in nature. ON the other hand, sub-section (2) which curtails the sphere of sub-section (1) has to be given restrictive interpretation so as not to erode the sphere of widow's right conferred under sub-section (1). The language in sub-section (1) makes it clear that all what has to be shown by a female Hindu is that she had a right in the property in question and she is possessed of that property. The possession may be physical, constructive or formal in a legal sense on the date of the coming into operation of the Act. But this is not the *sine qua non* for the acquisition of full ownership in the property. Under this sub-section when a female Hindu is put in possession of any property pursuant to her right to maintenance, her limited right or interest in the property thus far, by virtue of Section 14(1), blossoms into full ownership. On the other hand sub-section (2) of Section 14 is in the nature of exception or proviso to sub-section (1). sub-section (1) makes a widow, who had a limited interest, to be a full owner regardless whether acquisition was prior to or after the coming into force of the 1956 Act. We find, on the other hand that sub-section (2) excludes a woman's right from the field of sub-section (1), under this, where property is acquired by a female Hindu by way of gift or under a Will or any other instrument or under an order or decree of a civil court or under an award and where there is a term in such gift, will or instrument including the order or decree or an award prescribing a restricted enjoyment in such property, it will not mature any full right in such property. But where there is no such restriction in such property received by the transferee or beneficiary under such document or decree, it would not fall into the field of sub-section (2) but would fall under sub-section (1).

5. The main contention for the respondents in the present case is that since the transfer by a sale deed by the widow, Smt. Kesri, of the house, in which at that time, when the 1956 Act has yet not come, she had only a limited right, she had no right to sell the house in question except for the legal

necessity, which stood rejected in the first leg of legal proceedings between the same parties, hence the appellants could not be conferred a full right in the disputed property. The said transfer at the best could confer on her a limited right to enjoy, that too during the life time of Smt. Kerri. On the other hand, contention on behalf of the appellant-Smt. Naresh Kumari is that the transfer by a sale deed made by Smt. Kesri in her favour does not contain any restriction for the enjoyment of the estate, hence there being no restriction under the said document, it would not fall under sub-section (2) but would fall under sub-section (1) thus she became full owner thereof. Let us see the field of sub-section (2). The ingredients of this sub-section are, (a) property must have been acquired by way of gift, will or an instrument, decree or order of a civil court or an award; (b) that such document, order or decree must prescribe a restrictive right in such property and (c) such instrument, document or order must confer a new right or interest in such Hindu female not by way of recognition of or by way of giving effect to any pre-existing right which she already possessed.

6. the question of interpretation of sub-sections (1) and (2) of Section 14 has been in focus by decisions of this Court in the past. *V. Tulsamma and others v. V. Sessa Reddi (Dead) by LRs. 1977(3) SCR P. 261*, this decision exhaustively with precision has dealt with the history and the law on the subject preceding the enactment of the 1956 Act and has also interpreted these two sub-sections, the relevant portions are quoted hereunder :-

"(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 Yajnavalkya to Manu. Such a right may not be a right to property but 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 confers 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 S. 14 is in the nature of a proviso and has field of its own without interfering with the operation of S. 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 S. 14(1) of in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of S. 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 S. 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 S. 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-s. (2) and would be governed by S. 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 S. 14(1) clearly makes Sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-s. (2).

(6) The words 'possessed by' used by the Legislature in S. 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 S. 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 'restrict estate' used in S. 14(2) are wider than limited interest as indicated in S. 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

In *Himi (Smt.) D/O Lachhmu (Smt.) and another v. Hira Devi (Smt.) widow of Budhu Ram and others*, 1996(10) SCC P. 642, this Court followed the aforesaid *V. Tulsamma* case (supra).

7. In *C. Masilamani Mudaliar and others v. Idol of Sri Swaminathaswami Swaminathaswami Tihirukoil and others*, 1996(8) SCC P. 525, this Court while interpreting sub-sections (1) and (2) of Section 14 held that in case where a Hindu female acquires and possesses the property in recognition of her pre-existing right, sub-section (1) will apply and in case where she gets the right for the first time under an instrument or order without any pre-existing right, sub-section (2) will apply.

