

HIGH COURT FOR THE STATE OF TELANGANA

CCCA No.168 OF 2006

Between

M/s. Victory Constructions rep.
by its Managing Partners (a regd.
Partnership firm) C. Mohan Reddy and
N. Surender Rao, Flat No.201, Korutla Flats,
MCH No.3-6-393/1, Street No.3,
Himyathnagar, Hyderabad.

.... Appellant/Plaintiff

AND

A.Shyamala Devi (died) as per Lrs. R4 to R5
C. Pradeep Kumar, S/o. C. Sriramulu,
Aged about 46 years, Occ : Govt. Servant
R/o. 4-1-1229/1, Boggulkunta, Hyderabad
And 4 others

... Respondents/Defendants

DATE OF JUDGMENT PRONOUNCED: 10.02.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Lordships wish to
see the fair copy of the judgment? | Yes/No |

*** HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

+ CCCA No.168 of 2006

% DATED 10TH FEBRUARY, 2023

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R/o. 4-1-1229/1, Boggulkunta, Hyderabad
And 4 others

...Respondents

<Gist:

>Head Note:

! Counsel for the petitioner : Sri V. Hariharan

^Counsel for Respondents : Sri S. Ashok Anand Kumar – R2
Ms. Prabha Prasad, rep.
VSR Avadhani – R6

? CASES REFERRED:

1. 2004 (1) SCC 252
2. 2019 (2) SCC 241
3. AIR 2014 Cal 192
4. AIR 1977 SC 1944
5. (2004) 9 SCC 302
6. (2022) 4 SCC 274
7. (2019) 10 SCC 259
8. (1964) 1 SCR 1 SCR 980 =AIR 1963 SC 1516
9. 1995 (3) SCC 147

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
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And 4 others

... Respondents/Defendants

The Court made the following:

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO.**

CCCA.No. 168 OF 2006.

J U D G M E N T: (Per the Hon'ble Sri Justice J. Sreenivas Rao)

Challenging the judgment and decree dated 20-01-2006 passed in O.S.No.615 of 2000 by the XIV Additional Chief Judge, City Civil Court, Hyderabad, dismissing the suit filed by the plaintiff seeking the relief of specific performance of development agreement dated 05.02.1997. The plaintiff filed this appeal, under Section 96 of the Code of Civil Procedure 1908.

2. For the sake of convenience, hereinafter the parties will be referred to as “plaintiff” and “defendants”, as they were arrayed before the trial court.

3. Originally, plaintiff has filed O.S.No.615 of 2000 against defendant No.1 for seeking the following reliefs:

- a) To pass a decree for a specific performance of the development agreement dated 05.02.1997 by putting the plaintiff in possession to enable the plaintiff to proceed with the development of complex.
- b) To direct the defendant to vacate the tenant premises and settle the dispute if any with third parties and hand over vacant and peaceful possession of the property.
- c) To direct the defendant to execute and register such deeds or documents in favour of the plaintiff or their nominees for the share of interest in land to the extent of 60% under the Development agreement dated 05.02.1997;
- d) to grant perpetual injunction restraining defendant her men, servants and all those claiming under or through her from alienating or in any way encumbering or obstructing plaintiff's developmental activities on the plaint schedule property and towards the costs of the suit.

The children of the sister of defendant No.1, who are defendant No's.2 and 3 came on record claiming to have their vested remainder in the suit schedule property and alleging that the defendant No.1 is only having life interest. During pendency of the suit, defendant No.1 died issueless, therefore her brother and sister were brought on record as defendant No's.4 and 5 being the legal representatives.

4. In the said suit the plaintiff averred that plaintiff is a registered firm engaged in the business of development of property, building of complexes etc. Defendant No.1 is the absolute owner and possessor of the property admeasuring 930 sq.yds., bearing Municipal No.4-1-1239/3 and a portion of 4-1-1229 situated at Boggulakunta. She acquired the suit schedule property under a settlement deed dated 26.02.1952 executed by her father late Y. Satyanarayana. Thereafter, defendant No.1 alongwith her son, Dinesh Kumar alienated the suit schedule property in favour of "*Ramakrishna Mutt*" under a document dated 11.02.1974. Later, "*Ramakrishna Mutt*" released their claim by executing document dated 08.07.1994 in favour of defendant No.1. The defendant No.1 offered the suit schedule

property to plaintiff for development, representing that she is to be the only legal heir after the death of her son.

4.1 On 05.02.1993 plaintiff and defendant No.1 have entered into development agreement. As per the agreement, the plaintiff would construct a commercial complex at their cost after obtaining due permission from Municipal Corporation of Hyderabad and that plaintiff was entitled to retain 60% of the constructed area and the defendant No.1 is entitled to the remaining constructed area. Construction should be completed within 18 months with a further extension of six months. There were two tenants in two portions of the building at the time of the agreement and the defendant No.1 agreed to settle the issue and represented that the tenants would vacate and portion of the building would be handed over to plaintiff soon after they vacate the building. As per the terms of the agreement, plaintiff paid a sum of Rs.51,000/- on 21.09.1997 and Rs.1,49,000/- on 05.02.1997 respectively (in all Rs.2,00,000/-) as security deposit. After completion of the work, the amount has to be returned without interest. The agreement is irrevocable. Plaintiff paid a sum of Rs.95,925/- towards the fee payable to the Municipal Corporation of Hyderabad on 07.08.1997 but the members of the defendant's family raised objections for sanctioning plan. The tenants did not vacate the

premises, moreover one of the tenants has been residing in a foreign country for the last two years. Plaintiff has always been ready and willing to perform his part of contract. The execution of the construction came to a standstill because of the defendants.

