ALLAHABAD HIGH COURT

B. Hanuman Prasad

Vs.

Indrawati

First Appeal No. 232 of 1942, from decision of Addl. Civil J. Mathura,

M.C. Desai and N.U. Beg, JJ.

12.08.1941. 25.09.1957

JUDGMENT

Desai, J.

1. This is an appeal by the defendants from a decree passed by a Civil Judge, Mathura for a declaration that an alienation made by Srimati Bhagwati in favour of the defendants-appellants was "void beyond the life time of Mst. Bhagwati and does not bind the reversioners, who would be entitled after the death of Mst. Bhagwati, to possession over the assets of Babu Kalyan Singh". The last male owner of the property in dispute, Kalyan, Singh, died in 1918 leaving his widow Srimati Bhagwati, who inherited his property as a Hindu widow, his mother Srimati Hardevi and two daughters Srimati Indrawati, plaintiff-respondent, and Srimati Radha Rani, pro forma defendant-respondent. On the death of Kalyan Singh there were disputes and criminal cases between the claimants to his property and on 10-10-1919 Bhagwati executed a deed of iqrarnama to settle them. The plaintiff contended that the deed of iqrarnama was tantamount to a deed of transfer in favour of the defendants-appellants and was not binding on the reversioners.
2. The suit was contested by the defendants-appellants but has been decreed by the learned Civil Judge.

3. After the appeal was filed the Hindu Succession Act (No. XXX of 1956) was enacted to amend and codify the law relating to intestate succession among Hindus. Section 6 of the Act provides for devolution of interest in coparcenary property and Section 8 lays down general rules of succession in the case of males When a male dies, his property will devolve upon his sons and daughters, sons and daughters of pre-deceased sons and daughters, his widow and widows of pre-deceased sons and sons of predeceased sons and sons and daughters of his pre-deceased sons of pre-deceased sons. Each son, each daughter, the widow and the mother will take one share each. Section 14 lays down that
"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." The explanation to the section provides that property includes immoveable property acquired by a female Hindu by inheritance, or devise or in lieu of maintenance or by partition or by gift or by her own skill or exertion, or by purchase or prescription or in any other manner whatsoever and also any property held by her as stridhan. Section 15 lays down general rules of succession in the case of females.The property of a female dying intestate devolves firstly upon her sons, daughters and husband, each taking one share, in the absence of such heirs it will devolve upon the heirs of her husband as laid down in Section 8, in the absence of such heirs it will devolve upon her mother and father, in the absence of them it will devolve upon the heirs of the father and in their absence it will devolve upon the heirs of the mother. There is an exception in respect of property inherited from the husband or the father-in-law; in the absence of any son or daughter it will devolve upon the heirs of the husband. Section 29 provides for an intestate's dying heirless and Section 30, for testamentary succession.

4. On account of these provisions it was contended before us that Bhagwati became an absolute owner of the property inherited by her from Kalyan Singh, that she could transfer it to any one without any restriction, that now there is nothing like a reversioner and that the plaintiff, not being a reversioner, is not entitled to the declaration. In reply it was urged that Section 14 deals with property still possessed or held by a female and not with property previously held but now alienated by her.

5. The position under the customary Hindu Law before the enactment of the Hindu Succession Act was that a widow inheriting property from her husband represented the estate fully subject only to a restriction upon her power of alienation, that she could alienate the property absolutely for legal necessity, that on her death it was inherited not by her own heirs but by the next heirs of her husband (called reversioners) as if he had died on the date of her death and that as if she alienated it without legal necessity she could not herself impugn the alienation but it could be impugned during her life time by the presumptive reversioners and they would be entitled to recover possession from the alienee on her death. Authorities in support of these propositions may be quoted. In *Moniram Kolita v. Kerry Kolitany*[1], Sir Barnes Peacock described a Hindu widow's estate in the following words at page 154 : "A widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship (as to which see *Katama Natchiar v. Rajah of Shivaganga*[2],) does not take mere life estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant in tail." In *Bijoy Gopal Mukerji v. Krishna Mahishl Debi*[3], Lord Davey observed at pages 91-92 :

> "A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death."

