

## PATNA HIGH COURT

Ram Gulam Singh

Vs

Palakdhari Singh

A.F.O.D. No. 353 of 1955

(Raj Kishore Prasad and U.N. Sinha, JJ.)

12.05.1960

### JUDGMENT

#### **Raj Kishore Prasad, J.**

1. This appeal, by defendants 2, 3, 4 and 14, is from the judgment of the Second Additional Subordinate Judge, Darbhanga who has decreed the plaintiffs' suit, declaring that the sale deed dated 16-1-1951 (Ext. A) executed by Musstt. Arti Kuer, defendant 13, mother of Alkhi Kuer, defendant 14, in favor of defendants 2 and 3, and, another sale deed executed on the same day (Ext. A/1) by defendant 13 in favor of defendant 4, were both without consideration and legal necessity, and not genuine, and, not binding on the plaintiffs, who were the nearest reversioners to the estate of the deceased Rajendra Singh alias Gena Singh, grandson of defendant 13.

2. The appeal on behalf of defendant 14 was not pressed, and, therefore, we are concerned now only with the appeal of defendants 2, 3 and 4, the alienees from defendant 13, under Exhibits A and A/1.

3. The sole question, for determination in the appeal, is, whether the suit by the plaintiffs-respondents, in view of Section 14 of the Hindu Succession Act, 1956 (Act No. XXX of 1956), hereinafter referred to as 'the Act', is maintainable ?

4. The material facts, which are necessary to be stated for deciding the above question, are these :

5. The last male holder of the lands in suit was one Rajendra Singh alias Gena Singh. Rajendra Singh died in 1931 without any issue leaving behind properties including the lands in Suit. After his death, his grand mother Mst. Arti Kuer, defendant 13, inherited all the properties of her deceased grandson including the lands in suit and came in possession of the same. She on 16-1-1951 executed the above mentioned impugned sale deeds, Exts. A and A/1. The plaintiffs, as nearest reversioners of deceased Rajendra Singh, brought the suit, out of which the present appeal arises, on 19-11-1951, for a mere declaration that the just mentioned alienations, (Exts. A and A/1), amongst other alienations, by defendant 13, were fraudulent, collusive, nominal, without consideration, without legal necessity and not genuine, and, therefore, they were not

binding on them. The aforesaid allegations of the plaintiffs are to be found in paragraphs 4 to 6 of the plaint.

6. The suit was contested by the several transferees, including the appellants, by separate written statements. The main defense of the appellants, with whom alone we are concerned in the appeal, is to be found in paragraph 11 of their written statements. Defendants 2 and 3 filed one written statement, and, defendant No. 4 filed another written statement. The allegations of the plaintiffs in paragraphs 5 and 6 of the plaint were controverted by the defendants in paragraph 11 of their respective written statements, in which they denied the plaintiffs' allegations and asserted that the alienations in their favor were for adequate consideration, and, they were given effect to, and that they, as transferees, entered into and were in possession and occupation of their respective vended lands.

7. The learned Judge of the court below accepted the plaintiffs' case and held, inter alia, that the two impugned transfers, (Exts. A and A1), in favor of defendants 2, 3, and 4, the appellants, were neither genuine nor were they acted upon nor were they executed for legal necessity nor were they for consideration, and, therefore, they were not binding on the plaintiffs.

8. The court below, however, did not record any finding, one way or the other, on the question of possession, as to whether there was a transfer of possession from the vendor to the vendees, as alleged by them, obviously because the plaintiffs' suit was for a mere declaration, as they could not ask for possession during the life time of the widow, defendant 13, the alienor who was still alive.

