



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.436 OF 2022

APPELLANTS
(Original Plaintiffs) ON RA

- :-** 1) Bhavana Krishnarao Bhamburkar, Aged 85 Years, Occ: Nil.
- 2) Prashant Krishnarao Bhamburkar, Aged 54 Years, Occ: Nil.
- 3) Pradnya Krishnarao Bhamburkar, Aged 50 Years, Occ: Nil.
All R/o. Bhamburkar Chawl, Abhyankar Road, Sitabuldi, Nagpur.

..VERSUS..

RESPONDENTS
(Original Defendants) ON RA

- :-** 1) Vinay Harihar Bhamburkar (Since deceased, L.R.s. on record) thr.
L.Rs.
- 1-A Vrushali Vinay Bhamburkar, Aged 52 Years, Occ: Household.
- 1-B Ketan Vinay Bhamburkar, Aged 28 Years, Occ : Service.
- 1-C Kaustubh Vinay Bhamburkar, Aged 25 Years, Occ: Student.
- All** R/o. Bhamburkar House, Abhyankar Road, Sitabuldi, Nagpur.

2. Satish Harihar Bhamburkar, Aged 45 Years, Occ: Service.
3. Deepak Harihar Bhamburkar (Died Unmarried)
4. Krishna Balaji Bhamburkar (Died, through his L.Rs. are already on record i.e. Appellant Nos.1 to 3.)

All R/o. Bhamburkar Chawl, Abhyankar Road, Sitabuldi, Nagpur.

5. C.T. Khambata, Aged Major, Occ: Business, R/o. Bombay Furniture Mart, Bhamburkar Wada, Sitabuldi, Nagpur.

Mr. S.P. Kshirsagar, Advocate for Appellants.

Mr. N.A. Jachak, Advocate for Respondent Nos.1A to 1C./Caveator.

CORAM : ROHIT W. JOSHI, JJ.

DATE : 06/10/2025

ORAL ORDER :

1. Heard.

2. Judgment and decree dated 08.07.2022, passed by the learned District Judge-1, Nagpur, in Regular Civil Appeal No.318

of 2018 and the judgment and decree dated 13.04.2018, passed by the learned Joint Civil Judge, Junior Division, Nagpur, in Regular Civil Suit No.487 of 1988, are under challenge in the present second appeal. The dispute in the matter pertains to the family of one Balaji, who had purchased the suit properties in the year 1928 and constructed a house thereon in the year 1931. Balaji died intestate in the year 1932. On 26.10.1953, there was a partition between his three sons namely Harihar, Keshao and Krushna and widow namely Laxmibai. Laxmibai the widow has expired on 23.12.1979. In the partition that took place in the year 1953, certain properties were allotted to the shares of the three sons, while the suit properties were allotted to the share of the widow, Laxmibai. During her lifetime, Laxmibai transferred the suit properties in favour of her grandson, defendant No.1. The present suit is filed to challenge the gift deed dated 08.06.1967, executed by Laxmibai in favour of defendant No.1 and for seeking partition of the suit properties.

3. The contention of Mr. Kshirsagar, learned Advocate for the appellants is that the so called partition of the year 1953 is, in fact, a family settlement and not a partition. He contends that the document dated 26.10.1953, which is purportedly a partition,

cannot be termed to be partition since it is not a registered document. He contends that under the said family settlement, only a life interest was created in favour of Laxmibai and therefore, she was not competent to transfer the same by way of gift to defendant No.1. He further contends that the family arrangement made in the year 1953 did not confer any right of maintenance upon Laxmibai in respect of the suit properties. The learned Advocate further contends that the share granted to the widow, Laxmibai, will continue to remain a limited estate in view of Section 14(2) of the Hindu Succession Act, 1956 (hereinafter referred to as “HS Act of 1956”), and that it will not enlarge into a full ownership under Section 14(1) of the H.S. Act of 1956. The learned Advocate has placed reliance on the judgment of the Hon’ble Supreme Court in the matter of *Sharad Subramanyan ..vs.. Soumi Mazumdar and Ors*, reported in **AIR 2006 SC 1993**.

