

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.206 of 2001Order reserved on: 4-2-2019Order delivered on: 20-2-2019

1. Ganesh Singh, S/o Ramdas, Aged about 45 years. R/o Sonabal, Tahsil Konda Gaon.
2. Smt. Biyati Bai. W/o Piluram, Aged about 35 years, R/o Sonabal, Tahsil Kondagaon
3. Shankarlal, S/o Budhsan. Aged about 40 years, R/o Sonabal, Tahsil Kondagaon.
4. Smt. Neera Bai, W/o Shankarlal, Aged about 35 years, R/o Sonabal, Tahsil Kondagaon.

(Defendants)
---- Appellants

Versus

1. Milanram, S/o Pakalu, Aged about 50 years, R/o Sonabal, Tahsil Kondagaon.
2. Mangaluram, S/o Pakalu, Aged about 35 years, R/o Sonabal, Tahsil Kondagaon.
3. Pakali, W/o Sonaru, Aged about 40 years, R/o Village Sonabal, Tahsil Kondagaon.

(Plaintiffs)

4. Butaki Bai (Dead) Through LRs

a) Peelaram, S/o late Shridhar Gada, Aged about 40 years

b) Bhagwati, W/o late Raidar Gada, Aged about 50 years

Both are R/o Village Sonabal, Tahsil and District Kondagaon (C.G.)

c) Jaimati, W/o Biru Gada, Aged about 45 years, R/o Village Kumharpara, Post and Tahsil Kondagaon, District Kondagaon (C.G.)

5. Bong, S/o Kodu, Aged about 55 years, R/o Village Sonabal.
6. Tedhu, S/o Kodu, Aged about 50 years, R/o Village Sonabal, Tahsil Kondagaon.
7. Tulasi Bai (Deleted)
8. Mahadeo (Deleted)

9. Jal Singh (Deleted)

10. The State of M.P. (now the State of C.G.), Through Collector, Bastar, Jagdalpur.

(Defendants)
---- Respondents

For Appellants:	Mr. H.S. Patel, Advocate.
For Respondents No.1 to 3: -	Mr. Prafull N. Bharat, Advocate.
For Respondent No.10 / State: -	Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

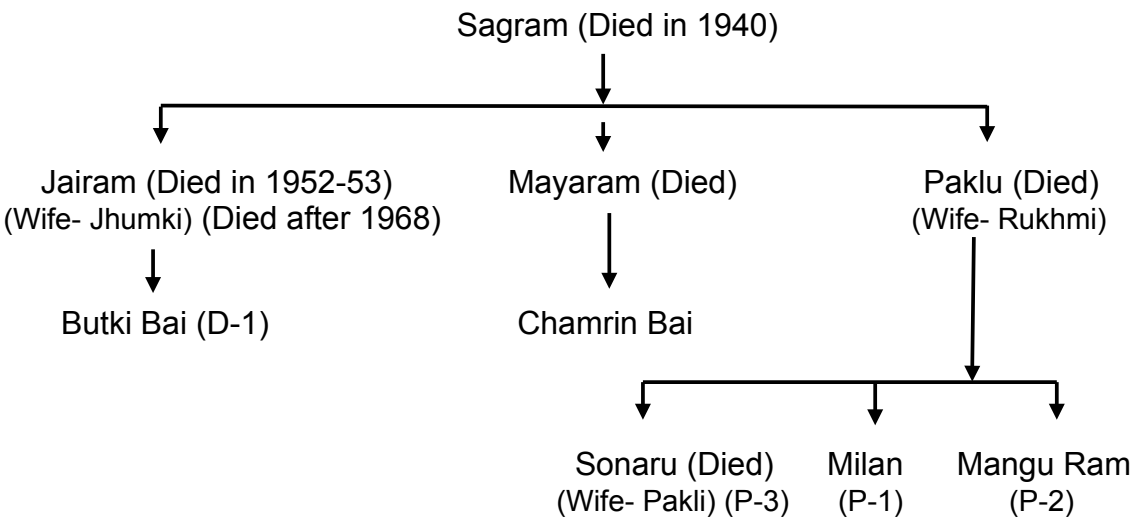
1. In this second appeal preferred by defendants No.7 to 10, following substantial questions of law were formulated for determination at the time of hearing of the appeal on admission: -