9. During the pendency of the appeal in this Court the Hindu Succession Act, 1956, came into force on 17-6-1956. Relying on Section 14 of the Act, it was strenuously urged by Mr. Satyanand Kumar, appearing for the appellants, that on the plaintiffs' own allegations, which are set out in paragraphs 4 to 6 of the plaint, and, also on the finding of the court below accepting the plaintiffs' case that the impugned alienations in favor of the appellants were not genuine and were without consideration and legal necessity, it was clear that the title in the vended lands remained with the vendor, defendant 13, and that there was no transfer of ownership from her to her vendees, and, therefore, as she, by virtue of Section 14(1) of the Act, became the full owner thereof, the plaintiffs as reversioners had no right now to challenge her alienations and to maintain the present suit, and, as such, the plaintiff's suit should now be dismissed as not maintainable.

10. The above point was further developed, on behalf of the appellants, by contending that on the allegations of the plaintiffs and on the findings of the court below, the alienations in favor of the appellants were, therefore, void in law, and, as such, even if the appellants are in possession of the lands in suit by virtue of their purchase since 1951, as alleged by them, their possession was illegal in law, was merely permissive and that of trespassers, and, accordingly, their possession must be deemed to be on behalf of the lawful owner thereof, namely defendant 13, from 1951, the date of the transfer, upto-date, and, hence, the widow, defendant 13, must be deemed to be in constructive possession through her transferees on the date when the Act came into force, and, therefore Section 14(1) of the Act would apply to the present case. In support of his above contention, Mr. Satyanand strongly relied on the decision of the Supreme Court in *Gummalapura Taggina Matada Kutturuswami v. Veeravva*<sup>1</sup>, and, also on the Full Bench decision of this Court in *Harakh Singh v. Kailash Singh*<sup>2</sup>,

11. In order to decide the point raised, it is necessary first to read Section 14 of the Act.

12. Section 14 is in the following terms :

"14. Property of female Hindu to be her absolute property;- (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 demise, 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 Stridrum 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".

13. The question as to what is the meaning of the words "Any property possessed by a female Hindu" occurring in Sub-Section (1), of Section 14 of the Act, is no longer in dispute, as it has been set at rest by the just mentioned decision of the Supreme Court relied upon by the appellants.

14. The word "possessed" occurring in Section 14(1) of the Act, is used in a broad sense, and, in the context, it means the state of owning or having in one's hand or power. The opening words "Any property possessed by a female Hindu", therefore, 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 into absolute estate under this particular section, was at least in such possession, taking the word "possession" in the widest connotation, when the Act came into force, the section would not apply. Section 14(1) 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 this section retrospective, but in such cases the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of this section applicable: per S.J. Imam, J. in AIR 1959 SC 577 (supra) though Section 14 of the Act is retrospective in so far as it enlarges a Hindu woman's limited estate into an absolute estate even in respect of property which had been acquired by her before the Act came into force, its operation however, is confined to the property in possession of the female when the Act came into force. It is clear, therefore that the word "possessed" in Section 14(1) means possession of the female on the date when the Act came into force.

15. After having ascertained the true meaning, and, correct interpretation of the expression "Any property possessed by a female Hindu' used in Section 14(f) of the Act, the next thing which, is necessary to know is as to what are the powers of a Hindu widow vis-a-vis her Hindu widows' property inherited by her, in order to decide whether the impugned alienations by defendant 13 are void, as contended by the appellants, or, voidable, as contended by the respondents.

16. It is well settled that under the Hindu law, a widow or other limited heir has no power to alienate the estate inherited by her from the deceased owner except for the following purposes, namely, (i) Religious or charitable purposes, (ii) Other purposes amounting to legal necessity, and (iii) For the benefit of the estate: *Bishun Singh alias Babu Singh v. Mangla Nain Bhagwan*<sup>3</sup>,

17. In the case of a Hindu widow, she is the owner of the property during her life time, though her powers with regard to the disposition of the property are limited. 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, but so long as she is alive no one has any vested interest in the succession. *Janki Ammal v. Narayana Swami Aiyer*<sup>4</sup>,

18. The position of a Hindu widow in respect of the family property inherited by her is, therefore, that of owner with certain restrictions upon her power as to disposition of the property. The position of a managing member is however different. A managing member represents the family and manages the family property on behalf of the family. In the case of a Hindu widow, she is entitled to enjoy the whole of the property and even if an alienation is made by her which is not supported by legal necessity, the purchaser from her is entitled to remain in possession so long as the widow is alive. In the case of a managing member, however; if a managing member sells away the property, not supported by legal necessity, the alienation is not binding upon the other members of the family and the other members of the family can question the alienation at any time they choose to do so.

