

SUPREME COURT OF INDIA

Subhan Rao

Vs.

Parvathi Bai

C.A.No.7277 of 2002

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

14.09.2010

JUDGEMENT

G.S. SINGHVI, J.

1. Whether Smt. Sundrabai wife of Ramchandra Rao, who was given right to enjoy certain lands belonging to Shiddoji Rao (predecessor-in- interest of the appellants) in lieu of maintenance became full owner thereof in terms of Section 14(1) of the Hindu Succession Act, 1956 (for short, 'the Act') and the sale deeds executed by her were valid are the questions which arise for consideration in this appeal filed against judgment dated 26.9.2001 of the learned Single Judge of Karnataka High Court, who declined to interfere with the concurrent dismissal of the suit filed by the appellants.

2. The relationship of the parties is depicted in the chart given below:

Shiddoji Rao Yeshwant Rao Gangubai (Mistress/Concubine) (died on 16.01.1942) Ramchandra Rao

Shiddoji Rao Sadashiv Rao (Son born from the (son of Shiddoji Rao) relationship of Shiddoji Rao, died in married to Prafulladevi 1957) (Plaintiff No.2) (Appellant No.2) (Plaintiff No.1) Subhan Rao (Adopted son of (Appellant No.1) Sadashiv Rao) Sundrabai (Wife of Ramchandra Rao, died on 22.7.1979) Sadashiv Rao Shiddoji Rao Appellant No.2 (b) Appellant No.2 (a) Miss Pretam Appellant No.2 (c) 3. Shiddoji Rao was Pargana Watandar of Nagarmanoli, Chikkodi Taluk.

He owned agricultural lands in Belagali and Kabbur villages of Chikkodi Taluk, Belgam District. He kept Gangubai as his mistress. Ramchandra Rao was born from that relationship. Shiddoji Rao died on 16.1.1942.

About four months before his death, Shiddoji Rao executed maintenance deed Ex.P-1 (his son Sadasiv Rao joined his father in executing the deed), whereby possession of Rayatawa lands situated at Belagali and Kabbur villages was given to Ramchandra Rao for his maintenance with a stipulation that in case of his death without having natural male issue, his wife shall enjoy the lands for her maintenance till her life time and the same shall revert to the executants after her death. The deed also contained a condition that Ramchandra Rao, his wife and natural heirs shall not create any encumbrance or alienate the lands. The relevant portions of Ex.P-1 are extracted below:

"Deed of maintenance in respect of Rayatawa lands situated at Belagali and Kabbur. Lands valued at Rs.5000/-.

Deed of maintenance executed in favour of Chi.

Ramachandra Siddojirao Parvatrao, caste Lingayat, occupation:

agriculture, age 45 years, resident of Nagarmunoli by (1) Siddojirao Yeshwantrao Parvatrao and (2) Sadashivarao Siddojirao Parvatrao, both Lingayasts by caste, occupation Zamindari, aged 72 and 22 years respectively resident of Nagaramonoli, taluka Chikodi is as under:

You are the son of Gangubai concubine of the person No.1 out of us, and are born from him (No.1), and the person No.1 himself has been maintaining you will uptil now. As you too have been behaving well and affectionately with us, and as both of us have been behaving well and affectionately with you, and as both of us have affection for you and think it proper to make some arrangements for maintenance of you and your natural issue and as you too have made this demand to us - through the panchas, we have in pursuance thereof given into your possession this day for your maintenance the below mentioned lands which have been of our ownership and in our

wahiwat. Particulars of these lands are as follows:

Description of the Rayatawa lands situate within the limits of the Inam village, namely Belgali and Kabbur, within the jurisdiction of the Sub-Registrar of Taluka Chikodi, Sub- District Chikodi, Dist. Belgaum.

R.S. Area Assessment No. Rs. 3 9.8 9 These lands of entire number are 12 12 26.31 situate at the village Belgali 334 20.32 14-2-0 The lands of 262 14.-3 entire numbers 12-3-0 are situate at Kabbur Kasaba Kabbur Thus, as the above mentioned immovable property is given into your possession today for the maintenance of you and your natural male issue, you should live happily by happily enjoying the said property from today. In case you die without having any natural male issue, your wife Sundrabai shall, after your death, enjoy the said lands for her maintenance only till her life time. After her death the said lands shall return to us.

