

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

A.S.No.392 of 1998

JUDGMENT:

The defendant in O.S.No.42 of 1989 on the file of the Court of the Subordinate Judge, Guntur is the appellant in the present appeal suit, preferred under Section 96 of the Code of Civil Procedure.

2. This appeal suit is directed against the judgment and decree dated 28.11.1997 passed by the said Court in the said suit.

3. First respondent herein instituted the said suit for declaration of title and possession. Plaint schedule property is a house property in an extent of Ac.0-02 cents situated at Nidubrolu, Ponnur Mandal, Guntur District.

4. The case of the plaintiff is that, plaintiff's father is one Sri Nannapuneni Adeyya and that the said Adeyya's sister, one Smt.Seethamma was given in marriage to Sri Pamulapati China Ankineedu and the said Sri Pamulapati China Ankineedu and Seethamma had no issues. Sri Pamulapati China Ankineedu executed Ex.A.1 Registered Will dated 20.05.1920, giving life interest to his wife, Smt.Seethamma and vested remainder to the plaintiff's father, Sri Nannapuneni Adeyya (brother of Smt.Seethamma). Sri Pamulapati China Ankineedu died in the year 1920. Smt. Seethamma executed Ex.A.2 relinquishment deed dated 09.11.1939 in favour of Nannapuneni Adeyya i.e., plaintiff's father. Thereafter, Sri Nannapuneni Adeyya had given half of his property to his brother Sri Nannapuneni Ankineedu. On the same day i.e., on 26.01.1940, Sri Nannapuneni Adeyya and his brother Sri Nannapuneni Ankineedu along with Gangaiah (Plaintiff) executed Ex.A.4 Registered Gift Deed in favour of their sister Smt.P.Seethamma for plaint property and certain other properties,

giving life interest with vested remainder in favour of Sri Nannapuneni Adeyya and Nannapuneni Ankineedu and Smt.P.Seethamma enjoyed the property and executed Ex.A.7 unregistered Will dated 15.10.1984 in favour of the plaintiff and Smt.P.Seethamma died on 19.10.1984 and thereafter the disputes arose between the plaintiff and his father Adeyya which led to litigation before the Court of the District Munsiff, Ponnur.

5. According to the plaintiff, despite the same, defendant by way of Ex.B.7 registered sale deed dated 09.01.1989, purchased the subject property without being supported by any valid consideration and that the defendant trespassed into the plaint schedule property on 06.04.1989, which led to the filing of the suit on 15.04.1989.

6. A written statement was filed by the defendant and in the written statement defendant, while pleading ignorance of Ex.A.1 to A.4, pleaded that the plaintiff's family and the family of his father got separated long time back; that Smt.Seethamma used to reside in the house of the plaintiff's father till her death; that the suit house was in possession and enjoyment of Adeyya all along; that the defendant purchased the same by way of Ex.B.7 Registered Sale deed and his name was also mutated in municipal records vide proceedings dated 06.09.1989; that the alleged sale agreement dated 14.10.1981 is false; that Smt.P.Seethamma had no right to execute Ex.A.7 Will dated 15.10.1984 and she had only life interest with vested remainder to Adeyya and his brother as per Ex.A.1 Registered Will dated 20.05.1920, Ex.A.2 dated -9/11/1939 and Ex.A.3 dated 26.01.1940.

7. On the basis of the pleadings available on record, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled for a declaration and possession as prayed for?

2. Whether the will dated 20.05.1920 executed by Sri Pamulapati China Ankineedu is true and valid?
3. Whether the relinquishment deed executed by Smt.Seethamma dated 09.11.1935 is true and valid?
4. Whether the registered Settlement Deed dated 26.01.1940 is true and valid?
- 4 (a) Whether the Registered Settlement Deed dated 26.01.1940 executed by Sri Nannapuneni Adeyya in favour of Pamulapati Seethamma, wife of Pamulapati China Ankineedu is true and valid?
5. Whether the Will dated 15.10.1984 is true and valid?
6. To what relief?
8. In order to substantiate his case, the plaintiff, apart from examining himself as PW.1, also examined PWs.2 to 4 and exhibited Exs.A.1 to A.50. On the other hand, the defendant examined himself as DW.1 and also examined DWs.2 and 3 on his behalf and filed Exs.B.1 to B.7 documents. The learned Subordinate Judge, by way of Judgment and Decree dated 20.11.1997, decreed the suit, declaring the plaintiff as absolute owner of the plaint schedule property while directing the defendant to deliver possession of the plaint property to the plaintiff. This appeal suit, preferred under Section 96 of the Code of Civil Procedure assails the validity and legal sustainability of the said judgment and decree, rendered by the learned Subordinate Judge.
9. Heard Sri S.Subba Reddy, Advocate, appearing for Sri V.L.N.G.K.Murthy, learned counsel for the defendant/appellant and Sri Srinivas Bodduluri, Advocate, representing Sri B.Adinarayana Rao, learned counsel for the respondents apart from perusing the material available on record.

10. Submissions/contentions of Sri S.Subba Reddy:

- 10.1. The impugned judgment and decree are contrary to law, weight of evidence and probabilities of the case?
- 10.2. The findings recorded by the learned Subordinate Judge on the applicability of Sub-section (1) of Section 14 of the Hindu Succession Act, 1956 are highly erroneous and contrary to law.
- 10.3. The transaction covered by Ex.A.4 Gift Deed dated 26.01.1940 executed by Sri Nannapuneni Adeyya and others in favour of Smt.P.Seethamma falls under sub-Section (2) of Section 14 of the Hindu Succession Act, 1956, as such, the learned Subordinate Judge grossly erred in decreeing the suit.
- 10.4. The learned subordinate Judge ought not to have believed Ex.A.7 will dated 15.10.1984 said to have been executed by Smt.P.Seethamma in favour of the plaintiff in view of existence of the surrounding suspicious circumstances.
- 10.5. In view of the discrepancies in the evidence adduced on behalf of the plaintiff, the findings recorded by the learned Judge on Ex.A.7 Will dated 15.10.1984 are highly erroneous.

In support of his submissions and contentions, learned counsel for the Appellant places reliance on the judgements of the Hon'ble Apex Court in *KUSUMGAURI v. UMIBEN AND OTHERS*¹, *KOTA VARAPRASADA RAO v. KOTA CHINA VENKAIAH*², *RANVIR DEWAN v. RASHMI KHANNA*³ and *KRISHNA KUMAR v. SHAH AND ANOTHER*⁴.

