

# SUPREME COURT OF INDIA

Vidya (Smt)

Vs.

Nand Ram Alias Asoop Ram (Dead) By Lrs.

(A.P. Mishra and Y.K. Sabharwal JJ.)

09.08.2000

## ORDER

1. This appeal raises the question of interpretation of Section 14(1) and (2) of the Hindu Succession Act, 1956, (hereinafter referred as 'the 1956 Act'). The present appeal is preferred by the daughter of one Khimi Ram who had three wives, namely, Smt. Khunki, Smt. Nengu and Smt. Durga. The appellant is the daughter of Smt. Nengu. The short facts are that Khimi Ram executed a Will, dated 30th September, 1932, giving the disputed property to the appellant, namely, Smt. Vidya, daughter, but also gave the same property to his three wives in lieu of maintenance. It is not in dispute that under the Will, the said three wives had limited right to enjoy it during their lifetime. The said Khimi Ram died on 30th September, 1932 and Smt. Khunki died in 1953, Smt. Nengu died in 1960 and Smt. Durga died on 8th March, 1965. Admittedly, the aforesaid 1956 Act came into force before the last two wives died. At this juncture, the relevant part of the Will, which has bearing in this case, is reproduced below:

The remaining land and other movable and immovable properties, I gave to my daughter, Vidya. Till the time my three wives are there, they will look after the same and will also maintain themselves out of it. After the death of my three wives, my daughter, Vidya, will have the right in the movable and immovable properties.

2. The said Will was never contested; on the contrary, it was accepted by all including the present appellant. Then came Hindu Women's Right to Property, 1937, which created Hindu women's estate on the prospective application. This estate conferred upon the surviving widow, the same right as her husband had, under the Hindu joint family subject, however, to other limitations. It is admitted on the record as a fact that, on 27th February, 1965, Smt. Durga executed a Will, purporting to dispose of the property of the said Khimi Ram, in favour of Nand Ram, to be the son from her first husband. On the basis of this Will, dated 27th February, 1965 executed by Smt. Durga, the respondent filed the suit for declaration. This suit was contested by the appellant. The trial court decreed the suit holding that Smt. Durga was not the limited owner, as her right matured under the Hindu Succession Act, 1956 and hence the Will made by her in favour of the plaintiff is valid. The appellant preferred an appeal which was allowed, dismissing the suit of the plaintiff. The plaintiff then filed second appeal which was dismissed by learned Single Judge, but the appeal of the plaintiff under the letter patent was allowed by holding that Smt. Durga became absolute owner and her Will in favour of plaintiff, to be valid. It is against this judgment, the present appeal is preferred.

3. Learned Counsel for the appellant submits, Section 14(1) including the Explanation, will not

apply, as, under the Hindu Law, one cannot have more than one wife; hence right of maintenance could only be for the first wife. The submission is that, since Smt. Durga was the 3rd wife, her marriage could not be valid; hence she had no right of maintenance; consequently, Sub-section (1) would not apply to her. In support of this contention he made reference to Section 2 of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 which speaks about the ground for a wife to claim separate residence and maintenance. This Section confers right of a Hindu married woman for her separate residence and maintenance from her husband if her case falls on any of the grounds stated thereunder. He further referred to the decision of this Court in Beni Bai (Smt.) v. Raghbir Prasad in which this Court records that, marriage between the Hindus being sacramental and under the Shastri Hindu Law, it is the pious obligation of the Hindu husband to maintain his wife during his lifetime and after his death, even the widow has to be maintained out of the property left by the husband. We fail to understand as to how, either the aforesaid 1946 Act or this decision, lends any support to the submission of learned Counsel for the appellant. They have not referred about one or more than one wife about the pious obligation. The marriage of Khimi Ram with the aforesaid three wives was never under challenge, nor parties ever contested that they were not legally married. On the contrary, they, all throughout accepted and continued to accept the said three wives being the legal wives of Khimi Ram. In fact, the appellant herself, is the daughter from the second wife Smt. Nengu. On this submission, even her claim falls through. Even otherwise it would not be permissible to permit such a submission made first time before this Court.

4. Now we proceed to examine whether on the facts of this case, Section 14(1) of the 1956 Act would apply and Section 14(1) with Explanation is quoted below:

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 device, 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.

5. The submission that third wife would have no right to claim maintenance, hence Section 14(1) will not apply, has no merit. The language of Section 14(1) in this respect is very clear. Sub-section (1) of Section 14 refers to 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 and not as a limited owner. Smt. Durga is a female Hindu, acquired her right in lieu of maintenance, under the Will dated 30th September, 1932, executed by her husband Khimi Ram. The Explanation clarifies that property referred in Sub-section (1) of Section 14 includes a property held by her in lieu of maintenance. If that be so, right of such female Hindu would be covered by Sub-section (1) making her absolute owner. The submission for the appellant is against the very language of this Sub-section. To read differently than what is referred is contrary to all canons of interpretation. To read 'female Hindu' as only 'wife' is totally misconceived. Both Sub-section (1) and Explanation refer significantly the word 'female Hindu and not wife'. It would not only be too limited an interpretation, but an interpretation against the plain language of this Sub-section (1). The interpretation is totally misconceived. From the admitted facts, as we have recorded, Smt. Durga becomes the absolute

owner by virtue of Sub-section (1) of Section 14 of the 1956 Act. Once she becomes absolute owner, she can give such property to any one she likes. Another submission was made halfheartedly, by the learned Counsel for the appellant, that she gave this property through a Will in favour of one Nand Ram, who was the son from her first husband, which could not be competent. This submission also has no merit. There could be no restriction on the right of Smt. Durga; once she became the absolute owner, she can give it to anyone she likes. Thus the Will dated 27th February, 1965, executed by her in favour of plaintiff Nand Ram, was validly executed. It is not in dispute that the present appellant has already got 50% of the property left by her father Khimi Ram after her mother died in the year 1965. This gives equal distribution to both.

6. Accordingly, the present appeal fails and it is dismissed. Cost on the parties.