

PATNA HIGH COURT

Sumeshwar Mishra

Vs

Swami Nath Tiwari

(N Untwalia and K Dutta, JJ.)

05.09.1969

JUDGMENT

Untwalia, J.

1. This is a plaintiffs'

second appeal and has come up before us on being referred for hearing to a Division Bench by a learned single Judge of this Court. Their case is that, Deokinandan Missir was the common ancestor of the parties. He had four sons, one of whom named Raniprasad predeceased Deokinandan without leaving any issue. Deokinandan died in the year 1920 leaving behind his three surviving sons Ramdat, Rampratap and Ramphal. He died in a state of jointness, Rampratap and Ramphal both died in the year 1921 in a state of jointness. The former's grandsons are plaintiffs 2 to 4. Ramphal left behind Mosstt. Shukbaso Kuer., his widow, and a minor son Man Missir. Shortly after, Man Missir also died in 1921 in a state of jointness with Ramdat and the members of Rampratap's branch. Shukbaso Kuer was impleaded as defendant No. 4. She died during the pendency of this litigation. The suit was instituted by Ramdat (Plaintiff No. 1) and the grandsons of Rampratap as Plaintiffs 2 to 4. Ramdat also died during the pendency of the appeal in the lower appellate court and his heirs were substituted.

2. In the year 1924 the plaintiffs (by which word in the judgment we mean the original plaintiffs) filed a petition before the Revenue Court for mutation of their names in respect of the joint family properties, which at one time belonged to Deokinandan Missir. Shukbaso Kuer filed a petition of objection and claimed to be substituted in place of her son Man Missir. A compromise was entered into on the 3rd of January, 1925, according to which the plaintiffs were mutated in respect of the properties and the suit land was allotted to Shukbaso Kuer for her maintenance without conferring any right on her to alienate any of those properties. As against the restriction put in the compromise petition, Shukbaso Kuer transferred to defendants 1 to 3, who are her Natis, in August 1960 the suit properties by two registered sale deeds. The plaintiffs brought the present suit for a declaration that the sale deeds are void, inoperative and the transferees have

acquired no title thereunder. The trial Court decreed the suit in part only in respect of the properties which were not allotted to Shukbaso Kuer by the compromise dated the 3rd of January, 1925 but had yet been transferred by her under the sale deeds. In respect of the rest of the suit properties, however, the suit was dismissed. The plaintiffs went up in appeal. The learned District Judge has maintained the decision of the trial Court but has only rectified the decree as there was obviously an error in it in regard to the extent of the properties which were covered by the sale deeds but had not been allotted to Shukbaso Kuer in the compromise dated the 3rd of January, 1925. They have come up in second appeal to this Court.

3. Before discussing and deciding the main point, which falls for decision in this appeal, I would like to dispose of a minor point raised on behalf of the appellants. Mr. Thakur Prasad endeavoured to point out that the properties transferred by Shukbaso Kuer under the two sale deeds in the year 1960 were not only in excess of the properties allotted to her by the compromise as found by the courts below in regard to some of the plots but excess area even in the plots which were allotted to her was also transferred by her. We do not find any such case made out in the Courts below and since this is a question of fact, we did not permit this' question to be raised for the first time in second appeal. The net result would be that if on the main question of law the judgment of the lower appellate court is fit to be affirmed, it will stand affirmed as a whole.

4. The important question, which, however, falls for our decision is whether transfer of the properties by the widow in the year 1960 after coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act"), was a valid transfer in so far as it related to the properties allotted to her in lieu of maintenance or whether even after coming into force of that Act she had no right to transfer any of those properties.

