

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.102 of 1993

- 1.1. Prabha Sinha, Widow of Radhika Raman Prasad Sinha, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas, at Present New Area, West Mohan Bigha, P.S. Dehri, District- Rohtas.
- 1.2. Ajit Kumar Sinha, Son of late Radhika Raman Prasad Sinha, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas, at Present New Area, West Mohan Bigha, P.S. Dehri, District- Rohtas.
- 1.3. Asha Kumari Sinha, D/o Radhika Raman Prasad Sinha, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas, at Present New Area, West Mohan Bigha, P.S. Dehri, District- Rohtas.
- 1.4. Pushpa Sinha, D/o Radhika Raman Prasad Sinha and W/o of Shri Nirbhair Kumar Verma, Resident of Mohalla- New Area, West Mohan Bigha, P.S. Dehri, District-Rohtas.

... .. Appellants

Versus

1. Shri Kaushal Chand Singh, Son of Rajesshwari Prasad Sinha, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas, at Present residing at 126/A, Indrapuri, New Delhi.
2. Uday Prasad Sinha, Son of Shri Tarkeshwar Pd. Sinha, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas, at Present Mohalla- New Area, Dehri-on-sona, P.O. Dalmianagar, Distt- Rohtas.
- 3.1. Kamla Devi, Widow of late Lalit Prasad, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas.
- 3.2. Kumar Vishwas Raushan, Son of late Lalit Prasad, Resident of Village- Atimi, P.S. Nasriganj, Distt. Rohtas.
- 3.3. Sanyogita Kumari, D/o of late Lalit Prasad, W/o Sanjay Kumar Srivastava, Resident of Village- Kothi, Sahid Sukha Ranga, Sasaram, P.O. and P.S. Sasaram, Distt-Rohtas.
- 3.4. Ranjita Kumari, D/o of late Lalit Prasad, W/o Amit Kumar Sinha, R/o C/o- Surendra Dubey, Raj Colony Gali No. 4, P.O. and P.S.- Sasaram, District-Rohtas.
- 3.5. Sumita Kumari, D/o of late Lalit Prasad, Wife of Akhil Kumar Shivastava, R/o, C/o- Sanjay Kumar Sinha, Chawar Takia, P.O. and P.S.-Sasaram, Distt. Rohtas.
4. Shri Ravi Bhushan @ Shri Jhuni Lal Son of Kamta Prasad Verma, Resident of Village- Gaulashni, P.O. and P.S. Sasaram, Distt. Rohtas.
5. Shri Anik Kumar Verma, Advocate Son of Shri M.K. Verma, Resident of Mohalla- Fazalganj (infront of Officer's Colony), P.O. and P.S. Sasaram, Rohtas.
6. Chhathu Lal, Son of Deo Bansh Lal, Resident of Village and Post Office- Silari, P.S. Sheosagar, Distt. Rohtas, Sasaram,.

... .. Respondents



Appearance :

For the Appellants : Mr. Kumar Uday Singh, Advocate
Mr. Akhouri Vipin Bihari Shrivastava
Ms. Patla Kumari, Advocate
For the Respondents : Mr. Jitendra Prasad Singh, Advocate
Mr. Varun Krishna Singh, Advocate
Mr. Abhishek, Advocate

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

C.A.V. JUDGMENT

Date : 01-10-2024

The present appeal has been filed against the order dated 05.03.1992 passed by Shri Kumar Ganesh Dutt, 4th Additional District Judge, Rohtas at Sasaram in T.S. No. 2/86 arising out of Probate Case No. 33 of 1985 by which the Court below has dismissed the suit as not maintainable.

2. The appellant filed the Probate Case No.33 of 1985 for grant of probate and letters of Administration with respect to the property described in Schedule-A, B and C of the petition left by Late Kanji Sahay. In paragraphs 7 and 8 of the petition of Probate case, it has been stated that Late Kanji Sahai executed a deed of will in the name of petitioner on 19.12.1951 with the condition that his first wife Maina Devi @ Manraj Kuer and second wife Mundrika Devi @ Mundrika Kuer shall remain in possession of the land and properties left by the testator during their life time. It was further laid down that the wives of the testator shall deposit the usufruct and income of the properties left by the testator and the savings after the expenses towards



their maintenance. It was further mentioned in the Will that after the death of his wives the appellant shall be entitled to take actual possession as the absolute owner over the lands and properties of the testator, movable and immovable and shall be entitled to deal and manage as title holder. The testator died in the month of June, 1952.

