

## DELHI HIGH COURT

Chinti

Vs.

Daultu.

Civil Revn Appln. No. 6 of 1966.

(I. D. Dua, C.J., S. N. Andley and S. N. Shankar, JJ.)

9.10.1967

### JUDGEMENT

#### I. D. Dua, C.J.

1. The following question has been referred by Andley, J. for answer by this Bench:-

"Whether a gift made before the commencement of the Hindu Succession Act, 1956, by a widow at a time when she was a limited owner having only a life estate in favor of her daughter remains a gift only for the lifetime of the widow or does the daughter become a full owner of the gifted property by virtue of Section 14 of the said Act when the daughter done is in possession of the gifted property upon the date of the commencement of the said Act."

It is unnecessary to state the facts of the present case because we are only concerned with the abstract question referred. The reference, it may be pointed out, was necessitated because of a decision of the learned Judicial Commissioner of Himachal Pradesh (C.B. Cappor, J.C.) in Smt. Sumitra v. Smt. Maharaju, AIR 1963 Himachal Pradesh 21. According to the learned Judicial Commissioner, it was not the intention of the Legislature, while enacting Section 14 of the Hindu Succession Act No. 30 of 1956 (hereafter called the Act), that after its enforcement, a Hindu female shall have absolute rights in any and every property possessed by her and that the intent of the Legislature was that if a Hindu female possessed any property, whether acquired before or after the commencement of the Act, as a limited owner, she shall have absolute rights therein after the enforcement of the Act. The right which the done-daughters from the widow acquired under the gift was, according to the learned

Judicial Commissioner, merely to remain in possession of the gifted property during the lifetime of the widow and they did not have any right of ownership therein, the rights being akin to those of a licensee. They could not, therefore, be characterized as limited owners of the property which could be capable of maturing into absolute ownership rights by virtue of Section 14 of the Act. The learned Judicial Commissioner was also influenced by the fact that to give to a female donee the benefit of Section 14 would create an anomaly inasmuch as a male donee under similar circumstances would remain a limited owner whereas a female donee would become an absolute owner. Such an intention, according to the Court, could not be imputed to the Legislature. We have to see whether this view of the learned Judicial Commissioner is correct.

2. We may now read Section 14 of the Act:-

"14. (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."

It is obvious that the language used in this section, particularly in the Explanation, is of the widest amplitude. The anomaly which prevented the learned Judicial Commissioner from conferring on the female donee full rights of ownership, is inherent in Section 14 itself and was noticed by a Bench of the Punjab High Court as far back as 1961 in *Kaur Singh Gajjan Singh v. Jaggar Singh Kehar Singh*<sup>1</sup>. It was observed there that a Hindu male holder of ancestral immovable property governed by the Punjab customary law was still subject to restrictions on his power of disposition, whereas a Hindu female must be held to be full owner of any property possessed by

her, whether acquired before or after the commencement of the Act. But this anomaly could only be remedied by the Parliament and not by judicial interpretation against the Hindu females.

3. Now, Section 14 of the Act has been the subject-matter of interpretation in a number of decisions both by the Supreme Court and by the various High Courts. In *Gummalapura Taggina v. Setra Veerayya*,<sup>2</sup> it was observed as follows:-

"In the case before us, the essential question for consideration is as to how the words 'any property possessed by a female Hindu whether acquired before or after the commencement of this Act' in Section 14 of the Act should be interpreted. Section 14 refers to property which was either acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu. Reference to property acquired before the commencement of the Act certainly makes the provisions of the section retrospective, but even in such a case the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. There is no question in the present case that Veerayya acquired the property of her deceased husband before the commencement of the Act. In order that the provisions of Section 14 may apply to the present case it will have to be further established that the property was possessed by her at the time the Act came into force. It was the case of the appellant that the estate of Veerappa was in actual possession of the second defendant and not Veerayya at the relevant time. On behalf of the respondent it was urged that the words 'possessed by' had a wider meaning than actual physical possession, although physical possession may be included in the expression. In the case of *Venkayamma v. Veerayya*,<sup>3</sup> Viswanatha Sastri, J. with whom Satyanarayana Raju, J. agreed, expressed the opinion that the word 'possessed' in Section 14 refers to possession on the date when the Act came into force. Of course, possession referred to in Section 14 need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of Section 14. The word 'possessed' is used in Section 14 in a broad sense and in the context possession means the state of owning or having in one's hands or power. It includes possession by receipt of rents and profits. The learned Judges expressed the view that even if a trespasser were in possession

of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner provided the trespasser had not perfected his title. We do not think that it is necessary in the present case to go to the extent to which the learned Judges went. It is sufficient to say that 'possessed' in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. In the case of *Gostha Behari v. Haridas Samantra*<sup>4</sup>, P.N. Mookherjee, J. expressed his opinion as to the meaning of the words 'any property possessed by a female Hindu' in the following words :-

'The opening words 'property possessed by a female Hindu' obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the, commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognized by law. but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed to absolute estate under this particular section, was at least in such possession, taking the word 'possession' in its widest connotation, when the Act came into force, the section would not apply'.

