

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.718 OF 2014
WITH
CIVIL APPLICATION NO.671 OF 2011**

Kashinath Janardhan Mahajan Appellant

Vs.

Smt. Laxmibai Vasudeo Mahajan Respondents
since deceased, thru' Legal Heirs & Ors.

Mr. Pankaj V. Das, Advocate for the Appellant.
Mr. Avinash Avhad, Advocate for Respondent No.2.
None for other respondents.

Coram : Smt. R.P. SondurBaldota, J.

Date : 2nd March, 2015.

P.C.

1 This appeal challenges the concurrent findings of facts and law by the courts below as regards the rights of the respondents to the suit property.

2 The appellant is the nephew of original defendant no.1, since deceased. Admittedly the suit property was given to original defendant no.1 and it's possession delivered in lieu of maintenance payable to her, as per the adjustment arrived at, on 16th December, 1942 between the father of the appellant and original defendant no.1.

The courts below have held that after coming into force of the Hindu Succession Act (“the Act”), original defendant no.1 became absolute owner of suit property in view of Section 14(1) of the Act. It has been the contention of the appellant before the trial court, the lower appellate court and also before this court that the suit property would be saved for the appellant under Section 14(2) of the Act.

3 The provision of Section 14 of the Act reads as follows :

“14. Property of a 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 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 the 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.”

Bare reading of Section 14(2) of the Act would show that the same is not applicable to the property acquired by female Hindu (i) by inheritance or devise, (ii) at a partition, (iii) in lieu of maintenance and/or arrears of maintenance. Transfer by these modes is specifically excluded therefrom. The courts below have held that with coming into force of Hindu Succession Act, the limited interest of original defendant no.1 in the suit property was automatically enlarged into an absolute one and as such she became entitled to the property as it's full owner. Original defendant no.1 has subsequently sold the suit property to defendants no. 2 to 8. In the circumstances, there is no infirmity whatsoever with the concurrent findings of the courts below. There is also no substantial question of law arising for consideration of this Court. Hence, the Second Appeal is dismissed.

4 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)