4. *Per contra*, Mr. Jachak, the learned Advocate for the respondents, contends that Laxmibai being widow of Balaji had a pre-existing right of maintenance in the properties of her husband, Balaji. Mr. Jachak, the learned Advocate therefore, contends that the limited estate granted to her under the partition deed dated

26.10.1953 would become a full estate under Section 14(1) of the HS Act of 1956. As regards the contention relating to the nature of the transaction in the year 1953, Mr. Jachak has drawn attention to Paragraph-3 of the plaint, wherein it is stated that a partition had taken place in the year 1953 between the three sons and the widow of Balaji, which was subsequently reduced into writing. The learned Advocate also drawn attention to the specific statement in the plaint that the suit properties was allotted to Laxmibai in lieu of her maintenance.

5. I have perused the plaint and evidence with the able assistance of the learned Advocates. Perusal of the documents of partition demonstrates that it is stated therein that Laxmibai would be entitled to enjoy the properties which were allotted to her during her lifetime. There is a specific statement in the plaint that Laxmibai was granted the right to enjoy the usufruct of the property during her lifetime, and it is further stated that after her demise, the suit properties would revert to her sons.

6. It cannot be disputed that a wife has a right of maintenance against her husband, and also against his properties,

both separate and ancestral. It is also well settled that this right of maintenance against properties of husband continues to exist even after the demise of the husband. This right of maintenance is a pre-existing right, which is duly recognized under the *Shastric* Hindu law as well as the Hindu Adoptions and Maintenance Act, 1956. Section 14(1) of the Act of 1956, provides that any property possessed by female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner and not as a limited owner. Explanation to the said provisions clarifies that property received in partition or even in lieu of the maintenance is covered by the said 14(1) of the Act of 1956. The plaint averments clearly show that the property was given to widow Laxmibai for her maintenance in partition arrived at in the year 1953.

7. It is also well settled that in a partition of a Joint Hindu Family, the mother is entitled to one share equal to that of coparceners, although she cannot, by herself, demand partition. Thus, the right of Laxmibai in the properties of Balaji was pre-existing right. This right was not created for the first time under the partition.

8. The difference between Sections 14(1) and 14(2) of the H.S. Act of 1956, is well established by a catena of decisions of the Hon'ble Supreme Court including the landmark judgment in the matter of *Vaddeboyina Tulasamma & Others ..vs.. Vaddeboyina Sesha Reddi (dead) by LRs*, reported in **AIR 1977 SC 1944**, that when a Hindu female has pre-existing right over a property which is given to her by way of limited estate she holds the said property as absolute owner in view of Section 14(1) of the HS Act of 1956. It is held that Section 14(2) is applicable where there is no pre-existing right and right is conferred for the first time by creating limited life interest. Relevant observations of the Hon'ble Supreme Court are quoted herein below for ready reference:-

“(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 s. 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and s. 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 s. 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 subsection (2) and would be governed by s. 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 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 trespasser without 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."

9. Perusal of the aforesaid judgment demonstrates that a wife has an independent legal right to claim maintenance from her husband. This right may also extend to his property, subject to the relevant legal provisions. The Hon'ble Supreme Court has clearly held that, when a Hindu female is entitled to property under a pre-existing right and the property is allotted or transferred to her either for maintenance or by way of share in partition then the situation will be governed by Section 14(1) and not 14(2) of HS Act of 1956. Most importantly, in Clause-4 above, the Hon'ble Supreme Court has clearly directed that when a case is covered by Section 14(1), a restrictive covenant in a document will have to be ignored. Thus, irrespective of a restrictive covenant, in a cases where a Hindu female has a pre-existing right, the property given to her either towards maintenance or in partition shall be her absolute property and not a limited estate. The aforesaid judgment is being consistently followed. Laxmibai who got the suit property in

partition was entitled to receive the same as a matter of right in view of the legal position that mother of coparcener is entitled to receive a share of a coparcener in case of partition. A property which is received by the mother in partition is her absolute property. Restrictive covenant included in the document of the partition will have to be ignored in view of the Clause-4 in the matter of *V. Tulasamma* (Supra). The said judgment will not be applicable to the facts of the present case for two reasons; firstly, the property in which Laxmibai has a share was received in a partition, and secondly, it is evident from the records that the property was granted for her maintenance.

10. Mr. Kshirsagar, learned Advocate submits that issue regarding interpretation of Section 14(1) and (2), is now referred to a larger bench of the Hon'ble Supreme Court in the matter of *Tej Bhan (D) through LRs. and others ..vs.. Ram Kishan (D) through LRs and others*, reported in **2024 SCC OnLine SC 3661** and the reference is pending for consideration of the Hon'ble Supreme Court and therefore, the hearing of the appeal should be deferred till the reference is decided. However, the Hon'ble Supreme Court, has held in the matter of *Union Territory of Ladakh and ors. ..vs..*

Jammu and Kashmir National Conference and anr., reported in **2023 SCC OnLine SC 1140**, that whenever reference on any question of law is pending, before a larger Bench, the dispute between the parties should not be adjourned indefinitely and the matter should be decided in view of the existing legal position. The pending reference, therefore, need not detain this Court from deciding the second appeal.

11. Perusal of the referral order in the matter of *Tej Bhan* (Supra) will demonstrate that the controversy in the said matter is pertaining to life interest created in favour of Hindu female (wife) under a Will. It will be pertinent to mention that there are some decisions pertaining to interpretation of Section 14(1) of the HS Act of 1956 and 14(2) of the HS Act of 1956 relating to Will which hold that when life interest is created in favour of wife under a Will, such Will will be governed by Section 14(2) of the HS Act of 1956 and not by Section 14(1) of the HS Act of 1956.

12. It will be pertinent to note that, there is a divergence of the opinion across judicial pronouncements with respect to the interpretation of Section 14(1) and Section 14(2) of the HS Act of

1956. However, there is a broad consensus that where if a female Hindu has a pre-existing right in the property, the situation will be governed by Section 14(1) of the HS Act of 1956 and not by Section 14(2) HS Act of 1956. However, when it comes to Will executed in favour of female Hindu, the right of the testator to deal with his property is required to be *juxtaposed* with Section 14 of the HS Act of 1956. It is dealing with this situation that, some cases hold that even where a property is bequeathed to a female Hindu under a Will creating a limited estate, by virtue of Section 14(1) of the HS Act of 1956, a limited estate will ripen into full estate and there are some other decisions which hold that the limited estate shall be governed by Section 14(2) of the HS Act of 1956 and shall remain a limited estate.

13. In this context, it will be appropriate to refer to the judgments in the matter of *Jaswant Kaur ..vs.. Major Harpal Singh*, reported in (1989) 3 SCC 572 and *C. Masilamani Mudaliar ..vs.. Idol of Sri Swaminathaswami Thirukoil*, reported in (1996) 8 SCC 525. These judgments are by bench of three Hon'ble Judges.

14. In the case of *Jaswant Kaur* (Supra) although a life interest was created in favour of the female Hindu by virtue of Will, it was held that, since the female had a pre-existing right in the property, she would enjoy the property as its full owner in view of Section 14(1) of the HS Act of 1956. In the case of *C. Masilamani* (Supra), a three judges Bench of the Hon'ble Supreme Court has considered a two bench judgment in the matter of *Gumpha ..vs.. Jaibai*, reported in (1994) 2 SCC 511. The judgment in the matter of *Gumpha* (Supra), is by bench of two Hon'ble judges. In the said case restrictive interpretation was placed on Section 14(1) of the HS Act of 1956 to hold that when a Will is executed in favour of Hindu female conferring limited estate, the Will will be governed by Section 14(2) of the HS Act of 1956. The Hon'ble Supreme Court in *C. Masilamani* (Supra) has expressed that restrictive interpretation adopted in *Gumpha* (Supra) does not appear to be sound in law. Relevant observations in the Paragraph-28 of the judgment are reproduced herein below :-