In our opinion, the view expressed above is the correct view as to how the words 'any property possessed by a female Hindu' should be interpreted. In the present case if the adoption was invalid, the full owner of Veerappa's estate was his widow Veerayya and even if it be assumed that the second defendant was in actual possession of the estate his possession was merely permissive and Veerayya must be regarded as being in constructive possession of it through the second defendant. In this situation, at the time when the Act came into force, the property of Veerappa must be regarded in law as being possessed by Veerayya."

These observations quite clearly show that the expression "any property possessed by a female Hindu" has been given a wide construction by the Supreme Court. In *Eramma v. Veerupana*<sup>5</sup>, the opinion of the Court on the construction of Section 14 is expressed in the following observations :-

"It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of Section 14. The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the

commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words 'As full owner thereof and not as a limited owner' as given in the last portion of Sub-section(1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to Sub-Section (1) of Section 14 defines the word 'property' as including 'both movable and immovable property acquired by a female Hindu by inheritance or devise \* \* \* \*.' Sub-Section (2) of Section 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word 'property' but the word 'acquired' used in the Explanation and also in Sub-section (2) of Section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquired after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property."

4. It is indisputable that had the widow not made the gift, she would have become an absolute owner under Section 14 and it would be futile to contend that the widow as a limited owner did not possess any right of ownership. A widow or other limited heirs under the old Hindu Law was not a tenant for life, but was owner of the property subject to certain restrictions on alienation and subject to its devolving upon the next

heirs of the last full owner upon her death. The whole estate for the time vested in her and she represented it completely, entitled even to make a gift of her life interest to any one she liked. Having gifted the property to her daughter in the present case, the question arises if Section 14 applies to the donee. The Supreme Court in Gummalapura's case, AIR 1959 Supreme Court 577 as noticed earlier, considered the word "possessed" as used in Section 14 very broadly and held that in the context it meant the state of owning or having in one's hand or power. The Court also approved the view expressed by the Calcutta High Court in Gostha Behari's case. AIR 1957 Calcutta 557 that the word "possessed" as used in Section 14 is intended to be taken in its widest connotation and it includes constructive possession or possession in any form recognized by law. In Eramma's case, AIR 1966 Supreme Court 1879, the Supreme Court clarified the position further by showing that the "property possessed" within the contemplation of Section 14 is property to which the female in possession has acquired some kind of title however restricted the nature of her interest may be. It was added that the object of Section 14 is to extinguish the estate called "limited estate" or "widow's estate" in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.

This section, however, is not meant to confer a title on a Hindu female trespasser or one who does not possess any vestige of title, and it certainly does not validate illegal possession. The law as laid down by the Supreme Court in these two cases, seems to us to fully cover the instant case of the daughter-donee. As observed earlier, had the widow not made the gift in question, there is no manner of doubt that she would have become absolute owner, fully competent to gift the property to any one she liked. In case the gift were wholly invalid then also on the authority of Gummalapura's case, AIR 1959 Supreme Court 577, she might well have claimed absolute ownership on the ground of being in constructive possession, the donee-daughter's actual possession being permissive. But this aspect does not arise for our consideration in the present proceedings and we are only concerned with the nature of the title acquired by the donee-daughter.

5. One thing seems to be quite clear and that is that the possession of the donee-daughter can by no means be considered to be illegal and she is certainly not a trespasser. She has undoubtedly some kind of title to the property, though her interest in it is restricted in the sense that she cannot alienate the property freely. But

otherwise, as against the whole world, she is the owner, fully entitled and competent to protect her right, title and interest under the gift-deed, which clearly does not create a restricted estate as contemplated by Section 14(2). In our opinion, her possession, however, restricted the character of the title, falls within the clear language and purview of Section 14(1). It is argued that hers is not a widow's estate because she cannot be considered to be entitled to alienate the property even for a necessary purpose which a widow can and, therefore, hers is not the limited estate which is intended to be enlarged into an absolute estate under Section 14(1). Without expressing any opinion on the somewhat vexed question about the right of alienation claimable by her, we are inclined, as at present advised, to think that the done-daughter of a female Hindu, who is lawfully possessed of the property acquired by her by gift, is entitled to claim full ownership rights in that property.