4.2 The learned counsel for the defendants gave a publication in daily newspaper dated 04.08.2000 that the development agreement dated 05.02.1997 stands cancelled and that the plaintiff has obtained signature of the defendant on two blank stamp papers. On 05.08.2000 the plaintiff got issued a legal notice. On 25.08.2000 the defendants gave a reply through her counsel. The defendant has no right to cancel the agreement. Hence, the present suit is filed for specific performance of the development agreement dated 05.02.1997 and prayed to grant consequential reliefs of directing the defendant No.1 to evict the tenants from the suit schedule premises, deliver possession of the same, execute documents in their favour or nominees for their 60% share and also for perpetual injunction against the defendant No.1 from alienating the suit schedule property.

5. Defendant No.1 filed her written statement, wherein it was admitted by defendant No.1, who is said to have executed

agreement in favour of the plaintiff contending that the defendant No.1 is not aware as to whether the plaintiff is a registered firm and whether Sri C. Mohan Reddy is its Managing Partner. The suit is bad for want of proper registration, as required under the Indian Partnership Act. That defendant No.1 is the absolute owner of suit schedule property having acquired the same by virtue of settlement deed dated 26.02.1963 executed by her father and a registered release deed dated 08.07.1994 executed by the 'Ramakrishna Mutt' after the death of her son Dinesh Kumar on 16.08.1884. Plaintiff paid Rs.2, 00,000/- to the defendant No.1 and undertook to construct the complex after being fully satisfied with the title and possession of the defendant No.1. Plaintiff took absolute responsibility for construction of the commercial complex at their cost within a period of 18 months from the date of delivery of possession of the property and it further provides that the plaintiff will not rescind from the contract on the ground of defect in title. Defendant No.1 had performed her obligation by delivering the title deeds relating to the suit schedule property and also the legal opinion.

5.1 The plaintiff is not at all ready and willing to perform his part of contract. The defendant No.1 was compelled to pursue the contract, as the plaintiff failed to obtain permission

even after lapse of 30 months and showed no progress in work. The defendant No.1 got issued legal notice dated 28.08.1999 calling upon the plaintiff about the cancellation of agreement and accordingly returned the amount of Rs.2,00,000/-deposited with the defendants. Thus, the agreement stood rescinded. Thereafter, the plaintiff came up with a fresh proposal to purchase the said property for a valid sale consideration of Rs.60,00,000/- after the cancellation of the development agreement. They offered to pay Rs.20,00,000/- directly to the 'Ramakrishna Mutt' on 8.3.2000 and the same has to be adjusted against the sale consideration and balance amount of Rs.40,00,000/- to be paid within a period of 4 to 5 month, thereafter a formal sale agreement would be executed. The deliberations were held on 21.2.2000 in *Rama Krishna Mutt* was reduced into writing as Memorandum of Understanding. Plaintiff failed to comply the pre-requisite condition as stipulated in the MOU dated 20.01.2000. This itself shows that the development agreement dated 05.02.1997 was duly cancelled. The plaintiff has deliberately suppressed the MOU dated 20.01.2000. The plaintiff has no right to enforce the development agreement dated 05.02.1997, more so, the plaintiff firm cannot question the cancellation of the agreement by defendant No.1. Thus, the

plaintiff has no cause of action and the Court fee paid is insufficient and the suit is liable to be dismissed.

6. Defendant Nos. 2 and 3 also filed their written statement contending that the partnership deed was not registered and it was executed on a stamp paper worth Rs.300/-. The development agreement dated 05.02.1997 was not registered and written on a stamp paper of Rs.100/-. Y. Satyanarayana executed settlement deed dated 26.02.1953 giving life estate to the defendant No.1 and vested remainder to Dinesh Kumar in 1/3rd of the suit schedule property to ensure that the fruits of the property given by him to be enjoyed by his grandson and to prevent misuse or squander by his daughter. Dinesh Kumar, who is the only issue of the defendant No.1 died without being conferred absolute rights and ownership to the extent of defendant No.1's 1/3rd share in the suit schedule property. Thus, the defendant No.1 has not acquired any title over the suit schedule property as Class-I heir of her son. Her son died before he became an absolute owner. It was also incorporated in the settlement deed that in case anyone or more of the settles 4,5 and 6 dies or die without leaving any issue, the suit schedule property given to such deceased settle herein shall be taken by the surviving settle among Settles 4, 5 and 6

i.e.,defendant Nos.1 to D3 herein or their children. The defendant No.1 has not inherited to the suit schedule property from her husband A. Ramachander. She is having limited or restricted estate only and did not acquire absolute interest as owner. Under Section 14 (1) and 14 (2) of Hindu Succession Act, it was held that a Hindu widow, who has not inherited the property from her husband nor possessed of it in lieu of maintenance from the profit of her husband cannot derive any higher rights than what is stipulated in the document or instrument. The suit schedule property is still a joint and undivided property as per the Government record, within the terms and scope of Item No.1 of settlement deed dated 26.02.1953. Defendant No.1 is not the absolute owner of the suit schedule property.

6.1 The contention of the plaintiff that the suit schedule property was divided even during the lifetime of the settler is false but it is still undivided. The defendants referred to several circumstances to prove that the suit schedule property is still undivided joint family property and not divided among the three sisters and it is pleaded that the house property was divided for the sake of convenience for letting out the tenants, collecting rents for a particular portion and there is no division of suit schedule property by metes and bounds. They have further

pleaded that as the only son of the defendant No.1 died before her death, she got only life interest in the suit schedule property and after her death, the property devolves upon the defendant Nos. 2 and 3, who are the children of late sister of defendant No.1 and also the defendant No.4, who is a surviving sister. The “*Ramakrishna Mutt*” while executing the release deed mentioned that the defendant No.1 has got only life interest and Dinesh Kumar, who has vested remainder passed away. They have correctly given the legal position in the release deed. These defendants objected to grant and accord sanction for construction in favour of the plaintiff. All the above averments of the written statement would reflect that the suit schedule property was not divided by metes and bounds. The plaintiff has miserably failed to perform, his part of contract. The garages in the suit schedule property are in possession and enjoyment of tenants of these defendants. The defendant No.1 has no right whatsoever to enter into contract for development of the land in question. No plan of the suit schedule property is given, so that it cannot be identified and the suit is liable to be dismissed.

