

PATNA HIGH COURT

Sulochana Kuer

Vs

Deomati Kuer

A.F.A.D. No. 195 of 1966

(N.L. Untwalia and Anwar Ahmad, JJ.)

10.10.1969

JUDGMENT

Untwalia, J.

1. The relevant facts in the suit giving rise to this second appeal at the instance of the plaintiffs are in a short compass. One Bandhu Singh died leaving behind his widow Sunder Kuer (defendant No. 2) and four daughters, three of whom are the three plaintiff-appellants and the fourth one is Deomati Kuer, defendant No. 1. Defendants 1 and 2 are respectively respondents 1 and 2 in this second appeal. Sunder Kuer executed a deed of gift on the 13th of May, 1955, in favor of Deomati Kuer in respect of the suit properties. The plaintiffs' suit is for setting aside the deed of gift aforesaid on the ground of fraud and for a declaration that in any event it is ineffective and inoperative beyond the life time of Sunder Kuer. In other words, the suit was filed by the next reversioners challenging the gift made by a Hindu widow in favor of her one daughter to the exclusion of the other three, which gift was made before coming into force of the Hindu Succession Act, 1956, Central Act 30 of 1956 (hereinafter called the Act). The attack on the deed of gift was two fold, one on the ground of practice of fraud by the husband of defendant No. 1 upon defendant No. 2, and the other on the usual ground that in any event it could not be valid as against the reversioners on the death of the widow. Defendants 1 and 2 filed their separate written statements but their defense was common. The defense was that possession over the suit properties was delivered to defendant No. 1 in pursuance of the deed of gift dated the 13th of May, 1955, sometime in July, 1956. Defendant No. 2 executed another deed of gift in favor of defendant No. 1 on the 3rd December, 1959, which was during the pendency of the suit, which was filed on 2nd of July, 1959. The main plea taken on behalf of the defendants was that the plaintiffs had no right to challenge the deed of gift after coming into force of the Act.

2. Both the courts have found that the donee namely, Deomati Kuer, came in possession of the properties covered by the deed of gift dated the 13th May, 1955, immediately on the execution of the document. The second deed of gift dated 3rd of December, 1959, therefore, was of no consequence in this case. The Courts below have also taken the view that defendant No. 2 having parted with her entire interest in the properties gifted by her to her daughter defendant No. 1, was not possessed of any property on the 17th of June, 1956, when the Act came into force. She did

not, therefore, become the absolute owner of the properties. That being so, on the proposition of law which is firmly established by now by this Court as also by the Supreme Court the reversioners had a right to challenge the gift. But the Courts below, however, have taken the view that because the done in this case is a Hindu female, under Section 14 of the Act she became an absolute owner, and, since the done became an absolute owner, the transfer by the donor namely. Sunder Kuer, the widow, could not be challenged by the next reversioners of her husband. The plaintiffs have come up in second appeal to this Court.

3. The question which falls for consideration in this appeal is whether the view taken by the Courts below is correct that is to say, whether because of the alleged acquisition of absolute ownership by defendant No. 1 under Section 14 of the Act the reversioners had no right to challenge the transfer made by defendant No. 2.

4. In my opinion the learned Subordinate Judge has committed an error of law in the view which he has taken in this case. In my opinion it was not a case where it was necessary to find out whether the done defendant No. 1 had acquired any absolute ownership in the properties gifted to her under Section 14 of the Act. No restrictive clause in the deed of gift dated the 13th May, 1955 has been referred to by either of the Courts below to warrant a consideration of the point as to whether the done had become an absolute owner under Section 14 of the Act. The question, if otherwise relevant, would have been necessary to be gone into if there would have been a transfer by gift of a restricted estate to the done. In such a situation it would have become necessary to find out whether the case was covered by sub-section (2) of Section 14 of the Act and the done could enjoy only a restricted estate or whether sub-section (1) would govern her case and she became an absolute owner by enlargement of her limited estate on coming into operation of the Act. A Bench of this Court of which I was a member had recently an occasion to review several authorities in connection with a similar dispute which arose with reference to the nature of the estate of a Hindu female maintenance-holder. This point fell for consideration in *Sumeshwar Mishra v. Swami Nath Tewari*¹, In the judgment of this Court which I had the privilege to deliver, I quoted a passage from a judgment of the Supreme Court in the case of *Eramma v. Veerupana*², It is not necessary to quote the whole of the passage here but I would only like to quote a few lines from that passage :

"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."

