

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1438 of 1988 (O&M)

Date of Decision: April 10, 2019

Mehar Chand (since deceased) through L.Rs & others

...Appellants

Versus

Smt. Paro Bai (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Lalit Yadav, Advocate for
Mr. Sandeep Sharma, Advocate,
for the appellants.

Mr. J.S.Virk, Advocate &
Mr. K.G.Chaudhary, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiffs, decreed by the trial Court, has been dismissed.

By filing suit for declaration, appellant-plaintiffs challenged the judgment and decree dated 21.04.1972 rendered in Civil Suit No.146 of 1972 titled as “Satish Lal etc. Versus Smt.Parro etc.” on the premise that one Ram Lubhaya son of Chandi Ram was the co-owner in possession of 1/6th share in land measuring 91 kanals 4 marlas, which was allotted to him in view of the land left by him in Pakistan. The land was stated to be ancestral

and coparcenary. Ram Lubhaya had married twice with Parvati and Paro, who died in Pakistan. Plaintiffs were born from Parvati, whereas defendant No.1 had given birth to Satish Lal, Hari Kishan and Om Parkash. A civil suit for declaration filed by the plaintiffs, defendant Nos.2 and 3 and one Vir Bhan against Ram Lubhaya and Paro, vide judgment and decree dated 22.10.1956, was decided and according to the said decision, plaintiffs were declared owners to the extent of half share. Defendant Nos.2 and 3 and Vir Bhan became owners in possession of the suit land in equal shares. Ram Lubhaya inherited 1/3rd share, whereas defendant No.1 got 1/6th share. It was also agreed that in case any other son born from Ram Lubhaya and Paro, he would also get the suit land equal to the land of plaintiffs and defendant Nos.2 and 3. Ram Lubhaya would give share to his son and till they remained alive, will be the owner of the land and would not have any right to alienate without the consent of the plaintiffs and alienation, if any, would not be binding on the rights of the plaintiffs. Since the decree was in violation of the undertaking and the observations, constrained to file the suit.

Defendants opposed the suit alleging the claim to be time barred as decree of 1972 was attempted to be challenged in 1985. In fact, plaintiffs contravened the provisions of the decree dated 22.10.1956 as the plaintiffs had obtained full share of the suit land out of 573 kanals 9 marlas, but did not deny the decree of 1956. Plaintiffs never objected on the transfer of the suit land by Ram Lubhaya vide registered sale deeds dated 21.04.1972 and 28.03.1972. Suit property at Hansi was alienated in the presence of the plaintiffs, which was not objected to. Defendant No.1, as per the decree dated 22.10.1956, became the full fledged owner under the Hindu

Succession Act (for short, the Act), therefore, she was competent to alienate the suit property to any person.

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

- “1) Whether the impugned judgment and decree dated 21.4.72 are wrong and collusive and not binding on the rights of the plaintiff and are liable to be set aside as alleged? OPP*
- 2) Whether the plaintiffs are entitled to injunction prayed for? OPP*
- 3) Whether the suit is within limitation? OPD*
- 4) Whether the defendant No.1 became absolute owner of the suit land under Hindu Succession Act? OPD*
- 5) Whether the parties are governed by agricultural custom? If so, what the custom is and to what effect? OPD*
- 6) Whether the plaintiffs are estopped from filing the present suit as alleged in the preliminary objection No.4? OPD*
- 7) Whether the plaintiffs have no locus standi to file this suit? OPD*
- 8) Relief.”*

Plaintiffs, in support of the evidence, examined one witness and brought on record documents Ex.P1 to Ex.P8, i.e., jamabandies, judgment and decree etc., whereas the defendants examined two witnesses.

The trial Court, by noticing the provisions of sub-section (1) of Section 14 of the Act, decreed the suit. The Lower Appellate Court relied upon the provisions of sub-section (1) of Section 14 on the premise that Paro had a pre-existing right and, therefore, had become full fledged owner.

