

PATNA HIGH COURT

Harak Singh

Vs

Kailash Singh

A.F.O.D. No. 114 of 1950

(V. Ramaswami, C.J., B.P. Jamuar and R.K. Choudhury, JJ.)

01.07.1958

JUDGMENT

V. Ramaswami, C.J.

1. In the suit which is the subject-matter of this appeal the plaintiffs asked for a declaration that the deed of gift dated 30-3-1949, executed by defendant No. 2, Musammat Deosunder Kuer, widow of Rambarat Singh, in favor of defendant No. 1, Kailash Singh, was not valid beyond the lifetime of the widow and was not binding upon the plaintiffs, who are the next reversioners. The plaintiffs claimed to be the next reversioners to the estate of Rambarat Singh and alleged that defendant No. 1, in whose favor the gift was made, was the sister's son of Deosunder Kuer. The suit was contested by defendant No. 1, who alleged that the plaintiffs were not the next reversioners and that defendant No. 1 himself was the next reversioner, being the sister's son of Rambarat Singh. The learned Subordinate Judge dismissed the suit, firstly on the ground that defendant No. 1 was the sister's son of Rambarat Singh and, therefore, the plaintiffs were not the next reversioners to the estate of Rambarat Singh. The Subordinate Judge, therefore, held that the suit was not maintainable and dismissed the suit.

2. The appeal was in the first instance heard by Sinha and Untwalia, J J. It was argued on behalf of the plaintiffs, who presented the appeal, that in cases where the next reversioner was unwilling or suffered from some disability to institute a suit, the reversioner who came next was entitled to bring a suit for possession. The learned Judges accepted the contention and took the view that defendant No. 1, though the next reversioner, cannot bring a suit for setting aside the alienation in his own favor and, therefore, the reversioners who came next were entitled to bring the suit. It was argued on behalf of the respondents that there has been a revolutionary change in the Hindu law by the passing of the Hindu Succession Act of 1956 (Act 30 of 1956), and in view of the provisions of section 14 of that Act the limited estate of the Hindu widow had become an absolute estate, even in the hand of the alienee, and so the plaintiffs cannot get a declaration that the deed of gift dated 30-3-1949, executed by the Hindu widow was not valid beyond her lifetime. In support of this argument Counsel on behalf of the respondents relied upon the decisions of this Court in *Ram*

*Ayodhya Missir v. Raghunath Missir*¹, *Mt. Janki Kuer v. Chhathu Prasad*², and *Ramsaroop Singh*

*v. Hiralall Singh*³, The argument addressed on behalf of the appellant was that section 14 of Act 30 of 1956 had no application to a case where a Hindu widow had made a complete and out and out transfer of the property and in such a case a suit by a reversioner for a declaration that a certain transfer made by the widow before the Act came into force was invalid and not binding upon the reversioner was maintainable. Sinha and Untwallia, JJ. have agreed with the argument addressed on behalf of the appellant. The learned Judges doubted the correctness of the decisions of this High Court in 1956 BLJR 734(A), AIR 1957 Patna 674 and 1958 Pat LR 71. The learned Judges thought that these decisions required further consideration and the question at issue should be examined by a larger Bench.

3. Accordingly the question of law referred to the Full Bench is:

"Whether the right of an heir of a last male-holder to succeed to the property which was invalidly transferred by sale, gift or any other mode of absolute transfer by a Hindu female before the coming into force of the Hindu Succession Act of 1956 (Act 30 of 1956), and his claim for possession thereof from the transferee on the death of the female, or on otherwise extinction of the woman's estate, has been adversely affected and taken away by section 14 of the Act of 1956."

4. When the hearing commenced before the Full Bench, the learned Government Advocate suggested that the question should be reframed. I think the Government Advocate is right and the question should be reframed in the following manner in order to bring out the real controversy between the parties in this case:

"Whether the right of an heir of the last male holder to repudiate an absolute alienation of property by way of sale or gift made by a female Hindu without legal, necessity before the coming into force of the Hindu Succession Act of 1956 (Act 30 of 1956) and his claim of possession thereof from the transferee on the death of the female Hindu or on the extinction of the woman's estate otherwise, has been adversely affected and taken away by section 14 of Act 30 of 1956?"

5. The answer to the question depends upon the proper interpretation of section 14 of the Hindu Succession Act (Act 30 of 1956) which is in the following terms:

"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 moveable 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".

6. The argument is put forward by the learned Government Advocate that in case of property which is absolutely alienated by the Hindu widow before the promulgation of the Act, section 14 has no application, and the limited interest of the Hindu widow in such a property is not enlarged into an absolute interest. The opposite view point was Presented by learned Counsel on behalf of the respondents and it was contended that even in case of an absolute alienation of property before Act 30 of 1956 came into force, section 14 would operate, and the limited interest of the Hindu widow would be deemed to have been enlarged as an absolute interest and so the alienation in favor of the respondents would be deemed to be alienation of the absolute interest and the reversioners would have no right to challenge such an alienation. It was argued on behalf of the respondents that section 14 was retrospective in effect and the properties which the Hindu widow had possessed at any time, even before the coming into force of Act 30 of 1956, would be deemed to have become her absolute property, and so by a process of legal fiction the alienation in favor of the respondents would be deemed to be absolute the plaintiffs would have no right to challenge that alienation. The crucial question, therefore, is at what point of time does the Hindu widow's estate become an absolute estate according to section 14 of Act 30 of 1956? I think the answer is that section 14 only applies to properties "possessed by" the female Hindu at the date of the commencement of the Act. It is not correct to say that the expression "possessed by a female Hindu" refers to a point of time before the commencement of the Act, because such an interpretation would be inconsistent with the expression "shall be held by her as full owner" occurring in the latter part of the section. If section 14 of the Act is to apply, it is necessary that a female Hindu must be alive at the date of the promulgation of Act 30 of 1956 and it is also necessary that she must be "possessed" of the property in question of that date. It is true that section 14 is retrospective in so far as it enlarges a Hindu woman's limited estate into an absolute estate even with regard to property inherited or held by her as limited owner before the Act came into force. The section is retrospective only to this extent and no further. It is not correct to say that section 14 applies to properties of a female Hindu which she had inherited before the Act came into force and which she had absolutely alienated before the Act came into force. Such an interpretation is opposed to the language used in section 14 of Act 30 of 1956 and cannot be accepted as correct.

7. I next turn to the question as to the meaning of the expression "any property possessed by a female Hindu" in section 14 of Act 30 of 1956. In my opinion, this expression does not necessarily refer to physical possession of a female Hindu. The possession contemplated in section 14 is not necessarily physical possession; it may be possession in law. For example, possession of a mortgagee or lessee from a female Hindu of the property, or the possession of a guardian or trustee of a female Hindu, would be possession of the property of the female Hindu for the Purpose of section 14 of the Act. I am further of opinion that a person attempting to acquire title against a Hindu woman by adverse possession would not deprive her of possession for the purpose of section 14 of the Act. In this connection I should like to refer the definition of "possession" in Stroud's Judicial Dictionary, 3rd Edition, at page 2239 to the following effect:

"Possession. (1) (a) Possession is said two waies, either, actual possession or possession in law.

(b) Actual possession is when a man entred in deed into lands or tenements to him descended, or otherwise.

(c) Possession in law is when lands or tenements are descended to a man, and he hath not as yet really, actually, and in deed, entered into them: And it is called possession in law because that in the eye and consideration of the law, he is deemed to be in possession, for as much as he is tenaut to every man's action that will sue concerning the same lands or tenements (Termes de la ley, Possession)".

I am definitely of the view that the expression "any property possessed by a female Hindu" occurring in section 14 must be broadly interpreted in the context of the language of the sub-section and must be taken simply to mean "any property owned by a female Hindu" at the date of the commencement of Act

8. But in the case of property which has been absolutely alienated by the widow before the commencement of the Act she retains no right or interest in the property on the date of the coming into force of the Act. If the widow had sold away the property of which she had only a limited interest, or if she had made an absolute gift of the property and put the grantee into Possession, it is difficult to hold that the widow was "possessed" of the property when the Act came into force. In other words, she does not possess in such a case any property within the meaning of section 14 and there is no proprietary interest or right of the female Hindu upon which the provisions of section 14 can operate. The object of the Hindu Succession Act (Act 30 of 1956) was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided that they were in possession of the property when the Act came into force, and, therefore, in a position to take advantage of its beneficent provisions. The Act was certainly not intended to benefit alienees or to unduly enrich the alienees who with their eyes open purchased the property from the limited owners without justifying necessity before the Act came into force and at a time when the vendors had only limited interest of Hindu women. I am, therefore, of opinion that the effect of section 14 is not to enlarge the alienee's interest into an absolute indefeasible interest. Such an interpretation of section 14 cannot be accepted as correct.

9. In a matter of statutory interpretation it is legitimate to consider as to what was the state of the law at the time when the Hindu Succession Act was passed; what was the mischief and defect for which the previous law did not provide; what remedy has the Parliament now resolved and appointed in order to cure the mischief and defect. In a matter of this description the Court must adopt such a construction of the statute as to suppress the mischief and to advance the remedy. What was the state of the Hindu law with regard to the Hindu women's property before the enactment of the Hindu Succession Act of 1956? It is established that the holder of the widow's estate was not a tenant for life but she was the owner of the property inherited by her, subject to certain restrictions as regards its alienation, and further subject to the estate devolving upon the next heir of the last male owner upon her death. The legal position was stated by the Judicial Committee in *Janki Ammal v. Narayanaswami*⁵, as follows:

"Her right is of the nature of a right of property; her position is that of owner; her Powers in that character are however limited". In a previous case, *Moniram Kolita v. Kari*

*Kolitani*⁶, the position was stated by the Judicial Committee as follows:

"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. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of the estate, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death".

In *Collector of Masulipatam v. Cavalry Vencata Narrainapah*⁷, the Judicial Committee stated the legal position as follows:

"It is admitted, on all hands, that, if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for Purely worldly purposes. To support an alienation for the last, she must show necessity. On the other hand, it may be taken as established that an alienation by her, which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. But it surely is not the necessary or logical consequence of this latter proposition, that, in the absence of collateral heirs to the husband, or on their failure, the fetter on the widow's power of alienation altogether drops. The exception in favor of alienation with consent may be due to a presumption of law that, where that consent is given, the purpose for which the alienation is made must be proper".

It is, however, well established that if the widow alienates property without legal necessity, the alienation does not bind the reversioners and the alienation is good only during the lifetime of the widow, and further the reversioners are entitled even during the lifetime of the widow to bring a suit for a declaration that the alienation in

question was not for legal necessity and as such was not binding upon them. A Hindu widow, therefore, cannot in the absence of legal necessity bind the inheritance for her own personal debts or private purposes as against the reversioners. An alienation in excess of her powers is, however, not void but voidable in the sense that it is open to the reversioner to elect to abide by the alienation when the estate falls into their possession, either by express ratification or by acts done by him which treat the alienation as valid and binding.

10. That was the state of the Hindu law before the coming into force of the Hindu Succession Act (Act 30 of 1956). The effect of section 14 of the statute is that the limited ownership of a Hindu woman is abolished and the section makes the Hindu woman a full owner of all the property howsoever acquired by her, except in cases provided for by sub-section (2) of section 14. Henceforth the Hindu woman has an absolute power of disposition of all property to which