3. It is further case of the appellant that the first wife of Late Kanji Sahay, namely, Maina Devi @ Manraj Kuer died on 31.12.1968 and the second wife Mundrika Devi @ Mundrika Duer died on 30.9.1984. The Kanji Sahay had no issue from both the wives and, as such, he filed the case for grant of probate and letter of administration. It is the further case of the appellant that one Lalit Prasad, Respondent No.3 (now deceased and substituted by his heirs and legal representative) had been wrongly claiming as the adopted son of Late Kanji Sahay. Late Kanji Sahay had not given any instruction to his wives to adopt Lalit Prasad. Lalit Prasad got a fraudulent decree of adoption which was challenged in the title suit and the same was dismissed and affirmed by the Lower Appellate Court but in the second appeal a compromise decree was obtained fraudulently by Lalit Prasad.

4. Respondents appeared in the suit and objection was



filed on behalf of Respondent no.3 (adopted son of Late Kanji Sahay) in the probate case upon which it was converted in the title suit as T.S. No. 2/1986 in which it was pleaded inter alia that appellant had earlier filed a Probate Case No.100 of 1984 which was dismissed and therefore present probate case is not maintainable. Respondent No. 3 had pleaded in the rejoinder that he is the adopted son of Late Kanji Sahay who never executed a will on 19.12.1951. It is the case of Respondent No. 3 that Maina Devi @ Manraj Kuer died on 31.1.1966 and not on 31.12.1968 and after death of the Kanji Sahay, the respondent No.3 was adopted by the senior widow Manraj Kuer with the consent of Mundrika Kuer as directed by Kanji Sahay and both the widows had also executed a registered deed of adoption on 13.3.1961 admitting the factum of adoption. The suit challenging adoption has been compromised before this Hon'ble Court in Second Appeal No.368 of 1979 in which adoption has been accepted by Mundrika Kuer. There was registered partition among the two widows of Late Kanji Sahay and the adopted son (respondent No.3) through registered deed of partition dated 18.4.1963 and thereafter Mundrika Kuer had transferred some of the property allotted to her on partition. The respondent No.3 had also transferred the some of the property which are in



possession of the transferee and, as such, he requested for dismissal of the case being not maintainable.

5. The court below i.e. the Trial Court, on the basis of objection raised by the respondent No. 3 about the very maintainability of the suit, had decided the same on the basis of pleadings, petitions and submission of the both sides as also taking into consideration the fact and law, that if the suit itself is not maintainable then the adjudication on other aspect is not necessary. Further the Court below after considering the provisions of Section 14 of the Hindu Succession Act, 1956 has come to the conclusion that when properties allotted to the widows in lieu of their maintenance under an instrument then by operation of Sub-Section (1) of Section 14 of the Hindu Succession Act, the Will did not create new right in favour of widow rather the interest of the widows were pre-existing right in the property and, as such, the case is covered under Sub-Section (1) and the widows become absolute owner of the property and as such probate case was dismissed as not maintainable.

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

7. Learned counsel for the appellant submits that from



perusal of the contents of the will, it clearly transpires that the testator had given only restricted interest to his both wives in the property under will for their life time maintenance and thereafter the appellant will get the absolute title and this was the intention of the testator which had to be respected all along in view of Section 30 of the Hindu Succession Act, 1956. Learned counsel for the appellant further submitted that from perusal of contents of the will, it is clear that any interest whatsoever either of the deceased wives of testator or her adopted son i.e. Respondent No. 3 would fall under the provision of Section 14(2) of the 1956 Act and not under Section 14(1) of the 1956 Act. Learned counsel further contended that the deceased mother of Respondent No. 3 would have acquired title over the property under the Will as an absolute owner in view of Section 14(1) of the 1956 Act unless the Will in question did not have restricted her interest therein, therefore, the restricted right admittedly falls under Section 14(2) of the 1956 Act. In support of his contention, learned counsel for the appellant has relied on a case of ***Ranvir Dewan versus Rashmi Khana, reported in (2018) 12 SCC 1*** in which case the similar issue had been decided wherein it was held that restricted interest in a deed of Will to the wife of testator of the



case would not fall under Section 14(1) of the 1956 Act but it will fall under Section 14(2) of the 1956 Act, and thus prays that the impugned order under appeal is absolutely illegal and fit to be set aside.

