MADHYA PRADESH HIGH COURT

Mt. Lukai W/o Katikram

Vs.

Niranjan Dayaram

Second Appeal No. 758 of 1951
(M. Hidayatullah, C.J., B.K. Choudhary and T.P. Naik, JJ.)

31.01.1958

JUDGMENT

T.P. Naik, JJ.

1. This second appeal is by the defendants who are respectively a widow and the transferee from that widow. The transferee, Harirrm, is the father of Mst. Lukai, the first appellant. By a registered sale deed, dated 20-5-1949. Mst. Lukai sold two fields Nos. 409 and 476, total area 4.62 acres, of mouza Kachhar, tahsil Kharsia, district Raigarh, to Hariram out of 12 old acres of land inherited by her from her husband Katikram. The slit was brought for a declaration by the present respondents that the transfer was not binding on them after the widow's death.

2. The suit had a chequered career in the Courts below, the trial Court dismissing it and the first appellate Court decreeing it. According to the first appellate Court, there was no proof of legal necessity nor was any case set up to prove it. The learned appellate Judge, therefore, decreed the plaintiffs' claim. The two defendants thereupon appealed.

3. During the pendency of this appeal the Hindu Succession Act, 1956 (Act No. XXX of 1956) came to be passed. The learned counsel for the appellants therefore abandoned the original case, knowing that the second appeal was concluded by a finding of fact.' He based his case upon section 14 of the aforesaid Act and cited the following cases in support of his contention that the reversioners were now out of the picture: *R. A. Missir v. Raghunath,* [1] *Mt. Janki Kuer v. Chhathu Prasad,* [2] *Bhabani*

Prasad v. Sm. Sarat Sundari [3] and a decision of this Court reported in *Dhirajkunwar v. Lakhansingh* [4]

4. The second appeal was laid before one of us (Naik, J.), who referred it to a Division Bench. The Division Bench, entertaining some doubts about the correctness of the view taken in this Court, referred the case for disposal to a Pull Bench. It is in this way that the entire case has come before this Full Bench.

5. If it had been only a matter of deciding the case on the original cause of action and the law applicable to it, we would have had no difficulty with this second appeal. It would have failed as being concluded by the finding of fact. We have, however, heard arguments in support of the contention raised on behalf, of the appellants that section 14 of the Hindu Succession Act, 1956 now completely debars all reversioners from claiming properties either in the hands of limited owners or their transferees. While we admit that limited owners under section 14 of the Act have been conferred all rights of ownership in respect of certain kinds of properties of which they are in possession on the date the Act came into force and to that extent the reversioners" rights are at an end, we do not think that in all cases the reversioners' interests have been wiped out by the enactment of section 14 of the Act. The wording of that section is 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."

6. Emphasis is laid in the section upon the words: 'possessed by a female Hindu'. No doubt, no distinction is made between property acquired before and after the commencement of the Act, but the condition precedent to the application of section 14 of the Act is that the female Hindu must be possessed of that property. In the cases cited before us the learned Judges viewed the matter from the angle of the reversioners and held that as their rights were no more than spes successions, they could not be

enforced after the enactment of the Act. We do not agree. The Act clearly enhances the rights of a female Hindu only in respect of the property possessed by her. Where a Hindu female has parted with property, as here, her rights cannot be enforced by the application of section 14 of the Act. We think that the matter has to be judged not from the angle of the reversioners so much as from the angle of the Hindu female and the property in her possession. We need not traverse the whole ground, because the view which has been placed before us by the appellants for acceptance has not been accepted in several other cases in India. We cite the following *Venkayamma v. Veerayya* [5] *Gestha Behari v. Haridas Samanta,* [6] and *Hari Krishna v. Hira,* [7] The Andhra case has also been followed in *Thailambal Ammal v. Kesavan Nair,* [8] Without mentioning at length our reasons for dissenting from the Patna view, as also from the view propounded in our Court, we consider it enough to say that our view accords most approximately with the view expressed by Viswanatha Sastri, J. in Andhra case and by Sarkar, J. in the Calcutta case cited in this paragraph. For the reasons given by these learned Judges, which have our full concurrence, we dissent from the Patna view and the view taken in this Court and hold that in the present case the reversioners were not debarred by the Hindu Succession Act, 1956 from bringing a suit for a declaration that the transfer was not binding upon them. Once the suit is held to be good, we must point out - as we have done before - that the case is concluded by a finding of fact.

7. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1957 Pat 480
2. AIR 1957 Pat 674
3. AIR 1957 Cal 527
4. 1957 MPLJ 137: AIR 1957 Mad Pra 38
5. AIR 1957 And Pra 280
6. AIR 1957 Cal 557
7. AIR 1957 Pun 89
8. AIR 1957 Ker 86