8. Within the sphere of this legal principle, now we revert to the facts of the present case. It is not in dispute that in the first leg of litigation between the parties, when Smt. Kesri, widow of Radhakishan was alive and was a party, the respondents, reversioners of Radhakishan, succeeded in their suit by getting declaration of this disputed house, that the sale deed by Smt. Kesri to Smt. Naresh Kumar was without legal necessity hence void. The appeal filed by the appellants was dismissed which became final. The present issue has arisen when the respondents reversioners filed their second suit for possession over the same property about which they got the decree as aforesaid. The question on these facts is, whether still appellants can claim to fall under sub-section (1) of Section 14? There could be no doubt before a benefit of sub-section (1) of Section 14, even by the widow (Smt. Kesri), could be conferred, she has to show that she is possessed of this property in dispute in lieu of her limited right of maintenance. The question is whether she was possessed of

this property, to claim full right under sub-section (1) which she acquired before the 1956 Act came into force ? The admitted fact is, she transferred all her right to the appellants through the said sale deed before the 1956 Act came into force. Thus, she could not be said to be possessed of this property. Thus, by her own conduct she herself relinquished all her right and even lost possessions in it through the said transfer. Thus, she would not be said to be possessed of this property before coming into force the 1956 Act. Then how can she get benefit of sub-section (1) of Section 14 ? It may be examined from another angle. It is not in dispute that any female Hindu could only alienate her limited right in an estate prior to coming into force of the 1956 Act, which is in her possession, only for a legal necessity. If alienation is without any legal necessity or is contrary to law the alienee would only get a transitory limited right to enjoy the property, during the life of the widow which is the only residuary right she possessed which could be deemed to have been transferred. Thus, after the widow's death such property even from alienee would revert back to the reversioners of her husband. In *Kalawatibai v. Soiryabai and others, 1991(3) SCC P. 410*, this Court held :-

"A Hindu widow prior to 1956 held the property fully with right to enjoy or even destroy or dispose it of or alienate it but such destruction or alienation should have been impressed with legal necessity or for religious or charitable purposes or for spiritual welfare of the husband. Necessary consequences that flowed from an alienation for legal necessity was that the property vested in the transferee or alienee, and the reversioners were produced from assailing its validity. But if prior to 1956 any alienation was made by a Hindu widow of widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any right under Section 14. And so far as alienees were concerned it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. The alienee's possession may be good against the world, his right in property may not be impeachable by the widow but his interest qua the reversioner was to continue in possession at the maximum till the life time of his donor or transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferor but donor or transferor."

9. This authority completely demolishes the case of the appellants. After having lost the battle in the first suit where it was held that Smt. Kesri sold the property to appellants without any legal necessity. After transfer of the property through the sale, as aforesaid, she could not be said to have continued in possession of such property. The sale was prior to the coming into force of the 1956 Act. So, prior to coming into force of the 1956 Act, she could not be said to be possessed of this property under sub-section (1) of Section 14. On the other hand, in the absence of any valid transfer by Smt. Kesari the reversioners would get the right in the said property after he death and alienee would have no right over it thereafter. Thus, the submission on behalf of the appellants that as the sale deed dated 29th January, 1954 does not restrict the enjoyment of the estate, hence it would fall outside the purview of sub-section (2) and would fall under sub-section (1) of Section 14 is misconceived and cannot be accepted. Alienee could have matured her right in the property, if transfer by Smt. Kesri would have been after she had become full owner under Section 14(1), after coming into force of that Act. It is only in cases of valid transfers the question of examining whether such deed or document of transfer confers the transferee a restrictive right or not, arises.

10. In the present case, this does not arise, as transfer already held to be void in the earlier suit. A possible argument, though not argued, that in case the transfer was bad as void, the property would be deemed to have reverted back to Smt. Kesari and on coming into force of the 1956 Act she

became full owner. Even if that be, alienee could only succeed if there be any transfer to her after this date. There is more in the present case, her claim is only through the sale deed executed when she had only limited right. On the contrary, we find that the order and decree in the first suit results into giving an alienee a restricted right. Thus, the said transfer would be circumscribed and restricted by the order passed in the first suit. Thus, even on this ground it could not be said that the alienee-appellants had unrestricted right. It is also not in dispute that the appellants received the property not in lieu of her any pre-existing right, but received right in the property for the first time through the sale deed. In view of this, the appellants' case would fall under sub-section (2). Thus, the appellants' right in the said property could not be upheld.

17. In view of our aforesaid findings, none of the submissions on behalf of the appellants could be accepted. The appeal is devoid of any merit and thus fails and is, accordingly, dismissed. Cost on the parties.