

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

**Regular Second Appeal No.321 of 2011 (O&M)
Date of Decision: December 15, 2016.**

Surjit Kaur and others

.....APPELLANT(s).

VERSUS

Jaswant Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant (s).

Mr. Sanjay Gupta, Advocate
for the respondents.

SURINDER GUPTA, J.

This is second appeal by legal heirs of Swaran Singh, defendant (since deceased), against concurrent findings of the Courts below, whereby the suit filed by Smt. Dropti Devi daughter of Thakur Singh wife of late Joginder Singh (since deceased) now represented by legal heirs, was decreed and she was declared owner of the suit land measuring 18 kanals 10 marlas as fully described in the head note of the plaint and the sale deed dated 15.04.1993 in respect of 206/362 share out of this land in favour of defendant was declared as void, illegal, ineffective and inoperative on the rights of the plaintiff. She was held entitled to possession of land measuring 10 kanals 6 marlas contained in khasra Nos. 1405, 1406, 1407, 1118/1408 and 1912/1408.

2. The case of plaintiff Dropti Devi, in brief, is that suit land was owned by Thakur Singh son of Hamira father of plaintiff. He died in the year 1978. Vide Will dated 26.11.1973, 10 kanals 6 marlas of land contained in khasra No.1405, 1406, 1407, 1811/1408 and 1912/1408 was bequeathed to Deep Kaur, step mother of plaintiff Dropti Devi with usual condition that she will get produce of the land but shall not be entitled to dispose of the same. Mutation No.3795 was sanctioned in favour of Deep Kaur as per the Will and she died on 19.01.1999. Plaintiff approached the patwari and came to know that defendant had got the mutation sanctioned as per sale deed dated 15.04.1993 with respect to 206/362 share out of the suit land in khata No.230/480 and 482. It has been alleged that the deceased never executed alleged sale deed or received any sale consideration. She had no right to transfer the suit land as only limited rights were given to her under the Will. The defendants were requested to admit the claim of the plaintiff over the suit land but in vain, hence, this suit.

3. The defendant Swaran Singh contested the claim of plaintiff, inter-alia pleading that they had purchased the suit land from Deep Kaur who was absolute owner in possession of the same. He is now in possession of land measuring 10 kanals 6 marlas as a cosharer and the plaintiff is not entitled to seek possession of these khasra numbers. Earlier his possession over the suit land was as tenant under Deep Kaur as per the lease deed executed in the year 1983 and 1987. The defendant purchased the land measuring 10 kanals 6 marlas from Deep Kaur after going through the revenue record where she was entered as owner without any restriction or rider on her right. Even otherwise, as per provisions of Section 14 Hindu

Succession Act, 1956 (later referred to as 'Act of 1956') Deep Kaur had become absolute owner of the suit land and any rider or restriction upon her right was not operative against her. The factum of Will dated 26.11.1973 was denied.

4. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether deceased Thakur Singh executed a will dated 26.11.1973 in favour of plaintiff? OPP
- (2) Whether the plaintiff is entitled to decree of declaration as prayed for? OPP
- (3) Whether the plaintiff has no locus standi to file the present suit? OPD
- (4) Whether the plaintiff is estopped to file the present suit by his(sic her) act and conduct? OPD
- (5) Whether the defendant has purchased the property in dispute from Deep Kaur vide sale deed dated 15.4.1993?OPP
- (6) If issue No.5 is proved, whether the alleged sale deed is null and void, illegal, ineffective and inoperative? OPP
- (7) Whether the defendant is bonafide purchaser? OPD
- (8) Whether the present suit is hit by Sec.14 of Hindu Succession Act, 1956? OPD
- (9) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- (10) Whether the suit is within limitation? OPD
- (11) Relief.

5. While recording findings on issues No.1 and 2 by learned Civil Judge (Junior Division), Dasyua, Will dated 26.11.1973 executed by Thakur Singh in favour of plaintiff Dropti Devi and his wife Deep Kaur was held as valid. However, on the basis of this Will, plaintiff was declared owner of the suit land, which also include suit land i.e. 206/362 share bequeathed to

Deep Kaur. While recording finding on issues No.5, 6 and 7, learned Civil Judge observed that the sale deed is invalid as '*no sale consideration was ever paid to Dropti Devi and she had no right to execute the sale deed*'. It appears that the Civil Judge got confused between names of Dropti Devi and Deep Kaur as sale deed was executed by Deep Kaur and not Dropti Devi. Swaran Singh while appearing as DW1 has stated that he paid the sale consideration to Deep Kaur and not to Dropti Devi. On issue No.8, it was observed that Deep Kaur had limited right of possession over the land given to her and had not become its absolute owner, as such, was not competent to sell the same to defendant Swaran Singh.

