



{1}

SA 813.13F.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 813 OF 2013

Kailas s/o. Prabhakar Shinde,
Age 32 years, occ. Agril,
R/o. Gikulwadi (Kharpudi)
Tq. and Dist. Jalna.

.. APPELLANT

VERSUS

1. Indubai w/o. Kailas Shinde,
Age 28 years Occ. Household,
R/o. Nikalak (Akola) Tq. Badnapur,
Dist. Jalna.
2. Bapurshabe s/o. Nivrutirao Barkad,
Age 42 years, Occ. Service,
R/o. Police Quarters, Near Police Complex,
Bus stand Road, New Jalna, Dist. Jalna

.. RESPONDENTS.

Mr. B.R. Kedar, Advocate for applicants
Appeal abated against respondent No.1.
Mr. N.V. Gaware, alongwith Mr. S.N. Gaikwad, Advocate for respondent
No.2.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 24.01.2025
PRONOUNCED ON : 11.02.2025

J U D G M E N T :-

The appellant/original plaintiff impugns the judgment and

decree dated 18.07.2013 passed by District Judge, Jalna in Regular Civil Appeal no. 205 of 2009, thereby upholding the judgment and decree dated 30.11.2009 passed by Civil Judge (S.D.) Jalna, in Special Civil Suit No. 78 of 2007, thereby dismissing the suit of the appellant seeking cancellation of sale deed, declaration of ownership and perpetual injunction.

2. For sake of convenience, parties are referred as per their original status in the suit.

3. The Appellant/plaintiff instituted Special Civil Suit No. 78 of 2007 contending that defendant No.1 Indubai was his legally wedded wife. After solemnization of marriage on 10.5.1997, she happily resided with him for about 8 years. Thereafter, some dispute erupted between them eventually, she started residing with her parents. She instituted proceeding for grant of maintenance under Section 125 of Cr.P.C. against him. The dispute was amicably resolved by intervention of friends. Defendant No.1 resumed matrimonial life with him. In turn, he executed a registered management deed dated 9.3.2006 in her favour giving her right to manage suit property bearing Gat No. 281, admeasuring 1 Hectare 20 R situated at Kapurwadi. A lifetime interest was created in her favour with restriction from creating third party interest. However within a short span, defendant again left matrimonial home. Thereafter, she suffered mental disorder and was under treatment of a psychiatrist at Aurangabad. Taking disadvantage of her mental health, her brother, who was serving in Police Department, made her to execute a sale deed dated 4.6.2007 in respect of suit property in favour of defendant No.2. According to plaintiff, sale deed dated 4.6.2007 is invalid as Defendant

No.1 had neither authority to transfer the suit property nor was she in fit state of mind to make valid disposition.

4. Defendants resisted suit contending that suit property was handed over to defendant No.1 under Management deed in lieu of maintenance. She was in possession of suit property as exclusive owner. Plaintiff's ill-treatment made her to leave the matrimonial home. She had no source of income to maintain herself. Therefore, she sold out the property to defendant No.2 for valuable consideration. Defendant No.2 has acquired ownership and possession in pursuance to the sale deed.

5. The trial court framed issues based on pleadings of the parties and after hearing them, concluded that the suit property was given in lieu of maintenance to the defendant No.1. Consequently, she had acquired absolute ownership over the suit property and disposition of property by her in favour of defendant No.2 is valid.

6. Plaintiff assailed decision of trial court in appeal before the District Judge, Jalna, who concurred with the judgment and decree passed by trial court, eventually dismissed the appeal.

7. Mr. B.R. Kedar, learned advocate appearing for the appellant submits that judgments and decrees passed by the courts below are perverse, based on misreading/misinterpretation of the Management Deed dated 9.3.2006. By inviting attention of this court to the contents of the management deed, Mr. Kedar would submit that a restricted right was created in favour of defendant No.1 to enjoy the ownership and possession of the property for maintenance with further rider to not to

create third party interest in the property. He would submit that suit property was to revert back to plaintiff and his legal heirs after defendant's lifetime enjoyment. Defendant No.1 could have secured absolute ownership only if any instance of ill-treatment towards defendant No.1 erupts. According to Mr. Kedar, there is nothing on record to show that condition precedent for conferment of ownership in favour of defendant No.1 has been ever complied. In support of his contentions, he relies upon observations of Supreme Court in the case of ***Gaddam Ramakrishana Reddi and others vs. Gaddam Rami Reddi 2011 AIR (SC) 179***, so also judgment in the matter ***Shivdeo Kaur vs. R.S. Grewal 2013 (4) SCC 636***.

8. Per contra, Mr. Nitin Gaware learned Advocate appearing for the respondent No.2 (Purchaser) would invite attention of this court to Section 14 of the Hindu Succession Act to contend that suit property was to be possessed by defendant No.1 in lieu of maintenance. Life interest was created in her favour. Plaintiff being husband was under obligation to maintain his wife. The Management Deed conferred existing right of maintenance in favour of defendant wife. Eventually, she was put into possession acknowledging her absolute right. She transferred suit property in favour of defendant No.2 to satisfy her needs since plaintiff failed to maintain her. According to him, condition restricting unfettered right of defendant No.1 to enjoy property will have to be ignored in view of law declared by Constitution Bench of the Supreme Court in the case of ***V. Tulsamma and others Vs. Shesha Reddi (dead) AIR 1976 SC 2198***. He also places his reliance on the recent judgment of the Supreme Court in the case or ***Kallakuri Pattabhiramaswamy (Dead) through LRs vs. Kallakuri Kamaraju and others (Civil Appeal No. 5389 of 2012)***

He would submit that the legal position, as espoused in the case of **V Tulsamma (supra)** still holds field. Consequently, defendant no.1 had absolute right over the suit property and disposition made by her in favour of defendant No.2 under registered sale deed dated 4.6.2007 was legal and valid.