7. The plaintiff filed a rejoinder to the written statements of the defendant Nos. 2 and 3 inter alia contending that defendant Nos. 2 and 3 are strangers to the transaction between the

defendant No.1 and plaintiff and they have no cause or *lis* with this plaintiff. The claim of the defendant Nos. 2 and 3 against the defendant No.1 cannot be agitated in this suit. The claim of defendants 2 and 3 is that Smt. Shyamala Devi has only life interest is not the subject matter in the suit. The conditions incorporated in the settlement deed 22.02.1953 do not operate at this juncture, in view of the changed circumstances. The defendant Nos. 2 and 3 are trying to grab the suit schedule property while demonstrating the sign of protecting their interest. The assertion made by the plaintiff with regard to the title of the defendant No.1 is in consonance with the law of the land. The release deed dated 08.07.1994 is not related to the defendants. The defendant Nos. 2 and 3 are trying to confuse the issue with regard to the common open land. The plaintiff denied that defendant No.1 has defect in title. The contention of the defendant Nos. 2 and 3 may be rejected.

8. The defendant No.1 filed a lengthy rejoinder to the written statement of the defendant Nos. 2 and 3. She pleaded that she got acquired absolute right over the suit property which was settled in her favour, as her right against the suit property was created towards her maintenance, as she became a widow. The defendant No.1 and her two sisters divided the suit property by

oral partition in the year 1970. The defendant No.1 got the suit property in partition during the year 1970 and that she has been in peaceful possession and enjoyment of the same by letting out the suit property to various tenants; namely, Ramurthy and Company, Yogesh Arora and Vijay Auto Garage. Her two sisters have been collecting the rents from the tenants, who are in occupation of their respective premises. The clause incorporated in settlement deed restraining alienation of the suit property is void, sham and tissue of arrant falsehood, as it hit by Section 10 of Transfer of Property Act. The defendant No.1 has become absolute owner of estate with effect from 17.6.1956 by virtue of provisions of Hindu Succession Act, 1956 and thus she became absolute owner of the suit property. The defendant Nos. 2 and 3 cannot question the defendant No.1's right to deal with the suit property. She never made any statement admitting that the suit property is joint property. The defendant is no way concerned with the failure of the plaintiff to obtain approval of plan by the Corporation. The defendant Nos. 2 and 3 have no right over the suit schedule property and they cannot question the application filed by the plaintiff. The defendant Nos. 2 and 3 are neither necessary nor proper parties to the suit. Their claim may be rejected.

9. Defendant Nos. 2 and 3 filed their additional written statement after the death of the defendant No.1 and after his surviving sister and brother were added as defendant Nos. 4 and 5 in the suit. They have pleaded that the sons of late Satyanarayana have no right, title or interest whatever over the suit schedule property. Defendant Nos. 2 to 4 have succeeded to the property after the death of the defendant No.1.

10. Defendant No.4 filed written statement supporting the contention of the defendant No.1 as to how she acquired the property in partition among the sisters, plaintiff's failure to perform his part of the original development agreement and subsequent MOU and the defendant No.1 bequeathing the suit property in favour of "*RamkrishnaMutt*" by a Will dated 28.05.2001 under which the defendant No.4 and her son were represented as Executors.

11. The sixth defendant filed written statement reiterating the pleas taken by the 1st defendant and her son Dinesh Kumar alienating the property to this defendant and this defendant releasing the property to the first defendant and other pleas taken by the first defendant and the plaintiff's failure to perform their part of first contract or second contract. They pleaded that the first defendant executed a will dated 28.05.2001

bequeathing the suit schedule property to this defendant and registered the same as document No.41/2004. The fourth defendant and her son M. Jayanth Tagore were appointed as executor of the said Will. This defendant succeeded to the suit property under the Will. The plaintiff cannot enforce the development agreement against this defendant which is created under Trust Deed dated 31.01.1991. The suit is liable to be dismissed.

12. Basing upon the pleadings of the respective parties, the Court below initially framed five issues for trial and subsequently framed three additional issues, which are as follows:

- i) Whether the defendant No.1 is the owner and possessor of the suit property?*
- ii) Whether the development agreement created by D1 in favour of the plaintiff is cancelled as alleged by D1 in her written statement?*
- iii) Whether the development agreement is valid and enforceable in law?*
- iv) Whether the plaintiffs are entitled to the reliefs as claimed in law?*
- v) To what relief?*

The following additional issues were framed on 15.12.2003:

Whether there was an oral partition in 1970 among three daughters of the Settler of properties settled

under the settlement deed dated 26.02.1953 by metes and bounds as alleged by defendant No.1?

Additional issue framed on 31.08.2004:

Whether the suit agreement for development binds the fourth defendant?

Additional issue framed on 05.04.2005:

Whether the agreement relied upon by the plaintiff binds defendant No.6?

13. The Court below after taking into consideration of oral and documentary evidence on record and also after hearing both parties, dismissed the suit with costs, directing the plaintiff to pay an amount of Rs.95,002/- to the defendant No.6 by its judgment and decree dated 20.01.2006.

14. Aggrieved by the judgment and decree passed by the Court below, the plaintiff filed the present appeal, *vide* CCCA No.168 of 2006 under Section 96 r/w. Order-41 Rule 1 of CPC.