The words "acquired" and "property" as used in Section 14(1), are, in our opinion, intended to be construed in a wide sense so as to include the right, title and interest in the property acquired by gift by a daughter from her widowed mother and the expression "limited owner" as used in Section 14, does not seem to us to exclude such a done-daughter merely because of the fact that her doner had under the old law only a widow's limited estate in the gifted property. Section 14, we may point out, is intended to dispense with the traditional limitation on the powers of a female Hindu to hold and transmit the property, and except for the categories of acquisitions enumerated in Section 14(2), in our opinion, Section 14(1) would take within its fold all property possessed by a Hindu female at the commencement of the Act, however restricted the nature of her title in such property and whatever the mode of acquiring it. It may be remembered that this Act is the culminating point of the process of emancipation and equality of woman in Hindu society so far as the right of succession is concerned and Section 14 has to be construed on its plain language, keeping in view its broad purpose and object without overstraining it either in favour of or against the Hindu female.

6. On behalf of the respondents, our attention has been drawn to a Single Bench decision of the Punjab High Court (P.C. Pandit, J.) in *Mst. Mukhtiar Kaur v. Mat Kartar Kaur*.<sup>6</sup> In that case, on a male holder dying sonless in 1939, his widow in 1955 gifted the entire property in favor of her daughter Smt. Mukhtiar Kaur. This gift was challenged by the collaterals of the last male holder by means of a suit instituted in February, 1956. It was decreed by the Court of appeal in February 1958 in respect of ancestral property only. In February, 1959, Mst. Mukhtiar Kaur sold a part of this

property to Basant Singh and others. In 1961, the widow executed a will regarding the entire property which had earlier been gifted to Mst. Mukhtiar Kaur. About a month later, the widow died. A few months later, the other daughters of the widow instituted a suit for joint possession to the extent of three-fourth share of the property left by the widow, the defendants to this suit being their sister in whose favor the gift had earlier been made and the transferees from her. It was pleaded that the parties were governed by custom in matters of alienation and succession and the widow had no right to gift the property in favour of Mst. Mukhtiar Kaur alone and that the same was ineffective against the rights of the other daughters and they were entitled to succeed to three-fourth share at the property left by their mother. The sale made by Mst. Mukhtiar Kaur in excess of her share in the property was also assailed on the same ground. It was held by the learned Single Judge that the widow had only a life estate in the property and it was only that life interest which she could gift to her daughter. The donee accordingly could not remain in possession of the property after the widow's death on the basis of the gift. The decision of the Supreme Court in *Gummalapura's case*. AIR 1959 Supreme Court 577, was held to be of no assistance to Mst. Mukhtiar Kaur because a Full Bench decision of the Punjab High Court in *Amar Singh v. Sewa Ram*.<sup>7</sup> had held that Section 14 could not be applied to a case in which a female Hindu had sold the property and parted with its possession before the enforcement of the Act and that the gift, by a widow to her daughter stood at par with the case of a sale. Following this Full Bench decision, Mst. Mukhtiar Kaur's plea of absolute ownership was repelled. In our view, the decision of the learned Single Judge runs counter to the real ratio of the two Supreme Court decisions and the case of a donee-daughter acquiring property from her widowed mother, clearly falls within the purview of Section 14 as interpreted by the Supreme Court.

Reference has been made by the respondents to still another Single Bench decision of the Punjab High Court (Harbans Singh J.) in *Sawan Mal v. Smt. Gita Devi*,<sup>8</sup> which also followed the Full Bench decision in *Amar Singh's case*, AIR 1960 Punjab 530 (FB). In *Sawan Mal's case*, (1966) 68 Pun LR 449. Mst. Kaulan, on 14-3-1950, gifted to her daughter Mst. Gita Devi the property inherited by her from her husband. In 1951. Mst. Kaulan died. Mst. Gita Devi continued to be in possession of the gifted property On 7-3- 1956, several months prior to the enforcement of the Act, seven plaintiffs claiming to be Lakhu's collaterals, instituted a suit for possession of the property, claiming title in preference to the daughter. This suit was dismissed *qua* non-ancestral property, but was decreed *qua* ancestral property. Smt. Gita Devi's appeal was allowed by the Court of 1st appeal on the authority of a Single Judge's judgment

of the Punjab High Court in *Mst. Prito v. Gurdas*.<sup>9</sup> and it was held that the daughter had become absolute owner by operation of Section 14. On further appeal, the learned Single Judge took the view that the Full Bench decision in Amar Singh's case. AIR 1960 Punjab 530 (FB), had overruled the decision in Prito's case, (1958) 60 Pun LR 194. The learned Single Judge felt that on the filing of the suit by the reversioners challenging the alienation as void, the possession of Mst. Gita Devi must be treated to be as that of a trespasser. On this reasoning, the learned Single Judge excluded the operation of Section 14.