5. There was not much dispute in the Courts below in regard to the terms of the compromise petition (Ext. 1), which was filed in the Mutation Court on the 3rd of January, 1925. Since Mr. Thakur Prasad, learned counsel for the appellants, contended that under the terms of the deed no kind of right or title was conferred on the widow, who was merely given possession of certain properties to enjoy the usufruct thereof in lieu of maintenance, we have examined the terms of the deed ourselves. The argument as put forward is not quite accurate although I must hasten to observe that it will not be of much consequence in the case. The last line in paragraph 1 of the terms of the deed was that in the properties mentioned in Schedule 2 of the compromise petition the widow will have a life estate without any right to alienate the properties. In subsequent paragraphs it was made clear that she was being given the life estate in Schedule 2 properties in lieu of her right of maintenance which undoubtedly she had to get from the family properties in which her husband had an interest at the time of his death. Certain other arrangements were also indicated in the compromise petition as to who will pay rent in respect of the properties. To put it

briefly, the widow was put in possession of Schedule 2 properties in her own right in lieu of maintenance. In *Lal Mohan Mahanty v. Onkar Mall Marwari*¹, it was pointed out by Das, J., (as he then was) that where in mutation proceedings a bona fide dispute between the parties is composed each party recognising an antecedent title in the other, and the parties make a petition to the Court informing the terms of the agreement, there is no necessity to have such a petition registered as it does not purport to create or assign any right in immovable property within the meaning of Section 17 (1) (b) of the Registration Act; it is merely a recital of a fact by which the Court is informed that the parties have come to an arrangement. In the instant case, however, as I have pointed out above, a life estate was created in favour of the widow which was not the position in Lal Mohan's case. One may, therefore, take the view that such a compromise petition required registration. But registration or no registration, for' the purpose of deciding the point at issue, the same result would follow. If the document did not require registration, in terms of the deed it conferred a life estate on the widow or in any event put her in her own right in possession of certain properties in lieu of maintenance. If it required registration then the widow came in possession of the properties under an invalid document. She began to prescribe as against the rightful owner but prescribed to the limited extent of acquiring the life estate and not further than that, as it is a well-known principle of law that even by prescription the person prescribing acquires only that right which he purports to prescribe adversely to the rightful owner. In that view of the matter, it is clear in this case that the widow acquired a life estate, that means, she became a limited owner of the properties in lieu of her maintenance. But, as I have said above, I shall proceed to examine the question before us on the footing that the widow was induced in possession of the properties in lieu of maintenance without attaching much significance or importance to the fact that in terms of the compromise petition or by prescription she had acquired a life estate or had become a limited owner.

6. Undoubtedly, *Mosst. Shukbaso Kuer* on the findings recorded by the Courts below that her husband and her son died in a state of jointness with other members of the family had no separate title to the property but had a right to be maintained out of it. If she was allotted certain property in lieu of her right of maintenance it meant that instead of giving her maintenance every month or every year she was allowed to enjoy the property itself by enjoying the usufruct of the property. In such a situation under the personal Hindu Law the widow had no right to alienate the property whether the restrictive clause was there in the deed or not. In any event, the alienation could not inure beyond the lifetime of the widow. The question, however, is whether such a property was a property possessed by a female Hindu on the date of the commencement of the Act, that is, 17th June, 1956, which can be said to be held by her since that date as full owner thereof and not as a limited owner within the meaning of Subsection (1) of Section 14 of the Act. The trial Court took the view that the compromise petition is not an instrument within the meaning of Sub-section (2) of Section 14 of the Act; hence, it must come under Sub-section (1).

The learned District Judge seems to have taken a slightly different view but more or less to the same effect because he says that it may be an instrument but it is not an instrument of the kind which is envisaged under Sub-section (2) of Section 14 of the Act. On the reasonings given by the learned District Judge with reference to the decision of the Supreme Court in the case of *Mohan Chaudhary v. The Chief Commissioner, Union Territory of Tripura*², and Stroud's Judicial Dictionary, I am definitely of the view that a petition of compromise is an instrument within the general meaning given to it in legal parlance. The word "instrument", therefore, in Sub-section (2) will take within its sweep a document of compromise also. But the question is whether the instrument in question dated the 3rd of January, 1925, allotting certain property out of the joint properties to the widow in lieu of her maintenance with a restrictive clause in her power of alienation is such as will be covered by Sub-section (2) of Section 14 of the Act and will not permit the widow to become the full owner of the property under Sub-section (1) after coming into force of the Act.