“1. Whether the finding that Jhumki Bai died in the year 1954 is perverse in view of sale deed dated 15.12.1964 and 19.10.1968 (Ex.P-6 & Ex.P-7) executed by Jhumki Bai?

2. Whether the findings recorded by both the Courts below that Jhumki Bai had no right, title or interest in the suit property are contrary to the provisions of the Hindu Women's Right to Property Act, 1937 and Sections 14, 15 and 17 of the Hindu Succession Act, 1956?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court.)

2. The following genealogical tree would demonstrate the relationship among the parties: -



3. The suit property was held by Sagram, he had three sons namely Jairam, Mayaram and Paklu. Mayaram died issue-less, whereas the plaintiffs are sons and widow of Paklu and defendant No.1 is daughter of Jairam. Parties are Gond by caste and claim to be governed by the Mitakshara branch of Hindu law. It was further pleaded that the suit land was agricultural land and it was owned by Sagram and after death of Sagram, Jairam, Mayaram and Paklu jointly inherited the said property as ancestral property. It was also pleaded that Sagram died in the year 1940, Mayaram died issue-less and Jairam died leaving only wife Jhumki and daughter Butki Bai (defendant No.1) as his legal heirs and as per the prevalent Hindu law, if a male Hindu dies, his daughter and widow do not get any share in the property and defendant No.1 taking advantage of mutation in the revenue records, sold the property vide Exs.P-6 to P-12 to defendants No.2 to 10 and as such, no title is transferred in favour of the purchasers and therefore the plaintiffs are exclusive title holders of the suit land after the death of Jairam, the alienation made by defendant No.1 in favour of defendants No.2 to 10 is null and void.
4. The defendants filed written statement controverting the plaint allegations stating inter alia that the property was inherited by Paklu, Jairam and Mayaram, and after death of Jairam, his wife Jhumki became the limited owner of the suit property along with Paklu and after death of Jhumki, her daughter Butki Bai (defendant No.1) has inherited the property and has rightly sold the suit property to defendants No.2 to 10. Defendants No.2, 3, 4 and 5 have also claimed perfection of title by adverse possession over the suit land.
5. The trial Court after appreciating oral and documentary evidence on record, held that the suit property is the ancestral / joint family property

of all the three brothers namely Jairam, Mayaram and Paklu and after the death of Sagram, Paklu is entitled for declaration of title of the suit land and the sale made in favour of defendants No.2 to 5 vide Exs.P-6 & P-7 is barred by limitation and cannot be declared null and void and Paklu was also one of the signatories of Exs.P-6 & P-7, and decreed the suit that the plaintiffs are entitled for title of Khasra Nos.313, 345, 356 & 366, total area 18.70 acres, and further granted reliefs in favour of the plaintiffs which was affirmed by the first appellate Court. Both the courts have concurrently held that widow of Jairam – Jhumki died in the year 1954 prior to coming into force of the Hindu Succession Act, 1956.

6. Mr. H.S. Patel, learned counsel for the appellants / defendants No.7 to 10, would submit both the courts below have concurrently erred in holding that Jhumki – widow of Jairam died in the year 1954, whereas Exs.P-6 & P-7 were executed by Jhumki along with Paklu (plaintiffs' predecessor-in-title) on 15-12-1964 and 19-10-1968, respectively, which go to show that finding recorded by the two Courts below that Jhumki died in the year 1954 is perverse on the face of record and is liable to be set aside. He would further submit that admittedly, Jhumki's husband Jairam died in the year 1952-53 and at that time, the Hindu Women's Rights to Property Act, 1937 was in force and by virtue of Section 3(3) of the said Act of 1937, Jhumki had acquired limited interest known as a Hindu woman's estate under Section 3(3) of the Act of 1937 and entitled to claim partition on the suit land which has ripened into her full ownership right on the coming into force of the Hindu Succession Act, 1956 on 17-6-1956, therefore, after coming into force of the Hindu Succession Act, 1956, Butki Bai (defendant No.1) – daughter of Jhumki was entitled to alienate the suit property and thus,