Neither you, nor your wife and your natural heirs shall have any right whatever for laying encumbrance upon and for alienating the said lands in any manner whatsoever. In case none of your natural male issue survives after your death, the said entire property shall return to our family. No contention whatsoever of anyone shall be maintainable in this behalf.

As the above mentioned property, is as per your demand made through the panchas, given to you and your natural heirs for your proper maintenance as mentioned above, there is no right title and interest of yours left in any manner with regard to us. The valuation of the said property, is Rs.5000/- as per the market value.

To the above effect the deed of maintenance is duly executed.

Dated 1st September 1941, handwriting of .."

4. Ramchandra Rao died in 1957 and Smt. Sundrabai died in 1979.

During her life time, Smt. Sundrabai executed sale deeds in favour of Smt. Parvathi Bai (defendant No.1 - respondent No.1) and S/Shri Deepak and Vinayak (defendant Nos. 2 and 3 - respondent Nos.2 and 3) in respect of some of the lands specified in Ex. P-1.

5. Subhan Rao (adopted son of Sadashiv Rao) (appellant No.1 herein) and Smt. Prafulla Devi wife

of Sadashiv Rao who is now represented by her legal representatives, filed O.S. No. 62/1974 for declaration of title and for setting aside the sale deeds executed by Smt. Sundrabai, who was impleaded as defendant No.4 in the suit. After the death of Smt. Sundrabai, Smt. Ningawwa and Prakash Virupaksh Mahajan (respondent Nos. 4 and 5) were brought on record as her legal representatives on the basis of registered Will executed by the deceased. Appellant Nos.1 and 2 filed another suit being O.S. No. 116/1982 for grant of injunction to restrain the defendants from alienating the suit lands.

6. The thrust of the case set up by the appellants was that Shiddoji Rao and Sadashiv Rao executed deed of maintenance, which has also been described as 'potagi patra' with a view to provide maintenance to Ramchandra Rao (illegitimate son of Shiddoji Rao) and his wife Smt. Sundrabai during their lifetime and as both of them died issueless, the lands automatically reverted to the family of the executants. They also pleaded that in view of the express bar contained in Ex.P-1 against alienation of the lands mentioned therein, the sale deeds executed by Smt. Sundrabai in favour of respondent Nos.1 to 3 were nullity and they did not acquire any right on the basis of such alienation.

7. In the written statements filed on behalf of the defendants in the suit, it was pleaded that 'potagi patra' executed by Shiddoji Rao and his son Sadashiv Rao was in the nature of settlement deed whereby they recognized the antecedent rights of Ramchandra Rao in the co-parcenary property and the restriction contained against alienation of the property was not binding on them. It was further pleaded that by virtue of Section 14(1) of the Act, Smt. Sundrabai became full owner of the lands specified in Ex.P-1 and she was entitled to deal with and alienate the same.

8. The trial Court framed as many as 18 issues in O.S. No. 62/1974 and 5 issues in O.S. No. 116/1982. After considering the pleadings and evidence of the parties, the trial Court dismissed both the suits and held that two items of agricultural land situated at Belagali village were part of watan lands regranted in favour of Ramchandra Rao and the other two items of land in Kabbur village were his absolute property. The trial Court further held that Ex.P-1 was in the nature of settlement deed executed by Shiddoji Rao in recognition of the pre-existing rights of his illegitimate son and the conditional estate created in his favour was contrary to the provisions of Transfer of Property Act. The trial Court further held that Smt. Sundrabai had a pre-existing right of maintenance from the family of Shiddoji Rao and in view of Section 14(1) of the Act, she became full owner of the lands after the death of her husband and, as such, the alienations made by her were legal and valid.