8. Learned counsel for the Respondents submits the Court below has rightly decided the suit as not maintainable. Learned counsel submitted that the trial court after taking into consideration the relevant facts as well as relief prayed for by the petitioner, has held that the testator, Late Kanji Sahay created a life interest in favour of widows for the purpose of maintenance with a condition that applicant will inherit the property after death of testator, the property will be inherited by appellant with a pre-condition that till the life time of widows, they (widows) will remain in possession over the property for their maintenance and as such the disputed Will did not create any new right rather the interest of the widows were pre-existing and as such decided the probate case as not maintainable. Learned counsel further submitted that the finding of the court below is based on the legal principle because of the fact that when probate case itself is not maintainable then question of genuineness of the Will is not required to be adjudicated under the provisions of Indian Succession Act and the trial court after



taking into consideration the various pronouncement of the leading decisions of the Hon'ble Apex Court particularly ***V.Tulasamma Vs Sesha Reddy reported in (1977) 3 SCC 99*** as well as provisions of Section 14 of the Hindu Succession Act came to the conclusion that since pre-existing right of the widow has been created under the will as pleaded in the probate case, the widows became absolute owner of the property in question. It is well settled that under the Hindu law the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled to a right to be maintained out of such properties. Further, it is equally well settled that the claim of Hindu widow to be maintained is not a mere formality which is to be exercised as a matter of concession, grace or gratis but is a valuable, spiritual and moral right. The Hindu Succession Act, 1956 has made revolutionary and far reaching changes in the Hindu Society and every attempt should be made to carry out the spirit of the Act which is undoubtedly supplied a long felt need and try to do away with the invidious distinction between a Hindu male and female in estate succession. Learned counsel further submitted that Sub-Section (2) of Section 14 is merely a proviso to Sub-Section (1) and has to be interpreted as a proviso and not in a manner so as



to destroy the effect of the main provision.

9. Learned counsel for Respondents has further relied on a case of Hon'ble Apex Court in ***Shakuntala Devi Vs. Kamla and others reported in 2005(5) SCC 390*** which considered the legal position wherein a Hindu wife was bequeathed life interest for maintenance by will with the condition that she would not have power to alienate the same in any manner. As per the will after death of the wife the property was to revert back to his daughter as an absolute owner. On this fact, their Lordship following the ratio decided in ***Tulsamma case(supra)***, held that by virtue of Section 14 (1) a limited right given to the wife under the will got enlarged to an absolute right in the suit property.

10. Learned counsel for the respondents has further contended that a similar question had also arose in a case of ***Subhan Rao and others Vs. Parvathi Bai and others reported in 2010 (10) SCC 235*** wherein a portion of the suit property was given to the Plaintiff/wife for her maintenance subject to the restriction that she will not alienate the land which was given to her maintenance. The question arose as to whether by virtue of Section 14(1) of the Act she became the owner of the suit property. Considering all the earlier decisions of the Apex



Court, their Lordship held that by virtue of Section 14(1), the pre-existing right in lieu of her right to maintenance transformed into absolute estate.

11. In another similar case like the present one, the Hon'ble Apex Court in a case of ***Jupudy Pradha Sarthy Vs. Pentapati Rama Krishna and others reported in (2016) 2 SCC 56*** in which, from perusal of paragraph no.8 of the judgment, it appears that the husband has executed a will stipulating therein that his 3rd wife Veeraraghavamma shall enjoy for life the tile house with site and compound wall and with half right in the well covered by Municipal D. number 6/875 and after life time of his wife, his second son Narsimha Rao shall have the property with absolute rights such as gift, sale etc. ***Jupudy Pradha Sarthy (supra)*** squarely covers the facts of the present case where the Hon'ble Apex Court after considering several previous decision held in paragraph-31 and 33 as under :-