6. Appeal filed by defendant Swaran Singh was also dismissed by learned Additional District Judge (Ad hoc), Fast Track Court, Hoshiarpur with the observation that Deep Kaur was given only limited right of possession of the suit land and she was not competent to alienate the same.

7. Learned counsel for the appellants has argued that both the Courts below have gone wrong on a very vital legal question as to whether Deep Kaur was absolute owner of the suit property or was having limited right therein. Referring to the provisions of Section 14(1) of Hindu Succession Act, 1956 (later referred to as 'the Act of 1956'), he has argued that Deep Kaur was given right to have the crop of the land measuring 10 kanals 6 marlas given to her. This shows that testator had recognised her pre-existing right of maintenance and as per provisions of Section 14(1) of the Act of 1956, she had become absolute owner of the suit property. He has relied on the observations of Hon'ble Apex Court in case of ***Sharad Subramanyan Vs. Soumi Mazumdar & Ors 2006(8) SCC 91; Santhosh***

and others Vs. Basanti Devi represented by Legal Representatives and others 2007(4) PLR 514(P&H); Bhim Sain Vs. Kaushalya Devi alias Prem Lata and others 2010(1) PLR 113(P&H).

8. Learned counsel for the respondents has argued that Deep Kaur was given limited right to use the produce of the agricultural land measuring 10 kanals 6 marlas but her right was limited one and she could not alienate the suit land. Both the Courts below have rightly applied the provisions of Section 14(2) of the Act of 1956 while decreeing the suit of the plaintiff.

9. Substantial question of law which arise for consideration in this appeal are as follows:-

- (i) Whether Deep Kaur had become absolute owner of suit land measuring 10 kanals 6 marlas bequeathed to her by her husband Thakur Singh vide Will dated 26.11.1973, as per provisions of Section 14(1) of the Act of 1956 or she was having limited rights in the suit land as per provisions under Section 14(2) of the above Act?***
- (ii) Whether the sale deed dated 15.04.1993 executed by Deep Kaur in favour of Swaran Singh defendant is duly proved?***

10. Admittedly, the possession of the suit land is with the appellants-defendant. Plaintiff has challenged the transfer of this land by Deep Kaur to Swaran Singh vide sale deed dated 15.04.1993 and it is nowhere case of the plaintiff that the sale deed was executed without consideration. Learned Civil Judge discarded this admitted document on the ground that payment of the sale consideration to Dropti Devi (or the vendor) is not proved and the same was without consideration. This observation of learned Civil Judge is beyond pleading of plaintiff and is not

based on any evidence. Plaintiff herself has proved the sale deed by examining registration clerk of Sub Registrar, Dasyua as Ex.P1. Jaswant Singh, who is son of Dropti Devi while appearing asPW4 has stated that they came to know about the sale deed executed by Deep Kaur in favour of defendant. He has nowhere stated that this sale deed was without consideration. The first Appellate Court has not gone into the legality and validity of the sale deed executed by Deep Kaur or recorded any finding to this effect. As the sale deed dated 15.04.1993 is virtually an admitted document, the finding of Civil Judge declaring this document as invalid on the ground that it was without consideration is beyond evidence and pleadings of parties and deserve to be set aside.

11. The main dispute in this case is not as to whether Deep Kaur had executed the sale deed or not but the plea raised by the plaintiff is that Deep Kaur was not competent to execute the sale deed. Before proceeding further, it will be relevant to have a look on the recital in the Will dated 26.11.1973 by Thakur Singh. He recited in the Will that after his life time, his land measuring 10 kanals 6 marlas bearing khasra Nos.1405, 1406, 1407, 1408 and 1811/1408 and 1912/1408, Will devolved on his wife Deep Kaur and she will have life interest in this land. His entire other movable and immovable property will devolve on his daughter Dropti. Deep Kaur will have right to have produce of the land measuring 10 kanals 6 marlas but she will not be competent to alienate the same. After her death Dropti Devi will become owner of this land.

