

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO.302 OF 1992
WITH
CIVIL APPLICATION NO.2988 OF 1992
IN
SECOND APPEAL NO.302 OF 1992**

Smt. Gangubai Maruti Jadhav,
since deceased, through her legal heirs
and legal representatives.

...Appellants

vs.

Dattatraya Tukaram Pharane
since deceased, through his legal heirs
and legal representatives.

...Respondents

AND

SECOND APPEAL NO.164 OF 1992

Kisabai Ramu Pharne And Anr.

...Appellants

vs.

Dattatraya Tukaram Pharane
since deceased, through his legal heirs
and legal representatives.

...Respondents

....

Mr. R.R. Salvi, for the Appellants in SA/302/1992 and CAS/2988/1992.

Mr. N.V. Walawalkar, Senior Advocate, a/w. A.M. Savagave, for the
Appellants in SA/164 of 1992.

Mr. Sukand R. Kulkarni, for Respondent No.1(A) to 1(E).

.....

CORAM : S.C. GUPTE, J.

DATED : 22 MARCH 2017

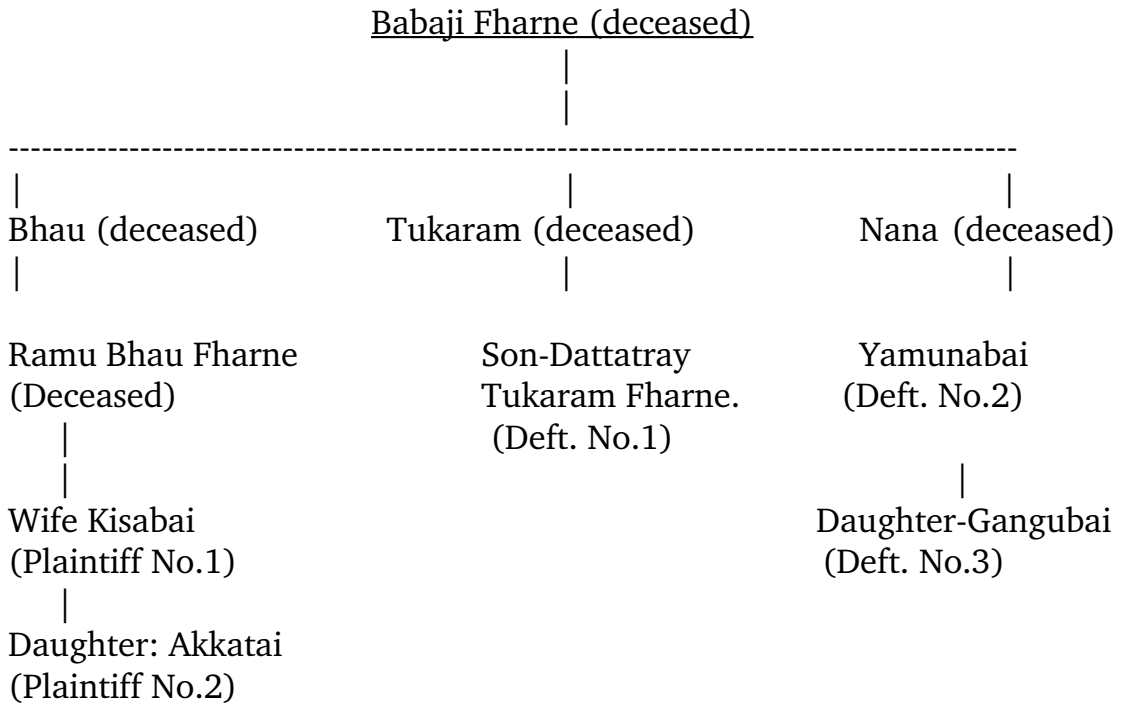
(ORAL JUDGMENT) :

. Second Appeal No.164 of 1992 impugns a judgment and order passed by the District Court at Kolhapur in Regular Civil Suit No.15 of 1986. By the impugned judgment and order, the learned District Judge allowed the first Respondent's (Original Defendant No.1) appeal and set aside the judgment and decree passed by the Trial Court in Regular Suit No.185 of 1979 filed by the Appellants (Original Plaintiffs). Second Appeal No.302 of 1992 is preferred by Original Defendant No.3 to that suit.