it cannot be held that only the plaintiffs are exclusive owners and entitled for declaration of the entire suit property and the said finding deserves to be set aside.

7. Mr. Prafull N. Bharat, learned counsel appearing for the plaintiffs / respondents No.1 to 3, would submit that both the Courts below have rightly concluded that Jhumki died in the year 1954 prior to coming into force of the Hindu Succession Act, 1956, therefore, Jhumki had no right over the suit property and rightly decreed the suit. He would further submit that by virtue of Section 3(3) of the Hindu Women's Rights to Property Act, 1937, at the best, Jhumki could have claimed partition before coming into force of the Hindu Succession Act, 1956, then only her definite share, if any, could have ripened into full ownership right after the said Act of 1956 which admittedly had not taken place, therefore, her share would not be any property as provided in Section 14(1) of the Hindu Succession Act, 1956. Therefore, both the Courts below have rightly granted decree in favour of the plaintiffs and the second appeal deserves to be dismissed.
8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

Answer to Substantial Question of Law No.1: -

9. Both the Courts below have recorded a finding that Jhumki and her husband Jairam both died in the year 1951, prior to coming into force of the Hindu Succession Act, 1956. This finding has been seriously challenged by the appellants/defendants. The plaintiffs have filed two sale deeds which have been exhibited by themselves vide Exs.P-6 & P-7 executed respectively on 15-12-1964 and 19-10-1968 in which Jhumki and Paklu – predecessors-in-title of the plaintiffs, both have

jointly executed sale deeds in favour of the purchasers – appellants herein. Since Jhumki was alive and sale deeds have been executed jointly by the plaintiffs' predecessor-in-title with her and which have not been questioned by the plaintiffs, the finding recorded by the two Courts below holding that Jhumki died prior to the year 1954 is ex facie illegal and bad, as she was alive till the execution of sale deeds Exs.P-6 & P-7 i.e. dated 15-12-1964 and 19-10-1968, respectively, and therefore the finding recorded by the two Courts below that Jhumki died prior to the year 1954 is perverse on the face of record and is accordingly set aside and it is held that she died after coming into force of the Hindu Succession Act, 1956 accordingly.

Answer to Substantial Question of Law No.2: -

10. It is the case of defendant No.1 – daughter of Jhumki i.e. Butki Bai and the purchasers from defendant No.1 that since Jairam died in the year 1951 at the time when the Act of 1937 was in force, therefore, by virtue of Section 3(2) of the Act of 1937, Jhumki had acquired limited right in the suit property left by her husband and which has matured into full ownership on the coming into force of the Act of 1956 on 17-6-1956. A serious question of law has been raised by Mr. Bharat, learned counsel, that since Jhumki did not claim partition under Section 3(3) of the Act of 1937 till the Act of 1956 came into force on enactment of the Act of 1956, therefore, Section 14(1) of the Act of 1956 would not apply, as Jhumki did not acquire any property in her husband's share before commencement of the Act of 1956 by reason of no partition having been effected. As such, this appeal raises an important question of law as to the true construction of Section 14 of the Act of 1956 read with Section 3(2) of the Act of 1937 as amended by Act No.18 of 1937. Sub-sections (2) and (3) of Section 3 of the Act

of 1937 provide as under: -

“3. Devolution of property.—(1) xxx xxx xxx

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition a male owner.”

