

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 22, 2018

1. R.S.A.No.210 of 2011 (O&M)

Suresh Kumar & others

...Appellants

Versus

Jogi Ram

...Respondent

1. R.S.A.No.209 of 2011 (O&M)

Suresh Kumar & others

...Appellants

Versus

Jogi Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Chetan Mittal, Senior Advocate with
Mr.Sunil Garg, Advocate &
Mr.Kunal Mulwani, Advocate,
for the appellants in both the appeals.

Mr.Sachin Mittal, Advocate,
for the respondent in both the appeals.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.210 and 209 of 2011 arisen out of the decision of Civil Suit No.256 of 2008 titled as “Jogi Ram Versus Smt.Ram Devi & others”, for declaration challenging the sale deed 8/9.6.1998 with consequential relief of permanent injunction and Civil Suit No.257 of 2008 titled as “Jogi Ram Versus Baldeva & others”, for possession.

Both the aforementioned suits were filed by Jogi Ram on the basis of judgment and decree dated 27.9.1995, upheld upto Hon'ble

Supreme Court, whereby the suit seeking declaration with permanent injunction was decreed and his reversionary rights qua half share in the suit property were protected.

This case has a chequered history. It would be apt to give facts of the previous litigation, resulting into passing of the judgment and decree dated 27.9.1995.

Jamna was the owner of the property. He had one son Tulsi, who had executed a Will dated 15.4.1968 in favour of Jogi Ram (his son) and Ram Devi (second wife), i.e., mother of Jogi Ram. The contents of the Will gave the limited right to Ram Devi that she could enjoy the property during her life time with a bar that during her life time, she would not alienate, transfer or create third party rights. During her life time, Ram Devi suffered a consent decree dated 15.1.1986 in Civil Suit No.30 of 1986 in favour of her daughter Bimla Devi. The aforementioned consent decree was challenged by Jogi Ram in Civil Suit No.943 of 1993 claiming declaration with regard to reversionary rights and as well as the registered lease deed dated 17.6.1986 executed by Ram Devi in favour of Amar Singh.

The trial Court, vide judgment and decree dated 27.9.1995, decreed the suit by holding that the entire suit property is 175 kanals 9 marlas and Ram Devi, who was arrayed as defendant No.1, was declared to be limited owner to the extent of half share of the suit property, description of which was given in paras 1 and 2 of the plaint. It was further held that she was not competent to alienate/transfer the property in any form or manner whatsoever and the civil court decree dated 15.1.1986 and the registered lease deed dated 17.6.1986 were declared to be null & void and not binding on the rights of the plaintiff. Defendant No.1 was further

restrained from creating any third party right or transferring the property, but was given liberty to enjoy the fruits of the property till her life estate.

During the pendency of the aforementioned suit, Ram Devi executed two sale deeds dated 29.4.1993 qua land measuring 38 kanals 14 marlas in favour of Dharam Singh son of Bhura and 11 kanals 3 marlas in favour of Kanta Devi and during the pendency of the appeal before the Lower Appellate Court, executed sale deed dated 8/9.6.1998 (Ex.P3) in favour of Baldeva for land measuring 40 kanals 8 marlas. The total area of the aforementioned three sale deeds comes to 87 kanals 15 marlas, i.e., half share of 175 kanals 9 marlas.

Ram Devi died on 26.8.1999. Jogi Ram instituted Civil Suit No.256 dated 13.6.1998 for declaration challenging all the sale deeds aforementioned with consequential relief of permanent injunction restraining the defendants, i.e., the vendees not to alienate or create charge over the suit property and Civil Suit No.257 dated 15.11.1999 for possession. The aforementioned suits have been re-numbered as 256 of 2008 for declaration and 257 of 2008 for possession. Both the aforementioned suits were consolidated by the trial Court vide order dated 25.11.2002. The trial Court decreed the aforementioned suits vide judgment and decree dated 13.8.2009 and the appeals preferred by the L.Rs of vendees were also met with the same fate. It is in this backdrop of the matter, the present appeals have been filed.

