

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2215-1986

Pronounced on : 27th May, 2015

Bhagat Singh

..... Appellant

VERSUS

Smt. Nihal Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr.G.S.Bhatia, Advocate, for the appellant.

Mr.V.K.Mahajan, Advocate, for the respondents.

RAJIVE BHALLA, J.

The appellant challenges judgments and decrees, dated 03.11.1983 and 06.02.1986, passed by the, Additional Senior Subordinate Judge, Jagraon and the Additional District Judge, Ludhiana, respectively, decreeing the suit for joint possession filed by the respondents and dismissing the appeal filed by the appellant herein.

Sher Singh, son of Dharam Singh, resident of village Dalla, Tehsil Jagraon, owner of the land, in dispute, passed away in 1957, after the coming into force of the Hindu Succession Act, 1956) (hereinafter referred to as the 'Act'). Before his demise, Sher Singh executed a registered will dated 08.06.1956 (Ex. P1) bequeathing a life interest in his estate to his widow Smt.Kishan Kaur. Kishan

Kaur executed a sale deed, dated 07.06.1974, alienating the land, in dispute, in favour of the appellant-Bhagat Singh.

The respondents filed a suit, pleading that as the will Ex.P1, confers a limited estate upon Smt.Kishan Kaur, she had no right to alienate the land, in dispute and prayed for a decree of joint possession. The appellant filed a written statement denying the will and pleaded that as Smt.Kishan Kaur has inherited the property, in dispute, as a natural heir she is an absolute owner. In the alternative, the appellant pleaded that even if the will is proved, Smt. Kishan Kaur, widow of Sher Singh has become absolute owner and is, therefore, competent to alienate the land, in dispute. The appellant also asserted his rights as a bonafide purchaser, for valuable consideration, without notice of any defect in the title of his vendor and prayed that the suit may be dismissed.

After considering the pleadings, the trial Court framed the following issues: -

- “1. Whether Kishan Kaur was limited owner under the will, allegedly executed by Sher Singh?
2. Whether the plaintiffs have locus standi to file the suit?
3. Whether the plaintiffs are estopped to contest the alienation in dispute?
4. Whether the defendant is bonafide purchaser for consideration, without notice and is protected u/s 41 of the Transfer of Property Act?
5. Whether the suit is barred by time?
6. Relief?”

The parties were thereafter, called upon to adduce

evidence. After considering the pleadings and evidence on record, particularly the will Ex.P1, the trial Court held that the respondents have succeeded in proving the execution of the will and as perusal of the will reveals that Smt. Kishan Kaur was conferred a limited estate, enabling her to enjoy income from the land during her lifetime, she was debarred from alienating the land, in dispute. The trial Court relied upon Section 14(2) of the Act and a Full Bench judgment of this Court in “**Jaswant Kaur Vs. Major Harpal Singh and others**”, 1977 PLR 523. The trial Court also held that after the death of Smt.Kishan Kaur, the land, in dispute, has devolved upon Avtar Singh (the original plaintiff No.1). The trial Court rejected the plea of a bonafide purchase by holding that the appellant has failed to prove the ingredients of a bonafide purchase. The suit for joint possession was, therefore, decreed.

Aggrieved by the aforesaid judgment and decree, the appellant filed an appeal. The Additional District Judge, Ludhiana, affirmed the findings recorded by the trial Court and dismissed the appeal.

Counsel for the appellant submits that the appellant has, admittedly, purchased the property, in dispute from Smt. Kishan Kaur, widow of Sher Singh, son of Dharam Singh. Admittedly, the property, in dispute, devolved upon Smt. Kishan Kaur pursuant to a will dated 08.06.1956 (Ex. P1), which came into effect after Sher

Singh admittedly, died on 05.03.1957. Admittedly, Smt. Kishan Kaur is the widow of Sher Singh and, therefore, had a pre-existing right to be maintained from his estate. The recital in the will when read with Section 14(1) of the Act cannot be construed to confer a limited estate by reference to Section 14(2) of the Act as Smt. Kishan Kaur had a pre-existing right to be maintained by her husband and after his demise from his estate. The judgments and decrees passed by the Courts below may be set aside and the suit filed by the respondents may be dismissed.

