

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.91 OF 1993

1. Ramchandra Barma Mali,
(Since deceased through his L.R.s)
- 1A. Chandrakant S/o Ramchandra Mali,
Age 42 years, Occu. Agri.,
- 1B. Durvas S/o Ramchandra Mali,
Age 36 years, Occu. Agri.,
- 1C. Bhaskar S/o Ramchandra Mali,
Age 33 years, Occu. Agri.,
- 1D. Bhimashankar S/o Ramchandra Mali,
Age 30 years, Occu : Agri.,
- 1E. Ambubai W/o Ramchandra Mali,
Age 65 years, Occu. Agri.,

All Nos.1A to 1E R/o Kakramba,
Taluka Tuljapur, District Osmanabad.

2. Maruti S/o Barma Mali,
Age 44 years, Occu. Agriculture,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
3. Pandurang S/o Barma Mali,
Age 40 years,
Occu. and R/o as above. **... Appellants.**

Versus

1. Mahadu S/o Rama Mali (Surwase),
Died through L.Rs.
- 1A. Raosaheb S/o Mahadev Mali (Surwase),
Age 65 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.

- 1B. Baliram S/o Mahadev Mali (Surwase),
Age 62 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1C. Sitaram S/o Mahadev Mali (Surwase),
Age 59 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1D. Madhukar S/o Mahadev Mali (Surwase),
Age 55 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1E. Shreemant S/o Mahadev Mali (Surwase),
Age 51 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1F. Ashok S/o Babruwan Mali (Surwase),
Age 42 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1G. Devidas S/o Babruwan Mali (Surwase),
Age 39 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1H. Kashinath S/o Babruwan Mali (Surwase),
Age 36 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 1I. Kalidas S/o Hanumant Mali (Surwase),
Age 34 years, Occu. Agri.,
R/o Kakramba, Tq. Tuljapur,
District Osmanabad.
- 2. Tukaram Barma Mali.
- 3. Laxman Barma Mali.

(Res.Nos.2 and 3 died prior to decision

in lower Court, but their names are mentioned in Judgment and decree, hence they are made as party respondents).

... **Respondents.**

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Advocate for Appellants : Mr. Ajinkya A. Joshi h/f Mr. Krishna K. Kulkarni.

Advocate for Respondent Nos.1A to 1I : Mr. H. V. Tungar
Respondent Nos.2 & 3 – Dead.

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CORAM : S. G. MEHARE, J.

DATE : 12.10.2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the appellants and the learned counsel for respondents.

2. The present appellants were the plaintiffs, and the respondents were the defendants. The plaintiffs had filed a suit to declare ownership and recover possession of the agricultural field and house property. The suit of the plaintiffs was based upon an award passed on 14.07.1941 in Regular Civil Suit No.1018 of 1940 before the Court. In pursuance of the settlement terms, the suit properties were handed over to one Kashibai Dashrath Mali, who was admittedly the legal heir from the common ancestor Arjun. It is the case of the plaintiffs that in the said award, the restricted rights were conferred upon Kashibai to enjoy the suit properties till her lifetime in

lieu of maintenance. Hence, her rights were restricted. However, on 31.12.1966, she executed a Will in favour of the defendants, and the defendants were claiming the title through that Will. Before executing the Will, the defendants were in possession as a lessee of deceased Kashibai. The plaintiffs have a case that since Kashibai had no absolute title to the suit properties, she cannot dispose of the suit properties by way of Will. Therefore, the defendant cannot acquire the title. Consequently, they are entitled to the possession and declaration that they are the exclusive owners of the suit properties.

3. The defendant contested the suit. They have pleaded that Kashibai has the absolute rights in the suit properties. There was no dispute about the suit filed by Kashibai in the year 1940 and the passing of the award. The execution of the Will is also not disputed by either of the parties. Neither of the parties to the suit led the evidence, and the suit proceeded ahead. The learned Trial Court as well as the First Appellate Court, dismissed the suit.