19. In the case of alienations by a Hindu widow, as such, the fact that they are not supported by legal necessity does not mean that they were altogether void; they are voidable at the instance of the next reversioner. The next reversioner may contend that they are not good beyond the life time of the widow, or he may affirm them. The widow, therefore, may sell or transfer in any other way, the estate, but it is liable to be questioned by the reversioners.

20. It is well settled that an alienation by a widow of the Hindu widow's property can be avoided only at the instance of a co-widow, or, at the instance of the reversioners, or, at the instance of those who are entitled to the property by escheat,

21. The learned Chief Justice of this Court, V. Ramaswami, C.J., in the Full Bench case of AIR 1958 Fat 581 after a review of the decisions of the Privy Council, has summed up the law on this question thus :

"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 life time 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 be bound 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".

22. Having now known the nature of the power of a Hindu widow with regard to the Hindu woman's estate inherited by her, let us then final out the legal position of an alienee from such a Hindu widow.

23. The legal position of an alienee of Hindu widow's property has been clearly laid down by B.K. Mukherjee, J. in *Kalishankar Das v. Dhirendra Nath*<sup>5</sup>, in these words :

"The interest of a Hindu widow in the properties inherited by her bears no analogy or resemblance to what may be described as an equitable estate in English law and which cannot be followed in the hands of a 'bona fide' purchaser for value without notice. From very early times the Hindu widow's estate has been described as qualified proprietorship with powers of alienation only when there is justifying necessity, and the restrictions on the powers of alienation are inseparable from her estate: vide *Collector of Mastulipatam v. Cavalry Vencatanarainapah*<sup>6</sup>, For legal necessity she can convey to another an absolute title to the property vested in her.

If there is no legal necessity, the transferee gets only the widow's estate which is not even an Indefeasible life estate for it can come to an end not merely on her death but on the happening of other contingencies like re-marriage, adoption, etc. If an alienee from a Hindu widow succeeds in establishing that there was legal necessity for transfer, he is completely protected and it is immaterial that the necessity was brought about by the mismanagement of the limited owner herself. Even if there is no necessity in fact, but it is proved that

there was representation of necessity and the alienee after making *bona fide* enquiries satisfied himself as best as he could that such necessity existed, then as the Privy Council pointed out in *Hunooman Pershad Pandey v. Mt. Babooee Mundraj Koonweree*<sup>7</sup>, the actual existence of a legal necessity is not a condition precedent to the validity of the sale.

The position, therefore, is that if there is no necessity in fact, or, if the alienee "could not prove that he made *bona fide* enquiries and was satisfied about the existence of the necessity the transfer is undoubtedly not void, but the transferee would get only the widow's estate in the property which does not affect in any way the interest of the reversioner".

24. After knowing the powers of a Hindu widow in respect of the Hindu widow's property, and, also the legal position of an alienee from her, let us now see how far, and, to what extent, has the Hindu Succession Act, 1956, altered the position of both.

25. It is well established by now that the object of Section 14 of the Act is to improve the legal status of a Hindu woman with regard to the properties owned and possessed by her at the date of the commencement of the Act, and, now a Hindu woman has an absolute power of disposition of all the properties to which this section applies, and, there is no power either in the reversioners or any one else to impeach the alienations made by a Hindu woman after the Act came into force. Section 14, however, does not apply to the property of a female Hindu of which she had made an absolute conveyance either by sale or gift before coming into force of the Act, because the property alienated by a Hindu widow and possessed by the alienee before the Act came into force is not within the language of Section 14(1). Nor does an enlargement of the interest owned by the alienee in the property form any part of the purpose sought to be achieved by the enactment of Section 14(1). The purpose of the section is merely to free Hindu women from the fetters imposed on them by the Hindu law in relation to the holding and enjoyment of property. No such purpose would be served by enlarging an alienee's interest.

