

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

**(1) RSA No.4665 of 2010 (O&M)
Date of Order:19th September, 2018**

Nirmaljit Kaur and another ..Appellants

Versus

Kuldip Singh and others ..Respondents

(2) RSA No.4666 of 2010 (O&M)

Bikkar Singh ..Appellant

Versus

Smt. Mohinder Kaur and others ..Respondents

(3) RSA No.4667 of 2010 (O&M)

Paramjit Kaur ..Appellant

Versus

Smt. Mohinder Kaur and others ..Respondents

(4) RSA No.4668 of 2010 (O&M)

Rachhpal Singh ..Appellant

Versus

Smt. Mohinder Kaur and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr.Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Akshit Chaudhary, Advocate and
Ms. Eesha Khanna, Advocate,
for the appellants.**

Mr. Naresh Kumar, Advocate,

for the respondents.

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeal Nos.4665, 4666, 4667 and 4668 of 2010 shall stand disposed of.

In the considered opinion of this court, following substantial question of law arises for determination:-

- (i) Whether a wife, who had been abandoned by her husband and as husband has started living with another women, gets possession of the property in a settlement, recognizing her right of maintenance, she would become full owner of the property or not in terms of Section 14(1) of the Hindu Succession Act, 1956?

These four appeals are arising out of 4 different suits, 3 filed by Mohinder Kaur, alleged subsequent wife and sons from her for possession and one filed by daughters of first wife claiming entire property.

Certain facts would be required to be noticed.

Budha Singh was having 4 daughters and one son (Joginder Singh). He was owner of approximately 500 kanals of land. Joginder Singh married with late Smt. Chhinder Kaur. 2 daughters were born to the couple Nirmaljit Kaur and Parmajit Kaur. However, it is the case of the plaintiffs i.e. Daughters, Nirmaljit Kaur and Parmajit Kaur from first marriage that Joginder Singh thereafter started living with Mohinder Kaur and 2 sons were born, namely, Kuldeep Singh and Gurmeet Singh. Mohinder Kaur (alleged second wife), Kuldeep Singh and Gurmeet Singh are plaintiffs in the other 3 suits.

Since Chhinder Kaur was not being taken care off and Joginder

Singh had started living with Mohinder Kaur, hence, she initiated proceedings under the Indian Penal Code. During the pendency of the proceedings pending before the High Court, a settlement was arrived at on 03.04.1961, which is not disputed between the parties. There was 3 signatories of the aforesaid settlement, namely Buddha Singh, Joginder Singh and Chhinder Kaur. Through this settlement, right of maintenance of Chhinder Kaur was recognised and it was agreed that she would be delivered possession of little bit more than 15 acres of land i.e. 121 kanals and she would be entitled to cultivate the land herself or get it cultivated from anyone else, to maintain herself. Of course, it has been written that she would be a lessee on the land.

It has also come in evidence that during the proceedings initiated by Chhinder Kaur, Joginder Singh and Mohinder Kaur made a statement before the court that they are not husband and wife.

Learned senior counsel appearing for the appellants in all these four appeals has confined his arguments only on this 15 acres of land which was given to Chhinder Kaur vide settlement dated 03.04.1961. Although, he admitted that the suit filed by Nirmaljit Kaur and Paramjit Kaur is with respect to the entire property but he is not pressing to that extent.

Both the courts below on the one hand decreed the suits filed by Mohinder Kaur (alleged 2nd wife) Kuldeep Singh and Gurmeet Singh, for possession and dismissed the suit filed by Nirmaljit Kaur and Paramjit Kaur, daughters of Chhinder Kaur.

Both the courts have primarily held that since property i.e. 15 acres belonged to Buddha Singh i.e. the father-in-law and father-in-law has no obligation to maintain daughter-in-law during the life time of her

husband, therefore, Chhinder Kaur had no pre-existing right of maintenance against this property and hence she cannot claim benefit of Section 14(1) of the Hindu Succession Act.

Although, at the time of admission of the appeal, following substantial questions of law were framed on 21.08.2015, however, learned counsel has confined his argument only to the fact noticed above. The questions of law are extracted as under:-

- “1. Whether the statements got recorded by a person under Section 313 of the Code of Criminal Procedure can be taken as admission against the said person in civil litigation?”*
- 2. Whether ancestral and coparcenary property could be legally bequeathed by way of Will in favour of a third person and/or illegitimate children, especially when the natural legal heirs are alive?”*
- 3. Whether the judgments and decrees passed by the learned courts below are result of non-reading and misreading of the pleadings, evidence and material placed on record and, as such, unsustainable in the eyes of law and are liable to be set aside?”*

It is undisputed that Buddha Singh was having only one son and 4 daughters. It is also undisputed that settlement which was arrived at between the parties, apart from Buddha Singh, Joginder Singh and Chhinder Kaur were also signatories. In other words, Buddha Singh in order to save his son from criminal prosecution, agreed to give land measuring 15 acres to Chhinder Kaur recognizing her right of maintenance.

