

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Regular Second Appeal No.663 of 1987(O&M)
Date of Decision: November 16, 2015

Kartar SinghAppellant
versus
Jangir Singh and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

Present: None for the parties.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

This regular second appeal is at the instance of plaintiff whose suit for possession was dismissed by the Sub Judge, 1st Class, Faridkot vide judgment and decree dated 31.10.1984 which was further upheld by the 1st Appellate Court vide judgment and decree dated 17.09.1986.

[2] The instant appeal gives rise to the following two substantial questions of law:-

- (1) Whether Smt.Bhaggi was absolute owner of the estate left by her husband-Puran Singh under Sub-section(1) or she acquired only limited rights under Sub-section (2) of Section 14 of the Hindu Succession Act, 1956 (in short, 'the 1956 Act')?
- (2) Whether the respondent-defendants are entitled to defend their title as bonafide

purchasers?

[3] A brief reference to the facts would necessitate for appreciation of the points in issue.

[4] Puran Singh was owner in possession of the suit-land measuring 41 kanal 12 marla. Smt.Bhaggi was wife of Puran Singh. They were issueless. The appellant (Kartar Singh) is natural son of Narain Singh and Smt.Dhanno. Smt. Bhaggi and Smt.Dhanno were real sisters. Puran Singh and Smt.Bhaggi adopted the appellant vide Adoption Deed (Exhibit PZ) executed on 17.04.2003 B.K. (equivalent to the year 1946).

[5] Puran Singh died on 01.01.2004 B.K. Smt.Bhaggi was admittedly alive when the 1956 Act came into force.

[6] The Adoption Deed (Ex.PZ) purportedly recites the extent of rights given to Smt.Bhaggi in the estate of her husband Puran Singh after the latter's death. It reads as follows:-

“... During our life time, I and my wife will be deemed to be the 'Malik' of moveable and immovable property and after my death and that of my wife, Kartar Singh, my adopted son, will be considered to be the Malik and in possession of that property. My property is situated in Jaitu and Ramowala and of all of this property my adopted son will be the 'Malik' after my death and the death of my wife.....”

(emphasis applied)

[7] It is not in dispute that the subject land had been mortgaged with possession by Puran Singh during his life time in favour of defendant-respondents. It was never got

redeemed. After the death of Puran Singh, the land was mutated in favour of Smt.Bhaggi. Smt.Bhaggi sold it for consideration to the respondents vide registered sale deed dated 13.12.1980.

[8] The plaintiff-appellant questioned the right of Smt.Bhaggi to alienate the suit land as well as the consequential sale deed and sought a decree for possession on the premise that he is the sole legal heir of Puran Singh and Smt.Bhaggi and that Smt.Bhaggi being a 'limited owner' as per the Adoption Deed, could not have alienated the same for want of absolute title.

[9] The respondents contested the appellant's claim on two counts. Firstly, they maintained that in view of Section 14(1) of the 1956 Act Smt.Bhaggi was the absolute owner and secondly, they had made proper enquiry in respect of the title of Smt.Bhaggi and after due diligence, purchased the land bonafidely for consideration.

[10] The appellant, on the other hand, relied upon Sub-section (2) of Section 14 of the 1956 Act to contend that Smt.Bhaggi did not acquire rights in the property other than those conferred by the Adoption Deed.

[11] The parties went on trial on the following issues:-

- “(1) Whether Amar Singh and plaintiff are governed by customary law in matters of adoption and succession? OPP.
- (2) Whether the plaintiff was adopted as a son by Puran Singh according to custom?OPP
- (3) Whether Smt.Bhaggi was having only life estate according to deed of adoption dated 17.04.2003 BK? OPP.

- (4) Whether Smt.Bhaggi became full owner of property by virtue of Section 14 of Hindu Succession Act?
- (5) Whether the defendants are bonafide purchasers for value without notice? OPD.
- (6) Whether the suit is barred by Order 2 Rule 2? OPD.
- (7) Whether the land in question was mortgaged with possession by Puran Singh with defendant about 60/70 years back and has not been redeemed, If so, its effect? OPD.
- (8) Whether the suit is bad for limitation? OPD.
- (9) Relief.

[12] The Courts below have answered Issue No.4 against the appellant and Issue No.5 in favour of the respondent-defendants and thus dismissed the suit.

[13] I have gone through the record. As there is no dispute on facts, the core question to be determined is whether the rights acquired by Smt.Bhaggi in the estate of her deceased-husband fall within the ambit of Section 14(1) or 14 (2) of the 1956 Act?

[14] It is by now well settled in a catena of decisions that Sub-section (2) of Section 14 of the 1956 Act is to be read as a proviso or an exception to sub-section (1) of Section 14 and it operates only in a case where the right in property is created for the first time and there was no pre-existing right in favour of female Hindu. Contrarily, if there was a pre-existing right, be it a life estate only, sub-section (1) of Section 14 applies with full force irrespective of the cloak created on such right and the female Hindu acquires absolute right in such

property.

[15] In the instant case, Smt.Bhaggi was admittedly the legally wedded wife of Puran Singh, who pre-deceased her. Undoubtedly, Smt.Bhaggi had a right to be maintained out of the properties of her deceased-husband. That pre-existing right stood crystalized into an absolute right by virtue of Section 14(1) when the 1956 Act came into force. The revenue authorities rightly recorded Smt.Bhaggi as one of the owner of suit-property. It is equally well settled that a Hindu woman has legally enforceable right to seek maintenance and the husband owes a duty to maintain her even if he does not own any property. Since the husband has got a personal obligation to maintain his wife, his properties can be put under a charge by way of a decree for maintenance though right to maintenance per-se does not create such charge on his properties.

[16] The recital in the Adoption Deed (Ex.PZ) does not attract Sub-section (2) of Section 14 of the 1956 Act, for Smt.Bhaggi had got a pre-existing right to maintenance against the estate of her deceased-husband Puran Singh. It was not a case where Smt.Bhaggi would have no limited right in the estate of Puran Singh but for the recital in the Adoption Deed (Ex.PZ). Sub-section (2) of Section 14 of the 1956 Act could apply only if Smt.Bhaggi had no right whatsoever in the estate of Puran Singh except what was given to her under the Adoption Deed. The facts being altogether different, the Courts below have rightly held that Smt.Bhaggi became absolute owner of the estate left by her deceased- husband after Section 14(1) of the 1956 Act came into force.

[17] In V.Tulasamma and others versus Sesha Reddy (dead) by LRs., (1977) 3 SCC 99 the Supreme Court ruled that :-

“.....(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 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 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) xx xx xx xx

(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;

(5) xx xx xx xx

(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.....”

[18] On the second question also, the findings returned by the Courts below do not call for any interference. Smt.Bhaggi was duly recorded as the owner/co-owner of the land. The respondents, who were mortgagees with possession enquired about the title of Smt.Bhaggi before purchasing the subject-land for consideration. They have been found to be bonafide purchasers. As regard to the scope of Sub-section(2) of Section-14 of the Act, V.Tulasamma and others' case (supra) holds that:-

“.....(3) 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.

(4) 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 recognize 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.

(5) 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).....”

[19] These principles have been re-stated in a long chain of decisions by the Supreme Court including the latest in Civil Appeal No.375 of 2007 (Jupudy Pardha Sarathy versus Pentapati Rama Krishna and others) decided on 06.11.2015.

[20] No case to interfere with the impugned judgments and decrees is called for.

[21] Dismissed.

November 16, 2015
mohinder

[SURYA KANT]
JUDGE