26. Where, therefore, 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. The object of the Act was to confer a benefit on Hindu females by enlarging their limited interest in property inherited or held by them into an absolute estate, with retrospective effect, if they were in possession of the property when the Act came into force and were therefore in a position to take advantage of its beneficent provisions.

27. The Act was not intended to benefit alienees, or to give them a windfall, or, to unduly enrich them at the expense of the reversioners, when the alienees, with eyes open, purchased property from female limited owners without any justifying necessity before the Act came into force and at a time when the female vendors had only the limited interest of a Hindu woman.

28. It was argued that Section 14(1) abolishes the category of reversioners, and, that, therefore, after the commencement of the Act, no suit by a Hindu reversioner for a declaration regarding an alienation by the limited owner can be maintained. This argument, however, cannot be accepted. What Section 14(1) states is that property possessed by a female Hindu shall be held by her as full owner and not as a limited owner. In relation to such property, she becomes a fresh stock of descent, and, therefore, there can be no question of reversion to the estate of the last male holder. Reversion gets abolished as consequence of the estate being enlarged to full ownership.

29. Therefore, unless the alienee's interest also gets enlarged to full ownership by the operation of Section 14(1), it would not be correct to speak of reversioners in relation to such alienated property getting abolished. The first question to ask is, does the alienee's interest get enlarged and does he become a fresh stock of descent? If that question is answered in the affirmative, it would follow as a consequence that there could be no reversion to the last male holder's estate in relation to that property. To say that there is no reversionary interest and then to proceed to consider the rights of the alienee is to look at the problem from the wrong end of the telescope.

and therefore to get incorrect answers.

30. The nature of the interest acquired by an alienee from a female Hindu gets fixed on the date of the alienation. In a case where the alienation is not binding on the reversioners to the estate of the last male holder, the interest which the alienee gets is the right not to have the alienation impeached by the woman and to hold the property at the pleasure of the reversioners on the termination of the woman's estate. That interest of the alienee is not affected either to his advantage or to his prejudice by Section 14(1): *Marudukkal v. Arumugha Goundar*<sup>8</sup>,

31. It was, however, argued, on behalf of the appellants, that, as in the present case, the impugned sale deeds had been found to be not genuine and without consideration and legal necessity, the widow, defendant 13, must, because of her alienations being 'invalid, be deemed to be in possession at the date of the commencement of the Act, as was held in the Supreme Court case, referred to before. In my opinion, this argument is not valid, because in the Supreme Court case the deed of adoption was void, whereas, in the present case the sale deeds are voidable.

32. In order to understand correctly the true scope of the decision of the Supreme Court, relied upon by the appellants, and, to decide if it supports them, it is necessary first to appreciate the distinction between a transaction which is void, and, a transaction which is voidable.

33. A void contract is one which is without any legal effect. A contract may be said to be void if one or both the parties had not the necessary legal capacity to enter into a contract. Such an incapacity may arise out of status also. A contract may be prima facie ab initio void; or, some proof may be necessary in order to show that the contract is void. A void contract is not enforceable by law. A transaction, therefore, is void when it is not enforceable at law. It is however not synonymous with illegal. If a deed has been executed which is beyond the legal competence of the executant, it is

ab initio void and ineffectual, and steps need not be taken to avoid it formally.

34. A voidable contract, however, is good until avoided, and, if the party entitled to avoid it avoids it, it becomes void; but, if it neglects to avoid or chooses to affirm it, it continues or becomes valid. A valid agreement is one which is fully operative in accordance with the intention of the parties.

35. Strictly speaking, an agreement is void or voidable because of its substance, owing to flaws in the contract, or, for want of free consent, or, the like.