9. The lower appellate Court held that Ex.P-1 was not in the nature of settlement deed in recognition of any pre-existing right of Ramchandra Rao and he did not get anything more than life estate in the property mentioned therein. However, the finding of the trial Court that by virtue of Section 14(1) of the Act Smt. Sundrabai became absolute owner of the property and she was entitled to alienate the same was affirmed by the lower appellate Court.

10. While admitting the second appeal, the learned Single Judge of the High Court framed the following question:

"Whether the right of maintenance conferred on defendant No.4 under the document Ex.P.1 had enlarged into an absolute right under Section 14(1) of the Hindu Succession Act, 1956?"

After hearing the counsel for the parties, the learned Single Judge framed the following additional question:

"Whether the Courts below were justified in declaring title of the two watan lands of Belagali village when the very regrant is being agitated before the competent authorities?."

11. The learned Single Judge considered the arguments of the counsel for the parties in detail, referred to 'Classical and Modern Hindu Law' (Vol.3) by J. Duncan M. Derett, 'Hindu Dharamshastra' (Vol. 2) by P.V. Kane, 'Digest of Hindu Law on Contracts and Successions' by Cole Brooke, 'Manual on Hindu Law' (Vol. 1) by S.T. Strang, and several judicial pronouncements and observed:

"What emerges from Ex.P.1 is Siddoji Rao had recognized Ramachandra Rao as his son and Sundari Bai as his daughter-in-law though not in the legal sense but at least in the biological sense. It is not improbable that he realized that he was obliged to maintain the family of Ramachandra Rao morally even if it is said that he thought that he was not legally bound. After the death of Siddoji Rao, this moral liability for maintenance of the family of Ramachandra Rao and his wife got matured into "legal liability" in respect of the property of Siddoji Rao in the hands of Sadashiva Rao, Hindu Law has recognized the moral duty of a father-in-law to maintain the widowed daughter-in-law from his self acquired property and on his death, the said moral liability ripens into a legal liability, in respect of the property of the father-in-law, (See the decision of Madras High L.J., 110). No doubt this principle of Hindu Law applies to cases where the widowed daughter-in-law was the wife of the legitimate son of the father-in-law. I am only referring to this case to appreciate how the Hindu Law viewed the duty to maintain persons who are related even morally also. In a case like the one on hand where this duty is felt by Siddoji Rao to maintain, his son and his family members it may not be improper to extend the above reasoning of the Madras High Court to this case on the peculiar facts. There is nothing in the Hindu Law which was applicable prior to the adoption and maintenance act or in the provisions of the Adoption and Maintenance Act which prohibits the application of the above reasonings.

In my view the combined reasoning of what is stated above, leads to the conclusion that Sudari Bai had a right or interest to be maintained in whatever way or form earlier to the execution of Ex.P.1

and Ex.P.1 can be related to this right."

The learned Single Judge then referred to Section 14 of the Act, the judgments of this Court in *V. Tulasamma v. Sesha Reddy* (1977) 3 SCC 99, *Gulwant Kaur v. Mohinder Singh* (1987) 3 SCC 674 and held:

"In this case I have held that Sundari Bai prior to execution of Ex.P.1 had certainly a claim, interest or a right for maintenance in the properties of Siddoji Rao. Ex.P.1 can only be relatable to this interest and the life estate created in her favour under Ex. P.1 fructifies and matures into an absolute estate after coming into force of Section 14(1) of the Hindu Succession Act Sundari Bai became an absolute owner of the suit properties viz., lands in Kobbur village and the findings of the Court below though on a different reasoning cannot be held to be illegal or against the provisions of Hindu Law."

The learned Single Judge then noticed that the regrant order made in favour of Ramchandra Rao was challenged by Sadashiv Rao by filing an appeal before Assistant Commissioner, Chikkodi, which was pending and held that finding recorded by the trial Court on the issue of title of the property was pre-mature. Accordingly, he reversed the conclusion of the courts below that Ramchandra Rao had acquired title of two watan lands of Belagali village and held that the parties shall abide by the decision of the authorities under the Kulkarni Watan Abolition Act before whom the matter was pending.