Counsel for the respondents submits that Courts below have rightly held that recitals in the will, when read with Section 14 (2) of the Act, confer a life estate and, therefore, Smt. Kishan Kaur could not alienate the property. The Courts below have rightly relied upon Section 14(2) of the Act to hold that the will Ex. P1 confers a limited estate upon Smt. Kishan Kaur.

I have heard counsel for the parties and perused the impugned judgments and decrees.

The substantial question of law, that arises for adjudication, is whether the Courts below have by relying upon Section 14(2) of the Act rightly held that recitals in will, dated 08.06.1956 (Ex.P1) conferred a limited estate, upon Smt. Kishan Kaur, widow of Sher Singh, thereby prohibiting her from alienating the property, in dispute?

Before answering the question posed, it would be

appropriate to briefly recount the facts and examine the will.

Admittedly, Smt.Kishan Kaur was the wife of Sher Singh, who executed will dated 08.06.1956 (Ex.P1) and passed away in 1957, after the coming into force of the Hindu Succession Act. A perusal of the will, reveals that Smt. Kishan Kaur was conferred a life estate enabling her to enjoy the usufruct of the land but was prohibited from alienating the property. The rights flowing from a will bequeathing a right in property to a female Hindu have to be read and interpreted in accordance with provisions of Section 14 of the Act.

Section 14 of the Act, reads as follows: -

“(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 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.”

Section 14 (1) of the Act, declares that any property “possessed” by a female Hindu, whether acquired before or after the

commencement of the Act, shall be held by her as full owner and not as a limited owner. The explanation to sub section (1) provides that “property” includes both movable and immovable property that may be 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 includes property held as stridhana immediately before the commencement of this Act. A conjoint reading of Section 14(1) of the Act and the explanation, reveals that property “possessed” by a Hindu female acquired by a bequest received in lieu of maintenance shall be held by her as full owner. Thus, a Hindu female who receives a bequest in lieu of maintenance etc. shall hold and own the property as an absolute owner with an absolute right to deal with the property in such manner as she may deem appropriate, including the right to alienate the property.

Sub section (2) of Section 14 of the Act, however, appears to strike a discordant note as it provides that sub section (1) shall not apply to any property acquired by way of gift or a will etc. particularly where the will confers a restricted estate.

The exact legal nuance that flows from Sections 14(1) and (2) of the Act has been the subject matter of a raging debate with different points of view and judgments for and against but the view

in law that appears to hold good, in the context of the object sought to be achieved by the Act namely conferring proprietary rights upon female Hindus, is that if a limited estate is conferred upon a female Hindu in lieu of a pre-existing right of maintenance etc., the recipient of such a bequest would receive the bequest as an absolute owner of the property in which she is conferred a limited estate. In all other situations the devolution would be of a limited estate.

Admittedly, Smt. Kishan Kaur was the wife of the testator Sher Singh and it is not denied that she had a pre-existing right to be maintained by her husband and after his demise from his estate. The clause in the will, conferring a life estate in my considered opinion, has to be read alongwith Section 14(1) of the Act and the explanation appended thereto as conferring an absolute estate upon Smt.Kishan Kaur. Section 14(2) of the Act cannot be invoked to record an opinion that Smt. Kishan Kaur was conferred a limited estate, thereby negating her right to alienate any part of the property. The right to be maintained from her husband and from her husband's estate flows from the Hindu Adoption and Maintenance Act, 1956, and from custom prevalent in the State of Punjab which enabled a widow to seek maintenance from the estate of her husband even where the husband had passed away, prior to enactment of the Hindu Succession Act, 1956 and the property had devolved upon sons or agnates or cognates. To support the aforesaid opinion, it would be appropriate to tabulate a few relevant precedents and reproduce

relevant extracts.