36. The legal position, therefore, is that which is void has no legal effect at all, while that which is voidable, is valid so long as it is not avoided by the party entitled to do so. As soon as it is shown to be void, the whole transaction falls to the ground. A void agreement is destitute of legal effect, when it is proved to be so, but an illegal one is so ab initio. A voidable contract is one which one or more of the parties thereto may avoid or repudiate, while another or others cannot do so, but which is binding on the party entitled to avoid unless and until he exercises his right to avoid.

37. The following illustration will bring out pointedly the distinction between void and voidable

transactions. If the contract between A and B is void, the ownership in the goods does not pass to B, even though B has been able to obtain physical possession of the goods. A fortiori ownership would not pass to C, even if he has paid full value to B, and A can recover the goods, leaving C to seek his remedies against B by way of damages for breach of warranty of title.

38. On the other hand, if the contract between A and B is voidable, (that is, good until it is set aside), and if C purchases for value, before A has actually set aside the contract, ownership will pass to C, and A cannot recover the goods from C and will have only the right to proceed against B for damages. However, if after A succeeds in setting aside the contract, C purchases the goods though *bona fide* and for value, C will again have no right to the goods, but only a claim for damages against B.

39. Similar is the position under the Banaras School of Hindu law with regard to the power of a Hindu widow to make an adoption. If there is no proof of any authority of the husband, the adoption by his widow is void and it does not give any title to the adopted son and the title always remains in the widow. A Hindu widow has the power to adopt only if she has been authorized by her husband, otherwise not. If, therefore, a Hindu widow makes an adoption alleging that she has been authorized by her husband, but it is found that actually she was never authorized by her husband and that she had no authority from her husband of all to make an adoption her adoption would be void being beyond her powers. Such an adoption would be void ab initio, and, completely ineffective, and, a deed of adoption evidencing such an adoption would also be destitute of legal effect when there is no proof of any authority of her husband. In such a case, even if there has been a transfer of possession from the widow to her alleged adopted son and the adopted son is in actual physical possession, his possession would be merely permissive, and, the widow would be regarded as being in constructive possession of the property through her alleged adopted son. That was the position in the Supreme Court case, and, therefore, it was held by their Lordships of the Supreme Court; that in such a situation at the time when the Act came into force, the property of the husband of the widow must be regarded in law as being possessed by her, and, therefore, Section 14 of the Act would apply to such a case.

40. The Full Bench case of this Court, however, was a case of an alienation by a Hindu widow, which was voidable, and not void. In such a case of an alienation, which is voidable, when it is proved to be for want of legal necessity or without consideration, it becomes void as against the reversioners, and, not binding on them, but such an alienation is binding upon the widow and the alienee has the right to be in possession of the property for the life-time of the widow, and, therefore, if actually there has been a transfer of possession from the alienor the widow, to the alienee and at the date when the Act came into force the alienee is in possession, his possession cannot be considered to be merely permissive, nor can he be regarded to be in possession on behalf of the widow so that the widow, the alienor, could be considered to be in constructive possession through the alienee. In such a situation, therefore, Section 14 of the Act would not apply.

41. In the case of an alienation, the cardinal point is as to whether the Hindu widow, the erstwhile owner of the alienated property, was in possession of the property at the date of the commencement of the Act, In this view, therefore, the principles laid down in the Supreme Court decision in which it was held that the actual physical possession of the adopted son must be regarded as permissive and on behalf of the widow who adopted him cannot apply to the present

case where the alienations are not void but voidable, and, they become void only when they are avoided by the reversioner and are proved to be without legal necessity. The argument presented, on behalf of the appellants, based on the Supreme Court decision, therefore, must be overruled.