7. It was pointed out by the Supreme Court in the case of *Eramma v. Veerupana*³, "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 subsection (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 Subsection (1) of Section 14 defines the word 'property' as including 'both movable and immovable property acquired by a female Hindu by inheritance or device.' 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 acquires 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."

8. The difference to my mind between the cases under Sub-section (1) and Sub-section (2) of Section 14 of the Act, as has been [aid down in several cases to which I will make a reference here, is that if the acquisition of the property by a female Hindu fan be related to her antecedent right or interest in the property then such an acquisition although as a limited owner or an acquisition of property in a limited sense will confer absolute ownership on the widow on and from the day of coming into force of the Act. If, however, the acquisition of the property cannot have any connection or relation to any kind of antecedent right or interest in the property of the female Hindu and the acquisition is conditioned by a restrictive clause, she will not become the absolute owner but will be governed by the restrictive clause mentioned in the gift, will, instrument, decree or order of a Civil Court or an award. The Explanation appended to Sub-section (1) of Section 14 of the Act says that "In this subsection, '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 .." meaning thereby that even in cases where the female Hindu may not be held to be a limited owner of the property, as in the case of her coming in possession of the property in lieu of maintenance, it is possible to take such a view, still the inclusive definition of the word 'property' given in the Explanation will make her a limited owner for the purpose of Sub-section (1) of Section 14 of the Act. The right of a Hindu widow to get maintenance out of the joint family properties is an indefinite right; yet it is a right and she does not get maintenance gratis or by way of charity. She gets it in her right under the Hindu law. If she is put in possession of certain property in satisfaction of that right for her life she is not a trespasser of the property. She enters into possession of the property acquiring some kind of limited ownership in it. In such a situation even, if the restrictive clause is there in the instrument conferring a limited right on the widow it will have no effect because under Sub-section (1) she will become the full owner of the property. It is to be pointed out that the common phrases in the Explanation appended to Sub-section (1) of Section 14 and Sub-section (2) thereof are only the cases of gift or will. Obviously the terms "inheritance, partition or in lieu of maintenance" have not been repeated in Subsection (2) of Section 14 for the reason that in all those cases the widow acquires the property in her own right, whatever may be the nature of her right. In cases of will or gift she gets the property not as a matter of right but gratis or as a matter of charity, may be for any other moral or laudable consideration , yet it is not a legal right which, can be traced antecedent to the acquisition of the property by gift or will. Thus read, the expression "any other instrument" occurring in Sub-section (2) has" been interpreted to mean acquisition of property by a female Hindu under any

other instrument which cannot be connected or related to any kind of right or interest in the property possessed by the female Hindu. Keeping this distinction in mind it has been held that if the acquisition of the property is referable to the pre-existing right or interest in the property, the limited ownership becomes the full ownership on coming into force of the Act. If, however, it is not referable to any pre-existing right or interest in the property and if the acquisition be 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, the restricted estate continues and it is not enlarged to an absolute estate even on coming into force of the Act.

9. The cases of partition are on a distinct and clear footing. They are *Raghunath Sahu v. Bhimsen Naik*⁴, *Sasadhar Chandra Day v. Sm. Tara Sundari Dasi*⁵, *V. Sampathkumari v. M. Lakshmi Ammal*⁶, and *Lachhia Sahuain v. Ram Shankar Sah*⁷, In all these cases the widow had a right to get property on partition in accordance with the Hindu Women's Rights to Property Act, 1937 or otherwise and when she got such an estate on partition before coming into force of the Act, it was held in all those cases that her limited estate became the absolute estate on and from the 17th June, 1956. The case of acquisition of property by gift or will will be on a different footing. If a female Hindu acquires such a property without a restrictive clause she would still be held under certain circumstances to be a limited owner under the personal Hindu Law but in such a case she will be the full owner of the property on coming into force of the Act. But if the acquisition was with a restrictive clause in express terms Sub-section (2) of Section 14 of the Act will prevent her from becoming the full owner of the property and will subject her to the restrictive clause. The two types of cases are on the two extremes and there does not seem to be much dispute or debate in that regard. The question of a female Hindu getting the property in lieu of her maintenance creates some difficulty in the matter. She gets the property not because she had some title to the property but she gets it because she had a right to get maintenance out of the usufruct of the property. Yet she does not get it, as I have said above, gratis or by way of charity. She gets it in lieu of her right to get maintenance. In such a situation I am inclined to agree with respect with the view expressed by the Punjab High Court in the case of *Smt. Sharbati Devi v. Pt. Hiralal*⁸, and the Andhra Pradesh High Court in the case of *Gadam Reddayya v. Varapula Venkataraju*⁹, The Bench decision of the Patna High Court in the case of *Mt. Sampato Kuer v. Dulhin Mukha Debi*, AIR 1960 Pat 360 is clearly distinguishable. There when the mother gifted her property to the daughters and the latter executed a deed of maintenance in favour of the former with a restrictive clause it was held that the mother had not become the full owner, although the point of distinction between Sub-section (1) and Sub-section (2) has not been clearly brought about in that decision. I am definitely of the view that the reason which must have led their Lordships to express that view was that the mother in that case had not acquired the property in lieu of her right to get any maintenance but had been given the property by way of charity or gift for her