15. The learned Senior Counsel for the plaintiff contended that the Court below without properly considering the contentions of the plaintiff, oral evidence of PWs. 1 and 2, documentary evidence of Exs.A.1 to A.12 had erroneously dismissed the suit, which is contrary to law. He further contended that the defendant No.1 is the absolute owner of the suit schedule property and the same was acquired through registered

settlement deed *vide* document No.69/1953, dated 26.02.1953 executed by her father and since then she has been in possession and enjoyment of the property. He further contended that in pursuance of the above said settlement deed, the defendant No.1 and her son alienated the suit schedule property in favour of defendant No.6-Ramakrishna Mutt on 11.02.1974 and subsequently defendant No.6 executed release deed in favour of defendant No.1 on 08.07.1994. By virtue of the same, the defendant No.1 is owner of the suit schedule property. While things stood thus, the son of defendant No.1 died.

16. Learned Senior Counsel further submits that the defendant No.1 executed development agreement on 05.02.1997 in favour of the plaintiff. As per the terms and conditions of the said development agreement, the plaintiff has to construct a commercial complex at its cost after obtaining permission from the Municipal Corporation of Hyderabad and the plaintiff was entitled to 60% and defendant No.1 is entitled to the remaining 40% of the constructed area. The recital of the said development agreement discloses that the entire construction should be completed within a period of 18 months. However, there is a clause for extension of time for six months more. As

per the terms and conditions of the agreement, the entire construction has to be completed within a period of 24 months from 05.02.1997. The learned counsel further contended that there were tenants in two portions of the suit schedule property and the defendant No.1 has to settle the issues, and would vacate the tenants and handover the possession of the building to the plaintiff. He also stated that the plaintiff has to deposit an amount of Rs.2,00,000/- with the defendant No.1 towards security. Plaintiff has made an application to the G.H.M.C for grant of approved sanctioned plan and he paid requisite amount also. Due to non-cooperation of defendant No.1 as well as the other family members of defendant No.1 the plaintiff could not get the sale deeds in respect of the suit schedule property, as the defendant No.1 failed to hand over the vacant physical possession of the same to the plaintiff. The learned Senior Counsel further contended that the plaintiff has expressed his ready and willingness to perform his part of contract but due to non-cooperation of the defendants the plaintiff could not get the approved sanctioned plan from the MCH. He further contended that defendant No.1 executed the development agreement on 05.02.1997 wherein it was specifically incorporated that she will obtain "*no objection certificate*", from her family members and also further agreed that she will take steps for vacating the

tenants, who are in occupation of the suit schedule property. The plaintiff trusted the assurances given by the defendant No.1 but the defendant No.1, herself violated the terms and conditions of the development agreement dated 05.02.1997, which is not enforceable under law and cancelled the said development agreement of sale and also returned the amount of Rs.2,00,000/-. He further contended that the sale deed executed by the defendant No.1 and her son on 11.02.1974 in favour of "*Ramakrsihna Mutt*" was cancelled by virtue of the release deed. He also submits that the defendant No.1 admitted the entire case of the plaintiff that she is absolute owner of the suit schedule property and she has rightly executed the development agreement on 05.02.1997, by receiving of Rs.2,00,000/- towards security and also admitted that she was alone responsible to obtain "*No Objection Certificates*" from her family members.

17. The learned counsel further submits that the defendant No.1 has not taken any steps for getting "*No Objection Certificate*" from her family members and she has not taken steps to hand over the vacant possession of the suit schedule property, wherein part of the suit schedule property is under the possession and occupation of respective tenants. Due to non-

cooperation of the defendant No.1 and her family members, the plaintiff was unable to get requisite sanctioned plan from MCH and there are no latches on the part of the plaintiff. In spite of the same, the Court below without properly appreciating the contentions of the plaintiff and failed to appreciate the oral and documentary evidence on record has erroneously dismissed the suit, which is contrary to law. The learned Senior Counsel further contended that the trial Court while giving specific finding in favour of the plaintiff in respect of Issue No.1 holding that defendant No.1 is owner and possessor of the suit schedule property, on the other hand, has dismissed the suit. Therefore, the judgment and decree passed by the Court below is contrary to the provisions of Sections 19 and 20 of Specific Relief Act. When the plaintiff has proved and established that he is ready and willing to perform his part of contract as per the development agreement dated 05.07.1997 under Ex.A3, the Court below ought not to have dismissed the suit. He also contended that the defendants 2 to 5 are not having any semblance of right over the suit schedule property and they are not entitled to raise any dispute including execution of the development agreement under Ex.A.3 in favour of the plaintiff.

18. The learned Senior Counsel further submitted that the father of defendant No.1 had executed settlement deed on 26.02.1953 bequeathing the suit schedule property infavour of defendant No.1. As per the terms of the settlement deed the suit schedule property is a self-acquired property of the father of defendant No.1 and that he has rightly executed settlement deed and the same was not questioned by any of the parties. In such, circumstances the defendants 2 to 5 are not entitled to claim any share in the suit schedule property. Admittedly the suit schedule property is not a joint family property. The entire dispute centred round between the plaintiff and defendant No.1 only.

19. The learned counsel vehemently contended that the Court below, has given specific finding that defendant No.1 is the absolute owner of the suit schedule property and the said finding was not challenged by any of the defendants and the said finding has become final and binding on the respective parties. In such circumstances, the defendants 2 to 5 are not having any semblance of right, interest over the suit schedule property.

20. In support of his contentions the learned counsel for the appellant relied upon the judgments of the Hon'ble Supreme

Court in **United Bank of India Vs. Ramdas Mahadeo Prashad and Others**¹ and in **Sushil Kumar Agarwal Vs. Meenakshi Sadhu and Others**² and also in **Ashok Kumar Jaiswal and Others Vs. Ashim Kumar Kar and Others**³ contending that the finding given by the trial Court in respect of Issue No.1 holding that the defendant is the absolute owner of the suit schedule property has become final and the same was not challenged by the other defendants by way of appeal. Hence, the defendant No's. 2 to 5 are not entitled to canvass that they are having rights in the suit schedule property.

21. The learned counsel for the respondent No.4 Sri Mahmood Ali contending that defendant No.1 is having life interest only and she has not entitled to execute any document infavour of the third parties including the development agreement dated 05.02.1997 infavour of the plaintiff and the same cannot be enforceable under law.