11. Submissions/contentions of Sri B.Srinivas Rao:

- 11.1. The judgment rendered by the learned Subordinate Judge is in accordance with law and the learned Judge decreed the suit after completely and elaborately considering the entire material available on record, as such, the judgment does not warrant

¹ AIR 1975 GUJARAT 126

² AIR 1992 AP 1 (DB)

³ (2017) 0 SUPREME (SC) 1180

⁴ 2016 (2) ALD 52 (DB)

any interference of this Court under Section 96 of the Code of Civil Procedure.

11.2. The instant case, falls under sub-section (1) of Section 14 of the Hindu Succession Act and the limited estate created in favour of Smt.P.Seethamma by way of Ex.A.4 document dated 26.01.1940 blossomed into absolute estate of Smt. P.Seethamma in view of Section 14 (1) of the Hindu Succession Act and Sections 21 and 22 of the Hindu Adoption and Maintenance Act.

11.3. The findings of the learned Judge on Ex.A.7 Will dated 15.10.1984 are in accordance with law.

In support of his submissions, learned counsel for the respondents relied on the judgments of the Hon'ble Apex Court in *JUPUDY PARDHA SARATHY v. PENTAPATI RAMA KRISHNA AND OTHERS*⁵, *VADDEBOYINA TULASAMMA AND OTHERS v. VADDEBOYINA SESA REDDI (DEAD) BY LRS*⁶ and *JAGANNATHAN PILLAI v. KUNJITHAPADAM PILLAI AND OTHERS*⁷.

12. In the above backdrop, now the points that emerge for consideration of this Court are:

1. Whether the findings of the learned Subordinate Judge with regard to enlargement of limited estate created in favour of Smt.P.Seethamma by way of Ex.A.4 into absolute estate is in accordance with Section 14 of the Hindu Succession Act, 1956?
2. Whether the findings of the learned Subordinate Judge on Ex.A.7 Will is in accordance with law?
3. Whether the plaintiff proved successfully by the execution of Ex.A.7 Will as per the provisions of Indian Evidence Act and Indian Succession Act?

⁵ (2016) 2 SCC 56

⁶ AIR 1977 SC 1944

⁷ AIR 1987 SC 1493

13. Point No.1:

The object of Section 14 of the Hindu Succession Act 1956 is the welfare of women and protection of their property rights and to ensure social security to the women. Having regard to the object of this legislation a liberal consideration needs to be given in favour of and in the direction of advancement of such rights. The present issue on hand is required to be examined in the light of the said legislative intent.

14. Admittedly, the subject property of the suit which is a house property originally belonged to one Late Sri Pamulapati China Ankineedu and he married one Smt.P.Seethamma (sister of the father of the plaintiff namely Sri Nannapuneni Adeyya). The said couple had no issues. During his life time, the said Pamulapati China Ankineedu executed Ex.A.1 Registered Will dated 20.05.1920, giving life interest to his wife Smt.P.Seethamma and vested remainder to the plaintiff's father, Sri Nannapuneni Adeyya. The said Pamulapati China Ankineedu died in the year 1920. Smt. Seethamma executed Ex.A.2 relinquishment deed dated 09.11.1929 in favour of Nannapuneni Adeyya, plaintiff's father. Thereafter, the said Adeyya executed Ex.A.3 Registered Settlement Deed dated 26.01.1940, giving half of the property to his brother Sri Nannapuneni Ankineedu. On the same day, i.e., on 26.01.1940 Sri Nannapuneni Adeyya and his brother Sri Nannapuneni Ankineedu and Nannapuneni Gangaiah (Plaintiff) executed Ex.A.4 = Ex.A.10 Registered Gift dated 26.01.1940 in favour of Smt. P.Seethamma in respect of plaintiff property and certain other properties, giving life interest to Smt. P.Seethamma with vested remainder to Nannapuneni Adeyya and his brother Nannapuneni Ankineedu.

15. Admittedly, the property is not a new property given to Seethamma. It is a property belonging originally to Pamulapati China Ankineedu who gave

his property to his wife Smt.Seethamma by way of Ex.A.1 registered Will dated 20.05.1920. Sri Pamulapati China Ankineedu had obligation to maintain his wife Smt.P.Seethamma. Even as per the evidence of defendant as DW.1, Smt. Sethamma used to rent the subject house during her absence and as per the provisions of Hindu Adoption and Maintenance Act also the persons who got the property from the persons who have obligation to maintain are equally obligated to maintain the defendants. In the instant case, the brothers of Seethamma who got the property from the husband of Seethamma have obligation to maintain their sister as per the provisions of Sections 21 and 22 of Hindu Adoption and Maintenance Act read with Section 3 (f) of the Hindu Succession Act, 1956 and item IV of the schedule to the said legislation.

16. In fact, the Court below placed reliance on the pronouncements of the Hon'ble Apex Court in the case of *JAGANNATHAN PILLAI (Supra 7)* and taking into consideration the fact that Seethamma regained the property by way of Ex.A.10 which was earlier given to her by her husband by way of Ex.A.1, held that the limited right of Smt.Seethamma blossomed into absolute right in favour of Smt.Seethamma. In this connection, it may be appropriate to refer to the judgments cited by the learned counsel for the appellants.

17. In *KUSUMGAURI (supra 1)*, the Hon'ble Apex Court at paragraph 3, held as under:

"3. The answer to the question raised before us mainly depends upon the interpretation of section 14(1) of the Act which is as follows :

"14. (1) : An 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 device, 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 stridhan 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 Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property."

The object of the section is to extinguish the estate called 'limited estate' or widow's estate in Hindu law and to make a Hindu female who under the old law would be a limited owner, a full owner of the property with all the power of disposition and to make the estate heritable by her own heirs and not revertable to the heirs of the last male holder. The legislature desired equality of rights to all males and females. In cases where a Hindu female was entitled to obtain 'full ownership of a property, Hindu female could not be condemned to, hold the property only as a limited owner. It is to be noted that it is not the object of the Act that in cases where a Hindu male can hold property only as a limited owner, a Hindu female should hold the property as a full owner. Sub-section (1) of section 14 of the Act enlarges the right of limited ownership of a Hindu female and sub-section (2) thereof, has been enacted to provide that in cases falling there under a Hindu female is, not to get a higher right than a Hindu male. The two sub-sections of section 14 have to be read together. To put in other words, the section has to be read as a whole in order to understand the legislative intent. In order that sub-section (1) of section 14 may apply the following 3 conditions must be satisfied: (1) the property must be possessed by a Hindu female; (2) the property possessed by her must have been acquired; and (3) she must have been a limited owner thereof. The expression "Possessed by" used in section 14(1) came for interpretation before the Supreme Court in Mangal Singh v. Smt. Rattno, AIR 1937 SC 1786 and the Court pointed out that the expression used in the section is 'possessed by' and not "in possession of". The Court pointed out that word "Possessed" in S. 14 has been used in broad sense and in the context means the state of owning or having in one's power. The word covered cases wherein a Hindu widow was in actual or constructive possession of the property, it also covered a case wherein a Hindu female may not be in actual or physical or constructive possession but she has a right to recover actual possession or constructive possession because her case then will be covered by the expression "the state of owning". What the Court held was that the word "possessed" covered the cases wherein a Hindu female has the actual or constructive possession or has possession in any form recognised by law. This decision of the Supreme Court was

followed in *Badari Pershad v. Smt. Kanso Devi*, AIR 1970 SC 1963. In the later decision the Court also held that the word "acquired" used in sub-section (1) of section 14 has also to be given widest possible meaning because of the explanation attached to the sub-section. Now the word "acquired" implies that a Hindu female got property or that the property came to her or the property fell to her with some right, title or interest by virtue of which she would claim exclusive possession. Explanation 1 to subsection (1) has to be noticed. The said explanation sets out various modes of acquisition of property by a female Hindu. It indicates that the section applies only to property to which a Hindu female has acquired some kind of title or interest however restricted nature of her interest may be. The expression "in any manner whatsoever" itself suggest, that the expression has not to be construed on the basis of the principle of adjustments generis or that the words must take colour from previous expression used in the section but has to be construed widely. In short section 14 contemplates cases in which a female Hindu has acquired the property under some vestige of title, however restricted it might be. The decisions of the High Courts were not unanimous as in which cases can fall under sub-section (1) of section 14 and what cases shall fall under section 14. But this point is now settled by the Supreme Court in *Badri Pershad* case (supra). The Court observed that sub-section (2) of section 14 is more in the nature of a proviso or an exception to sub-section (1) and comes into operation only if acquisition in any of the methods indicated therein is made for first time, without there being any pre-existing right in the female Hindu who is in possession of property. Sub-section (2) of section 14 would apply to cases in which the instrument mentioned therein is the source or foundation of the right or title to the property. It must be noticed that the explanation appended to sub-section (1) of section 14 assumes that the property acquired by a Hindu female in lieu of maintenance is a property of limited ownership. This explanation is important because of Section 4 of the Act provides, so far relevant, that save as, otherwise expressly provided any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect to any matter for which provision is made in this Act."

18. In *KOTA VARAPRASADA RAO* (supra 2), the Hon'ble Apex Court at paragraphs 26, 31 and 41, held as under:

"26. SIRCAR expresses the opinion that a married daughter is ordinarily to be maintained in her husband's family, but if they are unable to maintain her, she is entitled to be maintained in her father's family. (8th Edn. p. 534).

31. The Supreme Court in *V. Tulasamma v. V. Sesha Reddi*, AIR 1977 SC 1944, had the occasion to interpret the above

provision. The Supreme Court summarising the legal conclusions after an exhaustive consideration of the authorities on the question of law as to the interpretation of Section 14(1) and (2) of the Act, stated thus (at pp. 1977-78 of AIR):

"(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.....

(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 S. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of S. 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 S. 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of S. 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 the female is legally permissible, and S. 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 to 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 S. 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-s. (2) and would be governed by S. 14(1) despite any restrictions placed on the powers of the transferee.

(6) The words "possessed by" used by the Legislature in S. 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....

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

In the instant case, the settlement deed, Ex. B-I, specifically states that the brother --executants have handed over to Adi Laksh-mamma possession of the suit house on 1-4-1939 with a view to enable her to lease-out the house and live on the income arising therefrom, since she had no source of living and was being maintained by them. Thus, the statement of the suit property on Adi Lakshmamma was in lieu of her maintenance and to enable her to live on the lease-hold income from the said property. Thus, the property having been settled in lieu of her maintenance, the instrument (Ex. B- 1) is to be taken out of the ambit of S. 14(2) and would be governed by S. 14(1) despite the restriction of life-estate on the powers of Adi Lakshmamma.

41. Before parting with this, we would rather intend to express that the view we have taken herein as regards the pre-existing right of the daughter, a destitute widowed daughter, against the father and brothers for her maintenance by referring to the texts and precepts earlier to the codification of the law is absolutely in consonance with the intendment of the Legislature behind incorporating Section 22 of the Hindu Adoptions and Maintenance Act, 1956. Section 22 makes it mandatory for the heirs of a deceased Hindu to maintain the dependants, one such being the widowed daughter, of the deceased out of the estate inherited by them from the deceased. The Supreme Court also had the occasion to interpret Sections 21 and 22 of the Hindu Adoptions and Maintenance Act in Raja Gopala Rao v. Sitharam Amnia, dealing with the rights of a concubine for maintenance from the estate of the deceased paramour. The Supreme Court while observing that if the rights of maintenance were acquired by her or illegitimate sons of the deceased, those rights are not affected by the provisions of Ss. 21 and 22 of the Act, held (at p. 1973 of AIR):

"Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired and corresponding liability to pay the maintenance was incurred under the Hindu Law in force at the time of his death. It is well recognised rule that a statute should be interpreted, if possible so as to respect vested rights, and such a construction should never be adopted if the words are open to another construction. See Craies on Statute Law, 6th Edn., (1963) p. 397. We think that Ss. 21 and 22 read with S. 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu Law in force at the time of his death."

We have also had in mind by this to express that the obligation of the father against the daughter for her maintenance, since not touched by the codified law, remains as it is unaffected since nothing contra is stated in the Act."

19. In *RANVIR DEWAN (supra 3)*, the Hon'ble Apex Court at paragraphs 41 to 48, held as follows:

“41. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ambit of Section 14(2) of the Act must be 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. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a “restricted estate” in the property.

42. Applying the principle laid down in the aforementioned two cases to the facts of the case on hand, we are of the considered opinion that the case of plaintiff No.2-Mrs. Pritam does not fall under Section 14 (1) of the Act but it squarely falls under Section 14 (2) of the Act. In other words, in our view, in the facts of this case, the law laid down in Sadhu Singh's case(supra) would apply.

43. A fortiori, plaintiff No.2-late Mrs.Pritam received only “life interest” in the suit house by the Will dated 24.06.1986 from her late husband and such “life interest” was neither enlarged nor ripened into an absolute interest in the suit house and remained “life interest”, i.e., “restricted estate” till her death under Section 14(2) of the Act. This we say for following factual reasons arising in the case.

44. First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.

45. Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only “life interest” to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of Section 14 (2) read with Section 30 of the Act.

46. Third, such “life interest” was in the nature of “restricted estate” under Section 14(2) of the Act which remained a “restricted estate” till her death and did not ripen into an “absolute interest” under Section 14(1) of the Act. In other words, once the case falls under Section 14(2) of the Act, it comes out of Section 14(1). It is permissible in law because Section 14(2) is held as proviso to Section 14(1) of the Act.

47. Fourth, the effect of the Will once became operational after the death of testator, the son and the daughter

acquired absolute ownership in the suit house to the exclusion of everyone whereas the wife became entitled to live in the suit house as of right. In other words, the wife became entitled in law to enforce her right to live in the suit house qua her son/daughter so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua son/daughter but not beyond it. However, such was not the case here.

48. Fifth, the testator had also given his other properties absolutely to his wife which enabled her to maintain herself. Moreover, a right to claim maintenance, if any, had to be enforced by the wife. She, however, never did it and rightly so because both were living happily. There was, therefore, no occasion for her to demand any kind of maintenance from her husband.”

20. In *KRISHNA KUMAR* (supra 4), a Division Bench of this Court, at paragraph 18, held as follows:

“18. Before proceeding further, it is necessary to refer to the broad principles, which are relevant for appreciation of evidence in regard to proof or otherwise of a Will. In the decision in *Pinnaka Hanumantha Rao* (died per L.R) and two Ors. *V. Garlapati Dhanalakshmi @ Andallu* MANU/AP/0006/2007 : 2007 (2) ALD 435, this Court having considered the ratios in various precedents on the subject had formulated the principles that emerged from the precedents as under:

"30. From the various precedents cited by the learned Counsel referred to above, the following principles broadly emerge.

1. Whether the Will set up by the propounder is proved to be the last Will of the testator has to be decided in the light of Sections 67, 68, 45 and 47 of the Evidence Act and Sections 59 and 63 of the Indian Succession Act.
2. A Will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act.
3. Proof with mathematical certainty is not expected and the test to be applied would be the usual test of the satisfaction of the prudent mind.
4. The propounder would be called upon to show by disinterested, satisfactory and sufficient evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind free from all extraneous influences, that he understood the nature and effect of the dispositions and put his signature to the document of his own free Will and that he had signed it in the presence of two witnesses who attested in his presence and the presence of each other.
5. The onus on the propounder to prove the due and valid execution of the Will can be taken to be discharged on proof of the essential facts.

6. The execution of the Will may be surrounded by suspicious circumstances like,--

- (a) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.
- (b) The condition of the testator's mind may be very feeble and debilitated.
- (c) The dispositions made in the Will may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provision for the natural heirs without reasons.
- (d) The dispositions may not appear to be the result of the testator's free Will and mind.
- (e) The propounder takes a prominent part in the execution of the Will conferring substantial benefit on him.
- (f) The testator used to sign blank papers.
- (g) The Will did not see the light of the day for long.
- (h) Incorrect recitals of essential facts.
- (i) The unregistered Will challenged as forged comes from the custody of major beneficiary.

7. What circumstances would be regarded as suspicious cannot be precisely defined or exhaustively enumerated and that inevitably would be a question of fact in each case.

8. Each and every circumstance is not a suspicious circumstance and a circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.

9. All such legitimate suspicions should be completely removed by the propounder before accepting the document as the last Will of the testator and satisfactory discharge of such initial onus is very heavy and the test of satisfaction of judicial conscience is pivotal in deciding the solemn question.

10. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will.

11. A testator has the freedom to give his property to whomsoever he likes and once it is established that the testator was free and had a sound disposing mind, it is no longer the duty of the Court to go further to inject its own ethics of what is or is not a moral or a fair disposition according to its own standard.

12. No hard and fast or inflexible rules can be laid down for the appreciation of the evidence and application of general and broad principles would always depend on the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties.

13. Allegations of exercise of undue influence, fraud or coercion in respect of the execution of the Will propounded have to be proved by the person making such allegations.

14. Circumstantial evidence to prove the signature of the testator can lead to a legitimate conclusion only if it leads irresistibly to the inference that the person must have signed the document in question, but the presumption of execution of the Will by the testator on proof of the signature may be rebutted by proof of suspicious and unnatural circumstances.

15. The registration of the Will by the testator will be a strong circumstance to support the genuineness of the Will, but will not by itself be sufficient to dispel all suspicions without subjecting the evidence of registration to a close scrutiny.

16. Onus as a determining factor of a case can only arise if the evidence pro and con is so evenly balanced that no conclusion can be derived therefrom, but not when a determinate conclusion can be arrived at after hearing and weighing the evidence.

17. The presumption under Section 90 of the Evidence Act in respect of a Will 30 years old and produced from proper custody, is one of due execution and attestation as well as of testamentary capacity of the testator, but does not extend to the truth of the contents of the Will.

18. To judge the credibility of the witnesses, the demeanour of the witnesses, surrounding circumstances and the probabilities arising out of the evidence and nature and contents of the document have to be looked into.

19. It is more usual to call a known and reliable person, a friend or a relation, to be a witness when a person is intending to execute a Will and advantage may be taken of the accidental presence of chance witnesses also in this connection.

20. It would be sufficient even if one attester is examined, if he speaks about all the required elements.

21. The Court has the power to compare the disputed signature with the admitted signature, which power is available under Section 73 of the Evidence Act, but it should not normally take upon itself such responsibility and should leave the matter to the wisdom of experts in the event of slightest doubt.

22. If the Court is capable of forming an opinion on the strength of oral and documentary evidence by undertaking comparison under Section 73 of the Evidence Act, the necessity to send the document for expert's opinion may not arise and the opinion rendered by an expert being only a supporting material, the Court can come to its own independent conclusion.

The above principles deduced from the cited precedents are only enumerative and not exhaustive and their application to the facts and circumstances of each case should be strictly contextual but not mechanical.

The learned senior counsel for the appellants/defendants 1 and 2 had relied upon the following decisions in regard to proof of execution of Will:

(i) *Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and Another* MANU/SC/0289/1974 : (1974) 2 Supreme Court Cases 600. This decision deals with the guidelines and nature and extent of burden of proof on the propounder and the duty of the propounder to show that the Will was signed by the testator and that the testator was at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. In the cited decision, it was also laid down that when the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other persons for doubting that the dispositions of the Will are not the result of the testator's free will and mind, in all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. It was finally held that in the cited decision that ultimately it is the conscience of the Court that has to be satisfied; as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain.

(ii) *Meenakshiammal (dead) through L.Rs v. Chandrasekaran* MANU/SC/0953/2004 : (2005) 1 Supreme Court Cases 280. In this decision, the Hon'ble Supreme Court referred to the ratios in the decisions in *Ryali Kameswara Rao v. Bendapudi Suryaprakasa Rao* (MANU/AP/0088/1962 : AIR 1962 AP 178) and *Madhukar D. Shende v. Tarabai Aba Shedage* (MANU/SC/0016/2002 : (2002) 2 SCC 85) and had held in paragraph (21) as follows:

"In the case of *Madhukar D. Shende v. Tarabai Aba Shedage* reported in [MANU/SC/0016/2002 : AIR 2002 SC 637], it has been held as follows: "8. The requirement of proof of a Will is the same as any other document excepting that the evidence tendered in proof of a Will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the Court either believes that the Will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the Will was duly executed by the testator, then the factum of execution of Will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the Jury in *R. v. Hodge*, 1838, 2 Lewis CC 227 may be apposite to some extent "The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected hole; and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is

wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." The conscience of the Court has to be satisfied by the propounder of Will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a Will provided that there is something unnatural or suspicious about the Will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict positive or negative.

9. It is well-settled that one who propounds a Will must establish the competence of the testator to make the Will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. The contestant opposing the Will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the Court affirmatively that the testator did know well the contents of the Will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."

(iii) In *Sridevi v. Jayaraja Shetty* MANU/SC/0065/2005 : (2005) 2 Supreme Court Cases 784, the relevant ratio was laid down as follows:

"It is well settled proposition of law that mode of proving the will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, 1925. The onus to prove the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case. For this see *H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.* [MANU/SC/0115/1958 : (1959) Supp. 1 SCR 426] and the subsequent judgments *Ramachandra Rambux v. Champabai & Ors.* [MANU/SC/0304/1964 : (1964) 6 SCR 814]; *Surendra Pal & Ors. v. Dr. (Mrs.) Saraswati Arora & Anr.* [MANU/SC/0289/1974 : (1974) 2 SCC 600]; *Smt. Jaswant Kaur v. Smt. Amrit Kaur & Ors.* [MANU/SC/0530/1976 : (1977) 1 SCC 369]; and *Meenakshiammal (Dead) thr. LRs. & Ors.*

v. Chandrasekaran & Anr. [MANU/SC/0953/2004 : (2005) 1 SCC 280]."

Further, in paragraph (14) of the judgment, it was held as follows:

"The propounder of the will has to show that the will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged."

(iv) Pentakota Satyanarayana v. Pentakota Seetharatnam MANU/SC/0819/2005 : (2005) 8 Supreme Court Cases 67. This decision was relied upon in support of the proposition that circumstances of depriving natural heirs should not raise any suspicion because the whole idea behind the execution of the Will is to interfere in the normal line of succession and so natural heirs would be debarred in every case of the Will and that it may be that in some cases they are fully debarred and some cases partly.

(v) Savithri v. Karthyayani Amma MANU/SC/8061/2007 : (2007) 11 Supreme Court Cases 621. In this cited case, it was held that the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstances and that the testator lived seven years after the execution of the Will and did not cancel it, supports the validity of the Will.

(vi) In Niranjana Umeshchandra Joshi v. Mrudula Jyoti Rao and others MANU/SC/8788/2006 : (2006) 13 Supreme Court Cases 433, the Hon'ble Supreme Court while dealing with the execution of an unprivileged Will had held as follows:

"Section 63 of the Indian Evidence Act lays down the mode and manner in which the execution of an unprivileged Will is to be proved. Section 68 postulates the mode and manner in which proof of execution of document is required by law to be attested. It in unequivocal terms states that execution of Will must be proved at least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A Will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Indian Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.

The burden of proof that the Will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the Will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading

sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See *Madhukar D. Shende v. Tarabai Shedage* MANU/SC/0016/2002 : (2002) 2 SCC 85 and *Sridevi & Ors. v. Jayaraja Shetty & Ors.* MANU/SC/0065/2005 : (2005) 8 SCC 784]. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document."

(vii) *Mahesh Kumar (dead) by LRs v. Vinod Kumar* MANU/SC/0208/2012 : (2012) 4 Supreme Court Cases 387. This precedent was relied upon in support of the proposition that the signatures of two attesting witnesses to a Will are not required to be appended simultaneously."

21. The judgments of the Hon'ble Supreme Court in *KUSUMGAURI* (supra 1) and *KOTA VARAPRASADA RAO* (supra 2) would not be helpful to the appellant.

22. Even as per the judgment of the Hon'ble Apex Court in the case of *RANVIR DEWAN* (supra 3), it is clear that Section 14 (2) of the Hindu Succession Act is available only when the women claims the property for the first time as a grant without any pre-existing right. The Hon'ble Apex Court also made it very much clear that where female claims the property at a partition or in lieu of right of maintenance by virtue of pre-existing right, such acquisition, would not be within Section 14 (2) of the Hindu Succession Act. The said judgement in the considered opinion of this Court, would be helpful to the plaintiff.

23. In *JUPUDY PARDHA SARATHY* (supra 5), the Hon'ble Apex Court at paragraphs 14, 15, 20, 30, 31 and 33, held as under:

"14. It is well settled that under the Hindu Law, the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled to a right to be maintained out of such properties. It is equally well settled that the claim of Hindu widow to be maintained is not a mere formality which is to be exercised as a matter of concession, grace or gratis but is a valuable, spiritual and moral right. From the judicial pronouncement, the right of a widow to be maintained, although does not create a charge on the

property of her husband but certainly the widow can enforce her right by moving the Court and for passing a decree for maintenance by creating a charge.

15. The Hindu Married Women's Right to Separate, Maintenance and Residence Act, 1946 was enacted giving statutory recognition of such right and, therefore, there can be no doubt that the right to maintenance is a pre-existing right.

20. The facts in Karmi's case (supra) and that of the present case are fully distinguishable. In the instant case, the Will was executed in 1920 in which Subba Rao has mentioned that his first wife died, the second wife got two sons and one daughter. Thereafter, second wife also died. He, then, married to Veeraraghavamma as a third wife, who is alive. The executant of the Will have also mentioned the description of the properties owned by him. He, very specifically mentioned in the Will that his third wife Veeraraghavamma shall enjoy for life one tiled house situated in the compound wall. For that enjoyment, it was also mentioned in the Will that the widow Veeraraghavamma shall also be entitled to fetch water from the well situated in the backyard of a different house. In other words, the executant of the Will made arrangements for his third wife to maintain her enjoyment in the suit schedule property till her life. The intention of the executant is therefore clear that he gave the suit schedule property to his third wife Veeraraghavamma in order to hold and enjoy the suit property for her maintenance during her lifetime. It is not a case like Karmi case that by executing a Will, the executant directed that his entire estate will devolve upon his widow Veeraraghavamma.

30. Mr. Vishwanathan, learned senior counsel for the appellant's last contention was that in the absence of any pleading and proof from the side of the appellant to substantiate the plea that Veeraraghavamma was occupying the property in lieu of maintenance, Section 14 will not be automatically attracted. We do not find any substance in the submission made by the learned counsel. Indisputably, Exhibit A-2 is a document which very categorically provided that the property in question was given to Veeraraghavamma to enjoy the same till her life. Neither the genuineness of the said Exhibit A-2 was disputed nor it was disputed that Veeraraghavamma was enjoying the property by way of maintenance. In our considered opinion, unless the factum of bequeathing the property in favour of the wife and her continuous possession are disputed, the question of pleading and proof does not arise. In other words, no one disputed the arrangement made in the Will and Veeraraghavamma continued to enjoy the said property in lieu of maintenance. Hence, the ratio decided in G. Rama's case (supra) does not apply.

31. Further, indisputably, Mr. P. Venkata Subba Rao, the original owner of the property, realized the fact that his wife

Veeraraghavamma was issueless and she has a pre-existing right to be maintained out of his property. He further realized that physically he was weak and may not survive for long period. He therefore, decided to give his properties to his family members. For the maintenance of his third wife Veeraraghavamma, he gave the tiled house with site and compound wall with the stipulation that she shall enjoy the property for life in lieu of maintenance. She will also be entitled to fetch water from the well and use other facilities. Admittedly, no one disputed the arrangements made in the Will and Veeraraghavamma continued to enjoy the said property. In view of the admitted position, we have no doubt to hold that by virtue of Section 14(1) of the Act, her limited right became absolute right to the suit property.

33. Though no specific word has been mentioned in Exhibit A-2 that in lieu of maintenance life interest has been created in favour of Veeraraghavamma, in our opinion in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act.”

24. In *VADDEBOYINA TULASAMMA AND OTHERS* (*supra* 6), the Hon'ble Apex Court at paragraphs 27, 39, 40 and 63, held as follows:

“27. 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 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 preexisting 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) 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 I.L.R. 27 Mad. 45. (2) I.L.R. 18 Bom. 452.

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.

39. After considering various aspects of the matter we are inclined to agree with the contentions raised by Mr. Krishna Murthy Iyer appearing for the appellant. In the first place, the appellant's contention appears to be more in consonance with the spirit and object of the statute itself. Secondly, we have already pointed out that the claim of a Hindu female for maintenance is undoubtedly a pre-existing right and this has been so held not only by various Courts in India but also by the Judicial Committee of the Privy Council and by this Court. It seems to us, and it has been held as discussed above, that the claim or the right to maintenance possessed by a Hindu female is really a substitute for a share which she would have got in the property of her husband. This being the position, where a Hindu female who gets a share in her husband's property acquires an absolute interest by virtue of s. 14(1) of the Act, could it be intended by the legislature that in the same circumstances a Hindu female who could not get a share but has a right of maintenance would not get an absolute interest? In other words, the position would be that the appellant would suffer because her husband had died prior to the Act of 1937. If the husband of the appellant had died after 1937, there could be no dispute that the appellant would have got an absolute interest, because she was entitled to her share under the provisions of the Hindu Women's Right to Property Act, 1937. Furthermore, it may be necessary to study the language in which the Explanation to s. 14(1) and sub-s. (2) of s. 14 are couched. It would be seen that while the Explanation to s. 14(1) clearly and expressly mentions "property acquired by a female Hindu" at a partition or in lieu of maintenance or arrears of maintenance there is no reference in sub-s. (2) at all to this particular mode of acquisition by a Hindu female which clearly indicates that the intention of the Parliament was to exclude the application of sub-s. (2) to, cases where the property has been acquired by a Hindu female either at a partition or in lieu of maintenance etc. The Explanation is an inclusive definition and if the Parliament intended that everything that is mentioned in the Explanation should be covered by sub-s. (2) it should have expressly so stated in sub-s. (2). Again the language of sub-s. (2) clearly shows that it would apply only to such transactions which are absolutely independent in nature and which are not in recognition of or in lieu of pre-existing

rights. It appears from the Parliamentary Debates that when the Hindu Succession Bill, 1954, was referred to a Joint Committee by the Rajya Sabha, in s. 14(2) which was clause 16(2) of the Draft Bill of the Joint Committee, the words mentioned were only gift or will. Thus the intention of the Parliament was to confine sub-s. (2) only to two transactions, namely a gift or a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. Subsequently, however, an amendment was proposed by one of the members for adding other categories, namely, an instrument, decree, order or award which was accepted by the Government. This would show that the various terms, viz., gift, will, instrument, decree, order or award mentioned in s. 14(2) would have to be read ejusdem generis so as to refer to transactions where right is created for the first time in favour of the Hindu female. The intention of the Parliament in adding the other categories to sub-s. (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in s. 14(2), namely, gift, will, decree, order, award or instrument which prescribes a restricted estate would not be disturbed and would continue to occupy the field covered by s. 14(2). This would be the position even if a Hindu male was to get the property by any of the modes mentioned in s. 14(2): he would also get only a restricted interest and, therefore, the Parliament thought that there was no warrant for making any distinction between a male or a female in this regard and both were, therefore, sought to be equated.

40. Finally, we cannot overlook the scope and extent of a proviso. There can be no doubt that sub-s. (2) of s. 14 is clearly a proviso to s. 14 (1) and this has been so held by this Court in Badri Prasad's case (supra). It is well settled that a provision in the nature of a proviso merely carves out an exception to the main provision and cannot be interpreted in a manner so as to destroy the effect of the main provision or to render the same nugatory. If we accept the argument of the respondent that sub-s. (2) to s. 14 would include even a property which has been acquired by a Hindu female at a partition or in lieu of maintenance then a substantial part of the Explanation would be completely set at naught which could never be the intention of the proviso. Thus we are clearly of the opinion that sub-s. (2) of s. 14 of the proviso should be interpreted in such a way so as not to substantially erode s. 14(1) or the Explanation thereto. In the present case we feel that the proviso has carved out completely a separate field and before it can apply three conditions must exist:

- (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.

Where any of these documents are executed but no restricted estate is prescribed, sub-s. (2) will have no application. Similarly where these instruments do not confer a new title for the first time on the female Hindu, s. 14(1) would have no application. It seems to me that s. 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.

63. Thus on a careful scrutiny and analysis of the authorities discussed above, the position seems to be that the view taken by the High Courts of Bombay, Andhra Pradesh, Patna, Mysore, Punjab, Calcutta and Kerala to the effect that the widow's claim to maintenance, even though granted to her subject to certain restrictions, is covered by s.14 (1) and not by sub-s. (2) is based on the following premises:

(1) That the right of a Hindu widow to claim maintenance is undoubtedly a right against property though not a right to property. Such a right can mature into a full-fledged one if it is charged on the property either by an agreement or by a decree. Even otherwise, where a family possesses property, the husband, or in case of his death, his heirs are burdened with the obligation to maintain the widow and, therefore, the widow's claim for maintenance is not an empty formality but a pre-existing right.

(2) Section 14(2) which is in the nature of a proviso to s. 14(1) cannot be interpreted in a way so as to destroy the concept and defeat the purpose which; is sought to, be effectuated by s. 14(1) in conferring an absolute interest on the Hindu women and in doing away with what was heretofore known as the Hindu women's estate. The proviso will apply only to such cases which flow beyond the purview of the Explanation to s. 14(1).

(3) That the proviso would not apply to any grant or transfer in favour of the widow hedged in by limitation or restrictions, where the grant is merely in recognition or declaration of a pre-existing right, it will apply only to such a case where a new right which the female did not possess at all is sought to be conferred on her under certain limitations or exceptions. In fact in such a case even if a conditional grant is made to a male, he would be bound by the condition

imposed. The proviso wipes out the distinction between a male and a female in this respect.”

25. In *JAGANNATHAN PILLAI* (supra 7), the Hon’ble Apex Court at paragraphs 3 and 5, held as follows:

“3. The typical facts in the backdrop of which the problem has to be viewed are :-

(1) A Hindu female acquired a property, say by reason of the death of her husband, before the commencement of the Act (i.e. before June 17, 1956).

(2) What she acquired was a widow's estate as understood in shastric or traditional Hindu Law.

(3) She lost the possession of the property on account of a transaction whereby she transferred the property in favour of an alienee by a registered document of 'sale' or 'gift'.

4. *Ganesh Mahanta v. Sukria Rewa* (AIR 1963 Orissa 167).

5. *Medicherla Venkataratnam v. Siddani Palamma*, (1970 II Andhra Weekly Reporter 264).

6. *Chinnakolandai Goundan v. Thanji Gounder*, (ILR 1966 I Madras 326).

7. *Teia Singh v. Jagat Singh*, (AIR 1964 Punjab 403).

8. *Ramgowda Aunagowda v. Bhausahab*, (ILR 52 Bom. 1).

9. *Champa v. Chandrakant*, (AIR 1973 Gujarat 227).

(4) The property in question was retransferred to her by the said alienee 'after' the enforcement of the Act by a registered document thus restoring to the widow the interest (such as it was) which she had parted with earlier by reversing the original transaction.

It is in this factual background that the question will have to be examined as to whether upon the reconveyance of the very property which she had alienated after enforcement of the Act, she would become a full owner in respect of such a property by virtue 'of Section 14(1) of the Hindu Succession Act, 1956 (Act). Be it realized that the law has been settled by this Court that the limited estate or limited ownership of a Hindu female would enlarge into an absolute estate or full ownership of the property in question in the following factsituation:

1. Where she acquired the limited estate in the property before or after the commencement of the Act provided she was in possession of the property at the time of the coming into force of the Act on June 17, 1956.

2. Even if the property in question was possessed by her in lieu of her right to maintenance as against the estate of her deceased husband or the joint family property, she would be entitled to become a full or absolute owner having regard to the fact that the origin of her right was traceable to the right against her husband's estate.

5. On an analysis of Section 14(1) of the Hindu Succession Act of 1956, it is evident that the Legislature has abolished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her as a full owner. Section 14(1) would come into operation if the property at the point of time when she has an occasion to claim or assert a title thereto. Or, in other words, at the point of time when her right to the said property is called into question. The legal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner. (we are for the moment not concerned with the fact that sub-section (2) of section 14 which provides that Section 14(1) will not prevent creating a restricted estate in favour of a Hindu female either by gift or will or any instrument or decree of a Civil Court or award provided the very document creating title unto her confers a restricted estate on her). There is nothing in Section 14 which supports the proposition that a Hindu female should be in actual physical possession or in constructive possession of any property on the date of the coming into operation of the Act. The expression 'possess,' has been used in the sense of having a right to the property or control over the property. The expression 'any property possessed by Hindu female whether acquired before or after the commencement of the Act' on an analysis yields to the following interpretation:

.15 (1) Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner. (2) Any property possessed by a Hindu female acquired after the commencement of the Act Will be held as a full owner thereof and not as a limited owner.

Since the Act in terms applies even to properties possessed by a Hindu female which are acquired 'after' the commencement of the Act, it is futile to contend that the Hindu female shall be in 'possession' of the property 'before' the commencement of the Act. If the property itself is acquired 'after' the commencement of the Act, there could be no question of the property being either in physical or constructive possession of the Hindu female 'before' the coming into operation of the Act. There is, therefore, no escape from the conclusion that possession, physical or constructive or in a legal sense, on the date of the coming into operation of the Act is not the sine-qua-non for the acquisition of full ownership in property. In fact, the intention of the Legislature was to do away with the concept of limited ownership in

respect of the property owned by a Hindu female altogether. Section 4 of the Act (it needs to be emphasized) provides that any text, rule or interpretation of Hindu Law or custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in the Act. The legislative intent is therefore, abundantly loud and clear.