The pleaded claim of the plaintiff in both the suits was that Ram Devi, in view of the judgment and decree dated 27.9.1995, had a limited right in the suit property and, therefore, in view of the provisions of Section 14(1) of the Hindu Succession Act, 1956 (for short "1956 Act"), she

was not the absolute owner and could not alienate or transfer the property by virtue of the aforementioned three sale deeds regarding her share for which she was injuncted and restrained.

The appellant-defendants contested the suits by taking the plea that owing to the law declared by the Hon'ble Supreme Court in **V.Tulasamma and others Versus Sesha Reddy (Dead) by L.Rs, (1977) 3 Supreme Court Cases 99**, the right given to Ram Devi had been crystalized and held absolute owner and, therefore, she was competent to sell the aforementioned land, much less they were bonafide purchasers with valuable consideration and, therefore, protected under Section 41 of the Transfer of Property Act.

The respondent-plaintiff filed the replication, wherein it was stated that the appellant-defendants were restrained from taking the aforementioned plea in view of the bar/embargo as envisaged under Section 11 of the Civil Procedure Code, i.e., doctrine akin to *res judicata*, for, the findings with regard to the ownership and limited restraint of Ram Devi given in the judgment and decree dated 27.9.1995 had already attained finality upto Hon'ble Supreme Court.

Since the parties were at variance, the trial Court framed the following issues in both the suits:-

“Civil Suit No.256 of 2008

1. *Whether the sale deed dated 8/9.6.98 executed by Ram Devi in favour of defendant no.2 is null and void and does not create any title and right in favour of defendant No.2? OPP*
2. *Whether the defendants are liable to be restrained from alienating the suit land and also from interfering in possession of the plaintiff? OPP*

3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

4. *Whether the plaintiff has not come to the court with clean hands and suppressed the true and material facts from the Court? OPD*

5. *Whether the plaintiff has no locus standi to file the present suit? OPD*

6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

7. *Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD*

8. *Whether the present suit is not properly signed and verified according to the Civil Procedure Code? OPD*

9. *Relief.*

Civil Suit No.257 of 2008

“1. *Whether the plaintiff is owner of the land mentioned in para No.(i) (ii) (iii) of the plaint? OPP*

2. *Whether the plaintiff has no locus standi to file the present suit? OPD*

3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

4. *Whether the suit of the plaintiff is barred by limitation? OPD*

5. *Whether the suit of the plaintiff is abuse of process of law? OPD*

6. *Whether the suit of the plaintiff is pre-mature? OPD*

7. *Whether the defendants are bonafide purchaser for valuable consideration without notice? OPD*

8. *Whether deceased Smt.Ram Devi was holding ½ share of the estate of Tulsi Ram and not as a limited owner and whether deceased Ram Devi had become absolute owner of ½ share of the total land since commencement of Hindu Succession Act? OPD*

9. *Whether Smt.Ram Devi had become owner of the suit land by way of adverse possession? OPD*

10. Relief.

The parties to the lis led evidence in support of their respective claims and also placed on record documentary evidence, as indicated in the judgment, which is not in controversy or dispute during the course of the hearing.

Mr.Chetan Mittal, learned Senior Counsel assisted by Mr.Sunil Garg and Mr.Kunal Mulwani, Advocates, representing the appellant-defendants, in support of the memorandum of appeal, has raised the following submissions:-