12. Shri Shyam Divan, learned counsel for the appellants argued that the concurrent finding recorded by the trial Court and the lower appellate Court that by virtue of Section 14(1) of the Act, Smt. Sundrabai became owner of the lands specified in Ex.P-1 is liable to be set aside because the executors had created only life estate in favour of Ramchandra Rao and his wife Smt. Sundrabai. To buttress this argument, the learned senior counsel relied upon the contents of Ex.P-1. Shri Diwan then referred to the judgment of the Division Bench of Mysore High Court in *Ramachandra Rao v. Sadashivarao Shiddojirao Parvatrao* (1967) 2 Mysore Law Journal, page 303, to show that the suit filed by Ramchandra Rao for partition and possession of 1/4th share in the properties belonging to the family of Shiddoji Rao was dismissed by the three courts including the High Court on the premise that the plaintiff was an illegitimate son of Shiddoji Rao. Learned senior counsel argued that in view of that judgment Ramchandra Rao or for that reason his wife Smt. Sundrabai could not claim absolute right over the lands mentioned in Ex.P-1 and the courts below as well as the High Court committed serious error by refusing to nullify the sale deeds executed by her.

13. Shri V.N. Ganpule, learned senior counsel appearing for the contesting respondents supported the impugned judgment and argued that the High Court did not commit any error by refusing to interfere with the concurrent finding recorded by the two courts that after the death of her husband, Smt. Sundrabai became full owner of the lands in relation to which life interest was created in her

favour. Shri Ganpule argued that dismissal of the suit filed by Ramchandra Rao did not have any impact on the right of Smt. Sundrabai, who became full owner of the lands by operation of law. Learned senior counsel laid emphasis on the language of the explanation appearing below Section 14(1) of the Act and submitted that the learned Single Judge of the High Court rightly declined to interfere with the concurrent finding recorded by the two courts that Smt. Sundrabai had become full owner of the suit lands and the sale deeds executed by her were valid. Learned senior counsel then argued that once Smt. Sundrabai acquired absolute right over the lands, the restriction contained in Ex.P-1 against alienation thereof became redundant and she was entitled to sell the same.

14. We have considered the respective arguments and submissions. The nature of the right created in favour of Hindu female by Section 14 of the Act was considered by a three-Judge Bench of this Court in *V. Tulasamma and others v. Sessa Reddy (supra)*. Fazal Ali, J. analysed Section 14, referred to the views of several jurists and judicial precedents and recorded the following conclusions:

"(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 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, J. recorded concurring opinion on his own behalf and on behalf of Gupta, J. in paragraph 70 of the judgment, the relevant portion of which is extracted below:- "This line of approach in the construction of sub-section (2) of Section 14 is amply borne out by the trend of judicial decisions in this Court. We may in this connection refer to the decision in Badri Pershad case. The facts in that case were that one Gajju Mal owning self-acquired properties died in 1947 leaving five sons and a widow. On August 5, 1950, one Tuisi Ram Seth was appointed by the parties as an arbitrator for resolving certain differences which had arisen relating to partition of the properties left by Gajju Mal. The arbitrator made his award on October 31, 1950 and under clause 6 of the award, the widow was awarded certain properties and it was expressly stated in the award that she would have a widow's estate in the properties awarded to her. While the widow was in possession of the properties, the Act came into force and the question arose whether on the coming into force of the

