

## CALCUTTA HIGH COURT

Sasadhar Chandra Day

Vs.

Sm. Tara Sundari Dasi

Suit No. 926 of 1960

(P.C. Mallick, J.)

08.02.1962

### ORDER

#### **P.C. Mallick, J.**

1. This is a suit for the administration of the estate of Gopal Chandra Nawan who died in 1899 without leaving a male issue, Prosadmoni, the only daughter of Gopal inherited the estate. In a suit for partition of the Nawan estate, being Suit No.1970 of 1933 Gopal's share in the estate was allotted to Prosadmoni by the final decree passed in 1949. The properties allotted to Prosadmoni under the decree were to be held by her as a Hindu daughter. In a suit instituted by the next reversioners against Prosadmoni in 1948 being Suit No.3502 of 1948, for waste of the estate in her hand, a consent decree was passed whereby it was provided that moneys of the estate invested or otherwise lying in her hand were to be held by her as a 'Hindu daughter'. On October 19, 1959, Prosadmoni died intestate leaving her surviving the defendant Tara Sundari as her only heir. The plaintiffs claiming to be some of the reversioners of Gopal have instituted this suit impleading Tara Sundari and the remaining reversioners as party defendants. Their case is that Tara Sundari is not an heir of Gopal and the estate now belongs to the reversioners of Gopal. It is also alleged that the defendant Tara Sundari is wrongfully denying the plaintiffs title and has claimed to be absolutely entitled to the estate as the heir of Prosadmoni.

2. There are three written statements on record, one jointly filed by the defendants Nos. 2, 3, 4 and 5 and another filed jointly by the defendants Nos. 7 and 8. All these defendants support the plaintiffs' case. The only contesting defendant is Tara Sundari, defendant No.1, who in her written statement sets up her exclusive title to the estate in denial of the title of other parties. It is contended by her that after the passing of the Hindu Succession Act, 1956, Prosadmoni became entitled to the estate of Gopal in absolute title and on the death of Prosadmoni, she as the only heir of Prosadmoni is exclusively entitled to the estate. The reversioners of Gopal after the passing of the Hindu Succession; Act, 1956 ceased to have any interest or title in the estate left by Gopal and inherited by Prosadmoni. Tara Sundari is the only defendant contesting the plaintiffs' claim and her submission is that the suit must be dismissed with costs.

3. At the trial the brief of documents disclosed by the parties have been marked as exhibit by

consent, formal proof having been dispensed with. No oral evidence has been tendered by any of the parties.

4. The decision in this case will depend on the construction of Section 14 of the Hindu Succession Act which reads as follows:

"(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."

5. Plaintiffs and the supporting defendants contend that sub-section (2) will apply to the facts of the instant case and in consequence sub-section (1) will not apply. The result is that the reversioners of Gopal are entitled to the estate under the old Hindu Law. The contention of the defendant No.1, Tara Sundari, is that sub-section (2) does not apply to the facts of this case and in consequence under Section 14 (1) of the Act Prosadmoni became entitled to the property in absolute title after the passing of the Hindu Succession Act, .1956.

6. The right of a female Hindu to full ownership in property in her possession is given by Section 14 (1) of the Hindu Succession Act whether the female Hindu has acquired the property by inheritance or otherwise. The word "acquired" in sub-section (1) has been given the widest possible meaning. The explanation to the sub-section makes it clear that sub-section (1) would apply to any property which a female Hindu acquires whether by inheritance, gift, partition, purchase or otherwise. In the context of the explanation given in the sub-section, the word 'acquired' must be given the widest possible connotation. It is to be noted, however, that the explanation is restricted to sub-Sec.(1) and recourse to this explanation Was not intended by the Legislature to be taken for construing sub-section (2) of Section 14. Sub-section (2) exempts the operation of Section 14 (1).The language used in sub-section (2) indicates that the word "acquired" will have a restricted meaning. It was not intended to have a meaning wider than its ordinary meaning. A property is said to be acquired when prior to the acquisition the person acquiring it had no interest in the property. The done of a gift or the devisee under a will acquires the property because prior to the gift or devise he had no title or right to the property which he gets as gift or devise. In sub-section (2) the illustration of acquisition given is acquisition by way of "gift" or "devise". It is important to note that while in the explanation to sub-section (1) specific reference is made to properties allotted to the female Hindu on partition or in lieu of