31. Further, indisputably, Mr.P.Venkata Subba Rao, the original owner of the property, realized the fact that his wife Veeraraghavamma as issueless and she has a pre- existing right to be maintained out of his property. He further realized that physically he was weak and may not survive for long period. He therefore, decided to give his properties to his family members. for the maintenance of his third wife Veeraraghavamma, he gave the tiled house with site and compound wall with the stipulation that she shall enjoy the property for life in lieu of maintenance. She will also be entitled to fetch



water from the well and use other facilities. Admittedly, no one disputed the arrangements made in the Will and Veeraraghavamma continued to enjoy the said property. In view of the admitted position, we have no doubt to hold that by virtue of Section 14(1) of the Act, her limited right became absolute right to the suit property"
33. *Though no specific word has been mentioned in Exhibit A-2 that in lieu of maintenance life interest has been created in favour of Veeraraghavamma, in our opinion in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act".*

12. Further learned counsel for Respondents submitted that from perusal of Section 295 of the Indian Succession Act, 1925, it appears that proceeding of the probate case shall take, as nearly as may be, the form of the regular suit according to the provision of Code of Civil Procedure and as such when a question of maintainability of the case is raised then it has to be decided first and in that case the court has inherent power to see that frivolous and vexatious litigations are not allowed to consume the time of the court. In support of this reference may be made in a case of ***K.Akbar Ali Vs. K. Umar Khan and others reported in (2021) 14 SCC 51.***

13. Learned counsel for the respondents lastly contends that the question of genuineness of the will is not required to be



adjudicated when probate case itself is not maintainable. Thus, in view of the aforesaid facts and legal pronouncement the probate case filed by the appellant is not maintainable and has rightly been rejected by the court below and the same is required to be affirmed by this Court by dismissing the present appeal with cost.

14. In view of the rival contentions of the parties, the point for consideration in this appeal is whether the order of the Court below is sustainable and the case would come under the purview of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as “1956 Act”) or the case will fall under the ambit of Section 14(2) of the 1956 Act.

15. This Court would first consider the provisions of Section 14 of the 1956 Act and for better appreciation of the case, the same is quoted hereunder:

“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 the 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.”

16. Section 14(1) while declaring the female as full owner of all kinds of property has virtually reintroduced Vijnaneshwara's interpretation of Yajnavalkya's text on Stridhan. According to Mulla Hindu Law 25th Edition, the rule laid down in sub-section (1) has very wide and extensive application and has to be read in a comprehensive manner. The Act overrides *inter alia* the old law on the subject of stridhana in respect of all property possessed by a female, whether acquired by her before or after the commencement of the Act and this section declares that all such property shall be held by her as full owner.

In Eramma v Veerupana, AIR 1966 SC 1879, the Supreme Court examined the ambit and object of this section and observed:



“The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title, whether before or after the commencement of the Act. It may be noticed that the Explanation to section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words 'as full owner thereof and not as a limited owner' in the last portion of sub-section (1) of the section clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, section 14(1) of the Act contemplates that a Hindu female, who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.... It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige or title.”

17. So far Sub-section (2) is concerned, according to Mulla Hindu Law, the object of this sub-section is also to make it abundantly clear that a restricted estate can even after the commencement of the Act come into existence in case of interest in property given to a female Hindu, by operation of transactions inter vivos by testamentary disposition, by decree



or order of a civil court or under an award. It is also intended to make it clear that any such restricted estate created prior to the commencement of the Act will not be enlarged into full ownership by operation of sub-section (1) if the gift, will, other instrument, decree, order or award had prescribed a restricted estate.

18. Hindu Law recognizes that Hindu has a personal obligation to maintain certain near relations, such as wife, children and aged parents and that the one who takes another's property has an obligation to maintain the latter's dependents. Hindu sages, in most unequivocal and clear terms, laid down that maintenance of certain persons is a personal obligation. **Manu declared:** *"The aged parents, a virtuous wife and an infant child must be maintained even by doing hundred misdeeds."* The right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and wife and that right in the case of a widow is a "pre-existing right" which existed under the Shastric Hindu Law long before the passing of the Hindu Women's Right to Property Act, 1937 or the Hindu Married Women's Right to Separate Residence Residence and Maintenance Act, 1946. Those Acts merely recognised the position as was existing under the Shastric



Hindu Law and gave it a statutory backing. Where a Hindu widow is in possession of the property of husband, she has a right to be maintained out of it and she is entitled to retain the possession of the property in lieu of her right of maintenance.