Act, she became full owner of the properties under sub-section (1) or her estate in the properties remained a restricted one under sub-section (2) of Section 14. This Court held that although the award gave a restricted estate to the widow in the properties allotted to her, it was sub-section (1) which applied and not sub-section (2), because inter alia the properties given to her under the award were on the basis of a pre-existing right which she had as an heir of her husband under the Hindu Women's Right to Property Act, 1937 and not as a new grant made for the first time. So also in *Nirmal Chand v. Vidya Wanti (dead)* by her legal representatives there was a regular partition deed made on December 3, 1945 between Amin Chand, a coparcener and Subhrai Bai, the widow of a deceased coparcener, under which a certain property was allotted to Subhrai Bai and it was specifically provided in the partition deed that Subhrai Bai would be entitled only to the user of the property and she would have no right to alienate it in any manner but would only have a life interest. Subhrai Bai died in 1957 subsequent to the coming into force of the Act after making a will bequeathing the property in favour of her daughter Vidyawanti. The right of Subhrai Bai to bequeath the property by will was challenged on the ground that she had only a limited interest in the property and her case was covered by sub-section (2) and not sub-section (1). This contention was negated and it was held by this Court that though it was true that the instrument of partition prescribed only a limited interest for Subhrai Bai in the property, that was in recognition of the legal position which then prevailed and hence it did not bring her case within the exception contained in sub-section (2) of Section 14. This Court observed:

"If Subhrai Bai was entitled to a share in her husband's properties then the suit properties must be held to have been allotted to her in accordance with law. As the law then stood she had only a life interest in the properties taken by her. Therefore the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence it is not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for her lifetime.

Therefore the trial court as well as the first appellate court were right in holding that the facts of the case do not fall within Section 14(2) of the Hindu Succession Act, 1956."

It will be seen from these observations that even though the property was acquired by Subhrai Bai under the instrument of partition, which gave only a limited interest to her in the property, this Court held that the case fell within sub-section (1) and not sub-section (2). The reason obviously was that the property was given to Subhrai Bai in virtue of a pre-existing right inheriting in her and when the instrument of partition provided that she would only have a limited interest in the property, it merely provided for something which even otherwise would have been the legal position under the law as it then stood. It is only when property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub-section (2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2) as pointed out by this Court in *Badri Pershad* case while quoting with approval the observations made by the Madras High Court in *Rangaswami Naicker v. Chinnammal* is "only to remove the disability of women imposed by law and not to interfere with contracts, grants or decrees etc. by virtue of

which a woman's right was restricted" and, therefore, where property is acquired by a Hindu female under the instrument in virtue of a pre-existing right, such as a right to obtain property on partition or a right to maintenance and under the law as it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a "disability imposed by law" would be wiped out and her limited interest would be enlarged under sub-section (1)."

15. In *Gulwant Kaur and another v. Mohinder Singh and others* (supra), a two-Judge Bench again considered the scope of Section 14, referred to some earlier judgments including *Tulasamma's case* and observed:

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

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

(emphasis supplied)

16. In the light of the above, we shall now consider whether concurrent finding recorded by the trial Court and the lower appellate Court that by virtue of Section 14(1) of the Act, Smt. Sundrabai became full owner of the lands over which she was given right of enjoyment in lieu of maintenance

was vitiated by any patent legal infirmity warranting interference under Section 100 of the Code of Civil Procedure and whether the learned Single Judge was right in answering question No.1 against the appellants. A reading of Ex.P-1, the relevant portions of which have been extracted in the earlier part of the judgment makes it clear that Shiddoji Rao and his son Sadashiv Rao had executed deed of maintenance in respect of Rayatawa lands situated in Belagali and Kabbur villages in favour of Ramchandra Rao and Smt. Sundrabai because they believed that it was the duty of the family to maintain them. In their pleadings before the trial Court, the appellants did not dispute that Smt. Sundrabai was entitled to get maintenance from the family of her father-in-law, Shiddoji Rao. Not only this, the parties went to the trial on an agreed premise that she had a pre-existing right of maintenance and she was given the right to enjoy the lands in lieu of her maintenance. If Parliament had not enacted Section 14(1) of the Act, Smt. Sundrabai would have, in view of the plain language of Ex.P-1, enjoyed the property during her life time only and after her death the same would have reverted to the family of the executants. However, by virtue of Section 14(1) of the Act, Smt. Sundrabai acquired absolute right over the lands in respect of which she was given right of enjoyment and she became full owner thereof without any restriction on her right to deal with the property in the manner she liked. Therefore, the sale deeds executed by her were legal and the courts below as well as the High Court did not commit any error by declining to nullify the same.

17. In the result, the appeal is dismissed. However, the parties are left to bear their own cost.