

**SUPREME COURT OF INDIA**

Basanti Devi

Vs.

Rati Ram

C.A.No.7919 of 2011

(N.V.Ramana and S.Abdul Nazeer,JJ.,)

08.05.2018

**JUDGMENT**

**S.Abdul Nazeer,J.,**

1. This appeal by the appellants-defendants is directed against the judgment and decree in RSA No. 1571of 1985 dated 31.08.2007 passed by the High Court of Punjab and Haryana, whereby the judgment and decree of the First Appellate Court has been set aside and the judgment and decree of the trial Court has been restored.

2. The plaintiffs filed the civil suit No. 34 of 1977 for possession of 1/6th share agricultural land measuring 348 kanals 14 marlas along with rights in well etc. situated in village Berli Khurd, Tehsil Rewari. It was alleged in the plaint that one Har Narain was the ancestor of the plaintiffs. He had three brothers, namely, Jag Ram, Jas Ram and Mukh Ram. All the three brothers died issueless and Har Narian became the owner of the suit property. Har Narian had four sons, namely, Udmi, Bhoru, Shadi and Murli. Murli died during the life time of Har Narain. Murli had two sons, namely, Chhaju and Chiranji, who were minors at the time of the death of Murli. One Sheo Lal son of Anta, and Makhan son of Chunna got their names entered in the revenue record showing themselves to be sons and the heirs of Har Narian. Sheo Lal and Makhan applied for partition which was stayed by the Assistant Collector First Grade, Gurgaon as in the meanwhile their title was challenged. The Assistant Collector First Grade, Gurgaon allowed the parties to get the question of title decided in the Civil Court. Therefore, the plaintiffs filed the suit for declaration to the effect that Sheo Lal and Makhan were not the sons of Har Narian and were not the co-sharers in the suit land.

3. This suit was dismissed by the Trial Court on 23.12.1929. The appeal filed by the plaintiffs challenging the said decree was allowed by the District Judge, Gurgaon and the decree of the Trial Court was set aside vide judgment and decree dated 21.07.1930. Sheo Lal and Makhan challenged the said decree by filing a second appeal which was allowed by the High Court in part and the case was remanded to the District Judge for fresh disposal. On remand, the parties entered into a compromise and a compromise decree came to be passed.

4. It was further contended by the plaintiffs that in terms of this compromise, Sheo Lal was given a limited right to use the land in question without any right to alienate or mortgage the property. It was agreed that on the death of Sheo Lal, in absence of any male lineal, his surviving wife would also have the limited right in the land which comprised of 1/6th share of the total estate of Har Narain. Under the compromise, it was stipulated that after the death of the widow, in the absence of any male lineal, the land will revert to the plaintiffs i.e. the heirs of Har Narain, who will be entitled to take possession and Makhan will have no right over the land. Sheo Lal died somewhere in the year 1961-1962. On his death, mutation was entered in favour of Smt. Chhimli, who was the wife of Sheo Lal and the daughters of Sheo Lal. On the death of Chhimli in the year 1976, plaintiffs filed the suit for possession of the 1/6th share which was earlier held by Sheo Lal and upon his death by Smt. Chhimli.

5. The defendants filed the written statement opposing the suit by contending, inter alia, that after the death of Sheo Lal, his widow Smt. Chhimli acquired absolute ownership right by virtue of Section 14(1) of the Hindu Succession Act, 1956 (for short 'the Act'). The Trial Court vide judgment and decree dated 12.06.1979 held that Sheo Lal came into possession of the suit property by virtue of the compromise decree. It was further held that Smt. Chhimli is not entitled to the benefit of Section 14(1) of the Act as Sheo Lal had limited right under the decree of the court and in this way Section 14(1) will not apply and her estate is not enlarged into full ownership. It was held that the limited right granted to Smt. Chhimli cannot be inherited by her heirs and the same will revert to the plaintiffs in terms of the compromise decree dated 23.12.1932. It was also held that by virtue of Section 14(2) of the Act Chhimli's right of limited estate cannot be converted into an absolute ownership right.

6. The First Appellate Court reversed this judgment and decree by holding that Sheo Lal and Makhan had pre-existing right and the compromise decree cannot restrict their rights. It was also held that the limited estate of Sheo Lal is enlarged into an absolute ownership right by operation of the law and thus, the plaintiffs could not enforce the compromise decree against Smt. Chhimli and her heirs were entitled to inherit the suit property.

7. As noticed above, the High Court has set aside the judgment and decree of the First Appellate Court and has restored the judgment and decree of the trial court.