2. The subject matter of controversy in these Second Appeals concerns the right of a Hindu widow under Section 14(1) of the Hindu Succession Act, 1956 ("Act"). Possession of the suit property in the present case, which was claimed by original Plaintiff and Defendant No.2 as being referable to their right of maintenance as widows of deceased coparceners, was held by the Trial Court to have matured into full ownership under that provision. The Appeal Court denied such full ownership on the ground that the widows were not limited owners of the property. Substantial questions of law arise in the Second Appeals in connection with the kind of title or right necessary to be established by a Hindu widow so as to claim full ownership under Section 14(1) of the Act – both from the standpoint of what is the correct law on the subject, and whether such law is correctly applied by the lower Appellate Court.

3. The Plaintiffs' case is that the suit properties are ancestral

properties, held by them jointly between themselves and Defendant Nos. 1 to 3. The genealogical tree given by the Plaintiffs, and which is not disputed in the present case, is as follows :-



It is the case of the Plaintiffs and Defendant No.3 (who claims through Defendant No.2) that Plaintiff No.1 and Defendant No.2, who were widows of the deceased coparceners, Ramu and Nana, were in separate possession and enjoying the suit property under a family arrangement, their separate cultivating possession being reflected in the revenue records since the year 1952-53. They prayed for partition of the suit properties in three shares - 1/3rd share to Plaintiffs, 1/3rd share to Defendant No.1 and the remaining 1/3rd to Defendant Nos. 2 and 3.

4. Though Defendant No.1 admits the genealogy as well as the ancestral status of the property, his case is that after the demise of

Ramu and Nana, the suit properties came in possession of his father, Tukaram, as an exclusive owner. It is his case that Plaintiff No.1 and Defendant No.2 were residing separately during the life time of his father, Tukaram, having only a right of maintenance. Tukaram, accordingly, allowed one room each to them in the suit house and also paid maintenance allowance to them. Tukaram died on 29 August 1968 and, after his demise, Defendant No.1 became exclusive owner of the suit properties. It is denied that Plaintiff No.1 or Defendant No. 2 were ever cultivating the suit lands. It is the case of Defendant No.1 that Plaintiff No.1 and Defendant No.2 got their names entered in the record of rights by furnishing false information. Alternatively, he submits that his father, Tukaram, was in possession and, after his demise, Defendant No.1 came into possession of the suit properties and became owner by adverse possession. Further alternatively, it is submitted that Tukaram, Nana and Ramu had mortgaged the suit land to one Krishna Satu Kanchanale; that the mortgage was redeemed by Tanibai, mother of Defendant No.1, on 22 November 1951 by paying a sum of Rs.215/- and obtaining possession thereof; and that since then the suit properties were in her exclusive possession and, after her death, the lands came in his hands as legal heir of Tanibai. On these pleadings, the parties went to trial. The Trial Court in its judgment and decree in favour of the Plaintiffs held that the Plaintiffs had proved that they had 1/3rd share in the entire suit property; that Defendant No.1 had failed to prove that he had acquired title to the suit property by adverse possession or as successor in interest of Tanibai, who redeemed the suit property from Krishna Satu Kanchanale. The Trial Court, in the premises, decreed the respective shares of the parties, namely, Plaintiff Nos. 1 and 2 together, Defendant

No.1 and Defendant No.3 each having 1/3rd share in the suit property. The Trial Court, accordingly, passed a preliminary decree and ordered partition of the property by metes and bounds. On the main controversy in the suit, namely, full ownership of Plaintiff No.1 and Defendant No.2 as widows in possession under Section 14(1) of the Act, the Trial Court held that the two widows were possessed of the suit property within the meaning of Section 14(1) of the Act and after the coming into force of the Act, became full owners of their respective shares in the suit property. The lower Appellate Court did not disagree with the conclusion of the Trial Court, insofar as the acquisition of title by Defendant No.1 either by adverse possession or as a successor-in-interest of Tanibai was concerned. The lower Appellate Court, however, held that mere possession of the suit properties by the widows did not make them full owners of the property under Section 14(1) of the Hindu Succession Act. The Court held that the widows had to prove that their possession was referable to some legitimate claim or title as limited owner of the suit property. The lower Appellate Court held that there was no such proof. It accordingly allowed the appeal and dismissed the suit.