section 14 applies. She has the absolute power to dispose of such property by sale, mortgage, gift, lease, exchange etc. She has the power of disposal of such property by will. The devolution of such property after her death is governed by section 15 of the Act and the Hindu woman becomes a fresh stock of descent. With regard to property to which section 14 applies there is no power either in the reversioners or anybody else to impeach the alienations made by a Hindu woman. The object of section 14 of the Act is, therefore, to improve the status of the Hindu woman with regard to properties owned by her on the date of the commencement of the Act. To put it differently, the Hindu Succession Act was enacted to put the Hindu female owner on a status of equality with a Hindu male owner and to remove the previous defect of inferiority attaching to the status of a Hindu woman. That was the mischief for which the Hindu Succession Act, 1956, intended to provide the remedy. The object of the Act, therefore, is to improve the status of a Hindu woman, to enlarge her right with regard to the properties owned by her. The object of the Act is surely not to benefit the alienees or to give them a windfall or to unduly enrich them at the expense of the reversioners. From this point of view also the argument of the respondents with regard to the construction of section 14 cannot be accepted as correct and it is not right to hold that as a matter of interpretation section 14 applies to the property of a female Hindu of which she had made an absolute conveyance either by sale or by gift before the coming into force of Act 30 of 1956.

11. It was then argued on behalf of the respondents that the transaction of gift dated 30-3-1949, made by defendant No. 2 was void and not voidable, and in the eye of law defendant No. 2 continued to be the owner of the property even on the date of the commencement of the Act, and the effect of section 14 was to convert the limited interest of defendant No. 2 in this property into an absolute interest. I do not accept this argument as correct. It is established by numerous authorities that a Hindu widow cannot in the absence of legal necessity bind the inheritance for her own personal debts or private purposes as against the reversioners. If the alienation is not supported by legal necessity, the transaction is not void but it is only voidable in the sense that it is open to the reversioners to elect to abide by the transaction when the estate falls in their possession, either by express ratification or by acts done by them which treat the transaction as valid and binding. That is the view taken by the Judicial Committee in

*Modhu Sudan v. Rooke*⁹, It is also established that such an alienation by the widow can be avoided only at the instance of a co-widow, or at the instance of reversioners, or at the instance of those who are entitled to the property by escheat. Such an alienation will be legally valid as against third parties, and the transaction cannot be challenged by such third Parties on the ground of legal necessity. See, for instance, a decision of the Madras High Court in *Shamughasundaram v. Parvathi*¹⁰, and a decision of the Bombay High Court in *Sitaram Ravaji v. Khandu Mairala*,¹¹ In other words, the transaction by a Hindu widow which is unsupported by legal necessity is not void but is voidable at the instance of a certain class of persons, namely, those who are entitled to the property by survivorship, or in inheritance, or escheat. I would, therefore, reject the argument of learned Counsel for the respondents on this point. It follows, therefore, that a Hindu widow cannot be deemed to be the owner of the property of which she had made an absolute alienation before the date of the commencement of the Act and that section 14 cannot apply to such property and the limited interest of the widow in such property is not enlarged to an absolute interest.

12. For these reasons I hold that the view of law expressed in the decisions of the Division

Benches of this High Court in 1956 BLTR 734, AIR 1957 Patna 674 and 1958 Pat LR 71 is not correct and that these decisions must be overruled. I respectfully agree with the view taken in *Venkayamma v. Veerayya*¹², *Thailambal Ammal v. Kesavan Nair*¹³, and *Marudakkal v. Arumugha Goundar*¹⁴, For the reasons I have already expressed I hold that the right of the plaintiff in this case to repudiate the alienation of the property by way of absolute gift made by defendant No. 2 unsupported by legal necessity is not adversely affected by section 14 of Act 30 of 1956, and that the claim for possession of the plaintiff from the transferee after the death of defendant No. 2, or on the extinction of the widow's estate otherwise, would not also be affected or taken away by section 14 of Act 30 of 1956. I would accordingly answer the question of law referred to the Full Bench.

B.P. Jamuar, J.

13. I agree.

R.K. Choudhary, J.

14. I agree.

Reference answered accordingly.

Cases Referred.

¹1956 BLJR 734

² AIR 1957 Pat 674

³1958 Pat LR 71

⁴3 Ind App 207

⁶7 Ind pp 115 (PC)

⁷8 Moo Ind App 529 (PC)

⁹24 Ind App 164 (PC), and 34 Ind App 87 (PC)

¹⁰1945-2 Mad LJ 173

¹¹ ILR 45 Bom 105

¹² AIR 1957 And Pra 280

¹³ AIR 1957 Ker 86

¹⁴1958-1 Mad LJ 101