- a) The finding of the Courts below barring the appellant-defendants from taking the plea that Ram Devi had acquired the ownership owing to the law in existence, to be barred by *res judicata*, is not only erroneous but perverse;
- b) Similar question came to be debated before the Hon'ble Supreme Court in the judgment rendered in **Shakuntla Devi Versus Kamla & others**, 2005 (5) SCC 390, wherein while interpreting the provisions of Sections 34 and 35 of the Specific Relief Act, 1962 and as well as Section 11 of the Civil Procedure Code, three Judges Bench held that even if the two declaratory decrees had become final and being a decree *inter se* between the parties or their successors-in-interest, the defendants in the suit could not take a different stand because the law interpreted was different at the time of the adjudication of the aforementioned suits, i.e., for declaration and possession. The aforementioned findings of the Hon'ble Supreme Court are based upon the decision rendered in **Mathura Prasad Bajoo**

Jaiswal & Ors. Versus Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613), wherein it was held that earlier decision would not operate as *res judicata* between the same parties, for, the matter in issue in subsequent proceedings was not the same because **“the law interpreted is different.”**.

c) There was a different opinion of the Hon'ble Supreme Court with regard to the interpretation of the provisions of Sections 14(1) and 14(2) of the 1956 Act as sub-section (1) of Section 14 pertained to granting of absolute ownership to a woman by holding that it is the pious duty of the husband to maintain the wife during his life time and in case he predeceases her, then in sub-section (2) of Section 14, the widow was given a limited estate by virtue of a Will and decree and in case the Will or decree binds her to use the property only for limited purpose, her right could not crystalize in full ownership. All the aforementioned provisions came to be debated upon from time and again and ultimately in the judgment rendered by the Hon'ble Supreme Court in **V.Tulasamma's case's (supra)**, it has been held that right would be crystalized into absolute ownership. The aforementioned view has been reiterated recently by the Hon'ble Supreme Court in **Jupudy Pardha Sarathy Versus Pentapati Rama Krishna and others, (2016) 2 Supreme Court Cases 56**, and, thus, submits that there is an abdication, much less illegality and perversity. The appeals also involve substantial questions of law for determination.

Per contra, Mr.Sachin Mittal, learned counsel representing the respondent-plaintiff submits that the judgments and decrees of the Courts below are perfectly legal and justified and do not call for any interference. The decree dated 27.9.1995 expressly debars Ram Devi from alienating the property and she willfully violated the order of the Court by executing the aforementioned three sale deeds. The respondent-plaintiff was given a revisionary right in respect of half portion, which was sought to be transferred/alienated by virtue of two documents, i.e., consent decree dated 15.1.1986 and lease deed dated 17.6.1986. The issue with regard to possession was specifically framed by the trial Court. The respondent-plaintiff has already taken possession of the suit property in execution of the judgments and decrees under challenge.

He further submits that the respondent-plaintiff did not have any cause of action to take possession. The same accrued only on the demise of Ram Devi, but owing to the event, i.e., execution of the sale deeds, the respondent-plaintiff was constrained to file another suit for challenging the same. The previous suit was not simpliciter for declaration but with consequential relief of permanent injunction and in view of the proviso to Section 34 of the Specific Relief Act, it could not be said that the previous suit, being the simpliciter for declaration, was not maintainable, therefore, the appellant-defendants could not have taken the plea owing to the change in law on the right between the parties which had already been crystalized. In essence, the respondent-plaintiff had already been held to be owner. In support of his contention, he has relied upon the ratio decidendi culled out by this Court in **Hakam Singh Versus Baldev Singh, 1992 PLJ**

300 (Paras 10 and 11).

To counter the argument of Mr.Chetan Mittal vis-a-vis non-applicability of *res judicata*, Mr.Sachin Mittal has made reference to the judgment rendered by the Hon'ble Supreme Court in **Tamil Nadu Versus State of Kerala and Anr., 2014(12) SCC 696 (Para 169)**, whereby the Hon'ble Supreme Court, after noticing the Explanations VII and VIII, which were inserted w.e.f. 1.2.1977, i.e., by Code of Civil Procedure (Amendment) Act, 1976, where it has been held that the principles of *res judicata* would be made applicable to the cases which were tried by the Courts of limited jurisdiction and if a decision of the Court of limited jurisdiction, which was within its competence, it would operate as *res judicata* in a subsequent suit, even when the subsequent suit was not tried by it. In other words, he submits that once the issue which has directly been raised, considered and decided, it would operate *res judicata*. Therefore, the appellant-defendants are not permitted to take the plea of bonafide purchasers under Section 41 of the Transfer of Property Act, much less to submit that Ram Devi had acquired absolute ownership in view of the provisions of Section 14 of the Hindu Succession Act.