8. Appearing for the appellants, Sh. M.N. Rao, learned senior counsel, submits that Section 14(1) of the Act enlarges the scope of the estate into absolute estate if the widow is in the possession of the land. Sheo Lal died in 1961 and his wife Chhimli died in 1976 and during that period she was in possession of the land. Chhimli's right was not a grant for the first time. Her pre-existing right as wife of Sheo Lal to claim the property was not in dispute. This position is clear from the terms of compromise. In other words, the pre-existing right of Sheo Lal's widow was recognized even in the compromise. The learned counsel has taken us to the terms of compromise and submits that Sheo Lal had subsisting interest in the land. Therefore, his widow has the right in the property of her husband. It was argued that even before the compromise, Sheo Lal was the owner and possessor of the land. Therefore, the High Court is not right in holding that the case falls under Section 14(2) of the Act. In

support of his submissions learned senior counsel has placed reliance on the decision of this Court in *V.TUlasamma & Ors. v. Sesha Reddy (dead) by Lrs. reported in*<sup>1</sup>.

9. On the other hand, Sh. P.N. Sharma, learned advocate appearing for the respondents, submits that Chhimli, widow of Sheo Lal, had no pre-existing right in the suit property and that she had acquired the right under the compromise decree. Therefore, the case is covered under Section 14(2) of the Act.

10. Having regard to the contentions urged, the question for consideration is whether Smt. Chhimli, the widow of Sheo Lal had any pre-existing right in the suit property or she acquired the right under the compromise decree alone. Consequently, whether the case would be covered under Section 14(1) or 14(2) of the Act?

11. It is an admitted position that on 23.12.1932 a compromise decree was passed in a suit filed by predecessors of the defendants against the predecessors of the plaintiffs. In terms of the compromise decree, the sons of Har Narain who were predecessors-in-interest of the plaintiffs agreed to give limited possessory rights to the predecessor of the defendant, namely, Sheo Lal. In terms of the compromise, the consent decree was passed holding that “during the lifetime of Sheo Lal, he will not be entitled to sell or mortgage his property in any case”, thereby meaning that Sheo Lal merely got restrictive possessory rights in terms of the decree dated 23.12.1932 passed by the District & Sessions Judge, Hissar. Further, it categorically provided that the suit property was to revert to the predecessors of the plaintiffs in case the widow predeceased Sheo Lal and in case Sheo Lal predeceases the widow, the widow shall be entitled to use the same during her life time. Thereafter, the suit property will revert to the predecessors of the plaintiff. It is thus clear that Sheo Lal was given a limited right in respect of the suit property. Sheo Lal died in the year 1961. Chimml, wife of Sheo Lal died in 1976.

12. The suit was filed primarily on the ground that neither Sheo Lal nor his widow had any pre-existing right in the suit land since their rights flow from the compromise decree. After the death of Smt. Chimml, the plaintiffs were entitled to the possession of the land. It is clear that Sheo Lal was granted limited right not in recognition of his pre-existing right. Section 14(1) of the Act does not recognize the pre-existing right of a male Hindu. The suit property never became the self acquired property of Sheo Lal. Even his widow Chimml did not hold the land in lieu of maintenance which can be enlarged into full ownership by virtue of Section 14(1) of the Act. The estate was conferred on Chimml by virtue of the decree which created a new right. There were no pre-existing rights of either Sheo Lal or his widow Chimml. The property in her hands came as a result of she being a successor of Sheo Lal. Smt. Chimml would not have acquired a better right than Sheo Lal in the suit property. The rights of Sheo Lal as well as Smt. Chimml flow from the consent decree.

13. In *TUlasamma (supra)*, this Court has held that Hindu women’s right to maintenance is the personal obligation so far as the husband is concerned and it is the duty to maintain her even if he has no property. The right to maintenance is a pre-existing right. 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. It was further held that the claim for the right to maintenance possessed by a Hindu family is legally a substitute of a share which she would have got in the property of her husband.

14. In the instant case, there is nothing on record to show that the property in the hands of Chimli came in lieu of maintenance or on account of arrears of maintenance. The property in her hands came as a result of she being a successor of Sheo Lal. Sheo Lal did not possess any property. He had only life interest in the property which did not enlarge into a full right because Section 14(1) does not recognize the pre-existing right of a Hindu male. Smt. Chimli could not have acquired a better right than her husband had in the property in dispute. Right of Sheo Lal, as also Smt. Chimli, flows from the decree. Therefore, her right would not mature into full-fledged ownership by virtue of Section 14(1). She has acquired the right by virtue of the compromise decree for the first time. Therefore, Section 14(2) would apply to the instant case.

15. Resultantly, the appeal fails and it is accordingly dismissed. There will be no order as to costs.

Judgment Referred.

<sup>1</sup>(1977) 3 SCC 0099