“28. In Gumpha case (1994) 2 SCC 511, though the Will was executed in 1941 and the executor died in 1958 after the Act had come into force, the concept of limited right in lieu of maintenance was very much in the mind of the executor when Will was executed in 1941 but after the Act came into force, the Will became operative. The restrictive covenant would have enlarged it into an absolute estate; but unfortunately

the Bench had put a restrictive interpretation which in our considered view does not appear to be sound in law.”

15. As against this, another three Judges Bench in the case of *MST Karni ..vs.. Amru and others*, reported in (1972) 4 SCC 86, hold that where property devolves upon a Hindu female by virtue of Will creating a life estate in her favour, she would hold the property as a limited owner under Section 14(2) of the Act of 1956 and that Section 14(1) would not be applicable. The judgments in the matter of *Karni* (Supra) and *V. Tulasamma* (Supra) were considered to whether by the Hon’ble Supreme Court in the matter of matter of *Thota Sesharathamma and another ..vs.. Thota Manikyamma*, reported in (1991) 4 SCC 312. The Hon’ble Supreme Court has observed that *Karmi* (Supra) cannot be considered to be an authority on interpretation of Section 14(1) and 14(2) of the HS Act of 1956.

16. It appears that restrictive interpretation with respect to Section 14(1) of the HS Act of 1956 is adopted by the Hon’ble Supreme Court only in cases where life interest is created under a Will. However, there are two judgments of benches of three Hon’ble Judges, in the matter of *Jaswant Kaur* (Supra) and *C. Masilamani*

(Supra), which deal with a Will and hold that even restrictive covenant in a Will, will not restrict operation of Section 14(1) of the HS Act of 1956 in case where a Hindu female has pre-existing right over the property. As against this, there is another judgment by bench of three Hon'ble judges in the matter of *Karmi* (Supra) which held that in case of Will where limited estate is granted, Section 14(2) of the HS Act of 1956 will be applicable. As noticed above, correctness of *Karmi* (Supra) is doubted by the Hon'ble Supreme Court in *Thota Sesharathamma* (Supra). Thus, the legal position in respect of Wills appears to be that if a Hindu female has a pre-existing right over a property, then restrictive covenant will be inconsequential and the property will be enjoyed in full ownership right as per Section 14(1) of the HS Act of 1956. As regards other modes by which property is granted, there appears to be no divergence in the judicial pronouncement that, in the case of a pre-existing right of a Hindu female, any restrictive covenant in the grant is to be ignored.

17. As stated above, Mr. Kshirsagar, learned Advocate for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Sharad Subramanyan* (Supra).

Perusal of the Para-18 of the said judgment will demonstrate that in the said case, there was no material on record to indicate that the property was given to the wife in lieu of her right to maintenance.

18. As stated above, the present case is a case of partition of property in which Laxmibai was entitled to a share inferred to that of any other coparceners. In view of the legal position settled in the said judgments, there cannot be any two opinions with respect to the correctness of the findings recorded by both the learned Courts that Laxmibai became the absolute owner of the suit property by virtue of Section 14(1) of the HS Act of 1956.

19. In view of the legal position, as it stands today, in the considered opinion of this Court, it will have to be held that Laxmibai was absolute owner of the property allotted to her in the partition and accordingly, had absolute ownership right to gift the same in favour of the defendant No.1.

20. In view of the above, in the considered opinion of this Court, no substantial question of law arises for consideration in the second appeal. Second appeal is **dismissed**, with no order as to costs.

(ROHIT W. JOSHI, J.)