4. By order dated 13.04.1993, this Court admitted the appeal as the grounds Nos.(i) to (iv) in appeal memo. The

learned counsel for the appellants would submit that the grounds Nos.(i) to (iv) are the substantial questions of law involved in this case.

5. After hearing the respective learned counsels, this Court has reformulated the substantial questions of law as follows :

(i) Did Kashibai acquire only restricted rights to enjoy the suit properties in lieu of maintenance till her life was received from the award/ compromise in a suit?

(ii) Did Kashibai have the right to dispose of the property through a testamentary instrument?

Both the lawyers conceded the substantial questions of law as reformulated above by the Court and advanced the arguments.

6. Learned counsel for the appellants has vehemently argued that both the Courts have not considered Section 14(2) of the Hindu Succession Act. They dismissed the suit on the presumption that since the plaintiff's father had compromised the suit, that created the right in favour of Kashibai. They have acknowledged that the Kashibai had pre-existing rights. He further submits that when the compromise award was passed,

Kashibai had no pre-existing right. The right was conferred upon her in lieu of maintenance till her life. Hence, she had no right to dispose of the property in any way, mode or manner. Since Kashibai had no absolute right, the Will Deed executed in favour of the defendants is null and void.

7. He relied on the cases of *Sadhu Singh Vs. Gurdwara Sahib Narike and others ; (2006) 8 Supreme Court Cases 75* and *M. Sivadasan (Dead) through L.Rs. and others Vs. A. Soudamini (Dead) through L.Rs. and others ; (2023) Supreme Court Cases OnLine 1078*. He also relied on the case of *Himi (Smt.) D/o Lachhmu (Smt.) and another Vs. Hira Devi (Smt.) wd/o Budhu Ram and others ; (1996) 10 Supreme Court Cases 642*.

8. The learned counsel for the appellants heavily relied upon the Judgment of *Sadhu Singh* and argued that the law on the acquisition of a right by a woman under Section 14 of the Hindu Succession Act has been clarified. In the facts and circumstances of the case, it is clear that the right was created for the first time in favour of Kashibai by way of the award in the Civil Suit, and she had admitted her restricted rights to

enjoy the suit properties till her life in lieu of maintenance. Therefore, the appeal deserves to be allowed.

9. Per contra, learned counsel appearing for the respondents/defendants has vehemently argued that there is no dispute that Kashibai was the daughter of one of the branches of common ancestor Arjun. Relations between the plaintiffs and Kashibai were never denied. Before 1936, the inheritance of daughters was governed differently as per the law then existing. If the case is considered from a different angle, the plaintiffs are claiming the reversion. If the case of reversion is considered, the suit itself is not tenable. He relied on the case of ***Bai Vajia Vs. Thakorbbhai Chelabhai ; Laws (SC) 1979 2 22***. He also relied on the Judgment of *Sadhu Singh* relied upon by the appellants.

10. The dispute revolved around the sole question of whether Kashibai had pre-existing rights on the date of the award dated 14.07.1941.

11. Section 14 of the Hindu Succession Act has been referred to; hence, reproduced for the sake of ready reference :

“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.”

12. Sub Section (1) of Section 14 is crystal clear that where a female Hindu possess property acquired before or after the commencement of this Act, 1956 shall be held by her as full owner thereof and not as a limited owner. The pre-condition to claim full ownership by a Hindu female under Section 14 is that she must have the property in possession before or after

the commencement of the Hindu Succession Act. As far as acquiring property by a female, the term "property" has been defined in explanation. Such property includes movable and immovable. In the said explanation, the sources of the acquisition of the right by a female have been explained. She may acquire the property 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 the 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.

13. In the case at hand, the compromise award was passed between the father of the plaintiffs and the deceased Kashibai. They had agreed to partition the suit land. However, an additional clause was added to the award that it was given to her in lieu of her maintenance.