In *Rangasami Gounden v. Nachiappa Gounden*[4], Lord Dunedin observed at page 79 (of Ind App) :

> "The rights of a Hindu widow in her late husband's estate are not aptly represented by any of the terms of English law applicable to what might seem analogous circumstances. Phrased in English law terms, her estate is neither a fee nor an estate for life, nor an estate tail. Accordingly, one must not, in judging of the

[1]7 Ind App 115 (PC) [3]34 Ind App 87 (PC)
[2]9 Moo Ind App 539 (PC) at p. 604 [4]46 Ind App 72

> question, become entangled in western notions of what a holder of one or other of these estates might do."

In *Kalipada Chakraborti v. Palani Bala Devi*[5], Mukherjea J. expressed himself in almost the same language as Sir Barnes Peacock; he said at page 514 (of SCR) :

> "'The estate of a Hindu female heir, as is well known, is extremely anomalous in its character; it cannot be described either as an estate of inheritance or one for life, though it partakes of the nature of both."

Again in *Natvarlal Punjabhai v. Dadubhai Manubhai*[6], he said at p. 355 (of SCR) :

> "Though loosely described as a 'life estate', the Hindu widow's interest in her husband's property bears no analogy to that of a "life tenant" under the English law."

At p. 356 (of SCR) he pointed out that she has larger rights than a life-estate holder, because for legal necessity she can convey to another an absolute title to the property. Among the most recent authorities we may refer to *Dhiraj Kuer v. Lakhan Singh*[7], per Sen and Bhutt JJ. While she was alive the widow was an absolute owner of the property inherited by her; in spite of the restriction on her power to alienate she fully represented the estate during her life time; nobody else had any interest, even a vested interest in the property. The presumptive reversioner, i.e., the next heir of her husband had only a spes successionis. In 1954 SCR 339 , it was stated at p. 347 (of SCR) : Cat p. 65 of AIR) : -

> "The presumptive reversioner has got no interest in the property during the life time of the widow. He has a mere chance of succession which may not materialise at all. He can succeed to the property at any particular time only if the widow dies at that very moment."

In *Kalishankar Das v. Dhirendra Nath*[8], Mukherjea J. followed the case of 46 Ind App 72 and stated that an alienee from awidow without legal necessity got only the widow's estate which was not even an indefeasible life estate, because it could come to an end even during her life time on

the happening of other contingencies like re-marriage, adoption etc. Reference may also be made to *Ram Ajodhaya v. Raghunath*[9], (of BLJR) : (at pp. 481-482 of AIR).

6. As pointed out above widow's estate could not be compared to any estate known to English law and much confusion has resulted from calling it a limited estate or a life estate. We have cited authorities laying down that it was not a life estate at all and that the widow was not a mere life tenant. She was no more a life tenant of the property than any other owner would have been; a person can own property only while he is alive; it is impossible to conceive of his continuing to own it even after his death. The property of any owner would be inherited by his heirs on his death, but the property of a widow was inherited not by her own heirs but by the heirs of her husband; if on account of this

[5]1953 SCR 503 [7]1957 MPC 143: AIR 1957 Mad Pra38 at p. 145 (of MPC)
[6]1954 SCR 339 [8]1955 SCR 467 [9]1956 BLJR 734 : AIR 1957 Pat 480 at p. 736

difference her estate could be said to be a life estate, there would be no objection to calling it so provided other incidents of life estate were not imported into the case and how she could deal with the property during her life time was not thought to be affected by the fact that she owned only life estate. Mayne has rightly deprecated the describing of a widow's estate as alife estate; in his Treatise on Hindu Law and Usage, 11th Edition, page 753, he said that Hindu law knew nothing of estates for life, or tail, or in fee. One result of confusing a widow's estate with a life estate was the decisions in *Sreeramulu v. Kristamma*[10], and *Sagu Chidambarnamma v. Saraddi Hussainamma*[11], In the case of Sreeramulu Bhashyam Aiyangar J. stated at p. 201 : -

> "A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property for her life and.....she has a personal right therein, which she can exercise at her will and pleasure, by giving, selling or transferring the estate to another for her own life.....if a portion of the inheritance has been lawfully severed there from and transferred to a stranger, whether absolutely, as would be the case if the alienation was for a necessary purpose, the adopted son could on principle succeed only to the remaining inheritance which was vested in the widow at the time of the adoption."

