

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-936-2012(O&M)
Date of Order: 16.09.2021

HANS RAJ AND ORS.

..Appellants

Versus

BHAG SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANI LKSHETARPAL

Present Mr. C.B. Goel, Advocate
for the appellants.

Mr. Abhilaksh Grover, Advocate
for respondents.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The defendants (appellants herein) assail the correctness of concurrent findings of the fact arrived at by the subordinate courts while decreeing the suit for declaration with a consequential relief of permanent prohibitory injunction.

Some facts are required to be noticed.

Late Sh. Rikhi Ram @ Rikhi was the owner in possession of the suit property. He married to Smt. Akki, however, but owing to differences, they did not stay together. On an application filed by Smt. Akki, the Court directed Rikhi Ram to pay her maintenance at the rate of Rs.20/- per month. However, he was unable to pay the amount of maintenance as per the directions of the Court and therefore, executed a document to grant a limited estate of the land measuring 7 bighas of land in favour his wife Smt. Akki in

lieu of the liability to pay her the monthly amount of maintenance as directed by the Court .

Smt. Rampati (Late Smt. Akki's daughter) was married to Sh. Purshotam. The plaintiffs (respondents herein) are children of Smt. Rampati and Sh. Purshotam. Smt. Rampati predeceased Smt. Akki on 31.12.1983. After the death of Smt. Akki, the plaintiffs filed the suit claiming the property being her heirs. Smt. Akki. It is claimed that the defendants, without any right, title or interest, have started interfering in the suit property. In this case, defendant Ram Saran entered appearance in the suit but did not file the written statement. Subsequently, he expired and his legal representatives were brought on record. Still, no written statement was filed. Consequently, their defence was struck off vide an order dated 01.04.2008.

The plaintiffs examined Bhag Singh-plaintiff No.1 as PW1, Ram Pratap as PW2, Randeep Singh as PW-3 and produced various documents. Defendants did not lead evidence as their defence was stuck off.

Both the Courts, on the appreciation of evidence, have concurrently found out that as the suit land was given to Smt. Akki by her husband in recognition her right of maintenance, therefore, in terms of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as “the 1956 Act”), her right stood enlarged into absolute ownership and therefore, the plaintiffs being heirs of Smt. Akki are owners of the said land.

During the pendency of the present appeal, the defendants have filed an application with a prayer to summon the record of Civil Suit No.451 of 1981, titled as “Rampati Vs. Ram Karan and others”, decided on 12.12.1983, by Sub-Judge Ist Class, Ambala City. It will be noted here that the defence of the defendant was struck off by the trial Court and they did

not file any application before the First Appellate Court. In this court also, they have not filed any application for permission to lead additional evidence. The defendants themselves have produced a copy of the order passed on 12.12.1983. On perusal thereof, it is clear that Smt. Akki was granted permission to file a fresh suit subject to the payment of the cost of Rs.40/-. Thus, the summoning of the record of the aforesaid suit would not advance the case of the defendants. Furthermore, it has come on record that when Bhag Singh-plaintiff appeared in evidence, learned counsel representing the defendants, during his cross-examination, suggested that Smt. Rampati had filed a previous suit which was dismissed. Sh. Bhag Singh explained that the aforesaid suit is not with respect to the suit land. The defendants did not produce any evidence to prove that a previous suit filed by Smt. Rampati with respect to suit property was dismissed.

Learned counsel representing the appellants while relying upon the judgment passed by a full Bench in **AIR 1977 PH 341 (Smt. Jaswant Kaur vs Harpal Singh And Ors.)**, contends that in such a situation Section 14(2) of the 1956 Act shall be applicable. Per Contra, learned counsel representing the respondents contends that from the reading of Exhibit PW-1/A-Settlement Deed dated 05.12.1950, it is evident that Sh. Rikhi Ram @ Rikhi acknowledged the pre-existing right of maintenance pursuant to the order of the Court and accordingly, he transferred the land measuring 7 bighas of land in her favour. Hence, he contends that Section 14(1) of the 1956 Act will be applicable. In support of this submission, he relies upon the judgment of the Hon'ble Supreme Court in **V. Tulasamma & Ors vs V. Sessa Reddi, 1977(3) SCC 99.**

Before proceeding to analyse the arguments of learned counsel

representing the parties, it is appropriate to extract Section 14 of the 1956 Act which reads 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.”

On a careful reading of Section 14(1) of the 1956 Act along with its explanation, it is comprehensible that any property possessed by a female Hindu shall be held by her as full owner, thereof, and not as a limited owner. Explanation to Sub-Section(1) of Section 14 of the 1956 Act provides that the 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. Thus, in this case Section 14(1) of the 1956 Act shall be applicable. In Sub-Section 2, the Statute, does not talk of pre-existing right of maintenance. Thus, Section 14(2) of the 1956 Act is in

the nature of exception to Section 14(1) of the 1956 Act. Furthermore, a three Judge Bench in **V. Tulasamma (supra)**, has concluded that a Hindu female's right to maintenance is not an empty formality or an illusory claim. It has further been held that Section 14(1) of the 1956 Act and the explanation thereto, have been couched in the widest possible terms and must be liberally construed in the favour of females. It has been further explained that sub-Section 2 of Section 14 of the 1956 Act is in the nature of a proviso and it operates in its own field without interfering with the operation of Section 14(1) of the 1956 Act.

The relevant discussion is in para 62 which is extracted as under:-

“62. 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-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 with- out 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."*

Moreover, recently the Hon'ble Supreme Court in **Jupudy**

Pardha Sarathy vs Pentapati Rama Krishna & Ors, 2016(2) SCC 56, has once again reiterated the same view. Furthermore, the judgment passed in **Jaswant Kaur (supra)** is distinguishable. In the aforesaid case, the husband of Jaswant Kaur gave some part of the property to her as a limited estate. There was no recital in the document or evidence to prove that the transfer was in recognition of her pre-existing right of maintenance. Therefore, in those circumstances, the Court held that Section 14(2) of the 1956 Act shall apply.

In the present case, there can be hardly any doubt, particularly when her right of maintenance is acknowledged in the document Exhibit PW-1/A. Sh. Rikhi Ram @ Rikhi has admitted that as per the orders of the Court, he is under an obligation to pay maintenance at the rate of Rs.20/- per month, however, since he is not in a position to pay the monthly amount in cash, therefore, he is transferring the suit property in favour of Smt. Akki. Keeping in view the aforesaid facts, Section 14(1) of the 1956 Act which shall be applicable in the present case.

In view the aforesaid discussion, the inescapable conclusion is that there is no merit in the appeal.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16th September, 2021

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No