11. A bare perusal of the aforesaid provision would reveal that sub-section (3) of Section 3 of the Act of 1937 provides that in respect of the interest which devolves on a Hindu widow under sub-section (2), she shall have the limited interest known as a Hindu woman's estate and it further enacts that she shall have the same right of claiming partition as a male owner. It does not expressly or impliedly enact that Hindu governed by Mitakshara school of Hindu Law is deemed to live till his widow claims a right of partition.
12. The question raised herein was considered by the Andhra Pradesh High Court in the matter of Kanuri Sri Sankara Rao v. Kanuri Rajyalakshamma¹ and it was held that interest of husband devolves on widow under sub-sections (2) and (3) of Section 3 of the Act of 1937, immediately on the date of his death. No legal fiction is imported in the section and the legislature does not provide that the husband is deemed to live till she claims partition or files a suit for working out her rights. The Andhra Pradesh High Court relying upon the decision of the Madras High Court in the matter of Kuppathammal v. Sakthi² held that the rights conferred on the widow

1 AIR 1961 AP 241

2 AIR 1957 Mad 695

are not inchoate and imperfect till a claim for partition is made and observed as under: -

“9. I am fortified in my view by the decision in *Kuppathammal v. Sakthi*, AIR 1957 Mad 695. Rajagopala Ayyangar, J. expressed the view that under the provisions of the Hindu Women's Rights to Property Act, the rights conferred on the widow are not inchoate and imperfect till a claim for partition is made. He held that the rights come into existence on the date of the death and that the repeal of the provisions of the Act by Hindu Succession Act did not in any way affect the rights conferred under the Hindu Women's Rights to Property Act. The learned Judge however did not consider the effect of Section 14 of the Hindu Succession Act and determine whether the widow obtains an absolute interest or not in the property which devolved on her under the Hindu Women's Rights to Property Act.”

13. The decision rendered by the Andhra Pradesh High Court has further been followed by the Madras High Court in the matter of **Subbalakshmi Ammal v. Ramalakshmi Ammal and others**³ and it has been held that the rights conferred upon a Hindu widow under the Hindu Women's Rights to Property Act were not inchoate or imperfect until a claim for partition was made and further held that the moment the husband died, his interests devolved upon the widow and by a claim for partition she was merely working out the right which she had acquired under the Act. In light of this legal position, the submission of Mr. Bharat, learned counsel, deserves to be rejected.

14. At this stage, it would be appropriate to notice Section 14(1) of the Act of 1956 which states 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

³ AIR 1964 Madras 76

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.”

15. On a careful perusal of the aforesaid provision, it is quite vivid that under Section 14(1) of the Act of 1956, to get attracted, the property must be possessed by the female Hindu on coming into force of the Act of 1956. The object of this provision is firstly, to remove the disability of a female to acquire and hold property as an absolute owner and secondly, to convert any estate already held by woman on the date of commencement of the Act as a limited owner, into an absolute estate.

16. In Mayne on Hindu Law, 15th Edn., page 1171, qua Section 14(1) of the Act of 1956, it is stated as under: —

“on a reading of sub-section (1) with Explanation, it is clear that wherever the property was possessed by a female Hindu as a limited estate, it would become on and from the date of commencement of the Act her absolute property. However, if she acquires property after the Act with a restricted estate, sub-section (2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award.”

17. Their Lordships of the Supreme Court in the matter of Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and others⁴ while considering the meaning of “any property possessed by a female Hindu” quoted with approval the following words of Justice P.N. Mookherjee in the matter of Gostha Behari v. Haridas Samanta⁵ (at page 559):

“The opening words in “property possessed by a female Hindu” obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession

⁴ (1970) 1 SCC 786

⁵ AIR 1957 Cal 557

when the Act came into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word “possession” in its widest connotation, when the Act came into force, the section would not apply.”

and Their Lordships held :

“In our opinion, the view expressed above is the correct view as to how the words “any property possessed by a female Hindu” should be interpreted.”