maintenance so that she may acquire absolute title therein, there is no' such specific reference in sub-section (2). I apprehend that the Legislature realized that inclusion of such properties under sub-section (2) would make sub-section (1) inapplicable to all cases of pre-Act partitions. Partition of joint family property worth the name must be evidenced either by deed of partition or a decree of a Court in a partition suit. The property allotted to a female Hindu on such partition must necessarily be a restricted estate as prescribed by the Hindu Law. It follows that if the Legislature intended that property allotted to a female Hindu on partition or in lieu of maintenance be treated on the same footing as "gift" or "devise" in sub-section (2) then the whole effect of sub-section (1) would be destroyed in respect to properties which were partitioned prior to the Act either privately by a deed or by Court in a partition suit. The section would, in that event, be for all practical purposes prospective in character. The language used in Section 14 however leaves no room for doubt that it was intended to be retrospective in its operation. Sub-section (2) no doubt refers to acquisition of property by a female not merely by gift or devise but also by "any other instrument Or decree etc." In my judgment, the words "any other instrument etc." must be construed ejusdem generis, that is, any other instrument of the said nature whereby the acquisition is made in respect to property in which the person had no interest previously. A female Hindu prior to partition of joint Hindu family property had substantial interest therein. It is true that prior to partition she had interest jointly with other co-sharers in respect to the whole estate, while on partition she is given exclusive title in the properties allotted to her. The point to note, however, is that on partition she does not acquire any property in which she had no interest or title prior to partition. The disruption of a Hindu co-parcenary by partition results in the distribution of the co-parcenary property amongst the co-parceners to be enjoyed by each in severalty. In order to ensure separate possession and enjoyment by each the other co-parceners cease to have title on properties not allotted to them. No coparcener acquires any new property by partition. In lieu of his undivided share in the whole estate he is given exclusive right in the properties allotted. There is no new acquisition of property by any co-parcener. It is immaterial that in the case of Dayabhaga coparcenary there was no unity of ownership but only unity of possession and enjoyment. A coparcener might have his defined share in the coparcenary property during the subsistence of the coparcenary. On disruption, his interest in the coparcenary is crystallised in the coparcenary property allotted to him. He does not acquire the property. Nor does the allotment amount to acquisition of the shares of the other coparceners in that property. The same restricted meaning was intended in respect to property acquired under a decree or order of the Court. If prior to the date of the decree the Hindu female had title and all that the decree does is to declare that title of the female Hindu in the said properties, the female Hindu cannot be said to have acquired title property under the decree. Her right is merely declared. Such a declaration of a pre-existing right in a property cannot be said to be an acquisition of property by a female Hindu. The preliminary decree in a partition suit does nothing more than declare the existing rights of the parties. In the case of a female Hindu, the declaration must necessarily be to the effect that she would have restricted estate of a Hindu female. It cannot be said that by such a declaration in the preliminary decree the Hindu female acquires a share in the joint family property. Nor does the direction in the preliminary decree to allot to her property to be held by her in severalty in lieu of her undivided share in the joint estate amount to acquisition of new property by her. The preliminary decree in a partition suit cannot, therefore, be said to be a decree within the meaning of sub-section (2) of Section 14. It has been so held by Bachawat, J. in the case *Billabashini Datta v. Dulal Chandra Datta*<sup>1</sup>, and by me in the case of *Krishna Passi Saha v. Akhil Chunder Saha*<sup>2</sup>, In either case the ground on which the preliminary decree was held not to be hit by the mischief of Section 14 (2) is different from what is stated above. The Court,

however, was not called upon in those cases to decide the effect of sub-section (2) of Section 14 on a final decree Passed prior to the Act in which a female Hindu is allotted properties to be held by her in Hindu Women's Estate. The question came up for consideration in this Court in two cases, to which my attention has been drawn. In the case of *Lakshmimoni Dassi v. Bibhuti Bhusan*<sup>3</sup>, heard and decided by H.K. Bose, J. as he then was, on August 28, 1957, it was held that sub-section (2) would not apply even if the final decree was passed prior to the Act and the female Hindu would have absolute title in the property allotted to her in the Hindu Women's estate in the final decree. G.K. Mitter, J. also so held in the case of *Rani Bala Dassi v. Narayandas*<sup>4</sup>, decided on December 8, 1960. Both the decisions are unreported. In the case of *Jaria Devi v. Shyam Sunder Agarwalla*<sup>5</sup>, there is an observation of the Division Bench of this Court to the effect that in a simple case of partition wherein allotment was made according to shares, sub-Sec.(2) would not apply and the female Hindu would acquire absolute title under Section 14 (1). The question also came up for consideration by a Special Bench of this Court in the case of *Sailabala v. Sailabala*<sup>6</sup>, In this case, the question for consideration was whether a Hindu widow was entitled to get in absolute title the compensation money deposited in Court prior to the Hindu Succession Act, 1956 under Section 32 of the Land Acquisition Act. Two questions were involved in the case, namely, (1) whether the Hindu widow was "possessed" of the compensation money lying in deposit in Court and, (2) whether sub-section (2) prevented the application of sub-section (1) of Section 14. The Special Bench held in favour of the widow on both the points. Four decisions of other High Courts were also cited, one each of Patna and Kerala and two of Andhra, reported in *Ram Ayodhya Missir v. Raghunath Missir*<sup>7</sup>, *Pathumma Beebi v. Krishnan Asari*<sup>8</sup>, *Venkamma v. Venkatarreddi*<sup>9</sup>, and *Annapurnamma v. Bhima*<sup>10</sup>, None of these are well-considered decisions on the point under consideration. The view taken by me and stated above is consistent with the view expressed in other decisions of this Court and noticed before. In my judgment, the Hindu female acquires absolute title in properties allotted to her under a final decree passed prior to the Hindu Succession Act in a partition suit wherein she was declared to have restricted interest in the property. In the instant case, Prosadmoni became absolutely entitled to the properties allotted to her in the final decree passed in Suit No.1970 of 1933 and on her death in 1959, the properties devolved on defendant No.1 Tara-sundari as her only heir under the Hindu Succession Act, 1956. No other party has any interest in the estate.

7. For reasons stated above, the suit fails and is dismissed. In the facts of this case, the parties will pay and bear their own costs; certified for 2 Counsel.

Suit dismissed.

<sup>1</sup> AIR 1958 Cal 472

<sup>3</sup> Suit No.293 of 1949 (Cal)

<sup>5</sup> 63 Cal WN 295 : AIR 1959 Cal 338

<sup>2</sup> AIR 1958 Cal 671

<sup>4</sup> Suit No.537 of 1960 (Cal)

<sup>6</sup> 64 Cal WN 605 : AIR 1961 Cal 26 (SB)

<sup>7</sup> AJR 1957 Pat 480

<sup>9</sup> AIR 1959 And Pra 158

<sup>8</sup> AIR 1961 Kerala 247

<sup>10</sup> AIR 1960 And Pra 359