19. Before passing of the Hindu Women's Rights to Property Act, 1937, widow after the death of her husband was only entitled to maintenance in the joint family. The first legislation which protected the Hindu women rights in the property was Hindu Women's Rights to Property Act, 1937 which provided better rights. It conferred new rights on the widow. Hindu Women's Rights to Property Act, 1937 was replaced by Hindu Succession Act, 1956 which was then introduced as welfare legislation. The Act introduced revolutionary concept of testamentary and interstate succession, coparcenary property and identified property rights of the Hindu women. Thereafter, Hindu Succession (Amendment) Act 2005 was introduced which brought radical change by substituting Section 6 in the Act of 1956 making the daughter as co-parcener in Hindu Mitakshara joint family having birth right in co-parcenary property.

20. Now, coming to this case where two competing arguments were made as to the legal interpretation of the will



in question. The first argument is that the entire bequeath should be considered as maintenance for wives under Section 14(1) of the 1956 Act which, therefore, results in her becoming absolute owner of the property and then the case is covered by Section 14(1) of the 1956 Act and not by testamentary succession. The second argument is that wives of the late Kanji Sahay did not have any right when Will was executed. The Will only gives her limited interest and as such upon her death, it will devolve in terms of the will and the case will be covered by testamentary succession. The legal position under 1956 Act is well settled in *V. Tulasamma (supra)* in which case the summary of the case is discussed in paragraph 2 of the judgment which is as under:

“2.Venkatasubba Reddy, husband of Appellant 1 Vaddeboyina Tulasamma — hereinafter to be referred to as “Tulasamma” — died in the year 1931 in a state of jointness with his step brother v. Sesha Reddy and left behind Tulasamma as his widow. On October 11, 1944 the appellant Tulasamma filed a petition, for maintenance in forma pauperis against the respondent in the Court of the District Munsif, Nellore. This application was set ex parte on January 13 1945 but subsequently the petition was registered as a suit and an ex parte decree was passed against the respondent on June 29, 1946. On October 1, 1946 the respondent filed an interlocutory application for recording a compromise alleged to have been arrived at between



the parties out of Court on April 9, 1945. The appellant Tulasamma opposed this application which was ultimately dismissed on October 16, 1946. An appeal filed by the respondent to the District Judge, Nellore was also dismissed. Thereafter Tulasamma put the decree in execution and at the execution stage the parties appear to have arrived at a settlement out of Court which was certified by the executing court on July 30, 1949 under Order 21 Rule 2 of the Code of Civil Procedure. Under the compromise the appellant Tulasamma was allotted the Schedule properties, but was to enjoy only a limited interest therein with no power of alienation at all. According to the terms of the compromise the properties were to revert to the plaintiff after the death of Tulasamma. Subsequently Tulasamma continued to remain in possession of the properties even after coming into force of the Hindu Succession Act, 1956 — hereinafter to be referred to as “the 1956 Act” or “the Act of 1956”. By two registered deeds dated April 12, 1960 and May 25, 1961, the appellant leased out some of the properties to Defendants 2 and 3 by the first deed and sold some of the properties to Defendant 4 by the second deed. The plaintiff-respondent filed a suit on July 31, 1961 before the District Munsiff, Nellore for a declaration that the alienation made by the widow Tulasamma were not binding on the plaintiff and could remain valid only till the lifetime of the widow. The basis of the action filed by the plaintiff was that as the appellant Tulasamma had got a restricted estate only under the terms of the compromise her interest could not be enlarged into an absolute interest by the provisions of the 1956 Act in view of Section 14(2) of the said Act. The suit was contested by the appellant Tulasamma who denied the allegations made in the plaint and averred that by virtue of the provisions of the 1956 Act she had become the full