To erase the injustice and remove the legal shackles by abolishing the concept of limited estate, or the women's or widow's estate once and for all. To obviate hair-splitting, the Legislature has made it abundantly clear that whatever be the property possessed by a Hindu female, it will be of absolute ownership and not of limited ownership notwithstanding the position obtaining under the traditional Hindu law. Once it is shown that at the point of time when the question regarding title to property held by a Hindu female arises, she was 'possessed' of the property on that date, in the eye of law, the property held by her would be held by her as 'full owner' and not as 'limited owner'. In other words, all that has to be shown by her is that she had acquired the property and that she was 'possessed' of the property at the point of time when her title was called into question. When she bought the property from the alienee to whom she had sold the property prior to the enforcement of the Act, she 'acquired' the property within the meaning of the explanation to Section 14(1) of the Act. The right that the original alienee had to hold the property as owner (subject to his right being questioned by the reversioner on the death of the female Hindu from whom he had purchased the property) was restored to her when she got back the right that she had parted with. Whatever she had lost 'earlier', was 'now' regained by her by virtue of the transaction. The status-quo ante was restored in respect of her interest in the said property. In the eye of law, therefore, the transaction by which the vendee of the Hindu female acquired an interest in the said property was 'reversed' and the Hindu female was restored to the position prevailing before the transaction took place. In other words, in the eye of law the transaction stood obliterated or effaced. What was 'done' by virtue of the document executed in favour of the transferee was 'undone'. Such would be the consequence of a retransfer by the alienee in favour of a Hindu female from whom he had acquired an interest in the property in question. Thus on the date on which her right to the property was called into question, she was 'possessed' of the property which she had inherited from her husband she having by then re-acquired and regained what she had lost. And by virtue of the operation of Section 14(1) of the Act the limitation which previously inhered in respect of the property disappeared upon the coming into operation of the Act. It is no longer open to anyone now to contend that she had only a 'limited' ownership in the said property and not a 'full' ownership, the concept of limited ownership having been abolished

altogether, with effect from the coming into operation of the Act.”

26. Having regard to the various documents referred to above and the recitals contained therein and the principles laid down in the pronouncements referred to supra, it can now be safely concluded that the right created in favour of Smt.Seethamma did enlarge into absolute right in the subject property. In fact Seethamma had pre-existing right of maintenance from her husband and admittedly the subject property belonged to him. Therefore, the transaction in favour of the plaintiff is well protected and safeguarded under Section 1 of Section 14 of the Hindu Succession Act, 1956.

27. Another important and crucial aspect which requires mention in this context is that admittedly the father of the plaintiff through whom the defendant claims the property gave half share out of the properties to his brother, Sri Nannupuneni Ankinedu by way of Ex.A.3 Registered Settlement Deed dated 26.01.1940 and if the same being so, it is not understandable as to how the father of the plaintiff executed the Will Deed in favour of the defendant for the entire property without there being any title for half of the property even assuming that he had such right of alienation. In fact, DW.1 categorically stated in his evidence that Adeyya and his brother alone have right in the suit house and that he did not obtain any sale deed from Ankineedu nor he contacted Ankineedu while purchasing the said property and that the said Ankineedu got half share in the suit property. DW.1 also stated that he does not know the contents of the written statement. Even according to DW.1, Smt. P.Seethamma was living in the said property till her death. Therefore, point No.1 is answered in favour of the plaintiff and against the defendants.

28. Points 2 and 3:

The case of the plaintiff is that in a sound and disposing state of mind Smt.Seethamma executed Ex.A.7 Will, dated 15.10.1984, bequeathing the suit schedule properties in favour of the plaintiff.

29. On the other hand, it is the case of the defendant that the very execution of Ex.A.7 Will is suspicious and that in view of various material contradictions in the oral evidence adduced by the plaintiffs, the trial Court should have discarded Ex.A.7 Will and ought not to have given any credence for the same and should have ignored the said document.

30. According to the plaintiff, one Sri Chintalapudi Manikya Rao scribed Ex.A.7 Will. As per the evidence of PW.2 (Sri Pamulapati Hanumantharao), he is a resident of Nidubrolu and his avocation is cultivation and he acted as attester for Ex.A.7 Will and he identified his signature on the said document and at the time of Ex.A.7 one Sri Gadde Rama Mohana Rao, Pamulapati Ankineedu, Inturi Satyanarayana, himself, Chintalapudi Manikrao and testatrix Smt.Seethamma were present. He further deposed that the scribe wrote the contents of Ex.A.7 to the dictation of Smt.Seethamma and that she was in good condition and she affixed her thumb impression in their presence. He also categorically deposed that himself, Pamulapati Ankineedu, Gadde Rammohan Rao, Inturi Satyanarayana and scribe saw Smt.Seethamma affixing thumb impression on Ex.A.7 and further deposed that Smt.Seethamma saw him and attestors attesting the Will. Though, he spoke of Asthama and lack of vision of Seethamma as pointed out by the learned counsel for the plaintiff, it cannot be said that Smt.Seethamma was not in a sound and disposing state of mind when the fact remains that PW.2 categorically spoke about the mental condition of Smt.Seethamma. Simply

because PW.2's sister is given in marriage to the plaintiff, his evidence cannot be discarded nor its trustworthiness can be doubted so long as the same is in accordance with the provisions of Indian Evidence Act and the Indian Succession Act. As pointed out by the learned counsel for the plaintiff, lack of vision cannot be construed as complete blindness and in fact no such allegation of blindness was made by the defendant either in the pleadings or in the evidence.

31. PW.3, one Sri Gadde Ramamohana Rao, another attesor, whose house is at a distance of 60 or 70 yards from the house of Seethamma also spoke in the same lines. PW.4, one Sri Pamulapati Ankineedu, another attesor of Ex.A.7 Will deposed that he is a resident of Nidubrolu and his avocation is agriculture and his maternal grand mother and mother of Seethamma are sisters and his house is at a distance of two furlongs from the suit house. Though he spoke of Asthama and lack of vision, he did not say that the mental condition of Seethamma was not good at the time of execution of Ex.A.7 Will.

32. Though certain contradictions have been pointed by the learned counsel for the appellant in the evidence of PWs.2 to 4 as to the place of scribing the Will and presence of persons at the time of execution of Ex.A.7 Will, in the considered opinion of this Court, the same are minor in nature and cannot be construed as fatal to the case of the plaintiff. Therefore, it can be safely concluded that the plaintiff proved the execution of Ex.A.7 document in accordance with the provisions of Indian Evidence Act and the Indian Succession Act. In the result Point Nos.2 and 3 are answered in favour of the plaintiff.

33. The decision of this Court reported *KRISHNA KUMAR* (supra 4), cited by the learned counsel for the appellant, would not render any

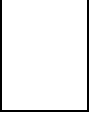
assistance to the appellant in the facts and circumstances of the case and for the reasons recorded supra.

34. In the result, the appeal suit is dismissed, confirming the Judgment and Decree dated 28.11.1997 rendered by the learned Subordinate Judge, Guntur in O.S.No.42 of 1989. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. In the circumstances of the case, there shall be no order as to costs.

Date:29-01-2018
grk

A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



A.S.No.392 of 1998

Dated:29-01-2018

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