In 29 Mad LJ 546 : AIR 1916 Madras 347, Sadasiva Aiyar J. recognised that a widow represented the estate fully, but because an alienation made by her without legal necessity was valid during her life time and conveyed to the alienee a right to enjoy the property during her life time, he felt compelled to conclude

"that the absolute estate vested in her becomes by her alienation for her own purposes (valid during her life time) divided into two estates (1) a life estate enjoyable by the purchaser during her life time and (2) a reversionary estate to be enjoyed after life time, both of which estates or rather the total of which, belonged to her husband at his death. So far as her life interest is concerned, it became by her alienation not available to the creditors of her husband; but the ownership of the remaining reversionary estate continues in her as part of the estate which she

inherited from her husband.....No person can claim during the widow's life time, after the alienation of the widow's life estate, to be the owner of that reversionary interest, but it does not follow there from that no reversionary interest in property forming part of the husband's estate, is left after her alienation of her life estate. If an interest belonging to the husband's estate is left, some legal person must be its owner. If a presumptive and contingent reversioner is not the legal person in whom the revisionary right exists, it must be the widow in whom the legal estate vested at her husband's death. (See page 549 (of Mad LJ) : (at pp. 349 350 of AIR)). Tyabji J. agreeing with him observed at page 550 (of Mad LJ) :

> "It seems to me that the widow was a party to the proceedings in two capacities : (1) as to life interest in her own absolute right and (2) as to the reversion as the representative of her deceased husband's estate which is to devolve on his reversioner." Similar observations are also to be found in *Venkayamma v. Veerayya*[12], Vishwanatha Sastry J. remarked at page 1048 (of Andhra LT) that a widow could convey her

[10]12 Mad LJ 197 [12]1956 Andhra LT 1045: AIR 1957 And Pra 280

[11]29 Mad LJ 546 : AIR 1916 Mad 347

> limited interest in the property in the absence of any necessity. The correct position, however, under the customary Hindu Law was that a widow was not a mere life tenant or did not inherit a mere life-estate; she was the full proprietor of the estate. She inherited the very estate that her husband left at the moment of his death; if she inherited anything less, somebody else must have inherited remainder or the balance, but admittedly it was not, the case. The whole of the estate left by her husband vested in her; there was no remainder or balance vesting in somebody else, such as her husband's next heirs or reversioners.

It is not to be disputed that the next heirs, did not acquire any interest in the estate of her husband. It, therefore, could not be contended that she inherited, possessed or held a life estate. She was a proprietor in the full sense of the word except that her power of alienation was restricted. According to the ancient Hindu Law a widow had no right to inheritance; she gradually stepped into the inheritance through the instrumentality of Niyoga. At first her right was not trammeled by any restrictions but later some of the schools succeeded in restricting her right to inherit to a bare right to abstemious use of the usufruct. Further developments of her possession came with the Commentaries and Nibandhas in the middle ages. The legal rule laid down by Katyayana to the effect that a sonless widow keeping unsullied the bed of her husband and following her vrata shall enjoy the "inheritance abstemiously until her death and that her husband's heirs shall take after her death made her more or less a custodian for life of her husband's estate : see N. C. Sengupta's Evolution of Ancient Indian Law, pp. 183 etc. She was not permitted to transfer any part of the estate except for legal necessity; she was not permitted to transfer even the so-called life interest because the Hindu law did not recognize anything like transfer of life interest. If a male owner could not transfer his life interest in the property owned by him, a widow also could not. In practice also a widow did not alienate her life interest; even when there was no legal necessity, she generally purported to alienate the absolute estate or the