42. In the instant case, therefore, the alienations by defendant 13 being voidable, and, having been found without legal necessity and consideration, they were no doubt void against and not binding on the reversioners, but certainly they were binding on defendant 13 and as such the alienees had the right to be in possession of the properties for her life-time, because until her death the reversioners, namely, the plaintiffs, were not entitled to possession of the properties. In such a situation, therefore, the possession of the vendee, for the lifetime of the widow would be considered to be their possession of the widow, and not of the widow at all and to such a case Section 14 (1) of the Act would not apply.

43. It was then argued that, at the worst, the alienees, the appellants, were trespassers, and, therefore, their possession must be deemed to be the possession in law of the widow, the alienor, and, therefore, Section 14(1) would apply here. I do not think there is any force in this contention.

44. It is true that "possession" referred to in Section 14 (1) of the Act 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 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 (1) of the Act.

45. But the argument that even if the alienees be considered to be trespassers, because of their alienations being held without consideration and legal necessity, their possession should be considered to be the possession of the widow so as to attract the provision of Section 14 of the Act, is not correct in law. The question whether a trespasser might conceivably be regarded as being in possession of the property of the female owner, provided the trespasser had not perfected title, was raised but not decided in the Supreme Court decision referred to before.

46. The answer to the above point raised is two-fold. In the first place, a trespasser's possession can never be taken to be a possession in any mode of the rightful owner, as his possession is completely adverse to the interest of the rightful owner, and, as such, the rightful owner cannot be considered to be in constructive possession through the trespasser.

47. In the second place, such alienees qua the reversioners may be considered to be trespassers and, their possession that of trespassers, but, their purchase qua the widow being valid and binding, upon her, they cannot be considered to be trespassers qua the widow. The alienations by the widow being binding on her, but not binding on the reversioners, the alienees have the right to be in possession in their own right for her lifetime, of the vended properties, by virtue of their purchase and, therefore, as long as the widow is alive they cannot be considered to be in possession as trespassers, although after the termination of the Hindu widow's estate their possession became that of trespassers qua the reversioners. In this view, the widow cannot be considered to be in constructive possession through her trespassers.

48. For the above consideration, therefore, I hold that, in the present case there being no finding,

one way or the other, that there was, or, was not a transfer of possession from the widow, defendant 13 to the vendees, defendants 2, 3, and 4, appellants, obviously because the suit was for a mere declaration, and not for possession, as the widow, defendant 13, was alive, and, the vendees the appellants being in possession, as asserted by them, and, there being no allegation even to the contrary in the plaint, to the effect that in spite of the alienations, defendant 13 continued as before and is in possession of the vended property, it must be held that the widow at the date of the commencement of the Act was not in possession of the vended property, and, therefore, to such a case Section 14 (1) did not apply. The question posed by me in the beginning must, accordingly, on the facts of the present case, be answered in the affirmative, and, held, that the plaintiffs suit has been rightly decreed.

49. Before, however, I conclude it is necessary to notice four decisions rendered by me, sitting singly, in which also the question of applicability of Section 14 (1) of the Act came up for consideration.

50. Two of them are reported and two are unreported. The reported cases are *Lateshwar Jha v. Mst. Uma Ojhain*<sup>10</sup>, and, *Jamuna Choudhuri v. Ramanup Singh*<sup>11</sup>, The unreported decisions are in (1) *Tiko Mahto v. Mst. Hemia*<sup>12</sup>, heard along with *Tiko Mahto v. Bishim Mahto*<sup>13</sup>, both decided on-the 8th September, 1959 (Pat), and (2) *Deolal Singh v. Jhari Lal Singh*<sup>14</sup>, D/d. 22-12-1959 (Pat).

51. In view of the decisions of the Supreme Court and of the Full Bench of this Court, relied upon by the appellants, and, after a consideration of the principles stated above, and, after knowing the true scope of Section 14 (1) of the Act, I feel that two of the above four cases require reconsideration in the light of the above decisions.