5. Section 14 of the Hindu Succession Act, 1956 provides 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.”

6. In **Eramma vs. Veerupana**¹, the Supreme Court, explaining the provisions of Section 14 of the Act, held that it was not attracted where a female Hindu came in possession of the property without any right to it. The law was stated by the Supreme Court in the following words:-

“The property possessed by a female Hindu as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words “as full owner thereof and not as a limited owner” as given in the last portion of sub-section (1) of section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section.” (Emphasis supplied).”

1 AIR 1966 SC 1879

7. This position was also affirmed in the later case of **Bai Vajja v. Thakorbhai Chelabhai**², where the Supreme Court stated the law thus:

"A plain reading of sub-section (1) makes it clear that the concerned Hindu female must have limited ownership in property, which limited ownership would get enlarged by the operation of that sub-section. If it was intended to enlarge any sort of a right which could in no sense be described as ownership, the expression "and not as a limited owner" would not have been used at all and becomes redundant, which is against the well-recognised principle of interpretation of statutes that the Legislature does not employ meaningless language."

8. Relying on these observations, it was submitted before the Supreme Court in **Gulwant Kaur vs. Mohinder Singh**³ that what was enlarged by sub-section (1) of Section 14 into a full estate was the limited estate known as "Hindu woman's estate" as under Section 3 of the Hindu Womens' Rights to Property Act, 1937. The Supreme Court negated this contention in **Gulwant Kaur's** case holding that the words "limited estate", were used to connote a right in the property, to which the possession of the female Hindu may legitimately be traced, but which is not a full right of ownership. The Court proceeded to hold that if a female Hindu is put in possession of the property pursuant to, or in recognition of, a right to maintenance, it cannot be denied that she acquires a limited right in the property and once that position is accepted, it follows that this right gets enlarged into full ownership under Section 14(1) of the Act. In **Gulwant Kaur's** case, the properties

2 (1979) 3 SCR 291 : AIR 1979 SC 993

3 (1987) 3 Supreme Court Cases 674

belonged to the coparcener, Major General Gurbux Singh. His wife, Gulwant Kaur, was estranged and living apart with their son and daughter-in-law. The evidence before the Court indicated that lands was given to Gulwant Kaur in lieu of maintenance. Based on such possession, Gulwant Kaur claimed absolute ownership of the land under Section 14 of the Act. A learned Single Judge, who heard the Second Appeal, held that the land was indeed given to her in lieu of maintenance and that by virtue of Section 14 of the Hindu Succession Act, she had become full owner. On an appeal under the Letters Patent, a Division Bench of the High Court of Punjab and Haryana held that Gulwant Kaur was merely allowed to receive the proceeds of the land in dispute “*in order to meet her day-to-day expenses*” and that she did not at all acquire any right or interest in the property as could be termed 'limited ownership' so as to allow her the benefit of Section 14(1) of the Act. The Division Bench held that Major General Gurbux Singh never had any intention to give away the land to Gulwant Kaur. The Division Bench, accordingly, reversed the judgment of the learned Single Judge. The Supreme Court disagreed with the conclusions of the Division Bench. The Court observed that the question was not whether Major General Gurbux Singh intended to give away the land absolutely to Gulwant Kaur but “*whether the land was given to her in lieu of maintenance*”. The Supreme Court held that the record before the Court clearly established that the land was given to Gulwant Kaur by Gurbux Singh in lieu of maintenance, the Court expressing its inability to understand the distinction made by the High Court between 'day-to-day expenses' and 'maintenance'. The Supreme Court, in terms, repelled the contention on the part of successor-in-interest of Gurbux Singh that even if the land

was given to Gulwant in maintenance, it must be established that what was given to her was a limited estate in the sense of ownership without the right of alienation and that under Section 14 of the Hindu Succession Act only such a limited estate would blossom into an absolute estate. The Supreme Court analysed Section 14 of the Act in the following words:

“4. It is obvious that sec. 14 is aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under sec. 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Sub-sec. 2 of sec. 14 is in the nature of an exception to sec. 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedents right.”

9. The Supreme Court also referred to the dicta of the Court in **Tulasamma vs. Sesha Reddy**⁴ which clearly laid down that Section 14(1) would be applicable to the property given to a female Hindu in lieu of maintenance. The following observations in the case of **Tulasamma** were quoted by the Supreme Court:

"It will, therefore, be seen that sub-section (1) of Section 14 is

4 AIR 1977 SC 1944

large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or subsequently acquired and possessed, she would become the full owner of the property. Now, sub-section (2) of Section 14 provides that nothing contained in sub-section (1) shall apply to another property acquired by way of gift or under a will or any instrument or under a decree by order of a civil court or under an award when the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property. This provision is more in the nature of a proviso or an exception to sub-section (1) and it was regarded as such by this court in *Badri Pershad v. Kanso Devi* (supra) It is, therefore, clear that under the Shastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged in the joint family property and even if no specific charge is created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim. The right of the widow to be maintained is of course not a *jus in rem*, since it does not give her any interest in the joint family property but it is certainly *jus ad rem*, i.e., a right against the joint family property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her *jus ad rem*, namely, the right to be maintained out of the joint family property. It would not be a grant for the first time without any preexisting right, in the widow. The widow would be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time without any antecedent right or title. There is also another consideration which is very relevant to this issue and it is that, even if the instrument were silent as to the nature of the interest given to the widow in the property and did not, in so many terms, prescribe that she would have a limited interest, she would have no more than a limited interest in the property under the Hindu Law as it stood prior to the enactment of the Act and hence a provision in the instrument prescribing that she would have only a limited interest in the property would be, to quote the words of this Court in *Nirmal Chand's* case

(supra), "merely recording the true legal position" and that would not attract the applicability of sub-section (2) but would be governed by sub-section (1) of Section 14. The conclusion is, therefore, inescapable that where property is allotted to a widow under an instrument, decree, order or award prescribes a restricted estate for her in the property and sub-section (2) of Section 14 would have no application in such a case."

10. Based on the law stated by the Supreme Court, as noted above, it is quite apparent that a property given to a female Hindu in lieu of her maintenance, which is in her possession on the date of coming into force of the Hindu Succession Act, 1956, matures into full ownership by virtue of Section 14(1) of the Act.

11. Coming now to the facts of our case, it is pertinent to note that both the Trial Court as well as the lower Appellate Court came to a concurrent finding that the widows were in possession of the properties by virtue of a family arrangement. Apart from the conclusion of family arrangement in favour of the widows, there were 7/12 extracts and land revenue assessment receipts on record, which showed the names of the widows in the revenue record in respect of the suit land. The Trial Court, in fact, proceeded to hold that from the extracts of the lands, it seemed that the lands were Inami lands which were not partible and accordingly the names of Plaintiff No.1, Defendant No.2 and Tukaram, father of Defendant No.1, were entered into the revenue record as joint owners and possessors in respect of the suit lands from the year 1953 and there was no partition of the suit lands, which were still joint and it seemed *"from the 7/12 extracts and the land revenue assessment that the parties to this suit are in possession of the suit property by mutual*

agreement". The lower Appellate Court noted that learned Counsel for Defendant No.1 did not, during the course of his submissions, challenge the observations made by the Trial Court that Plaintiff No.1 and Defendant No.2 were in possession of the suit properties to the extent of their 1/3rd share each. The lower Appellate Court also did not dispute the case of family arrangement, holding in terms that the lower Appellate Court found itself "*in concurrence with the observations made by the Court below that there was no partition as such by metes and bounds in between coparceners and it was family arrangement*". Based on this evidence before the Courts below, it is quite clear that the possession of the widows was not a matter of dispute before the lower Appellate Court. The lower Appellate Court, however, denied the benefit of Section 14(1) to the widows on the ground that mere possession of a female Hindu of any property does not make her a full owner of the property under that Section. The Court, relying on the decision of a learned Single Judge of our Court in the case of **Narayanrao vs. The State of Maharashtra**⁵, also observed that a female Hindu, for claiming full ownership under Section 14(1), must show that she has "*got vested in herself at least limited ownership of the property*" and there must be something to prove that "*such right to the property was transferred to her.*"

12. In **Narayanrao's** case, the question before the Court was whether the suit lands were correctly included in the aggregate holding of the plaintiff. The argument before the Court was that the suit lands were given by the plaintiff into the possession of Sarubai, his wife, and even mutation entries to that effect had been made prior to 1956, and

⁵ AIR 1981 Bombay 271

Sarubai, being in possession of the lands in the year 1956 (when the Act came into force), became a full owner thereof. The contention was that the lands were given in lieu of her right of maintenance. A learned Single Judge of this Court negated the contention that the suit lands became her absolute property with effect from the coming into force of the 1956 Act. The learned Single Judge held that the legal consequences contemplated by Section 14 of the Hindu Succession Act arose only when the property is “acquired” by a female Hindu before or after the commencement of the Act. The learned Judge observed that the property might be acquired by a female Hindu under a compromise decree or under a decree in invitum or by any instrument of transfer. The learned Judge held that “*mere handing over of the property by the husband to the wife does not amount to her having 'acquired' the said property.*” The learned Judge went by the strict dichotomy maintained by the said section between possession of the property as 'full owner' on the one hand and as 'limited owner' on the other. He held that this dichotomy postulated that the female Hindu concerned has got vested in herself at least 'limited ownership' of the property and there must be something to prove that such right of the property was transferred to her. The learned Judge reiterated this position in the following words :- “*The possession must refer to some legitimate claim of title as owner may be as full owner or limited owner.*” The binding authority in the Supreme Court in the case of **Tulasamma** (supra), which was quoted by the Supreme Court in the later case of **Gulwant Kaur** (supra), was not brought to the notice of the learned Judge. The observation of the learned Judge that the property might be acquired by the female Hindu under a compromise decree or under a decree in invitum or by any

instrument of transfer, are, with utmost respect, misplaced in the context of sub-section (1) of Section 14. There is a separate provision contained in Sub-section (2) in respect of such acquisitions. In fact, as the Supreme Court laid down in **Tulasamma's** case and later reiterated in **Gulwant Kaur**, Section 14 was aimed at removing restrictions or limitations on a right of a female Hindu to enjoy, as a full owner, property possessed by her “*so long as her possession is traceable to a lawful origin*”, or, in other words, so long as she had “*a vestige of a title*”. In a property given to her and possessed by her in lieu of maintenance she had sufficient title to enable the ripening of her possession into full ownership. The learned Judge in **Narayanrao's** case does not appear to have considered fully the plaintiff's case of giving of the lands to his wife in lieu of maintenance. He rather appears to have merely laid emphasis on the mutation entries placed before the Court which showed title and possession of Sarubai. He held that the “*revenue records may at the most serve as evidence of possession and, on occasions, even as presumption of title but mere possession by a female Hindu of any property does not make her a full owner of the said property under said Section 14 of the Hindu Succession Act.*” So far so good. But the judgment in **Narayanrao's** case cannot be said to be laying down any law to the effect that even if a female Hindu's possession, reflected in the revenue records, is traceable to her right of maintenance, it cannot mature into full ownership under Section 14(1) of the Act, because it does not refer to “*some legitimate claim of title as owner.*” For if it were to state the law thus, such law would be clearly contrary to the binding Supreme Court cases referred to above.