very property inherited by her. The alienation was invalid according to the Hindu law, but the question arose who was aggrieved by it and what could be done. The only persons who could at all be affected were she and the reversioners; nobody else had any interest in the estate during her lifetime or subsequently. Even the reversioners could be affected only after her death (because they would not get the property), but so long as she remained alive they were not at all affected and could not feel aggrieved. They could not get the alienation set aside since they had no vested right in the alienated property; see *Vaidyanatha Sastri v. Savitri Ammal*[13], and 1954 SCR 339 . The widow could not be said to be aggrieved because it was her own voluntary act and moreover if she instituted a suit to challenge the alienation, she would be estopped by her representations to the alienee from pleading that the alienation was without legal necessity. Consequently no suit could be brought during her life time to recover the property from the alienee; the reversioners could sue to recover it only after her death. Because the property could not be recovered by anyone during her life time, it became customary to say that the alienation was valid for the widow's life time though really it was invalid. The alienee did remain in possession of the property, but it was not because the alienation was valid. On the death of the widow the estate left by her husband (minus the portion alienated for legal necessity) vested in the next reversioner. If she had alienated any part of it without legal necessity it still vested in the next reversioner and he at once became entitled to recover its possession from the alienee. He was an heir of the

[13] AIR 1918 Mad 469 (FB)

husband and not the widow and did not claim through her and was, therefore, not estopped from suing for possession as she had been. Moreover the alienation was against his right which was to inherit the estate left by her husband and the principle that barred her from suing for possession did not operate to debar him. The decisions in the cases of 12 Mad LJ 197, (J) and 29 Mad LJ 546 : AIR 1916 Madras 347 :, were overruled in the case of AIR 1918 Madras 469. Kumaraswami Sastri J. pointed out at page 477 that the Texts and Smrithis did not countenance the view that a widow could make a valid alienation of any kind or to any extent without legal necessity and that they did not empower her to do what she liked with her so-called limited estate. In 1954 SCR 339 , the View advanced by Bhashyam Aiyangar J. in the case of 12 Mad LJ 197, was disapproved and the view of Kumaraswami Sastri J. in the case of AIR 1918 Madras 469, that the Hindu Law did not countenance the idea of widow's alienating her property without legal necessity merely as a mode of enjoyment was accepted. In the case of 1954 SCR 339 , Mukherjea J. pointed out at page 356 (of SCR) , that the transfer was invalid though nothing could be done and that the widow's estate could come to an end even during her life time, for example by remarriage or adoption or surrender, and rejected the theory that an alienation without legal necessity split up the estate into two parts and gave the alienee an interest co-extensive with her life time.

7. Though the estate did not vest in the presumptive reversioner during the widow's life time he was given a right by the Anglo-Hindu Law to file a suit for a declaration that the alienation was invalid and did not bind the reversioner after her death. He could only obtain a declaration; this right was given to him on account of convenience. The suit that he brought was a representative

suit on behalf of the whole reversion. Naturally he could not be certain of being the next reversioner at the moment of the widow's death; so he could not seek a declaration that the alienation would not bind him on the widow's death. The declaration that he could seek was that it would not bind whomsoever was the next reversioner at the time of her death; in other words it was a suit on behalf of whomsoever was the next reversioner. If he, himself became the next reversioner on her death, there would be no difficulty in holding that he was bound by the result of the suit to which he was a party; but whoever else was the next reversioner was also bound by the result, not on the ground that he represented the presumptive reversioner who had filed the suit but on the ground that it was a suit representing all the reversioners, next and remote. There are numerous authorities in support of this proposition, such as *Kesho Prasad v. Sheo Parkash*[14], *Kesho Prasad v. Shiva Prasad*[15], *Venkata-narayana Pillai v. Subbammal*[16], *Pramatha Nath v. Bhuban Mohan*[17], *Sudehaiya v. Ram Dass*[18], and *Varamma v. Gopaladasayya*[19],

8. An alienation by a widow without legal necessity though not authorised under the Hindu Law was not void. As pointed out earlier so long as she was alive nobody had a remedy against it. On her death the estate vested in the reversioner "under operation of law without any act on his part", in the words of Mukherjea J. in the case of 1954 SCR 339 , at p. 357 (of SCR) : (at pp. 68-69 of AIR), and he at once became entitled to recover possession from the alienee who had never acquired lawful title. It has been the practice to say that the alienation was not void but voidable. In *Ramgowda Annagowda Patil v. Bhausaheb*[20], Lord Sinha stated at

[14]29 Cal WN 606 ; [16]42 Ind App 125 [18] AIR 1957 All 270
[15] AIR 1922 All 301 (FB) [17] ILR 49 Cal 45 : AIR 1922 Cal 321 [19]35 Mad LJ 57: AIR 1919 Mad911 (FB)
[20] AIR 1927 PC 227

p. 229 that an alienation by a widow in excess of her powers was "not altogether void, but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their, right to avoid it either by express ratification or by acts which treat it as valid or binding". In 34 Ind App 87 (PC), Lord Davey observed at page 92 :

> "Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir."