22. The learned Senior Counsel Sri Ashok Anand Kumar representing on behalf of the defendant No's. 2 and 3 contended that as per the settlement deed/Ex.B4 executed by the father of the defendant No.1 clearly show that the defendant No.1 is

¹2004 (1) SCC 252

²2019 (2) SCC 241

³AIR2014 Cal 192

having only limited interest i.e., she is having life interest only and vested remainder to her son. He further contended that the son of first defendant died. In view of the same, the defendant No.1 is having only limited interest to enjoy the suit schedule property till her life time and she is not entitled to execute any document in respect of the suit schedule property including the execution of development agreement/Ex.A3 infavour of the plaintiff. He further contended that defendant No.1 in her cross-examination specifically admitted that she is claiming right over the suit schedule property through settlement deed/Ex.A10, which was executed by her father only. Except the same, she is not having any other document to claim the suit schedule property. He further contended that as per the provisions of Sections 10, 19, 21 and 23 of the Transfer of Property Act, the defendant No.1 is not having any right to execute the development agreement infavour of the plaintiff. He further contended that as per the provisions of Sections 14 and 30 of Hindu Succession Act, the defendants 2 and 3 are having rights over the property, as they are the coparceners.

23. The learned senior counsel further contended that the Court below after considering the oral and documentary evidence and after hearing both the parties has rightly

dismissed the suit. He also contended that merely not challenging the finding given by the trial Court in respect of Issue No.1 declaring that the defendant No.1 is owner of the suit schedule property, the plaintiff is not entitled to seek enforcement of the development agreement/Ex.A3. The finding given by the Court below is contrary to the settlement deed/Ex.A10, wherein the specific recital connotes that the defendant No.1 is having only life interest. The Court below without properly considering the recitals as mentioned under Ex.A-10, has erroneously given the said finding. He further submitted that as per the provisions of Order-41 Rule 33 of CPC the defendants are entitled to canvas in the appeal that the finding given by the lower Court in respect of Issue No.1 holding that the 1st defendant is owner of the suit schedule property, is contrary to the pleadings and evidence on record, without filing appeal or cross-appeal, the appellate Court is having power and jurisdiction to examine the said findings. The learned Senior Counsel further contended that the plaintiff has entered into MOU with the first defendant on 20.01.2000 under Ex.B12 subsequent to development agreement/Ex.A3, wherein the plaintiff specifically mentioned that plaintiff is willing to purchase the suit schedule property and by virtue of execution of MOU, earlier development agreement executed by the 1st

defendant dated 05.02.1997 in favour of plaintiff is no more in existence and the plaintiff is not entitled to seek the enforcement of the development agreement and the suit filed by the plaintiff is not maintainable under law and the Court below rightly dismissed the suit and there is no illegality or irregularity in the impugned judgment.

24. In support of his contention the learned Senior Counsel relied upon the following judgments:

- (1) **Vaddeboyina Tulasamma and Others Vs. Vaddeboyina SessaReddi**⁴
- (2) **Ram Vishal (dead by Lrs and Others Vs Jagan Nath and Another**⁵
- (3) **Jogi Ram Vs. Suresh Kumar and Others**⁶
- (4) **Prahlad Pradhan and Others Vs. SonuKumhar and Others**⁷
- (5) **Panna Lal Vs. State of Bombay**⁸,

25. The learned Senior Counsel Sri V. Hari Haran representing on behalf of the plaintiff in reply contended that Ex.B12 is the consignment of contract only. Subsequently, the defendant No.1 executed Will-Deed dated 28.05.2001 under Ex.B15 bequeathing the suit schedule property in favour of

⁴ AIR 1977 Supreme Court 1944

⁵ (2004) 9 Supreme Court Cases 302

⁶ (2022) 4 Supreme Court Cases 274

⁷ (2019) 10 Supreme Court Cases 259

⁸ (1964) 1 SCR 1 SCR 980 = AIR 1963 SC 1516

defendantNo.6. In view of the same, plaintiff has rightly instituted the suit for enforcement of the development agreement under Ex.A3. The MOU/Ex.B.12 and the development agreement/Ex.A.3 are not similar. He further submits that as per the provisions of Section 19 of the Specific Relief Act the plaintiff has rightly instituted the suit for seeking enforcement of development agreement and the same is permissible under law. In support of his contention, he has relied upon the judgment reported in **Anil Kumar Singh Vs. Shivnath Mishra @ Gadasa Garu**⁹

26. In view of the rival submissions made by the learned counsels for the parties and material on record, the following points that arise for consideration in this appeal, which read as under:

- (1) *Whether the defendant No's. 2 and 3 are entitled to question the finding given by the Court below in respect of Issue No.1 in the absence of filing independent appeal/cross-objections?*
- (2) *Whether the plaintiff is entitled for grant of decree for specific performance of development agreement dated 05.02.1997?*
- (3) *Whether the judgment and decree passed by the Court below is sustainable under law?*

⁹ 1995 (3) SCC 147

POINT NO.1

27. As per the pleadings of the respective parties as well as evidence of the defendant No.1, who was examined as DW-1, clearly discloses that she has acquired the suit schedule property from her father through registered settlement No.816/1974 dated 11.02.1974 which was marked as Ex.A.10. The recitals of the document clearly state that the defendant No.1's rights are limited to life interest only. Moreover, during the cross-examination defendant No.1 has admitted that she is claiming rights over the suit schedule property through Ex.A.10 only and she is not relying on any other document, and has also admitted that she is having only a life interest in the suit schedule property. In view of the specific recitals as well as specific admissions made by DW.1, the defendant No.1 is having only limited interest in the suit schedule property and she is not having any right to transfer the suit schedule property in favour of third parties including execution of development agreement/Ex.A.3 in favour of plaintiff. In such circumstances, the finding given by the Court below that the defendant No.1 is absolute owner of the suit schedule property, is contrary to the evidence on record.