14. As discussed above, Kashibai was one of the descendants of common ancestor Arjun, and the suit properties were devolved from generation to generation. In this situation, it is

to be answered whether the clause in the compromise deed, 'in lieu of maintenance,' confers upon her the restricted rights.

15. In the case of *Sadhu Singh (cited supra)* and all other cases relied upon by both the respective counsels, the distinction in Section 14(1) and 14(2) has been elaborately discussed. In *Sadhu Singh's* case, it has been held that the essential ingredients for determining whether Section 14(1) of the Hindu Succession Act would come into play are 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. Any acquisition of possession of property (not right) by a female Hindu after coming into force of the Act cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If, while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

16. The Hon'ble Apex Court, in the case of *Bai Vajia (cited supra)* had referred to the pronouncement of ***F. Tulasamma Vs.***

V. Sesha Reddi; 1977 (3) SCR 20. The facts of the case of *Tulasamma* were that there was an instrument of compromise under which the properties were given to Tulasamma before the Hindu Succession Act in lieu of maintenance. Similar were the facts of this case. In the said case, it was observed in paragraph No.5 that;

"It is true that if widow's claim for maintenance does not ripen into a fullfledged right in property, but nevertheless, it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of pre-existing right. The claim to maintenance, as also right to claim property in order to maintain herself, is an inherent right conferred by the Hindu Law, and therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right with the widow possessed from the before".

17. It has also been observed that once it is established that the instrument merely recognized the pre-existing right, the widow would acquire the absolute interest. Secondly, the explanation to Section 14(1) merely mentions the various modes by which a widow can acquire the property, and the property given in lieu of maintenance is one of the modes mentioned in the explanation. Sub Section (2) is merely a

proviso to Section 14(1) and cannot be interpreted in such a manner as to destroy the very concept of the right conferred on a Hindu woman under Section 14(1). Sub Section 14(2) is limited only to those cases where by virtue of a certain grant or disposition, a right is conferred on the widow for the first time, and the said right is restricted by certain conditions. In other words, even if a grant or disposition of property is conferred on a Hindu male under certain conditions, the same are binding on a Hindu male. The effect of Sub Section (2) is merely to equate male and female in respect of grant conferring restricted estate.

18. The Hon'ble Supreme Court in the case of *Bai Vajia* had followed the *Tulasamma's* case and held that *Bai Vajia* became the full owner of the land in dispute under the provisions of Sub Section (1) of Section 14 of the Act and that Sub Section (2) thereof has no application to her case, the land having been given to her as a limited owner and her in recognition of her pre-existing right against the property.

19. The admitted facts in this case, as pointed out by the learned counsel for the respondents, that Kashibai had filed a suit against the father of the plaintiffs. They had arrived at a

settlement, and the award was passed. She possessed the suit properties before the Act of 1956. She had a pre-existing right in the suit properties, though limited as one of the descendants of the common ancestor. The terms of the settlement were specific that they should get the properties partitioned. The father of the plaintiffs and Kashibai were enjoying the respective shares they had given in the settlement terms in the Court of law. In such circumstances, though, it has been mentioned that the properties given to Kashibai in lieu of maintenance would not restrict her rights to enjoy the property. Kashibai had a pre-existing right in the suit properties, and her rights were recognized in a compromise deed; therefore, she had absolute rights under Section 14(1) of the Hindu Succession Act. Since she has the absolute right, she had further right to dispose of the properties given to her as per the settlement terms. Therefore, substantial question No.1 is answered that Kashibai had acquired the absolute right. Question No.2 has been answered that since she had an absolute right, she had the right to dispose of the property. Hence, the defendants got the title in view of the Will executed by Kashibai in their favour.

20. Both the substantial questions of law have been gone against the appellants/plaintiffs. Hence, the following order :

ORDER

- (i) The Second Appeal stands dismissed.
- (ii) No order as to costs.
- (iii) Rule stands discharged.
- (iv) Record and Proceedings be returned to the learned Trial Court.

(S. G. MEHARE, J.)

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