In 46 Ind App 72 , Lord Dunedin used similar language. It was voidable in the sense that it was open to the reversioner, in whom the estate vested, not to sue the alienee for possession or to ratify the alienation, but it was not voidable in the sense that so long as he did not avoid it, no cause of action accrued to him for suing for possession. Under Article 141 of the Limitation Act limitation began to run against him from the date of the widow's death; see 34 Ind App 87, at p. 92, 1953 SCR 503 and 29 Mad LJ 546 : AIR 1916 Madras 347. The widow's death was the cause of action and not any exercise of election by the reversioner.Had the transfer become voidable in the sense in which the word is used in the law of contract, the period of limitation for a suit by the reversioner to recover the property would have commenced on the date on which he elected to avoid it; so long he did not elect and did not avoid it, he would not have acquired the right to recover possession and the period of limitation would not have started running. But

unquestionably his conduct or act was no part of the cause of action for the suit. What was meant by describing the alienation becoming voidable on the widow's death was simply this that only the reversioner had a right to sue to recover possession and that so long he did not sue, the alienation remained in force. That is, more or less, the position in an ordinary case of trespass; the trespasser remains in possession so long as the true owner does not obtain a decree against him. The next reversioner when he sued, exercised election no more than, and not different from, election exercised by true owner suing the trespasser. If he did not file a suit within the period of limitation, his right was lost for ever, but that was by operation of the law of limitation and not because he had elected to ratify the alienation. The Supreme Court described the alienation "invalid" in the case of 1954 SCR 339 , at P. 356 (of SCR) : (at P. 68 of AIR); this only meant that it was against the Hindu Law. In the case of AIR 1927 PC 227 the Judicial Committee was really considering the effect of an act of the presumptive reversioner in joining in execution of a deed of alienation by the widow.

9. This was the position of the law when the Hindu Succession Act was enacted. The provisions of Section 14 are retrospective in some respects and prospective in some. They are retrospective to the extent that they govern the property acquired by a Hindu female even before the commencement of the Act; every property of a widow whether inherited before the commencement of the Act or after became her absolute property. But they are not retrospective to this extent that a property alienated by her before the commencement of the Act was deemed to have been owned by her absolutely. They do not have so much retrospective effect as to make her an absolute owner of the whole inheritance with effect from the date of the inheritance. They contain no provision affecting alienations made by her before the commencement of the Act; in other words their validity and effect are left untouched. The provisions are prospective in the sense that the property becomes absolute property of the female only with effect from the commencement of the Act; the words "shall be held by her as full owner" mean that she will hold it as a full owner since the commencement of the Act and not that she will be deemed to have held it as full owner with effect from the date of inheritance. Consequently if a widow had alienated the property without legal necessity, the alienation that was invalid according to the customary Hindu law remained invalid and its invalidity was not affected at all by the provisions of Section 14. Since it remained invalid, it remained challengeable on the ground of want of legal necessity as if the act had not been enacted. We have already said that the only two persons who could possibly challenge it are the widow and the presumptive reversioners; whether they can challenge it after the commencement of the Act is dealt with subsequently. The property that a widow will now hold as full owner must be the property possessed by her at the time when the Act came into force; any property previously alienated by her, whether for or without legal necessity, cannot be said to be held by her as full owner at the time of passing of the Act. She cannot be owner of any kind of property alienated by her; if she has no interest left in the property, the question whether she is a full owner or not cannot arise. It is immaterial if the alienation was invalid and challengeable, the effect of it still was that the title and possession had passed from her to the alienee and the Act does not profess to retransfer them to her. The