28. The learned counsel for the second and third defendants have rightly contended that the appellate Court has the powers to correct the findings given by the trial Court by exercising the powers conferred under Order 41 Rule 33 of CPC, in the absence of questioning the said finding by way of appeal or cross-appeal.

28.1 In **Panna Lal** (supra), paragraphs Nos.11, 12, 14, and 18 read as under:

11. There is however much force in the appellant's contention that the High Court ought to have exercised its jurisdiction under O. 41 Rule 33 of the Code of Civil Procedure in favour of the plaintiff. The operative portion of that rule, which was for the first time introduced in the Civil Procedure Code in 1908, is in these words:

“33. The appellate court shall have power to pass any decree and make any order which ought to have been passed or made, and to pass or make such further or other decree or order, as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may have filed any appeal or objection.”

A proviso was added to this by Act 9 of 1922 which, however, does not concern us. It is necessary however to set out the illustration to the rule which runs thus:—

“A claim a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The appellate decides in favour of X. It has power to pass a decree against Y.”

12. Even a bare reading of O. 41 Rule 33 is sufficient to convince anyone that the wide wording was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondent as “the case may require”. In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the State by dismissing the plaintiff's suits against it, give the plaintiff a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the Section make this position abundantly clear the illustration puts the position beyond argument.

14. The whole argument is based on the assumption that the plaintiff could by filing a cross-objection under Order 41 Rule 22, Civil Procedure Code, have challenged the trial court's decree in so far as it dismissed the suit against the defendants other than the State. We are not, at present advised, prepared to agree that if a party who could have filed a cross-objection under Order 41 Rule 22 of the Code of Civil Procedure has not done so, the Appeal Court can under no circumstances give him relief under the provisions of Order 41 Rule 33 of the Code. It is, however, not necessary for us to discuss the question further as, in our Opinion, the assumption made by the High Court that the plaintiff could have filed a cross-objection is not justified.

18. In our opinion the view that has now been accepted by all the High Courts that Order 41 Rule 22 permits as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being re-opened between the objecting respondent and other respondents, that an objection under Order 41 Rule 22 can be directed against the other respondents, is correct. Whatever may have been the position under the old Section 561, the use of the word "cross-objection" in O.41 Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. As Rajammannar, C.J. said *Venkateswarlu v. Ramanma* [ILR (1950) Mad, 874]. "The legislature by describing the objection which could be taken by the respondent as a "cross-objection" must have deliberately adopted the view of the other High Courts. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant". We think, with respect, that these observations put the matter clearly and correctly. That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against a co-respondent is indicated by the substitution of the word "appellant" in the third paragraph by the words "the party who may be affected by such objection."

29. The judgments relied by the learned counsel for the plaintiff in 2004 (1) SCC 252, 2019 (2) SCC 241 and AIR 2014 Cal 192 are not applicable to the facts and circumstances of this case.

30. In the instant case, the defendant No.1 acquired the suit schedule property from her father through registered settlement

deed/Ex.A10 and the recitals of the document clearly shows that defendant No.1 is having only life interest in the suit schedule property and she is not having any right to transfer the suit schedule property to third parties including execution of development agreement/Ex.A3 in favour of plaintiff.

31. In view of foregoing discussion, the finding given by the Court below that the defendant No.1 is absolute owner of the suit schedule property, is contrary to the evidence on record and the same is liable to be set aside by exercising the powers conferred under Order 41 Rule 33 of CPC as well as principles laid down by the Hon'ble Apex Court in the case of Panna Lal. Accordingly, Point No.1 is answered in favour of defendants.

POINT NO.2

32. The Court below after considering the contentions of both the parties, oral and documentary evidence on record, gave specific finding that subsequent to execution of Ex.A3/development agreement, the plaintiff himself entered into MOU with the defendant No.1 which clearly establish under Ex.B.12 that the plaintiff himself gave up his rights under Ex.A3/development agreement. The Court below rightly observed in Para Nos.36 to 38 as under:

“36. The fact that the plaintiff gave up the development agreement Ex.A3 and wanted to perform their part of contract and Ex.A12 Memorandum of Understanding is evident from the evidence of P.W.1 himself who says that he took Rs.14,50,000/- in the shape of demand draft and balance of Rs.5,50,000/- in the shape of demand draft and balance of Rs.5,50,000/-. In cash to deliver to Swamiji, but he did not hand over the documents or the cash to Swamiji, though the Swamiji was prepared to receive them, as the 1st defendant did not secure the consent of D-2 and D-3 who are objectors before the Municipal Corporation. It has to be seen that there were repeated discussions between the parties. The defendant Nos. 2 and 3 have already raised objections before the Municipal Corporation for construction. But, it was not made a condition in Ex.B12 that the 1st defendant should obtain the consent of Defendants Nos.2 and 3 for performing the plaintiff's part of contract under Ex.B12. Thus, the plaintiff is introducing new conditions. In fact, it was recited in clause (j) of Ex.A3 development agreement that, “the second party hereby declare that they have verified the title of the 1st party with regard to the schedule property and after satisfying with her title to the schedule property as its sold, absolute and exclusive owner has entered into this development agreement....” And they will not resile from the contract on the ground of defect in title of the 1st party, even if it is detected later by them. I therefore hold that Ex.A3 contract was substituted by Ex.B12 contract and Ex.A3 contract cannot be sought to be enforced by the plaintiff.

37. There is a clause in Ex.B.12 that after the plaintiff paid the amount, a formal sale agreement will be entered into and so. It is conclusion that Ex.B.12 is not an agreement by itself. If the full amount is paid and no other conditions are to be fulfilled by the 1st defendant a sale deed would follow and there is no necessity of another sale agreement. The learned Advocate for the 1st defendant relied upon AIR 1968 SC 1028 (K. Sriramulu Vs. AswathaNaryana) wherein it was held as follows:

“A mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound, until a formal contract is signed. The question depends upon the intention of the parties and the special circumstances of each particular case. The fact of a subsequent agreement being prepared may be evidence that the previous negotiations did not amount to a concluded agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement”.