owner of the properties with absolute right of alienation and the respondent had no locus standi to file the present suit. The learned Munsiff decreed the suit of the plaintiff holding that the appellant Tulasamma got merely a limited interest in the properties which could be enjoyed during her lifetime and that the alienations were not binding on the reversioner. Tulasamma then filed an appeal before the District Judge, Nellore, who reversed the finding of the trial court, allowed the appeal and dismissed the plaintiff's suit holding that the appellant Tulasamma had acquired an absolute interest in the properties by virtue of the provisions of the 1956 Act. The learned Judge further held that sub-section (2) of Section 14 had no application to the present case, because the compromise was an instrument in recognition of a pre-existing right. The plaintiff-respondent went up in second appeal to the High Court against the judgment of the District Judge. The plea of the plaintiff-respondent appears to have found favour with the High Court which held that the case of the appellant was clearly covered by Section 14(2) of the Hindu Succession Act and as the compromise was an instrument as contemplated by Section 14(2) of the 1956 Act Tulasamma could not get an absolute interest under Section 14(1) of the Act. The High Court further held that by virtue of the compromise the appellant Tulasamma got title to the properties for the first time and it was not a question of recognising a pre-existing right which she had none in view of the fact that her husband had died even before the Hindu Women's Right to Properties Act, 1937. We might further add that the facts narrated above have not been disputed by Counsel for the parties."

Further in paragraphs 61 and 63, the Hon'ble Apex

Court held as under:



“61. 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 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."

63.It is, therefore, clear that the compromise by which the properties were allotted to the appellant Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre-existing right, and, therefore, the case of the appellant would be taken out of the ambit of Section 14(2) and would fall squarely within Section 14(1) read with the Explanation thereto. Thus the appellant would acquire an absolute interest when she was in possession



of the properties at the time when the 1956 Act came into force and any restrictions placed under the compromise would have to be completely ignored. This being the position, the High Court was in error in holding that the appellant Tulasamma would have only a limited interest and in setting aside the alienations made by her. We are satisfied that the High Court decreed the suit of the plaintiffs on an erroneous view of the law.”

21. The Hon’ble Apex Court further in the case of ***Raghubir Singh Vs. Gulab Singh reported in (1998) 6 SCC 314*** held that by force of Section 14(1) of the Act, the widow’s limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument and so far as sub-section(2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts, etc, which create an independent or a new title in favour of female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her “pre-existing right to maintenance” out of that property 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) of the Act. Paragraphs 14, 14, 15, 16, 17, 18, 19, 20 and 24 are relevant in the present context and the same are reproduced as under:



“14. According to the old Shastric Hindu law, marriage between two Hindus is a sacrament — a religious ceremony which results in a sacred and a holy union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain his wife and where he dies possessed of properties, then his widow was entitled, as of right, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her deceased husband is, thus, a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.

15. Mulla in his classic work on Hindu Law, 14th Edn., dealing with the characteristic of the right of maintenance of a Hindu wife observes:

“A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self-acquired.”

16. Mayne in his treatise on Hindu Law and Usage, 11th Edn., while tracing the history and



origin of the right of maintenance of a Hindu wife says:

“The maintenance of a wife by her husband is, of course, a matter of personal obligation, which attaches from the moment of marriage.”

17. The obligations, under the Shastric Hindu law, to maintain a Hindu widow out of the properties of her deceased husband received a statutory recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. The law on the subject was, thereafter, consolidated and codified by the Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946 which came into force on 23-4-1946. The right to maintenance of the Hindu widow, as a pre-existing right, was thus recognised by the two statutes referred to above but it was not created for the first time by any of those statutes. Her right to maintenance existed under the Shastric Hindu law long before statutory enactments came into force. After the attainment of independence, the need for emancipation of women from feudal bondage became even more imperative. There was growing agitation by Hindu women for enlargement of their rights as provided by the Shastric Hindu law in various spheres. It was at this juncture that Parliament stepped in and enacted various statutes like the Hindu Marriage Act, 1956, the Hindu Adoption and Maintenance Act, 1956, and the Hindu Succession Act, 1956 providing for intestate succession.

18. The Hindu Succession Act, 1956 made far-reaching changes in the structure of Hindu law by removing the traditional limitations on the



powers of a Hindu widow to deal with the property of her deceased husband in her possession in lieu of her right to maintenance and the Act made her an absolute owner of the property, over which hitherto she had only a limited right.

19. A most elaborate discussion about the rights of a female Hindu before and after the coming into force of the Hindu Succession Act, 1956 and particularly the provisions of Section 14 of the Act, is contained in a three-Judge Bench judgment of this Court in V. Tulasamma v. Sesha Reddy [(1977) 3 SCC 99] . Dealing with the provisions of the Hindu Succession Act, 1956, this Court in V. Tulasamma v. Sesha Reddy [(1977) 3 SCC 99] observed: (SCC p. 116, para 23)

“The Act is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate....”