12. Before proceeding further, it will be appropriate to have a look at provision contained in the Act of 1956, regarding property of a female

Hindu. Section 14 of the Act, 1956 prescribes that property of Hindu female shall be her absolute property. It reads as follows:-

“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. "

13. Section 14(2) is an exception to the principle laid down in this Section that female shall hold the property as full owner and not as limited owner when she had acquired property by way of gift or under a Will or other instrument or decree etc., which prescribed a restricted interest in the property. Plain reading of Section 14(2) prescribes that when there is a condition in the Will that the limited right has been given to a female, she will not become absolute owner of the same. After complete survey of Shastric Hindu Law and changes therein brought under Section 14 of the

Act of 1956 Apex Court curled out the principles arising therein in case of ***V.Tulasamma Vs. Shesha Reddy(dead) by L.Rs. (1977)3 SCC 99*** as follows:-

"(1) that the provisions of Section 14 of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;

(2) it is manifestly clear that sub-section (2) of Section 14 does not refer to any transfer which merely recognises a pre-existing right without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Pershad's case ((1969) 2 SCC 586).

(3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;

(4) that sub-section (2) of Section 14 is merely a proviso to subsection (1) of Section 14 and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision."

14. The law as laid down in the case of ***V.Tulasamma Vs. Shesha Reddy(dead) by L.Rs. (supra)*** came for detailed discussion before Hon'ble Apex Court in case of ***Sharad Subramanyan Vs. Soumi Mazumdar & Ors (supra)*** and it was observed in para 12, 13 and 14 as follows:-

"12. Analysing the scope and extent of sub-section (2) of Section 14 of the Act, which this Court treated as a proviso to sub-section (1), this Court took the view that as a proviso it should be interpreted in such a way so as not

to substantially erode sub-section (1) of Section 14 and the Explanation thereto. It was pointed out that sub-section (2) had carved out a completely separate field and before it could apply, the following three conditions must be satisfied:

"(i) that the property must have been acquired by way of gift, will, instrument, decree, order of the Court or by an award;

(ii) that any of these documents executed in favour of a Hindu female must prescribe a restricted estate in such property; and

(iii) that the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a pre-existing right which the female Hindu already possessed."

Finally, this Court said:

"Where any of these documents are executed but no restricted estate is prescribed, sub-section (2) will have no application. Similarly where these instruments do not confer any new title for the first time on the female Hindu, Section 14(2) would have no application. It seems to me that Section 14(2) is a salutary provision which has been incorporated by the Parliament for historical reasons in order to maintain the link between the Shastric Hindu Law and the Hindu Law which was sought to be changed by recent legislation, so that where a female Hindu became possessed of property not in virtue of any pre-existing right but otherwise, and the grantor chose to impose certain conditions on the grantee, the Legislature did not want to interfere with such a transaction by obliterating or setting at naught the conditions imposed."

13. After noticing the divergent views of different High Courts, this Court, summarised its conclusion as under:

"(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 enjoined 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.

(2) 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.

(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 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.

(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 subsection (2).

(6) The words "possessed by" used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14 (1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words "restricted estate" used in Section 14(2) are wider than limited interest as indicated in Section 14 (1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

14. In this case, it was observed that, the properties in suit were allotted to the appellant-Tulsamma under a compromise certified by the Court; that the appellant had taken only a life interest in the properties under the compromise deed. However, she continued to be in possession of the properties till 1956 when the Act came into force and, therefore, by reason of Section 14(1), the properties were allotted to her in recognition and in lieu of her right to maintenance, which was a pre-existing right. Consequently, it fell out of the ambit of sub-section (2) of Section 14 of the Act as a result of which she became the full owner of the properties involved."

15. In case of *Santhosh and others Vs. Saraswathibai and another (supra)* some land was given to wife under a decree for her maintenance till her death with the rider that she will not alienate (through

gift or sale of the land) given to her and after her death this land will revert to defendants No.1 and 2. Husband died in the year 1987 and the question which arose for consideration was as to whether provisions of Section 14(2) or 14(1) of the Act of 1956 would apply. Hon'ble Apex Court relying on the principle laid down in case of ***V.Tulasamma Vs. Shesha Reddy(dead) by L.Rs. (supra)*** upheld the view that provisions of Section 14(1) of the Act of 1956 will apply in such a case. While making these observations, it was observed in para 16 as follows:-

“16. In ***Nazar Singh and others vs. Jagjit Kaur and others : (1996) 1 SCC 35***, this Court following ***Tulasamma*** (supra) held as under :-

“The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. According to this decision, Subsection (2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Sub-section (2) even if the instrument, decree, order or award allotting the property to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial Singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants accompanying the grant. (Also see the recent decision of this Court in ***Mangat Mal v. Punni Devi*** where a right to residence in a house property was held to attract Subsection (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.) According to Sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the

commencement of the Hindu Succession Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was "possessed" by her. Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. This proposition follows from the words in Sub-section (1), which insofar as is relevant read : "Any property possessed by a female Hindu....after the commencement of this Act shall be held by her as full owner and not as a limited owner". In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession. So far as the expression "possessed" is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case."