38. I, therefore, hold that the plaintiff gave up his rights under Ex.A3, the agreement is deemed to be cancelled and it is substituted by Ex.B12 agreement. He did not perform his part of

contract even under Ex.B12. the plaintiff is not entitled to specific performance of Ex.A3 agreement as well as Ex.B12 agreement”.

32.1 In **Vaddeboyina Tulasamma and Others** (supra), paragraphs-63, 64, 68, 70 read as under:

“**63.** Thus, on a careful scrutiny and analysis of the authorities discussed above, the position seems to be that the view taken by the High Courts of Bombay, Andhra Pradesh, Patna, Mysore, Punjab, Calcutta and Kerala to the effect that the widow's claim to maintenance, even though granted to her subject to certain restrictions, is covered by Section 14(1) and not by sub-section (2) is based on the following premises:

“(1) That the right of a Hindu widow to claim maintenance is undoubtedly a right against property though not a right to property. Such a right can mature into a full-fledged one if it is charged on the property either by an agreement or by a decree. Even otherwise, where a family possesses property, the husband, or in case of his death, his heirs are burdened with the obligation to maintain the widow and, therefore, the widow's claim for maintenance is not an empty formality by a pre-existing right.

(2) Section 14(2) which is in the nature of a proviso to Section 14(1) cannot be interpreted in a way so as to destroy the concept and defeat the purpose which is sought to be effectuated by Section 14(1) in conferring an absolute interest on the Hindu women and in doing away with what was hereto before known as the Hindu women's estate. The proviso will apply only to such cases which flow beyond the purview of the Explanation to Section 14(1).

(3) That the proviso would not apply to any grant or transfer in favour of the widow hedged in by limitation or restrictions, where the grant is merely in recognition or declaration of a pre-existing right; it will apply only to such a case where a new right, which the female did not possess at all is sought to be conferred on her under certain limitations or exceptions. In fact, in such a case even if a conditional grant is made to a male, he would be bound by the condition imposed. The proviso wipes out the distinction between a male and a female in this respect.”

64. The contrary view taken by the Madras, Orissa, Andhra Pradesh, Allahabad and Jammu & Kashmir High Courts proceeds on the following grounds:

“(1) That a widow's claim to maintenance is merely an inchoate or incomplete right having no legal status; unless the widow gets a property in lieu of maintenance or unless a charge is created in a particular property the claim for maintenance cannot be legally enforced. Thus, where under a grant, compromise, transfer or a decree, a property is allotted to the widow in lieu of maintenance, it is not the recognition of any pre-existing right but it amounts to conferment of a new right for the first time which in fact did not exist before the said demise. This view is really based on the provisions of the Hindu Women's Rights to Property Act,

1937, under which the widow has got the right to get a share of his son in lieu of partition and even otherwise she is entitled to her share in the joint Hindu family property on partition. These High Courts, therefore, seem to be of the opinion that in view of the provisions of the Hindu Women's Rights to Property Act, the widow in claiming a share in the property has a pre-existing right which is recognised by law, namely, the Act of 1937. The same, however, cannot be said of a bare claim to maintenance which has not been recognised as a legal right and which can mature into a legally enforceable right only under a grant or demise. This view suffers from a serious fallacy, which is based on a misconception of the true position of a Hindu widow's claim for maintenance. It has been seen from the discussion regarding the widow's claim for maintenance and her status in family that under the pure Shastric Hindu law the widow is almost a co-owner of the properties with her husband and even before the Act of 1937 she was entitled to the share of a son on the death of her husband after partition according to some schools of Hindu law. The Act of 1937 did not introduce any new right but merely gave a statutory recognition to the old Shastric Hindu law on the subject. In this respect the Act of 1937 is very different from the Act of 1956, the latter of which has made a revolutionary change in the Hindu law and has changed the entire complexion and concept of Hindu women's estate. In these circumstances, therefore, if the widow's claim for maintenance or right to get the share of a son existed before the Act of 1937, it is futile to dub this right as flowing from the Act of 1937. The second fallacy in this view is that Court failed to consider that the claim for maintenance is an important right which is granted to the widow under the Shastric Hindu law which enjoins the husband to maintain his wife even if he has no property. Where he has a property, the widow has to be maintained from that property so much so that after the death of her husband anyone who inherits that property takes the property subject to the burden of maintaining the widow. Even where the property is transferred for payment of family debts and the transferee has the notice of the widow's claim for maintenance, he has to discharge the burden of maintaining the widow from the property sold to him. Thus, the nature and extent of the right of the widow to claim maintenance is undoubtedly a pre-existing right and it is wrong to say that such a right comes into existence only if the property is allotted to the widow in lieu of maintenance and not otherwise.

(2) Another reasoning given by the courts taking the contrary view is that sub-section (2) being in the nature of a proviso to Section 14(1) all grants with conditions take the case out of Section 14(1). This, as we have already pointed out, is based on a wrong interpretation of the scope and ambit of sub-section (2) of Section 14.

(3) Lastly, the contrary view is in direct conflict with the observations made by this Court in the cases referred to above, where a grant in lieu of maintenance of the widow has

been interpreted as being in recognition of a pre-existing right so as to take away the case from the ambit of sub-section (2).