AIR 1960 Patna 182 :

52. In *Jamuna Choudhuri*'s case, AIR 1960 Patna 182, there was no transfer of possession from the vendor to the vendee, and, admittedly the widow, in spite of her alienation, was in actual physical possession of the vended property as a Hindu widow at the time of the commencement of the Act, and, therefore, it was held that Section 14 (1) of the Act applied to the facts of that case. That case has, in my opinion, been correctly decided.

AIR 1958 Patna 502 :

53. The decision in *Lateshwar Jha*, AIR 1958 Patna 502, however, seems to be partly wrong. My decision that Section 8 of the Act (sic) it appears that it applies only to succession that has opened after the Act came into operation. This Section 8 of the Act propounds a new and definite scheme of succession and lays down certain rules of succession to the property of a male Hindu who dies intestate after the commencement of the Act. The general rules of succession in case of males laid down in Section 8 of the Act are pivotal and have to be read along with the Schedule of the Act. Sees, 8 to 13 contain a fasciculus of rules which must be read together Section 8 of the Act, therefore, it is clear, is not at all retrospective. As far as I held that Section 14 of the Act is retrospective, it is correct because the Supreme Court in *Smt Kamla Devi v. Bachulal Gupta*<sup>15</sup>, also pointed out that Section 14 of the Act is retrospective in effect. My decision that Section 14 (1) of the Act applied to the Acts of that case is also correct. In that case there was no question of any alienation by any Hindu widow. On the finding of the court below in that case, which was affirmed on appeal, Achaki Jha the husband of defendant 8 of that suit, had died in 1938, in a

state of jointness with the members of his joint family, after the commencement of the Hindu Women's Rights to Property Act, 1937 (18 of 1937 amended by Act 11 of 1938). She, therefore, became entitled under Section 3 (2) of the said Act to have in the family property "the same interest" as her deceased husband had. She, as such, under Section 3 (3) of the said Act had "the same right of claiming partition" as a male owner had. On partition, therefore, at the instance of any coparcener of the family, after the death of her husband, she, on partition, being entitled under the aforesaid Act to the undivided interest of her deceased husband, would get a share in the property representing the interest of her deceased husband, which he himself would have got on partition had he been alive at the date of the suit for partition. Since after the death of her husband in 1938, long before the 1956 Act came into force, she being in joint possession of the family property, as the possession of her co-sharers was in law tantamount to her possession and there being no case or any finding of her buster, she was held entitled to get a share on partition in the properties under partition even by virtue of Section 14 of the Act. It may be noted that this 1938 Act was no doubt repealed by Section 31 of the Hindu Succession Act 1956; but rights acquired and liabilities incurred under the 1938 Act were not affected by the 1956 Act by reason of Section 6 of the General Clauses Act, 1897 (Act 10 of 1897). Section 31 of the Act has to be read with Section 6 of the General Clauses Act which, inter alia, saves the rights which have accrued under any repealed enactment and, evidently, therefore, rights acquired by a widow under the 1938 Act were not impaired by operation of the repeal. On the other hand, the interest devolving on a Hindu widow under the provisions of Section 3 of the 1937 Act as amended by 1938 Act, which was a limited interest, known as a Hindu Women's estate, became by virtue of Section 14 of the 1956 Act her absolute interest as she became full owner thereof if she was in possession of it at the date when the 1956 Act came into force. Lateswar Jha's case, therefore, was partly wrongly decided only so far as it was held therein that Section 8 of the Act was retrospective. First Appeal No. 593 of 1956 :

54. As regards the unreported decision in Deolal Singh's case First Appeal No. 593 of 1956 (Pat) this case was also about certain alienations made by a Hindu widow. In that case also, the admitted position was that the widow never parted with her possession, and she continued to be in possession, as before, of the vended properties, in spite of the transfer, and, therefore, she being in actual possession of the vended properties at the date of the commencement of the Act, it was held that Section 14(1) of the Act applied to the case. That case also has, therefore, been correctly decided.