maintenance. That being so, the case clearly came under Sub-section (2) and not under Sub-section (1) of Section 14 of the Act.

10. The only case which has taken a contrary view is the decision of Natesan, J., sitting singly, in *Thatha Gurunadhan Chetti v. Smt. "Thatha Navaneethamma"*¹⁰, That was a case of acquisition of property in lieu of maintenance. After pointing out the well-established distinction between Sub-section (1) and Sub-section (2) of Section 14 of the Act in paragraph 3 of the Judgment, the learned Judge said in paragraph 4-

" . . . no doubt she acquires the property in lieu of maintenance, but the instrument where there is one which transfers the property to her is then the source of her title to the property. She acquires the property only under the instrument, true in lieu of her right to maintenance. If there are no restrictions on the estate thus carved out or no limitation on the property thus provided for maintenance in the instrument, then Sub-section (1) of Section 14 can apply. But if the instrument gives only a restricted estate, Sub-section (2) is attracted."

With great respect I differ from this view. Even where under an instrument property is allotted to a widow in lieu of her right to maintenance without a restrictive clause, the widow will get a right to enjoy the property for her life. She will not get absolute ownership under the personal Hindu Law. The distinction is not as to whether in such an instrument a restrictive clause is there or not, as pointed out by Misra, J., (as he then was) in the Patna case referred to above 1966 BLJR 82 = (AIR 1966 Pat 191), but the distinction is as to whether acquisition of the property is referable to some right or interest in the property in lieu of which she is getting it. If it cannot be referred to such a right or interest the restrictive clause will operate under Sub-section (2) of Section 14 but if it is referable to such a right or interest, the case comes out of Sub-section (2) and is fully covered by Sub-section (1) of Section 14 of the Act.

11. I may also refer to a Bench decision of this Court in the case of *Sheojee Tiwary v. Prema Kuer*¹¹, where Maliapatra, J., has expressed an identical view in paragraph 14 of his judgment at page 192.

12. On a careful consideration of the matter, I have come to the conclusion that either under the terms of the compromise or by prescription *Mosstt.* Sukhbaso Kuer had acquired the property in lieu of maintenance within the meaning of the Explanation appended to Sub-section (1) of Section 14 of the Act, and, therefore, the property was possessed by her on the date the Act came into force as a limited owner. She became a full owner on coming into force of the Act. She had a right to transfer the property allotted to her in lieu of maintenance and the impugned transfers by her in favour of her Natis are not invalid as rightly held by the Courts below.

13. In the result, the appeal fails and is dismissed with costs.

K.K. Dutta, J.

14. I agree.

Cases Referred.

1AIR 1946 Pat 55

2AIR 1964 SC 173

3AIR 1966 SC 1879 at p. 1882

4AIR 1965 Ori 59

5AIR 1962 Cal 438

6AIR 1963 Mad 50

71966 BLJR 82 = (AIR 1966 Pat 191)

8AIR 1964 Punj 114

9AIR 1965 Andh Pra 66

10AIR 1967 Mad 429

11AIR 1964 Pat 187