I have heard the learned counsel for the parties, appraised the paper book and records of the Courts below with their able assistance.

The previous decree dated 27.9.1995, whereby the consent decree and registered lease deed dated 17.6.1986 were set-aside, is not in dispute. The fact that Ram Devi was given a right to enjoy the property till her life time with a restraint not to alienate the property, which had attained finality, is not in dispute.

The question which posed before this Court is as to whether in

pursuance to the judgment and decree dated 27.9.1995, appellants' right to the extent of half share has already been determined and crystalized as owner, whether in such circumstances, the defendants can be permitted to challenge the ownership in a subsequent suit claiming the possession.

To answer the aforementioned question, it would be apt to refer the facts of the case and the ratio decidendi culled out in the judgment rendered by the Hon'ble Supreme Court in **Shakuntla Devi's case (supra)**. In the aforementioned case, one Hirday Ram had executed a Will dated 1.10.1938 in favour of his two wives, i.e., Kubja and Pari and one daughter. After the death of Hirday Ram, his estate devolved upon another wife, i.e., Uttamdassi (third wife) and one daughter Tikami. Uttamdassi, vide sale deed dated 28.11.1958 sold the part of the suit property in favour of the vendees and also executed a gift dated 2.12.1958 in favour of the donor. Tikami challenged the aforementioned action of Uttamdassi by filing a suit, which was decreed on 12.7.1961. The appeal preferred by Uttamdassi was also dismissed and the decree became final. Uttamdassi again executed a gift deed dated 24.5.1975 of the property to another donor, which was the subject matter of the sale deed dated 28.11.1958. Tikami again challenged the aforementioned action by filing the suit, which was dismissed. Ultimately, the Lower Appellate Court allowed the appeal and held the gift to be void *ab initio*. The matter did not stop here. Uttamdassi executed the Will dated 27.12.1986. She died on 1.1.1987. Dispute arose with regard to the possession of the land. Tikami's daughter instituted the suit for possession on the basis of the previous declaratory decree, whereby she has been held to be owner of the property. The said suit was dismissed on 22.8.1989 and appeal preferred was also dismissed by holding that the

previous declaratory decree would not operate as *res judicata* inter se the parties as the earlier decrees were being passed in suits filed by the appellant as presumptive reversioner of the widow of Hirday Ram and the claim was based on the ownership after the death of Uttamdassi. The Regular Second Appeal preferred before the High Court also met with the same fate. Ultimately, the matter reached Hon'ble Supreme Court, wherein noticing the aforementioned facts, it was held that the plea of *res judicata* would not apply. I would be failing in my duty if I do not extract the relevant portion of the findings rendered by the Hon'ble Supreme Court in the aforementioned judgment. The same read thus:-

“11. Almost similar is the facts of this case inasmuch as in this case also since on the coming into force of the [Hindu Succession Act](#) by virtue of [Section 14\(1\)](#) the limited right got by Uttamdassi under the Will got enlarged to an absolute right in the suit property. Thus, she became absolute owner of the property, hence, any declaratory right obtained earlier by the reversioner as contemplated in the Will cannot be the basis on which the suit for possession could be maintained unless, of course, the claimants in the suit for possession established a better title independent of the declaratory decree obtained by them.