20. Fazal Ali, J. in his exhaustive judgment, dealing with the question of the pre-existing right of a Hindu widow laid down: (SCC pp. 113-14, para 20)

“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 a 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 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.”

24. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow is “a pre-existing right”, which existed under the Shastric Hindu law long before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a “statutory” backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.”

22. Further the Hon’ble Supreme Court in the case of ***Jupudy Pardha Sarathy vs. Pentapati Rama Krishna and Others since reported in (2016) 2 SCC 56*** held that property given to Hindu woman in lieu of her pre-existing right of maintenance, even if by will creating only life interest, the same would get transformed into absolute right by operation of Section 14(1). Paragraphs 24, 28 and 31 are relevant and the same are reproduced as under:



“24. Reference may also be made to the decision of a three-Judge Bench of this Court in Shakuntla Devi v. Kamla [Shakuntla Devi v. Kamla, (2005) 5 SCC 390] , where a Hindu wife was bequeathed life interest for maintenance by will with the condition that she would not have power to alienate the same in any manner. As per the will, after death of the wife, the property was to revert back to his daughter as an absolute owner. On this fact Their Lordships following the ratio decided in Tulasamma case [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99 : AIR 1977 SC 1944] held that by virtue of Section 14(1) a limited right given to the wife under the will got enlarged to an absolute right in the suit property.

Para-28. *In Nazar Singh v. Jagjit Kaur [Nazar Singh v. Jagjit Kaur, (1996) 1 SCC 35] , this Court following the decision in Tulasamma case [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99 : AIR 1977 SC 1944] held as under: (Nazar Singh case [Nazar Singh v. Jagjit Kaur, (1996) 1 SCC 35] , SCC pp. 38-39, para 9)*

“9. Section 14 and the respective scope and ambit of sub-sections (1) and (2) has been the subject-matter of a number of decisions of this Court, the most important of which is the decision in V. Tulasamma v. Sesha Reddy [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99 : AIR 1977 SC 1944] . The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. According to this decision, sub-section (2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any



pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2) even if the instrument, decree, order or award allotting the property to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial Singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants accompanying the grant. [Also see the recent decision of this Court in Mangat Mal v. Punni Devi [Mangat Mal v. Punni Devi, (1995) 6 SCC 88] where a right to residence in a house property was held to attract sub-section (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.] According to sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Succession Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was 'possessed' by her. Where, however, the property is given to a female Hindu towards her maintenance after the



commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. This proposition follows from the words in sub-section (1), which insofar as is relevant read: 'Any property possessed by a female Hindu ... after the commencement of this Act shall be held by her as full owner and not as a limited owner'. In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession. So far as the expression 'possessed' is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case."

Para-31. *Further, indisputably, Mr P. Venkata Subba Rao, the original owner of the property, realised the fact that his wife Veeraraghavamma was issueless and she has a pre-existing right to be maintained out of his property. He further realised that physically he was weak and may not survive for long period. He therefore, decided to give his properties to his family members. For the maintenance of his third wife Veeraraghavamma, he gave the tiled house with*



site and compound wall with the stipulation that she shall enjoy the property for life in lieu of maintenance. She will also be entitled to fetch water from the well and use other facilities. Admittedly, no one disputed the arrangements made in the will and Veeraraghavamma continued to enjoy the said property. In view of the admitted position, we have no doubt to hold that by virtue of Section 14(1) of the Act, her limited right became absolute right to the suit property.

23. Further, in the case of case of ***Munni Devi Alias Nathi Devi vs. Rajendra Alias Lallu Lal*** since reported in 2022 ***SCC OnLine SC 643***, the Hon'ble Apex Court held as under in paragraphs 13 and 20 of the judgment:

“13. Following the said observations made in the case of V. Tulasamma (supra), this court in Raghubar Singh v. Gulab Singh held as under:

“22. The judgment in Tulasamma case [(1977) 3 SCC 99] has held the field till date. (See also with advantage: Ram Kali v. Choudhri Ajit Shankar [(1997) 9 SCC 613] and Bhoomireddy Chenna Reddy v. Bhoospalli Pedda Verrappa [(1997) 10 SCC 673].)