9. I have considered submissions advanced by learned advocates appearing for respective parties, Admittedly, defendant No.1 is legally wedded wife of plaintiff. Plaintiff executed registered Deed of Management dated 9.3.2006, gist of which connotes thus :-

"The suit land is transferred in favour of defendant wife without consideration for the purpose of maintenance. The wife is entitled to take produce out of land and utilize the same for her maintenance. The land is permanently given to and possession is handed over to defendant wife. The wife shall not have right to transfer the land or create third party interest. Wife shall be entitled to enjoy the property as owner during her lifetime. Thereafter, ownership of land would be reverted back to plaintiff and his legal heirs and no one else would have any right on it. Wife shall be entitled to enjoy the property as owner without any interruption from the plaintiff husband. The plaintiff is taking wife for cohabitation. In case he fails to maintain good behaviour or causes ill-treatment to wife, the transfer of land shall be treated as absolute. The defendant wife shall be entitle to mutate her name in the revenue record of the suit property."

10. In the light of aforesaid stipulations, question that falls for consideration before this Court, is as to whether defendant had acquired absolute right in the suit property with right of disposition or create third party interest therein.

11. The legal position on the aforesaid aspect has been crystallized in the case of **V. Tulsamma and others Vs. Shesha Reddi (supra)**. Para.62 reads thus :-

"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 [s. 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 s. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of s. 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 s. 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of [section14](#) applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and s. 14(1) will not operate in this sphere. Where, however, an instrument merely de- clares 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 s. 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or trans- ferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub- s. (2) and would be governed by s. 14(1) despite any re- strictions 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 s. 14(1) clearly makes sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-s. (2).

(6) The words "possessed by" used by the Legislature in s. 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 s. 14(1) she would get absolute interest. in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser with- out any right or title.

(7) That the words "restricted estate" used in s. 4(2) are wider than limited interest as indicated in s. 14(1) and they include not only limited interest, but also. any other kind of limitation that may be placed on the transferee.

12. In yet another judgment, in case of Kallakuri (supra) in reference to the judgment in case of ***Magatmal Vs. Punni Devi (1995) 6 SCC 88***, the Supreme Court observed in para.10 as under :-

“What flows from the above is that the Hindu Women's right to maintenance is not by virtue of statute, but is found in Shastric Hindu law; maintenance has to be proper, appropriate and adequate, giving the woman so maintained the ability to continue to live the life, similar to what she once lived; and that the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance”.

13. In both the aforesaid cases, the Honourable Supreme Court held that in case, pre-existing right is conferred upon the woman, she would acquire an absolute right under Section 14(1) of the Hindu Succession Act. Section 14(2) would have no application in such cases. Further, restriction imposed upon the right to enjoy the property as full owner under any instrument or decree creating right in her favour will have to be ignored. The restriction contemplated under sub-clause 2 of section 14 would have no operation where the pre-existing right, such as, claim of maintenance or partition or share to which the family member is entitled has been created, the limited interest would automatically be enlarged into absolute one by force of Section 14(1). The restriction if any placed under document would have to be ignored.

14. In present case, undisputedly, the limited right was created in favour of defendant No.1 in lieu of maintenance. Since the right to maintenance is recognized as pre-existing right, limited right created in favour of defendant No.1 under management deed would automatically get enlarged to absolute right by operation of Sub-Section (1) of Section 14 of the Hindu Succession Act.

15. Mr. Kedar, learned advocate appearing for the appellant heavily relied on judgment of Supreme Court in case of ***Gaddam Sheshamma (supra)***. In that case, one G. Kela Reddi had executed registered deed of gift giving limited right in his share of property to his wife Gaddam Sheshamma without right of alienation and management was vested in G. Rami Reddi. In the context of aforesaid facts, the question that arose for consideration, whether, Gaddam Sheshamma had absolute right in the property. The Court held that the right created in favour of Sheshamma was not in lieu of her maintenance, as she was already managing the property in question and it was the Donee's desire that suit property should ultimately go to his son Romi Reddi and therefore, right of Sheshamma was held to be governed by Sub-Section (2) of Section 14 of the Hindu Succession Act. Therefore, the law laid down in the case of Gaddam would not assist the appellant to advance his cause. Similarly, another judgment in case of ***Shivdeo Kaur(supra)***, Honourable Supreme Court found that if the properties acquired by Hindu female by will or gift giving her only life interest that would remain same even after commencement of the Act of 1956. In that case, it is held that disposition of the property in favour of daughter under the will would not constitute pre-existing right.

16. Before parting, it is desirable to take note of the recent judgment of the Supreme Court in the case of *Tejbhan (D) through LRS and others vs. Ram Kishan through LRs and others (2024) SCC online SC 3661*, wherein, the Bench of the Supreme Court felt it necessary to make reference to the larger Bench for re-considering principles laid down in various judgments of the Supreme Court for restating the law on interplay between sub-Section (1) and (2) of Section 14 of the Hindu Succession Act. However, in that case, the issue involved pertains to right crated in favour of wife under a will. The life interest in favour of wife in lieu of maintenance is not doubted and still governed by exposition in **V. Tulsamma (supra)**.

17. In result, no substantial question of law arises in this appeal. Appeal sans merit, hence dismissed. Civil Application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-