18. In the matter of **Eramma v. Verrupanna and others**⁶, the Supreme Court held that the property possessed by a female Hindu as contemplated in the Section is clearly the property to which she has acquired some kind of title whether before or after the commencement of the Act and negatived a claim under Section 14(1) of the Act in view of the fact that the female Hindu possessed the property on the date of the Act by way of a trespass after she had validly gifted away the property, and further held that the need for possession with a semblance of right as on the date of the coming into force of the Hindu Succession Act was thus emphasized.
19. In the matter of **Dindayal and another v. Rajaram**⁷ it was held that before any property can be said to be “possessed” by a Hindu woman as provided in Section 14(1) of the Hindu Succession Act, two things are necessary (a) she must have a right to the possession of that property, and (b) she must have been in possession of that property either actually or constructively.
20. Thereafter, in the matter of **V. Tulasamma and others v. Sesha Reddy (Dead) by LRs.**⁸, Their Lordships considered the real nature of incidence of Hindu widow's right of maintenance and scope and

6 (1966) 2 SCR 626

7 AIR 1970 SC 1019

8 (1977) 3 SCC 99

ambit of Section 14(1) of the Act of 1956 and held as under: -

“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.”

21. In the matter of Sadhu Singh v. Gurdwara Sahib Narike and others⁹, the Supreme Court pointed out the essential ingredients in determining whether sub-section (1) of Section 14 of the Act of 1956 would come into play and held that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act of 1956 would come into play. It was further held that if she takes it as an heir under the Act, she takes it absolutely.
22. Similar proposition has been laid down by the Supreme Court in the matter of Sri Ramakrishna Mutt represented by Manager v. M. Maheswaran and others¹⁰ reiterating and reaffirming the principles of law laid down in Gummalapura Taggina Matada Kotturuswami (supra).
23. Recently, in the matter of Shyam Narayan Singh and others v. Rama Kant Singh and others¹¹, the Supreme Court while considering the provision contained in Section 14(1) of the Act of 1956 held as under: -

⁹ AIR 2006 SC 3282

¹⁰ (2011) 1 SCC 68

¹¹ 2018(1) RCR (Civil) 981

“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 'possessed' has been used in the sense of having a right to the property or control over the property. The expression 'any property possessed by a Hindu female whether acquired before or after the commencement of the Act' on an analysis yields to the following interpretation:

(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.”

24. Reverting to the facts of the case in light of the aforesaid principles of law laid down by the Supreme Court in the above-stated judgments (supra), admittedly, Jairam died in the year 1954 by which his widow Jhumki became the limited owner of her share by virtue of Section 3(2) of the Act of 1937 and after coming into force of the Act of 1956 and by operation of Section 14(1) of the Act of 1956 with effect from 17-6-1956, her limited right in the suit property would blossom into absolute estate as contemplated by Section 14(1) of the Act of 1956, as she would become its absolute owner and was entitled to alienate

the suit property and it has rightly been alienated even along with the plaintiffs' father Paklu vide Exs.P-6 & P-7 to the defendants and after her death, her property was inherited by her daughter Butki Bai – defendant No.1 and as such, she was also entitled to the suit property. As such, both the Courts below are absolutely unjustified in holding that Jhumki – widow of Jairam had no right over the suit property and accordingly, the impugned judgments & decrees passed by the two Courts below so far as declaring the alienation made by defendant No.1 to the present appellants vide Exs.P-8, P-9, P-10, P-11 & P-12 illegal, are set aside. However, the alienation made to the other defendants vide Exs.P-6 & P-7, which they have not challenged in this appeal, would remain undisturbed.

25. As a fallout and consequence of the aforesaid discussion, the second appeal is partly allowed to the extent of the alienation made to the appellants herein / defendants No.7 to 10 and judgments of both the Courts below are accordingly set aside to the extent indicated herein-above. The substantial questions of law are answered accordingly. There shall be no order as to cost(s).

26. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge