

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

RSA No.3559 of 2013 (O&M)

Date of decision : 01.11.2018

Raj Kumar and another

...Appellants

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate for the appellants.

Mr. Puneet Jindal, Sr. Advocate with
Ms. Neha Anand Mahajan, Advocate for the respondents.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing a suit for declaration filed by plaintiff-respondent No.1 claiming that the sale deeds executed by Smt. Shanti on 04.12.1998 are illegal, null and void.

Some facts are required to be noticed. Bhulla Ram was having three sons-Sadhu Ram, Brahm Dutt and Satya Paul, apart from a wife namely Dropati Devi. Sadhu Ram died during the lifetime of Bhulla Ram. Plaintiff-respondent No.1 is son of Brahm Dutt.

Bhulla Ram had lot of self-acquired property. He with a view to avoid any dispute between his successors, entered into a family settlement. Thereafter, a Memorandum of Settlement was reduced into writing on 18.03.1955 thumb marked by all the family members including various witnesses. According to the memorandum of family settlement, some property had come to the share of Brahm Dutt whereas some property had come to the share of Satya Paul. Similarly, two residential houses came to the share of Smt. Shanti Devi, widowed daughter-in-law. However, there was some other property left which was kept by Bhulla Ram for himself including land and kothi which although was in the name of his son namely Satya Paul. It was agreed that Satya Paul would transfer this property in favour of his father who alongwith his wife as well as Shanti Devi (widowed daughter-in-law) would reside therein and after his death, if his wife is alive, she would remain in possession alongwith widowed daughter-in-law and after the death of the wife, Smt. Shanti Devi (widowed daughter-in-law) would be entitled to reside therein and after her death, the property would be divided among his two sons in equal share.

Sh. Bhulla Ram died in the year 1960 and the mutation of the various properties were sanctioned on the basis of the Memorandum of Family Settlement dated 18.03.1955. It was specifically recorded in the aforesaid mutation that Smt. Shanti Devi would have no right to sell or mortgage the property which had been given to her for residence only during her lifetime. It may be noted that Sh. Satya Paul, pursuant to the Memorandum of Family Settlement had transferred the property in dispute in favour of his father measuring 4 kanals and 16 marlas.

Undisputedly, Smt. Shanti Devi had transferred the land measuring 2 kanals and 8 marlas in favour of Brij Mohan son of Satya Paul. However, she sold land measuring 2 kanals and 8 marlas by a separate sale deed in favour of the appellants which has been impugned in the suit.

Both the Courts after appreciating the evidence have found that the sale executed by Smt. Shanti Devi in favour of the appellants is illegal as he had no pre-existing rights of maintenance in the property in question, therefore, the right in the property, if any does not enlarge into full ownership in terms of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter to be referred as “the Act of 1956”).

Learned counsel for the appellants has submitted that in the present case, Section 14(1) of the Act of 1956 would apply and Smt. Shanti Devi deemed to have become full owner. He further submitted that in any case, once she was recorded as owner, the defendants-appellants are bona fide purchasers and, therefore, entitled to protect the rights transferred as per the sale deed. He further submitted that since Smt. Shanti Devi was always treated as an full owner and Smt. Shanti on various occasions sold the property in favour of her brother-in-law Brahm Dutt as well as in favour of her second brother-in-law Satya Paul, therefore, the ownership of Smt. Shanti is not in dispute.

On the other hand, learned counsel for the respondents submitted that two residential houses had been given to Smt. Shanti Devi exclusive ownership. He further submitted that since two other houses have been given to Smt. Shanti Devi, therefore, she had no pre-existing rights of maintenance in the property in dispute, therefore, Sub Section 2 of Section

14 of the Act of 1956 would be applicable and not Sub Section 1 Section 14. He further submitted that the transfer of other properties are pursuant to the Memorandum of Family Settlement and, therefore, there cannot be any acquiescence. He further submitted that in the mutation, when the property was transferred in favour of Smt. Shanti Devi, it was specifically recorded that Smt. Shanti Devi has only got life interest and the defendants-appellants admit the fact that they were in knowledge of the aforesaid factual position, therefore, the defendants-appellants cannot claim that they are protected under Section 41 of the Transfer of Property Act, 1882.

This Court has considered the submissions of the learned counsel for the parties and with their able assistance gone through the judgments passed by both the Courts below and the photocopy of the record supplied by the learned counsel for the parties, correctness whereof is not being disputed.

There is no dispute that the entire property was self-acquired property of Bhulla Ram. Widow of pre-deceased son had no pre-existing rights of maintenance from the self-acquired property of the father-in-law. Reference in this regard can be made to Section 19 of the Hindu Adoption and Maintenance Act, 1956 which 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 father-in-law 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. ”

It is apparent that the father-in-law is duty bound to maintain the daughter-in-law from any coparcenary property in his possession. Since the property in question undisputedly, is self-acquired, therefore, Smt. Shanti, daughter-in-law of pre-deceased son had no pre-existing right of maintenance in the property of her father-in-law.

Still further, on careful perusal of Section 14 of the Act of 1956, it is apparent that Section 14 is in two parts. Sub Section 1 of Section 14 of the Act of 1956 read with explanation as interpreted by Hon'ble the Supreme Court in the judgment **V. Tulasamma Vs. Sesha Reddy (1997-3) SCC 99**, have held that if instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and she does not have any pre-existing right, Sub-Section 2 of Section 14 would apply. The conclusion drawn by Hon'ble the Supreme Court in the aforesaid judgment are 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 preexisting 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. "

In the present case, she had no pre-existing right of maintenance in the self-acquired property of the father-in-law. Still further, she had still been given two residential houses in the family settlement. It has not been proved that she could not maintain herself or aforesaid two residential properties, ownership whereof had come to the share of the widowed daughter-in-law. In these circumstances, Smt. Shanti Devi does not become full owner of the property.

As regards other submission of the learned Senior Counsel, it may be noted that the transfer deeds executed by Smt. Shanti Devi are all in favour of two brothers-in-law or their children, who were to get the property as per the Memorandum of Family Settlement. Therefore, such transfer cannot be treated as acquiescence on the part of the plaintiff acknowledging her to be the owner of the property.

As regards the argument of the learned Senior Counsel for the appellants that the defendants-appellants are bona fide purchasers, it may be noted that when the defendant-appellant appeared in evidence, he admitted that he was in knowledge of document dated 18.03.1955 before the purchase of the property in question.

In the aforesaid document, it is specifically recorded that Smt. Shanti Devi has only right of residence in the property in question which

would go to two sons of the original owner after her death. Hence, the defendants-appellants cannot claim that they are bona fide purchasers.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No