Mr. Lalit Yadav, Advocate for Mr. Sandeep Sharma, learned counsel for the appellants submitted that the law with regard to the applicability of the provisions of sub-sections (1) and (2) of Section 14 of the Act is no longer exists. He contended that ratio decidendi culled out by

the Hon'ble Supreme Court in **Jupudy Pardha Sarathy Versus Pentapati Rama Krishna and others, 2016(2) Supreme Court Cases 56**, wherein principles culled out in **V.Tulsanama's case(supra)** had been reiterated, would not apply to the facts and circumstances of the case, for, in para 28 of the judgment rendered in Jupudy Pardha Sarathy's case(supra), the Court while interpreting the contents of the Will found that wife was given a right in the property as maintenance,i.e., "In Lieu of Maintenance" as expression used in the explanation of Section 14(1) of the Act.

The aforementioned judgment came to be debated upon by Hon'ble the Supreme Court, wherein it was held that de hor of the fact that whether the widow was given a life interest, it would culminate into full ownership in the latest judgment in **Ranvir Dewan Versus Mrs. Rashmi Khanna & Anr., 2018 AIR (SC) 62**, wherein by interpreting the expression "Life Interest" the Hon'ble Supreme Court laid down that beneficiary was given "limited right" in the property which would not ripen in the full ownership, in other words, he submitted that ratio decidendi culled out in judgment rendered by the Supreme Court of India in **V.Tulasamma and others Vs. Sesha Reddy (dead) by LRs (1977) 3 SCC 99** would not apply.

Per contra, Mr. J.S.Virk and Mr. K.G.Chaudhary, learned counsel for the respondents, supported the impugned judgment and decree to submit that Paro had pre-existing right as Vir Bhan the other sibling pre-deceased Ram Lubhaya and Paro and his share devolved upon Paro as she became the absolute owner. Such deviation from the decree dated 22.10.1956 even if conferred a life interest, but her ownership had become absolute and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the

paper book, records of the courts below as well as the judgments cited with their able assistance and of the view that the following Substantial Question of Law arises for determination by this Court:-

“Whether the decree dated 22.10.1956 conferring the life interest to Ram Lubhaya and Paro, would assume the character of full ownership as per the provisions of Section 14(1) or 14(2) of the Act?”

While admitting the appeal, the following order was passed by this Court on 07.06.1988:-

“Admitted.

The respondents shall not alienate the disputed property meanwhile.”

The decree of 22.10.1956 is in vernacular. The same was read out by the Translator of this Court to confer whether it contained a rider of alienation upon Ram Lubhaya and Paro. The same was read out and there is no dispute with regard to the findings noticed by the courts below. Further question which arises is whether Paro would acquire the acquisition of the property as absolute owner under Section 14(1) or 14(2) of the Act. It would be apt to reproduce Sections 14(1) and (2). The same read thus:-

*“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.”

The findings rendered in paragraphs 36, 37, 41, 43, 44, 45, 46 by the Supreme Court of India in **Mr.Ranvir Dewan's case (supra)** are reproduced as under:-

“36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

41. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ambit of [Section 14\(2\)](#) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a “restricted estate” in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of [Section 14\(2\)](#) of the Act, even if the instrument, decree, order or award allotting the property prescribes a “restricted estate” in the property.

43. *A fortiori, plaintiff No.2-late Mrs.Pritam received only “life interest” in the suit house by the Will dated 24.06.1986 from her late husband and such “life interest” was neither enlarged nor ripened into an absolute interest in the suit house and remained “life interest”, i.e., “restricted estate” till her death under [Section 14\(2\)](#) of the Act. This we say for following factual reasons arising in the case.*

44. *First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.*

45. *Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only “life interest” to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of [Section 14 \(2\)](#) read with [Section 30](#) of the Act.*

46. *Third, such “life interest” was in the nature of “restricted estate” under [Section 14\(2\)](#) of the Act which remained a “restricted estate” till her death and did not ripen into an “absolute interest” under [Section 14\(1\)](#) of the Act. In other words, once the case falls under [Section 14\(2\)](#) of the Act, it comes out of [Section 14\(1\)](#). It is permissible in law because [Section 14\(2\)](#) is held as proviso to [Section 14\(1\)](#) of the Act.”*

The cumulative reading of the aforementioned provisions leave no manner of doubt that the Lower Appellate Court erred in setting-aside the judgment and decree of the trial Court.

For the reasons mentioned above, the judgment and decree of the Lower Appellate Court is not sustainable. The same is set-aside and that of the trial Court is restored. Suit is decreed. The substantial Questions of Law are answered in favour of the appellant-plaintiffs and against the defendant-respondents.

Appeal stands allowed.

April 10, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No