

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

RSA No.1026 of 1987 (O&M)

Date of Order:19th September, 2018

Teja Singh

..Appellant

Versus

Bachna and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Arun Jain, Sr. Advocate, with
Mr. Abhishek Dhull, Advocate,
for respondent nos.1 and 2.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court decreeing the suit filed by the plaintiffs for declaration that they are owners in possession of the property measuring 70 kanals.

Plaintiffs also claimed that the mortgage in favour of defendants no.5 to 9 does not effect the rights of the plaintiffs.

Plaintiffs, natural heirs of late Sh. Partap Singh, claim this property by way of natural succession, whereas defendants-appellants claim this property through one Smt. Jiwi. It is the case of the plaintiffs that Jiwi was not the wife of late Sh. Partap Singh, whereas it is the case of the defendants-appellants that Jiwi was wife of late Sh. Partap Singh.

Plaintiffs have pleaded that Smt. Jiwi was married to Dalip Singh of village Batta, Tehsil Kharar. However, Dalip Singh and Jiwi could

not pull along and thereafter Jiwi started having illicit relations with late Sh. Partap Singh. Those illicit relations continues for 2-3 years and thereafter Jiwi married with Charan Singh and a daughter, namely, Kartari, defendant no.3 was born.

Smt. Jiwi claiming to be wife of late Sh. Partap Singh filed a suit for grant of maintenance.

Trial court dismissed the suit. However in appeal, parties entered into a settlement was arrived at in writing, which is Ex.PZ/8 on 9th Baisakh 1987, which would be equivalent to English Calendar 1930. Smt. Jiwi on the basis of the aforesaid compromise also suffered a statement in court which is Ex.PZ/9.

Although, the aforesaid compromise is in Urdu, however, with the help of official translator, the aforesaid compromise has been got read in open court. Counsel for the parties do not dispute correctness thereof.

In the aforesaid compromise deed/settlement, it is admitted by Smt. Jiwi that she is not the married wife of late Sh. Partap Singh. In the compromise deed, it was written that her right of maintenance has been acknowledged to the extent of Rs.80/- per year and if payment is not made she will be entitled to take possession of the ½ share of the joint land.

Now the dispute between the parties is whether Jiwi becomes full owner of the property or not?

Interpretation of Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') is involved. Section 14 of the Act is extracted as under:-

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 her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

Section 14 has been interpreted by the Hon'ble Supreme Court in **V.Tulsamma and others v. Sesha Reddy (Dead) by Lrs. (1977) 3 Supreme Court Cases, 99**, wherein it has been held that if a female had any pre-existing right of maintenance then Section 14(1) would apply and Section 14(2) which is in the nature of exception to Section 14(1) would be applicable only when the female has no prior right of maintenance. The

conclusion drawn by the Hon'ble Supreme Court in V.Tulsamma and others (supra) is extracted as under:-

“We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above; on the question of law involved in this appeal as to the interpretation of Section 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:

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

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms. and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends, sought to be achieved by this long needed legislation. (3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso. should not be construed in a manner so as to destroy the effect of the main

provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-Section . (2) and would be governed by Section 14 (1) despite any restrictions placed on the powers of the transferee. (5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to Section 14 (1) clearly makes sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words "possessed by" used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same: Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow,

however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser with- out any right or title.

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

In the present case, it is apparent that Jiwi was not the wife of late Sh. Partap Singh. This fact is admitted by Smt. Jiwi in 1930 before the court when settlement Ex.PZ/8 was arrived at. First Appellate court also found on appreciation of evidence that Smt. Jiwi was not the wife of late Sh. Partap Singh. Learned counsel appearing for the appellants has submitted that in 1936 on the death of Parsini, mutation of the land was sanctioned in favour of Jiwi to the extent of $\frac{1}{2}$ share and subsequently also mutations were sanctioned depicting Smt. Jiwi to be the widow, therefore, it must be assumed that Smt. Jiwi was wife of late Sh. Partap Singh. He further submitted that now the plaintiffs are estopped from challenging the aforesaid mutations.

It is well settled that the mutations are sanctioned only for fiscal purposes and mutations do not confer any right or do not give rise to any cause of action and hence confer no right upon the defendants-appellants.

Learned first appellate court has further relied upon judgment passed on 26th Phagan 1985 B.K., Ex.P6 and decree sheet Ex.P5 which would be equivalent to 1948, wherein in a suit filed by Krishna etc., it was

held that Smt. Jiwi is not widow of late Sh. Partap Singh. Learned counsel for the appellants could not dispute the aforesaid judgment.

In view of the aforesaid, questions which arises is whether Section 14 sub-section(1) would apply or Section 14 sub-section(2) would be applied. As held by the Hon'ble Supreme Court in **V.Tulsamma and others (supra)**, the right of female would get enlarged and she would become full owner and not a limited owner, if she has a pre-existing right of maintenance and in lieu of maintenance or arrears of maintenance, limited estate has been given to her. In the present case, it is not proved that Smt. Jiwi was having any pre-existing right of maintenance, in the property/estate of Partap Singh.

Still further in the case of **Shivdev Kaur (D) by Lrs and others v. R.S.Garewal, 2013 (3) R.C.R.(Civil) 20**, Hon'ble Supreme Court while dealing with a right of a daughter who acquired life interest in the property by way of will executed by the father held that said right would not stand crystalized into absolute ownership. The Hon'ble Supreme Court while concluding has summarized as under:-

“13. Thus, in view of the above, the law on the issue can be summarized to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallized into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the

provisions of Sections 14(2) and 30 of the Act 1956 would become otios.

Section 14(2) carves out an exception to rule provided in sub- section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title.”

In view of the aforesaid this court does not find any good ground to interfere with the findings of learned first appellate court.

The regular second appeal is dismissed.

19th September, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No