respondent is, therefore, right in his contention that the property in dispute alienated by Bhagwati before the commencement of the Act cannot be said to be still possessed by her at the commencement of the Act and the question of considering whether she holds it as an absolute owner or not cannot arise. It is not within the scope of Section 14 at all. It was argued, on the authorities of 12 Mad LJ 197 (J) and 29 Mad LJ 546 : AIR 1916 Madras 347, that when Bhagwati transferred her life estate out of the inheritance, she was left with something which would attract the provisions of Section 14. We have already shown that the argument is fallacious. What is that thing which is still left with a widow when she alienates the property without legal necessity has not been described. Its existence seems to have been thought of only for the purpose of contending that Section 14 of the Act governs the property even though it was transferred without legal necessity before its commencement. But the object in view is not at all achieved; under Section 14 only that thing that is possessed by the widow becomes her absolute property. If after the alienation she is left with something, that something may become her absolute property but not the property itself. The suit of the reversioner is in respect of the property and not in respect of the imaginary something. Finally Section 14 governs what has been inherited by the widow from the husband; she inherited the property and not the imaginary something and the property would become her absolute property and not the latter.

10. In the cases of 1956 Andhra LT 1045 : AIR 1957 Andhra Pra 280 (L); 1956 BL JR 734 : AIR 1957 Patna 480; 1957 MPC 143 : AIR 1957 Madhya Pradesh 38; *Kamla Devi v. Bachulal*[21]*, Hari Kishan v.Hira*[22]*, Gosta Behari Bera v. Hardas Samanta*[23]*,* and *Thailambal Ammal v. Kesavan Nair*[24]*,* it was held that the provisions of Section 14 are retrospective to this extent that they govern property inherited by a female before the commencement of the Act. It was also held in the cases of 1956 Andhra LT 1045 : AIR 1957 Andhra Pra 280 (L); 61 Cal WN 325 : AIR 1957 Calcutta 557; AIR 1957 Kerala 86 and AIR 1957 Punjab 89, that only that property, which was still held or possessed by a Hindu widow at the commencement of the Act, would become her absolute property, that Section 14 will not apply to property already alienated by her before the commencement of the Act and that the Act did not improve the title of the alienee. In the case of AIR

[21] AIR 1957 SC 434 [23]61 Cal WN 325: AIR 1957 Cal 557
[22] AIR 1957 Pun 89 [24] AIR 1957 Ker 86

1957 Punjab 89,
Bishan Narain J. said at page 90 :

> "As long as she was in the possession of the property, it could be said that she was possessed of it and therefore in future she could hold it as a full owner, but after its sale it cannot possibly be said that at the time when this Statute came into force she was possessed of the property and if that be not so she can obviously not hold it in future either as full owner or as limited owner .....The transaction is binding on her during her lifetime and she has no rights left in this property on account of the sale."

In the case of 61 Cal WN 325; ((S) AIR' 1957 Cal 557), P. K. Sarkar J. pointed out at page 328 (of Cal WN) that Section 14 (1) only declares the law which will come in force on the enactment of the Act, that it does not enact that the law should be deemed to have been always so and that it cannot be interpreted in a manner to affect interests already acquired or vested in the absence of express words to that effect. P. N. Mookerjee J. concurring said at p. 329 (of Cal WN) :

> "If a Hindu female had lost possession before the Act and was not in possession of the property, either actual or constructive or in any sense of the term, at the date of its commencement, Section 14 would not obviously apply."

In 1956 Andhra LT 1045 : AIR 1957 Andhra Pra 280 (L) Viswanatha Sastri J. said at page 281 (of AIR) :

"Where, however, before the Act came into force, the female owner had sold away the property in which she had only a limited interest and put the vendee in possession, she should in no sense be regarded as 'possessed' of the property when the Act came into force.....
A Hindu female limited owner who, before the coming into force of the Act, had sold property inherited by her retains no right to or interest in the property on the date of the coming into force of the Act. Section 14 merely enlarges her limited interest into an absolute estate in the property held by her when the Act came into force and does not enlarge the right of a purchaser of her limited interest before the Act came into force."

11. Though an alienation made before the passing of the Act remains vulnerable and does not dispose of the preliminary dispute, the question still remains who can impugn it and how? Now arises the real difficulty of the respondent. The widow continues to be estopped from challenging the validity on the ground of want of legal necessity and reversioners have completely disappeared by virtue of the provisions of Section 15. The customary law of succession has been completely abrogated by the Act which exhaustively amends and codifies the law relating to intestate succession among Hindus. Even the heirs of the husband referred to in Section 15 are the heirs mentioned in Section 8 and not the heirs under the customary law. The next reversioner, who was a creation of the customary law, is no longer in the picture.
It makes no difference whatsoever if by accident the heir of the widow is the same person who would have inherited the property on her death as the next reversioner; if he inherits the property now, it will be in his capacity as the widow's heir and not as the next reversioner. Since there will be no reversioners after the passing of the Act, nobody can get a decree as a reversioner now. Even these persons who could have obtained a decree before the passing of the Act that an alienation made before the passing of the Act was invalid cannot now get a declaration to that effect because they have lost the status by virtue of which they could get it.

12. The heirs of the widow, who now replace the reversioners, also cannot challenge the

alienation. In the first place, they claim through her and are estopped as much as she was. Secondly they have not the same right as was possessed by the presumptive reversioners. The latter were the heirs to the estate left by the husband and were given the right to see that the estate left by him remained intact during the widow's lifetime and passed on to them. They were, therefore, allowed to sue for a declaration of the invalidity of an alienation even during the widows' lifetime. No such right can be claimed by the heirs of the widow who have no right whatsoever to inherit the estate left by her husband. The widow has been given unrestricted power of alienation and even otherwise they have no right to prevent her from alienating it for any purpose. The only right that they possess now is to get whatever estate is left by her at her death.

13. The Hindu Succession Act makes no provision for an alienation made without legal necessity by a widow before it came into force. Therefore, no decree for a declaration about the invalidity of an alienation can be granted after it came into force. Here the respondent obtained a decree before the Act came into force, but we cannot maintain it on appeal, even if it was correct at the time when it was granted, because the declaration that has been granted is rendered futile by the Act. So long as there were reversioners a declaration would usefully be granted by a Court that they were not bound by an alienation.

14. Now that there are no reversioners at all, there is no question of the alienation, howsoever illegal it might be, not being binding on reversioners. The declaration that was granted by the trial Court has lost all meaning now. Nobody is entitled to the estate left by Kalyan Singh and no declaration can be given in favour of any such person. We are not called upon in this appeal to decide whether anybody will have right, on the death of Bhagwati, to recover possession of the alienated property from the appellants. The suit of the respondent was for a declaration and not for possession. Even if he would be entitled (which seems very doubtful) to recover possession after Bhagwati's death, he is not entitled to retain the declaration that has been granted to him by the trial Court.

15. In the cases of 1956 BLJR 734 : AIR 1957 Patna 480; 1957 MPC 143 : AIR 1957 Madhya Pradesh 38 and *Laxmi Devi v. Surendra Kumar*[25], it was held that a reversioner cannot after the commencement of the Act obtain a declaration that the alienation made by a female without legal necessity was invalid. A similar view was expressed by Sri J. D. M. Derrett in an article m (1957) Bombay Law Reporter (Journal), p. 49. He observed that the title of an alienee is not at all improved or enlarged by the Act, which does not purport to do it, that the alienation remains vulnerable, that "although there is no longer

[25] AIR 1957 Oris 1

any reversioner who can benefit from the persisting right to challenge the alienation after the widow's death, forfeiture or surrender, the title of the purchaser or his successor remains limited, that "No reversioner can challenge the alienation after June 17, 1956, since whatever interest may exist by virtue of the defect in the title of the purchaser exists for the benefit of the

widow herself, and that "the reversioner as such is nowhere in the picture". We are in full agreement with these views of the learned writer. In 1956 Andhra LT 1045 : AIR 1957 Andhra Pra 280, a presumptive reversioner was allowed to get a declaration but without any discussion of the question whether anybody could claim the right of a presumptive reversioner after the commencement of the Act.

16. It is unnecessary for us to go into the other matters. The decree passed in favour of the respondent is rendered in fructuous by the enforcement of the Hindu Succession Act and also cannot be retained by him. The suit instituted by him cannot now be maintained. We, therefore, allow the appeal, set aside the decree passed by the trial Court and dismiss the suit. Since the appeal has been allowed only on account of the passing of an Act after the decree was passed, it is proper that we make no order about costs of either Court.
Appeal allowed.