23. Thus, we find that there is enough authority for the proposition that the right to maintenance of a Hindu female is a pre-existing right, which existed in the Hindu law long before the Act of 1937 or the Act of 1946 came into force and is not a creation of those statutes, which only recognised that position. In the words of Fazal Ali, J. in



Tulasamma case [(1977) 3 SCC 99] : (SCC p. 135, para 62)

“(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.”

24. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow is “a pre-existing right”, which existed under the Shastric Hindu law long before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a “statutory” backing. Where a



Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

25. *Explaining the meaning of the expression “possessed” as used by the legislature in Section 14(1) of the 1956 Act in Tulasamma case [(1977) 3 SCC 99] this Court held : (SCC p. 136, para 62)*

“(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.”

26. *It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts, etc.,*



which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her “preexisting right to maintenance” out of that property. As held in Tulasamma case [(1977) 3 SCC 99] 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) of the Act.”

20. As stated earlier, Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. The word “possessed by” and “acquired” used in Section 14(1) are of the widest amplitude and include the state of owning a property. It is by virtue of Section 14(1) of the Act of 1956, that the Hindu widow's limited interest gets automatically enlarged into an absolute right, when such property is possessed by her whether acquired before or after the commencement of 1956 Act in lieu of her right to maintenance.”

24. The present case is squarely covered with the case of



Jupudy Pradha Sarthy (supra) as in that case, P. Venkata Subba Rao and in the present case i.e. Kanji Sahay, both having testamentary dispositions, the Hon'ble Apex Court emphasized the implications of Section 14(1) of the Hindu Succession Act. In 1920, P. Venkata Subba Rao bequeathed his property to his childless wife, Veeraraghavamma, who later passed it on to Pentapati Subba Rao in 1971. The Hon'ble Apex Court ruled that any limited interest granted to a Hindu female with a pre-existing right of maintenance becomes an absolute right after the enactment of the 1956 Act. Similarly, Kanji Sahay's will of the year 1951 provided lifetime possession to his two wives, Maina Devi @ Manraj Kuer and Mundrika Devi, with absolute ownership reverting to the appellant upon their demise. In both instances, the Hindu females' pre-existing rights of maintenance transformed their interests into absolute ownership under the provisions of the Hindu Succession Act.

25. The Trial Court, in the present case, after taking into consideration the principles laid in *V. Tulasamma (supra)* as also other decisions by the Hon'ble Apex Court has come to the conclusion that when specific property is allotted to a widow in lieu of her claim for maintenance under an instrument which prescribes a restricted estate, question has arisen as to whether



she becomes owner of the same by operation of sub-section (1) read with explanation or does she remain entitled only to a restricted estate as visualised in sub-section (2). The trial Court has further stated that most expansive interpretation has to be given to sub-section (1) and the operation of sub-section (2) must be confined to cases where property is acquired for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribed a restricted estate in the property. But where property is acquired by a Hindu female in lieu of right of maintenance, it is by virtue of a pre-existing right that such an acquisition would not be within ambit of sub-section (2), even if the instrument, decree or award allotting the property prescribed a restricted estate in the property. The Trial Court further stated that even if the disputed will is taken to be genuine then in that case also, reliefs as prayed for the petitioner-appellant cannot be granted keeping in view of the provisions of law. Further the Trial Court while concluding the order has rightly stated that the disputed will did not create any new right in favour of the widows rather the interest of the widows were pre-existing.

26. After hearing both sides, perusing the order of the Court below as well as ratio laid down by the Hon'ble Supreme



Court in various decisions referred to above as also statutory provisions contained in Hindu Succession Act, this Court is in agreement with the submission of the learned counsel for respondents that no new rights had been created to both the widows by way of Will and both the widows had pre-existing right and thus this case will come under the purview of Section 14(1) of the 1956 Act and not under Section 14(2) of 1956 Act.

27. The order passed 05.03.1992 passed by Shri Kumar Ganesh Dutt, 4th Additional District Judge, Rohtas at Sasaram in T.S. No. 2/86 is affirmed and the present appeal is dismissed without any costs.

(Rudra Prakash Mishra, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	05.09.2024
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