68. Lastly strong reliance was placed by Mr Natesan counsel for the respondents on a decision of this Court in *Naraini Devi (Smt) v. Ramo Devi* [(1976) 1 SCC 574] to which one of us (Fazal Ali, J.) was a party. This case is no doubt directly in point and this Court by holding that where under an award an interest is created in favour of a widow that she should be entitled to rent out the property for her lifetime, it was held by this Court that this amounted to a restricted estate under Section 14(2) of the 1956 Act. Unfortunately, the various aspects, namely, the nature and extent of the Hindu women's right to maintenance, the limited scope of sub-section (2) which is a proviso to sub-section (1) of Section 14 and the effect of the Explanation, etc. to which we have adverted in this judgment, were neither brought to our notice nor were argued before us in that case. Secondly, the ground on which this Court distinguished the earlier decision of this Court in *Badri Pershad v. Kanso Devi* was that in the aforesaid decision the Hindu widow had a share or interest in the house of her husband under the Hindu law as it was applicable then, and, therefore, such a share amounted to a pre-existing right. The attention of this Court, however, was not drawn to the language of the Explanation to Section 14(1) where a property given to a widow at a partition or in lieu of maintenance had been placed in the same category, and, therefore, the reason given by this Court does not appear to be sound. For the reasons that we have already given, after taking an overall view of the situation, we are satisfied that the Division Bench decision of this Court in *Naraini Devi* case was not correctly decided and is, therefore, overruled.

70. We would now like to summarise the legal conclusions which we have reached after an exhaustive consideration of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 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 pre-existing 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 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.”

32.2 In **Ram Vishal (dead) by Lrs and Others** (supra), paragraph-16 reads as under:

“16. In this case, R has validly disposed of his separate property by a will. This is permissible as he has the capacity to so dispose of it. He is also enabled to do so by Section 30 of the Hindu Succession Act. He is thus entitled to interfere with the succession that would have ensued if he had died intestate. In the context of the will executed by him the question is what has he bequeathed to his wife and whether he had placed any restriction on her estate so bequeathed”.

32.3 In **Jogi Ram Vs. Suresh Kumar and Others** (supra), paragraphs 32, 33, 36 read as under:

“32. We would first like to turn to the seminal judgment in *V. Tulasamma case* [*V. Tulasamma v. Sesha Reddy*, (1977) 3 SCC 99]. In para 20 the propositions emerging in respect of incidents and characteristics of a Hindu woman's right to maintenance have been crystallized as under: (SCC pp. 113-14)

“20. Thus, on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

‘(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property, then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly pre-existing right in property i.e. it is a *jus ad rem not jus in rem* and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort (Jayanti Subbaiah V. Alamel Mangamma [Jayanti Subbiah v. AlameluMangamma, 1902 SCC OnLine Mad 4 : ILR (1904) 27 Mad 45] and Yellawa v. Bhimangavda [Yellawa v. Bhimangavda, 1893 SCC OnLine Bom 3 : ILR (1893) 18 Bom 452]) of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.

33. In the light of the aforesaid passage, Sections 14(1) and 14(2) of the said Act were entered by the Court. The word “possessed” was held to be used in a wide sense not requiring a Hindu woman to be in actual or physical possession of the property and it would suffice if she has a right in the property. The discussion in para 33 thereafter opines that the intention of Parliament was to confine sub-section (2) of Section 14 of the said Act only to two transactions viz. a gift and a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. The intention of Parliament in adding the other categories to sub-section (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in Section 14(2) of the said Act. The conclusions were thereafter set forth in para 62 of the judgment as under: (SCC pp. 135-36)

“62. We would now like to summarise the legal conclusions which we have reached after an exhaustive consideration of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 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 recognizing 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 pre-existing 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 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.

36. *The testator in the present case, Tulsi Ram, had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited life interest to her as the second wife with the son inheriting the complete estate after her lifetime. We are, thus, of the view that it would be the provisions of Section 14(2) of the said Act which would come into play in such a scenario and Ram Devi only had a life interest in her favour. The natural sequitur is that the respondents cannot inherit a better title than what the vendor had and, thus, the view taken by the trial court and the first appellate court is the correct view and the sale deeds in favour of the respondents cannot be sustained”.*

32.4 In **Prahlad Pradhan and Others** (supra) paragraph No.4 reads as under:

“4. The courts below have found on the basis of the evidence adduced by the parties, that the appellants had failed to prove that the suit property was the self-acquired property of Mangal Kumhar. The burden to prove that the suit property was the self-acquired property of Mangal Kumhar was on the Appellant purchasers. Reliance is placed on this Court's judgment in *Adivappa v. Bhimappa* [*Adivappa v. Bhimappa*, (2017) 9 SCC 586 : (2017) 4 SCC (Civ) 678] wherein it was held that : (SCC p. 589, para 19)

“19. It is a settled principle of Hindu Law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. (See Mulla, Hindu Law, 22nd Edn. Article 23 “Presumption as to coparcenary and self-acquired property”, pp. 346 and 347.)”
(Emphasis supplied)

The appellants have failed to discharge the burden to prove that the suit property was separate or self-acquired property of Mangal Kumhar”.

33. The Court below has given specific findings that the development agreement under Ex.A3 was deemed to have been cancelled and is substituted by Ex.B.12/MOU and further held

that the plaintiff did not perform his part of contract even under Ex.B12 and thus the plaintiff is not entitled for grant of decree of specific performance of Ex.A3/development agreement as well as Ex.B12/MOU. Therefore, the plaintiff is not entitled to the relief claimed in the suit for grant of specific performance of contract for enforcing development agreement/Ex.A3. Accordingly, Point No.2 is answered against the plaintiff.

POINT NO.3

34. In view of the findings given on Point No's. 1 and 2 above and also in view of the specific findings in the impugned judgment, we are of the considered view that the Court below has rightly dismissed the suit. Thus, viewed from any angle, there are no grounds in the appeal and the same is liable to be dismissed.

35. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel, miscellaneous applications if any, pending shall stand disposed of.

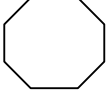
JUSTICE P. NAVEEN RAO

JUSTICE J. SREENIVAS RAO

10-02-2023.

Skj

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO**



CCCA.No.168 OF 2006

Date : 10-02-2023.

Skj.