55. Second Appeals Nos. 530 and 551 of 1956 (Pat), I find, however, that they have not been correctly decided.

56. In these cases, the facts were these. One Girdhari, predeceased his father, Bipat, leaving behind his widow, Dharmi, defendant 4, and, his son Tulsi, husband of Bundia defendant 5. Tulsi also died leaving behind his widow, Bundia, defendant 5 and his mother, Dharmi, defendant 4, before the 1956 Act came into force. These two widows, defendants 4 and 5 jointly executed two sale deeds in 1948 in favor of the transferee defendants. The plaintiffs of these suits, as the nearest reversioners to Tulsi, brought the suits for the declaration that the above mentioned two alienations were void as being without legal necessity and without consideration. The trial court held that these sale deeds were without consideration and without legal necessity and, therefore, they were not binding on the plaintiffs. On appeal, however, the question whether these transfers were without consideration and without legal necessity as found by the trial court was left open

by the first appellate court. In that case, the argument before me was that even assuming that the finding of the trial Judge that the sale deeds were without consideration and without legal necessity is correct, then, so ran the argument, the legal effect of that finding would be to make the sale deeds by the widows void in law, and, if they were void, then the legal title which was with the vendors, the widows, still remained with them, and, therefore, it was argued that the widows would be deemed to be in constructive possession of the vended lands through their alienees, so as to attract the provisions of Section 14 of the Act, as held in the Supreme Court decision, relied upon also by the present appellant here. In that case, the alienees, and not the alienois, the widows, were in possession at the date when the Act came into force. The trial Judge had found that the transferees, who were defendants 6 to 9 in one suit, and defendants 4 to 7 in the other suit, were in possession as cosharers with the plaintiffs, each party having a definite proportion of share and, as such, it was held that neither of them would be entitled to oust the other. It was further held that the plaintiffs of those suits could not, therefore, get exclusive possession. The first appellate court did not reverse the above finding, rather it found that as long as Dharmi, the mother of Tulsi, was alive the documents executed by her were binding on her. In this view, it is clear that the widow was not in possession at the date when the Act came into force. It is obvious, therefore, that to such a case, the Supreme Court decision did not apply at all. I, therefore, wrongly accepted that argument as valid in law and wrongly held that the Supreme Court decision applied there. Even if the sale deeds were without consideration and without legal necessity, and, were as such not binding upon the reversioners, they were certainly binding on the widows, the alienors, and, they enured for their life time, and, as such, the vendees were legally entitled to be in possession for the life time of the widows, and, therefore, the possession of the vendees could not be considered to be the possession of the widows. I would, therefore, hold that Second Appeals Nos. 530 and 551 of 1956 (Pat) were wrongly decided.

57. For the reasons given above the decision in Second Appeals Nos. 530 and 551 of 1956 (Pat), is wrong, in its entirety, and, therefore, it is overruled. The decision in AIR 1958 Patna 502 is also partly wrong and, therefore, it is also partly overruled to the extent indicated above.

58. The result, therefore, is that the appeal fails and is dismissed with costs.

**U.N. Sinha, J.**

59. I agree.

Appeal dismissed.

Cases Referred.

<sup>1</sup> AIR 1959 SC 577

<sup>2</sup> AIR 1958 Pat 581 : 1958 BLJR 545 (FB)

<sup>3</sup> AIR 1945 PC 30 : 72 Ind App 27

<sup>4</sup> 43 Ind App 207

<sup>5</sup> AIR 1954 SC 505 at pages 509-510

<sup>6</sup> S Moo Ind App 529(PC)

<sup>7</sup> 6 Moo Ind App 393

<sup>8</sup> AIR 1958 Mad 255 : ILR 1958 Mad 354

<sup>10</sup> 1958 BLJR 645 : AIR 1958 Pat 502

<sup>11</sup> AIR 1960 Pat 182

<sup>12</sup> S. A. No. 530 of 1956

<sup>13</sup> S.A. No. 551 of 1956

<sup>14</sup> First Appeal No. 593 of 1956

<sup>15</sup> AIR 1957 SC 434