Whether this circumstance rendered the possession of Mst. Gita Devi as that of a trespasser and whether the learned Single Judge was right in so holding and excluding the operation of Section 14, need not be examined by us on this occasion because, as observed earlier, a gift by a widow in favor of her daughter does not by itself render the position of the done-daughter as that of a trespasser and in view of the exposition of law by the Supreme Court in the two decisions cited above, we feel no hesitation in applying Section 14 to the case of a daughter holding possession, on the enforcement of the Act, of property acquired by her under a gift from her widowed mother. The plain language of Section 14(1) read with the explanation, seems to us to be clear and unambiguous, the purpose and object thereof obviously being to do away with the limited estate of all Hindu females envisaged by the Hindu Law of Succession prior to the enforcement of the Act. To restrict the broad concept of the expression "property possessed" by reference to the rights of some collaterals, whether under the customary or personal law, does not appeal to us and as at present advised, we are disinclined on this ground to cut down the plain meaning of the statutory language which seems to us to be fully consistent with the legislative scheme, purpose and object. Judicial interpretation, it is axiomatic, must neither legislate under a mask, nor squeeze out even partially the life-blood of a statute.

7. In *Smt. Chawli v. Hansa*,<sup>10</sup> Shamsheer Bahadur, J., following the decision of the Supreme Court in Gummalpura's case, AIR 1959 Supreme Court 577 upheld the plea of absolute ownership of a daughter possessed of property gifted to her by her widowed mother at the commencement of the Act. In our opinion, the view taken by the learned Single Judge was quite correct and in consonance with the law as enunciated by the Supreme Court.

8. Now, a few words about the Full Bench decision in Amar Singh's case, AIR 1960 Punj 530 (FB). In that case, the following question was referred to the Full Bench for answer in two cases:-

"Are the collaterals (reversioners) of the last Hindu male-holder, entitled to file, or, if filed already, to continue, a suit, after the enforcement of the Hindu Succession Act, challenging an alienation effected, prior to the enforcement of the Act, by an intervening female heir, who at the time of the alienation held only a widow's estate?"

9. In one of them, the daughter had sold the property and the sales were impugned. The third alienation by means of a gift made by her was not in dispute in the High Court. In the second case, the widow had gifted the property to her daughter in 1949 and this gift was challenged by a collateral in the fifth degree. Mehar Singh, J. (as he then was) and Gosain, J. answered the question in the affirmative. Dulat, J. agreed with them in the case of sale by the daughter, but in the case of gift by the widow in favor of her daughter, he disagreed on the basis of the authority of the Supreme Court decision in *Gummalapura's case*, AIR 1959 Supreme Court 577 and held the suit to be incompetent. The Supreme Court has since clarified the position in unequivocal terms that a suit by a reversioner to challenge an alienation by a limited owner on the ground of want of legal necessity is maintainable and that Sections 14, 15 and 16 of the Act do not abolish the reversioners and the reversionary rights : see *Radha Rani v. Hanuman Prasad*.<sup>11</sup> But the competency of such a suit is a wholly different question from the question of a female Hindu having become absolute owner under Section 14 in a given case.

10. The view taken by us, therefore, does not come into conflict with the view that the reversioners and the reversionary rights have not been abolished by the Act. The discussion on the question of difference between an invalid adoption and a gift by a widow in favor of her daughter does not seem to us to be germane to the point in controversy because we are not concerned with the right of the widow as being in constructive possession of the property, but with the nature of the estate held by the done-daughter, whose case appears to us to clearly fall within the purview of Section 14(1) and who cannot be considered to be either a trespasser or in illegal possession of the gifted property.

11. As a result of the foregoing discussion, our answer to the question referred is that the daughter, in whose favor a gift has been made before the commencement of the Act by her widowed mother, and who is in possession of the gifted property on the date of commencement of the said Act, becomes a full owner of the gifted property with effect from the said date of commencement.

12. The case will now go back to the learned Single Judge for disposal in accordance

with law and in the light of the observations made above. The costs of this reference will be costs in the cause.

Reference answered accordingly.

Cases Referred.

1. , AIR 1961 Punjab 489
2. AIR 1959 Supreme Court 577
3. AIR 1957 Andhra Pradesh 280 ;
4. AIR 1957 Calcutta 657 at p. 559
5. AIR 1966 Supreme Court 1879
6. AIR 1966 Punjab 31
7. AIR 1960 Punjab 530 (FBI)
8. (1966) 68 Punj LR 449 ,
9. (1958) 60 Pun LR 194 ,
10. AIR 1960 Punjab 404.
- '11. AIR 1966 Supreme Court 216.