*12. As stated above, the learned counsel for the appellant contended that since the two declaratory decrees obtained by them having become final and being a decree inter se between the parties or their successors in interest, the defendants in the present suit could not take a stand contrary to the declaration already obtained by appellant. This argument is obviously based on the principle of *res judicata*. Ordinarily such an argument ought to be accepted but there are some exceptions in regard to the application of this principle. One such exception would be where the earlier declaration obtained by the court is established to be contrary to an existing law. [In](#)*

Mathura Prasad Bajoo Jaiswal & Ors. vs. Dossibai N.B.Jeejeebhoy [(1970) 1 SCC 613) this Court held :

"7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties; Tarini Charan Bhattacharjee's case (supra). It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different."

13. It is to be noticed that in the present case when the first declaratory decree was obtained, the law as it stood then right of Uttamdassi remained a limited right, in the suit property hence, a declaratory decree was given in favour of the plaintiffs in that suit, but by the time the second declaratory decree was obtained by the appellant herein, this Court by the judgment in V.Thulasamma's case had declared the law under Section 14 of the Hindu Succession Act holding that the estate of persons similarly situated as Uttamdassi got enlarged and a beneficiary under a Will with limited rights became the absolute owner of the same. Since the judgment of this Court in Tulasamma's case was the law on that date and is the law currently, the second declaratory decree was contrary to the said declaration of law made by this Court. Therefore, that declaration cannot be of any use to the appellant. In view of the law laid down by this Court in Mathura Prasad's case (supra) as extracted herein above.

14. Apart from the above in the very same case of Mathura Prasad (supra), this Court at para 11 held:

"Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supercede the law of the land."

20. *Learned counsel for the appellant then contended that the judgment in Tulasamma's case being prospective the first declaratory decree obtained by her would prevail since that was based on the law as it stood then and had become final, therefore, the first declaratory decree would be protected. In support of this contention he relied upon the judgment of this Court Managing Director, ECIL, Hyderabad & Ors. vs. B.Karunakar & Ors. [(1993) 4 SCC 727]. We do not think this judgment would help the appellant in support of the contention raised by her. It is true that the judgment in Tulasamma's case is not retrospective and would not apply to cases which have ended finally. But a declaratory decree simplicitor does not attain finality if it has to be used for obtaining any future decree like possession. In such cases of suit for possession based on an earlier declaratory decree is filed it is open to the defendant to establish that the declaratory decree on which suit is based is not a lawful decree.*

21. *Unfortunately for the appellant the declaration obtained by her based on which she was seeking possession in the present suit being contrary to law, the courts below correctly held that the appellant could not seek possession on the basis of such an illegal declaration. Thus, the law is clear on this point i.e. if a suit is based on an earlier decree and such decree is contrary to the law prevailing at the time of its consideration as to its legality or is a decree granted by a court which has no jurisdiction to grant such decree, principles of res judicata under Section 11 of the CPC will not be attracted and it is open to the defendant in such suits to establish that the decree relied upon by the plaintiff is not a good law or court granting such decree did not have the jurisdiction to grant such decree.”*

On cumulative reading of the aforementioned paras, it has been held that if a suit is based on an earlier declaratory decree and such decree is contrary to the law prevailing at the time of its consideration as to its legality or is a decree granted by a court which has no jurisdiction to grant

such decree, the plea taken by the adverse party cannot be hit by doctrine akin to *res judicata*. Thus, the finding of the Lower Appellate Court debarring the appellant-defendants to take up the plea on the ground of *res judicata* is not only fallacious but perverse and hereby set-aside.

Now coming to the law with regard to the interpretation of provisions of Sections 14(1) and 14(2) of 1956 Act, the land mark judgment on this proposition had been laid in **V.Tulasamma's case (supra)**, wherein after noticing the detailed analysis of the authorities and the law, in Para 20 held as under:-

“20. 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 a 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 pre-existing

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 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.”

Similarly in Paras 30 and 61, the following principles were culled out:-

“30. In the light of the above decisions of this Court the following principles appear to be clear:

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

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

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

(4) that sub-section (2) of [Section 14](#) is merely a proviso

to sub- section (1) of [Section 14](#) and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision.”