1. V.Tulasamma and others Vs. Sesha Reddy (Dead) by LRs, 1977(3) SCC 99. A relevant extract from the judgment, reads as follows: -

"Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right; (Emphasis ours);

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

Thereafter, Section 14(2) of the Act was interpreted in the

following terms: -

"1. Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation.

2. Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

3. Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

4. The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14 (1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2)."

A reference may also be made to judgments in Ram Kali (Smt.) Vs. Choudhri Ajit Shankar and others, 1997(9) SCC 613; Bhoomireddy Chenna Reddy and another Vs. Bhoospalli Pedda

Verrapa (Dead) by LRs and another; 1997 (10) SCC 673, Raghubar Singh Vs. Gulab Singh, 1998(3) RCR (Civil) 330; Maharaja Pillai Lakshmi Ammal Vs. Maharaja Pillai Thillanayakom Pillai and another, 1988(1) SCC 99; and Vaddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi (dead) by LRs, AIR 1977 SC 1944(1).

As regards the widow's right to maintenance, it would be appropriate to make a reference to the judgment of the Hon'ble Supreme Court in Bai Vajja (dead) by Lrs. Vs. Thakorbhai Chelabhai and others, AIR 1979 SC 993. A relevant extract from the judgment, reads as follows: -

“(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoyed by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu Jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.”

Counsel for the respondents has relied upon the following judgments in support of his plea that the will confers a limited estate:-

1. Shivdev Kaur (D) by LRs and others Vs. R.S.Grewal, 2013(3) RCR (Civil) 20;

2. Ranvir Dewa and another Vs. Rashmi Khanna and others, 2014(2) RCR (Civil) 781;
3. Jamuna Devi and others Vs. Chet Singh and others, 2014(2) RCR (Civil) 222; and
4. Sharad Subramanyan Vs. Soumi Mazumdar and others, 2006(3) ACJ 735 (SC).

A perusal of these judgments reveals that they are not in conflict with and do not depart from the judgments referred to in the preceding paragraphs. All that these judgments record is that Section 14(2) of the Act would come into operation only where a female Hindu is conferred an interest in the property without a pre-existing right.

Thus, the situation in law, in my considered opinion, is clear that where a female Hindu who had a pre-existing right receives a bequest of property by a Will, hedged in by caveats indicating a limited estate, the bequest so made would partake the nature of an absolute bequest, conferring an absolute estate and consequently a right to alienate the property. Smt. Kishan Kaur was governed by Hindu Law and had a pre-existing right of maintenance. Smt. Kishan Kaur would, therefore, take the property bequeathed under the Will as absolute owner with an inherent right to alienate the property. The Full Bench judgment relied by the courts below cannot be said to lay down the correct proposition in law in view of judgments of the Hon'ble Supreme Court. The substantial question of law is accordingly answered in the above terms in favour of the appellant.

and against the respondents.

The trial Court and the first appellate Court have held that the will confers a limited estate, thereby debarring Smt.Kishan Kaur from selling the land, in dispute. In view of the answer to the substantial question of law, it must necessarily follow that the Courts below have committed errors of law while interpreting Section 14 of the Act and holding that the will conferred a limited estate upon Smt.Kishan Kaur. The courts below failed to consider that Smt. Kishan Kaur had a pre-existing right of maintenance and in view of Section 14(1) of the Act, would inherit the land, in dispute, as an absolute owner, with an inherent right to alienate the property in favour of the appellant.

Consequently, the appeal is allowed, the impugned judgments and decrees recorded by the Courts below are set aside and the suit is dismissed, but with no order as to costs. Decree sheet be drawn accordingly.

27th May, 2015

Shamsher S. Sabharwal

[RAJIVE BHALLA]
JUDGE