16. In case titled as ***Rati Ram and others Vs. Basanti Devi, represented by Legal Representatives and others (supra)*** the matter in issue before a Co-ordinate Bench of this Court was as to whether a female who was having limited right over the land after the death of her husband has attained absolute ownership under the provisions of Section 14(1) of the Act of 1956. The brief facts of the case find mention in para 2 and are extracted as follows:-

“..... In terms of this compromise, Sheo Lal was given limited right to use the land in question without any right to alienate or mortgage the same. It was further agreed that on the death of Sheo Lal without any male lineal, his surviving wife would also have the limited right

in the land, which comprises of 1/6th share of the total estate of Har Narain. Under the compromise, it was also stipulated that after the death of the widow in the absence of a male lineal, the land will revert back to the plaintiffs i.e. the heirs of Har Narain, who will be entitled to take possession and Makhan will have no right over the land.”

17. In that case, Sheo Lal died in the year 1961-62 and the land to the extent 1/6th share was mutated in favour of his wife Chimli and his daughter. Chimli died in the year 1961 and dispute arose as to whether land had reverted to the heirs of Har Narain. After discussing the law on the point, it was observed in para 15 as follows:-

“15. The test laid down by the Hon'ble Apex Court to differentiate between the rights under Sub-section (1) of Section 14 and Sub-section (2) of Section 14 of the Act is where a female had a pre-existing right in the property devolved/acquired with limited estate; she will be entitled to be conferred with full ownership right under Section 14 (1) of the Act. However, where a female acquires a right by virtue of an instrument, gift, will or a decree or order of a Court for the first time with restrictions on the right, Sub-section 14 (2), will apply.”

18. In case of ***Bhim Sain Vs. Kaushalya Devi alias Prem Lata and others (supra)*** similar observations were made by another Co-ordinate Bench of this Court and limited rights conferred on the wife under the Will over the property in lieu of her maintenance were held as governed by Section 14(1) of the Act of 1956.

19. Applying the principle of law laid down by Hon'ble Apex Court in case of ***V.Tulasamma Vs. Shesha Reddy(dead) by L.Rs. (supra)*** to the

facts of the present case, I find that deceased Thakur had given 10 kanals 6 marlas of land to his wife to ensure her maintenance throughout her life. She was given the right to have the produce of the land which further depict the intention of the testator that he was concerned about the maintenance of his wife after his death. A woman's right to maintenance is a personal obligation so far as the husband is concerned and casts a duty on him to ensure that she is maintained during his life time and after his death from the property, if he owns some immovable property. Right of maintenance of wife and after the death of widow become an equitable charge on his property and as held in the case of ***V.Tulasamma Vs. Shesha Reddy(dead) by L.Rs. (supra)*** any person who succeed the property carries with it the legal obligation to maintain the widow. Thus Deep Kaur was having pre-existing right in the property of her husband which were virtually recognised vide Will dated 19.01.1999, as such, provisions of Section 14(1) of the Act of 1956 apply to the property acquired by her under the Will of her husband and she had attained full ownership and not limited ownership over 10 kanals 6 marlas of land sold by her to appellant.

20. Learned counsel for the respondent has relied on the observation of Hon'ble Apex Court in case of ***Naresh Kumari(dead) by LRs and Another Vs. Shakshi Lal (dead) by LRs and Another 1999(1) Apex Court Journal 477*** where the sale made by a female who was holder of limited interest in the property was held to be not valid. The facts of that case are distinguishable from the facts of this case. In that case limited owner Smt. Keshri had sold her limited interest before coming into force of the Act of 1956 and in the litigation initiated before coming into force of the

Act of 1956 that sale was held to be void and judgement to this effect had attained finality. It was in this context that Hon'ble Apex Court held that the provisions of Section 14(2) are applicable and not Section 14(1) of the Act of 1956.

21. As a sequel of above discussion, I am of the considered opinion that both the Courts below have committed grave error of law while observing that the provisions of Section 14(2) of the Act of 1956 are applicable in this case. Deep Kaur had become absolute owner of the property given to her under the Will as per the provisions of Section 14(1) of the Act of 1956 and the sale made by her was legal and valid. Consequently, the findings of the Courts below to this effect are reversed and set aside.

22. Consequent to my above discussion, both the substantial questions of law are decided in favour of the appellants. The appeal has merits and is accepted. Suit filed by the plaintiff is dismissed with costs throughout.

December 15, 2016

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No