13. In the present case, the cultivating possession of the

properties by the widows is not a matter of dispute. It is not only evidenced by the revenue record available since 1952-53, but actually found by both Courts below. Both attribute it to a family arrangement. This possession is clearly referable to their right of maintenance out of the family properties. Neither of the Courts below accepted the case of Defendant No.1 that the widows were being provided for financially by Tukaram or later by Defendant No.1 by way of maintenance otherwise than out of the suit properties. At the same time, it was not disputed by Defendant No.1 that they had the right to be maintained. If the widows had the cultivating possession of the suit property coupled with a right to be maintained out of it, if not otherwise provided for, and the case of Defendant No.1 that they were separately maintained, that is to say, otherwise than out of the suit properties, was not accepted, there would be a presumption that their possession is referable only to their right of maintenance. Even otherwise, from the material before the Court, i.e. the family arrangement, the admitted possession of the widows, and the 7/12 extracts and other revenue record showing the widows' cultivating possession of the suit properties, the inescapable conclusion would be that the possession of the widows must be referable to their right of maintenance. A family arrangement (which is supported by a long-standing revenue record) can only be on the basis of antecedent rights and the only antecedent right the widows had was their right of maintenance from out of the family properties. There is nothing to suggest that possession, such as the widows have in the present case, cannot be traced to a lawful origin or that there is no vestige of a title.

14. Learned Counsel for the Respondents also relies on the

judgments of our Court in the case of **Bhagirathibai w/o Chandrabhan Nimbarte vs. Tanabai w/o Ramchandra Zanzad (dead)**⁶ and **Gangabai w/o Krishnarao Mandalik vs. Janabai w/o Somaji Patil**⁷ in support of his contention that there is no full ownership of the property on the part of the widows. In the case of **Bhagirathibai** (supra), the Court was simply considering the devolution of interest of a co-parcener. The Court held that considering the fact that the co-parcener died before the coming into force of the 1937 Act, undivided interest in the coparcenary property devolved on the other coparcener by survivorship and as such the surviving co-parcener became the absolute owner of the entire property. The Court was, in other words, concerned with acquisition of property following the coparcener's death. There was no case of possession in lieu of maintenance on the part of the widows in that case. It is in that context that the Court held that the widows were possessing no vestige of title, and the mere fact of their possession did not attract Section 14 of the Hindu Succession Act. In the case of **Gangabai** (supra), a learned Single Judge of our Court, in fact, noted that after coming into force of Section 14 of the Hindu Succession Act, 1956, the widow became absolute owner of the suit properties left by her deceased coparcener husband. The only question before the Court was whether the daughter of the deceased was similarly entitled to succeed to the joint family properties in satisfaction of her right of maintenance. The argument before the Court was that the daughter had to be treated on par with her widowed mother, and with that analogy and by giving a wider meaning to the word “possessed”, it should be held that along with her mother, the daughter also acquired and possessed the properties

6 2013(2) Mh.L.J. 502

7 2012(5) Mh. L.J. 639

left by her father in satisfaction of her right of maintenance. This was negated by the learned Single Judge holding that the word “possessed”, occurring in sub-section (1) of Section 14, was intended to cover not only actual or constructive possession but also possession in law. The Court held that by no stretch of imagination can it be said that the daughter having right to receive maintenance acquires a limited ownership of the joint family property or part thereof. In her case, the learned Judge observed, *“the requirements of a female Hindu having had “possessed” the property on the date of coming into force of Hindu Succession Act, can be said to be fulfilled”* in the event the property is settled upon the daughter under any instrument or otherwise in lieu of her right to maintenance. None of these judgments, accordingly, supports the Respondents' case.

15. In the premises, the impugned judgment and order of the lower Appellate Court cannot be sustained. The Second Appeals are, accordingly, allowed by setting aside the impugned judgment and order passed by the District Court on 10 February 1992 and restoring the judgment and decree passed by the Court of Civil Judge, Senior Division, Ichalkaranji in Regular Suit No.185 of 1979. In the facts of the case, there will be no order as to costs.

16. Learned Counsel for the Respondents seeks an order of continuation of status-quo for a limited period. On his application, it is directed that all parties shall maintain status-quo for a period of four weeks from today. The record and proceedings of the Court, along with an authenticated copy of this order, be transmitted to the Court of Civil Judge, Senior Division, Ichalkarnji after this period of four weeks.

17. In view of the dismissal of the Second Appeals, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)