I further pointed out in the said case :

"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 laid down in several cases to which I will make a reference here, is that if the acquisition of the property by a female Hindu can 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."

Here in absence of any restrictive clause in the deed of gift, as none has been referred to in the judgments of the Courts below or has been pointed out in this Court, in my opinion, as already stated, it was not necessary to find out whether Deomati Kuer under the deed of gift had acquired an absolute estate under Section 14 of the Act. The property which was acquired under the deed of gift, if the deed of gift is not avoided by the next reversioners or is challenged unsuccessfully was acquired by her as an absolute owner, she will remain an absolute owner and Section 14 is not necessary to be pressed in her aid to make her an absolute owner of the property. If however, as is the well-established principle of law by now that under the Hindu Law as it existed before coming into force of the Act, a transfer by a Hindu widow who was holding the Hindu woman's estate, can be challenged and avoided by the next reversioners either by filing a declaratory suit during her life time or a suit for possession on the death of the widow, it still can be challenged if the transfer was made by the limited owner namely, the widow, before coming into force of the Act, vide the cases of *Harak Singh v. Kailash Singh*³, and *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva*⁴,

5. In the instant case there is no doubt that the plaintiffs being the next reversioners had a right to challenge the gift of the kind with which we are concerned here made by Sunder Kuer. But for the complication which, to my mind, has been unnecessarily created in the judgment of the lower appellate Court the appellants are entitled to the declaration asked for. The question, however, is whether Section 14 of the Act on the facts of this case could make any difference.

6. The learned Advocate-General who appeared for the respondents in support of the judgment of lower appellate Court feeling the obvious difficulty in supporting the judgment, as it is, has advanced an ingenuous argument. In substance his contention is that when the properties in suit were transferred by a gift to Deomati Kuer she got a limited estate in the properties inasmuch as the transfer inter vivos in her favor if avoided by the next reversioners could not go beyond the lifetime of the widow; in that sense the donee was a limited owner, she became a full owner under Section 14 of the Act on its coming into force, and, that finished the right of the reversioners to challenge the gift which otherwise they had had. He had to concede that if the gift was in favor of a male donee it could successfully be challenged but it could not be so challenged when it was in favor of a female Hindu donee because her limited interest with the aid of Section 14 of the Act becomes absolute. In support of this proposition he submitted five principles of law for our consideration. They are :

- (1) Section 14 (1) of the Act is intended to enlarge a limited interest into an absolute interest.
- (2) The expression 'limited interest' as used in the said section includes a Hindu woman's estate but is not co-extensive with it. It is larger than that.

(3) A Hindu woman's estate has a peculiar concept of Hindu Law. It is the whole of the estate vested in a Hindu Woman. It is not a life estate in the sense the expression is used in English Law.

(4) A Hindu woman's estate may be created by inheritance, gift or will.

(5) A Hindu woman possessing a Hindu woman's estate can confer by gift the same nature of estate on the done provided the done is capable to taking a Hindu woman's estate, that is to say if the done is a Hindu female.

7. The first four principles of Hindu Law as narrated above are beyond any dispute. I have no quarrel with any one of them nor have I any quarrel with the fifth proposition as put; but, in developing that principle the learned Advocate-General submitted two aspects of the matter, if I could follow him rightly. The first submission which he made was that a Hindu Women's estate can be created by gift if the done is a Hindu female, irrespective of the question whether the donor is a male or a female. That being so, a Hindu woman also by gift can confer a Hindu woman's estate on the done. To this extent I accept his contention. While transferring the property a male Hindu who has the power of disposition can confer by gift a Hindu woman's estate on the done provided the done is a female Hindu and there are recitals in the document of gift indicating that the donor was not intending to transfer the absolute estate in the property to the done but was transferring the property and creating a Hindu Woman's estate in respect of it. Similarly a Hindu woman who has got either an absolute power of transfer or even a restricted power of transfer can confer a Hindu woman's estate on the done by transfer or by gift. If the donor had an absolute power of transfer nobody can challenge it. If a further transfer takes place by the done the question of examining the nature of his estate with reference to Section 14 of the Act may be relevant but that will be relevant only when an occasion arises wherein the transfer is made by the done on whom a limited estate had been conferred by the donor. But if a Hindu woman who herself was possessed of a Hindu woman's estate confers a similar estate on the done by making a gift of certain properties in favor of the latter, I fail to understand how that transfer cannot be challenged by the next reversioners provided other conditions of challenge are fulfilled. If the absolute transfer by gift by a Hindu woman possessing a Hindu woman's estate is capable of challenge so is the transfer by gift of a limited estate open to challenge by the next reversioners. If the challenge otherwise succeeds the transfer which was made in favor of the done, whether it was absolute or whether it was conferring only a Hindu woman's estate on her, will stand avoided in either case.