“61 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 [Sections 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 pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and [Section 14\(1\)](#) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of [Section 14\(1\)](#) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by [Section 14\(1\)](#) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to [Section 14\(1\)](#) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of 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.”

The aforementioned view has been reiterated by the Hon'ble Supreme Court in **Jupudy Pardha Sarathy's case (supra)**, by holding as under:-

“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.

32. In the impugned judgment, the High Court has elaborately discussed the facts of the case and the law applicable thereto and came to the conclusion that the trial court committed serious error of law in holding that by virtue of [Section 14\(2\)](#) of the Act, her limited right has not become absolute.

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.

34. After giving our anxious consideration to the matter and the judicial pronouncements of this Court in a series of decisions, we hold that the impugned judgment of the High Court is perfectly in accordance with law and needs no interference by this Court.

35. For the reasons aforesaid, this appeal has no merit and dismissed. However, there shall be no order as to costs.”

However, the judgment relied upon by Mr.Sachin Mittal would not apply to the facts and circumstances of the present case as in Paras 169 and 170 of **State of Tamil Nadu's case (supra)**, the Hon'ble Supreme Court, after consideration of the Explanations referred to above, laid down as under:-

“169. Explanations VII and VIII were inserted in the above provision by Code of Civil Procedure (Amendment) Act, 1976 w.e.f. 1.2.1977. Explanation VIII in this regard is quite relevant. The principles of res judicata, thus, have been made applicable to cases which are tried by Courts of limited jurisdiction. The decisions of the Courts of limited jurisdiction,

insofar as such decisions are within the competence of the Courts of limited jurisdiction, operate as res judicata in a subsequent suit, although, the Court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the Court of limited jurisdiction, which was within its competence, operates as res judicata in a subsequent suit even when the subsequent suit is not triable by it, a fortiori, the decision of the highest Court of the land in whatever jurisdiction given on an issue which was directly raised, considered and decided must operate as res judicata in the subsequent suit triable exclusively by the highest Court under [Article 131](#) of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

170. The principles of res judicata are clearly attracted in the present case. The claim of Kerala in the earlier proceeding that water level cannot be raised from its present level of 136 ft. was expressly not accepted and the obstruction by Kerala to the water level in the Mullaperiyar dam being raised to 142 ft. on the ground of safety was found untenable. The judgment dated 27.2.2006 of this Court, thus, operates as res judicata in respect of the issue of safety of the dam by increasing its water level from 136 ft. to 142 ft.

On perusal of the aforementioned findings, it is evident that it was a case where on similar issue, the matter had already been considered and decided between the parties and there was no change of law and as it was a question of fact, therefore, was set-aside.

In the decree dated 27.9.1995, Ram Devi was given a limited

right and, therefore, the plea of Mr.Sachin Mittal that right enured from the provisions of Sections 14(1) and 14(2) of 1956 Act and, therefore, she being not absolute owner could not have executed the three sale deeds under challenge, though in the first blush looked attractive, but in view of the interpretation of the provisions of Sections 14(1) and 14(2) of 1956 Act, it has been held that even if the widow has been given a limited right, the same would culminate into absolute ownership. Thus, the sale deeds executed by Ram Devi were on the presumption that she had ownership and title voluntarily passed on to the vendees. The sale deeds did not exceed to her share as the other half share of Jogi Ram had already been protected and was not in dispute. All these factors, in my view, have not weighed in the minds of the Courts below, i.e., proposition of law has not been appreciated in correct perspective and, thus, there is illegality and perversity in the concurrent findings. The same are hereby set-aside. The suit of the respondent-plaintiff is dismissed.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts

Act, 1918 had been restored back . For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of

law while deciding the appeals, aforementioned.

It is not in dispute that the respondent-plaintiff has already taken possession. He is entitled to seek restitution of the property in accordance with law.

Resultantly, the appeals are allowed.

February 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No