Section 19 of the Hindu Adoption and Maintenance Act, 1956 provides that a Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law. Hence, it cannot be said that she was having any pre-existing right of maintenance during the life time of her husband from the property of the father. Section 19 of the Hindu Adoption and Maintenance Act, 1956 is extracted as under:-

19. Maintenance of widowed daughter-in-law- (1) *A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance- (a) from the estate of her husband or her father or mother, or (b) from her son or daughter, if any, or his or her estate.*

(2) *Any obligation under sub-section (1) shall not be enforceable if the fatherinlaw has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.*

However, the facts of the case have to be examined in the proper perspective.

Buddha Singh had only one son i.e Joginder Singh. Criminal proceedings were pending before the court against his son. There was a

settlement between daughter-in-law, son and father-in-law. Such settlement was in recognition of rights of the daughter-in-law to the extent of her maintenance. Once Buddha Singh signed the aforesaid settlement, along with Joginder Singh, he recognised the rights of Chhinder Kaur through Joginder Singh.

Section 14 of the Hindu Succession Act, 1956 is a beneficial provision for females. Section 14(1) provides that if a female is possessed of any property whether acquired before or after the commencement of the Act of 1956, shall be held by her as full owner thereof and not as a limited owner. Explanation added to sub-section (1) of Section 14 clearly explains the scope of Section 14(1) of the Act. It provides that any movable or immovable property possessed by a female Hindu in lieu of maintenance or arrears of maintenance shall be full owner of the property. In the present case, recognition of her right of maintenance is admitted in the settlement, dated 03.04.1961. Section 14 of the Hindu Succession 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.

In such circumstances, if father-in-law had come forward to save his son from criminal prosecution and offered to give land in his own name, obviously, he was taking action on behalf of his son. In such situation, both the courts erred in overlooking this aspect. The courts have further erred in overlooking the fact that Buddha Singh was only having one son i.e. Joginder Singh and ultimately after the death of Buddha Singh, Joginder Singh was to inherit more than 15 acres of land, in absence of any testament.

Hon'ble Supreme Court while interpreting respective scope of Sections 14(1) and 14(2) of the Act has very elaborately dealt with the aforesaid provisions in the case of **V.Tulsamma and others v. Sessa Reddy (Dead) by Lrs. (1977) 3 Supreme Court Cases, 99.** Two concurring judgments have been written. It has been held that Section 14(2) is in the nature of exception to Section 14(1) of the Act. It has further been held that

Section 14(2) shall be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing rights.

Hon'ble Mr. Justice S. Murtaza Fazal Ali while writing a concurring judgment has culled out following proposition with respect to incidents and characteristic of Hindu women's right to maintenance. A relevant part of the judgment 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 without any right or title.

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

This judgment has been consistently followed.

In view of the aforesaid binding precedent, reference to other judgments is not necessary.

Although, no arguments have been addressed, however, with regard to question no.1, courts have wrongly held that the statement given by Joginder Singh and Mohinder Kaur in the criminal proceedings that they are not married and therefore, they are not husband and wife is not binding in the civil court, is erroneous. The statement given by the accused in the court cannot be allowed to be brushed aside easily by the court. The courts were wrong in ignoring the statement on the ground that the aforesaid statement was given by Joginder Singh and Mohinder Kaur, in order to save themselves from the criminal prosecution.

Still further, courts have wrongly observed that continuous co-habitation of a man and women raises a presumption of marriage. There cannot be any valid marriage amongst the Hindus during the life time of his first wife. So, therefore, even if there was any second marriage, that was void and therefore, Mohinder Kaur had no right to claim that she was a legal married wife of Joginder Singh.

As noticed earlier, only one point has been raised by learned counsel for the appellant, therefore, this court refrains from answering the questions no.2 and 3 framed at the time of admission.

In view thereof, the judgments and decrees passed by the courts below are modified to the extent that 15 acres of land which was given to Chhinder Kaur would be her absolute property. Chhinder Kaur or her daughters would have no rights over the remaining property of Joginder Singh or Buddha Singh as these have been bequeathed in favour of Kuldip

Singh, Gurmeet Singh etc. and the aforesaid testamentary document has been upheld by the courts.

C.M.Nos.114-C-2016

C.M.Nos.117-C-2016

C.M.Nos.123-C-2016 &

C.M.Nos.135-C-2016

Counsel for the appellants does not wish to press these applications for mesne profits.

Hence, dismissed as not pressed.

C.M.Nos.9556-C-2017, C.M.Nos.9560-C-2017

C.M.Nos.9591-C-2017, C.M.Nos.9592-C-2017

C.M.Nos.1568-C-2011, C.M.Nos.1305-C-2011

C.M.Nos.1294-C-2011, C.M.Nos.1314-C-2011

These applications are disposed of in terms of the judgment passed above.

19th September, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No