8. The second aspect of the question which the learned counsel for the respondent submitted, I confess, is not very clear to me. On the one hand, if I have rightly followed him, he said that the nature of a Hindu woman's estate not being identical to that of a life estate as understood under the English law, a Hindu widow possessing the woman's estate has an absolute power to transfer, which inures for all times to come subject to the right of the reversioners to avoid it, which avoidance becomes effective whether avoided earlier or later from the date of the death of the widow. On the other hand, he submitted that since a Hindu woman possessing a woman's estate could not transfer the property to a done by a gift which could be effective beyond her lifetime if the transfer was sought to be avoided by the next reversioners, the nature of the estate which was conferred on the done, provided she was a female Hindu was also a limited estate within the meaning of Section 14 of the Act and it will become a full estate with the aid of that section. I fail to reconcile the second proposition with his first proposition. He had to concede during the

course of discussion that when a Hindu woman possessing a Hindu woman's estate transfers by sale certain properties to a female Hindu the transfer did not bring about the conferment of a Hindu woman's estate on the transferee. If that is so, I fail to understand how the absolute transfer by a deed of gift without any restrictive clauses being added thereto confers a Hindu woman's estate on the transferee. If it could not be so, as obviously it could not be, we have to go back upon the same proposition of law with which I started discussion in my judgment that the estate which was conferred on Deomati Kuer in this case was an absolute estate subject to the challenge by the next reversioners. Even if it was a Hindu woman's estate, assuming that there were restrictive clauses in the deed itself conferring such an estate, the question as to whether Deomati Kuer acquired an absolute estate on coming into force of the Act is irrelevant with reference to the right of reversioners, namely, the heirs of the husband of Sunder Kuer. If transfer of an absolute estate was open to challenge and could be challenged successfully, the transfer of a limited estate was equally assailable and could also be successfully assailed. In the latter kind of the case it will bear repetition to say that the question could be relevant if the heirs of the husband of Sunder Kuer would not have challenged the gift at all or would have challenged it unsuccessfully but later on any transfer made by Deomati Kuer came to be challenged by the reversioners of her husband. Then and then only it would have been necessary to find out whether on the principles of law noticed by me in Second Appeal No. 832 of 1966, the estate of Deomati Kuer had become absolute under sub-section (1) of Section 14 or still she would be under a limitation of a restricted estate under sub-section (2). In the present case I have no doubt in my mind that such a question does not arise and the estate which Deomati got on transfer by gift from Sunder Kuer did not become absolute in the sense it was urged by the learned Advocate General with reference to the Hindu woman's estate held by Sunder Kuer. A Hindu woman's estate as such is not capable of transfer either by sale or by gift. The mere concept of such an estate is not transferred on the transfer of the properties attaching to the estate. If transfer by Sunder Kuer is otherwise not binding on the reversioners, they are entitled to the declaration asked for in the present suit and Deomati Kuer cannot defeat their suit with the aid of Section 14 of the Act.

9. In the result I allow the appeal with costs in this Court, set aside the judgments and decrees of the courts below and decree the plaintiffs'suit. It is declared that the deed of gift dated the 13th May, 1955, executed by Sunder Kuer, Defendant No. 2 in favor of Deomati Kuer, defendant No. 1 is ineffective and inoperative beyond the lifetime of defendant No. 2 and is not binding on the plaintiffs. I shall make no order as to costs either in the trial court or in the lower appellate Court.

Anwar Ahmad, J.

10. I agree.

Appeal allowed.

Cases Referred.

¹ Second Appeal No. 832 of 1966, D/d. 5-9-1969 : (reported in AIR 1970 Pat 348)

² AIR 1966 SC 1879 at p. 1882

³ AIR 1958 Pat 581

⁴ AIR 1959 SC 577