Tej Bhan(D) Through Lr vs Ram Kishan (D) Through Lrs on 9 December, 2024

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Bench: Pamidighantam Sri Narasimha

REPORTA

2024 INSC 945

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6557 OF 2022

TEJ BHAN (D) THROUGH LR. & ORS. ...APPELLAN

VERSUS

RAM KISHAN (D) THROUGH LRS. & ORS. …RESPONDENT(S

ORDER

1. Interpreting Section 14 of the Hindu Succession Act, 1956 1, in V. Tulasamma & Ors. v. Sesha Reddy (Dead) by LRs. 2", Justice Bhagwati observed that this is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and has proved to be a paradise for lawyers. Raising concern about the legislative indifference and interpretative difficulties presented by sub-sections (1) and (2) of Section 14, leading to judicial divergence, which might as well be described as chaotic, robbing the law of that modicum of certainty which it must always possess, Justice Bhagwati observed;

1 Hereinafter the 'Act'.

2 (1977) 3 SCC 99.

"67. ..... The question is of some complexity and it has evoked wide diversity of judicial opinion not only amongst the different High Courts but also within some of the High Courts themselves. It is indeed unfortunate that though it became evident as far back as 1967 that sub-sections (1) and (2) of Section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation

which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers...."

2. With this trepidation, they proceeded to resolve the confusion surrounding the interplay between sub-sections (1) and (2) of Section 14 of the Act and to enunciate the principles that govern disposition of property in favour of Hindu female. The principles formulated in Tulsamma, as extracted in paragraph 4 of this judgment, substantially hold the field. However as of date, there are atleast 18 judgments from this Court comprising decisions from two and three Judge benches that are varying and sometimes inconsistent with the view taken in Tulsamma's case. While arriving at their respective decisions, these judgments sought to explain, distinguish, negotiate or ignore the principles in Tulsamma and in the process they have either contradicted Tulsamma or implicitly departed from its principles sub-

silentio. Almost four decades after the judgment in Tulsamma, we have two streams of thoughts. While the first applies principles in Tulsamma as an inviolable principle steadfastly holding that property possessed by a Hindu female before or after the commencement of the Act shall be held by her as a full owner. The other seems to be evolving from case to case, influenced by, i) the method and manner by which the Hindu female is possessed of the property, ii) the instrument through which the right is acquired, and iii) the time at which such possession takes place, to mention a few.

3. Having gone through the precedents in detail, our endeavour was to reconcile the judgments and restate the principles with clarity and certainty. However, in view of the fact that we are in a combination of a two-Judge bench, such an exercise will not be fruitful as our judgment would be subject to the decision of many three Judge benches which need to be reconciled. The issue is of utmost importance as it affects the rights of every Hindu female, her larger family and such claims and objections that may be pending consideration in almost all original and appellate courts across the length and breadth of the country. It is absolutely necessary that there must be clarity and certainty in the position of law that would govern proprietary interests of parties involving interpretation of Section 14.

4. In this view of the matter, we have directed the Registry to place our order along with the appeal paper book before the Hon'ble Chief Justice of India for referring the matter to an appropriate larger bench.

In order to assist the Hon'ble CJI, we have reviewed the precedents that have caused some inconsistencies and uncertainties.

5. Before we examine the precedents in detail, the short facts involved in the present appeal are as under:

6. The appellant before the court is the purchaser of the suit scheduled property under a sale deed dated 02.03.1981 executed by the wife of one Kanwar Bhan, the testator, who was the original owner of the property. Mr. Kanwar Bhan during his lifetime executed a will dated 03.03.1965 in favour of his wife. The will created a life estate in favour of his wife. The relevant portion of the will creating the life estate is as under:

> "After my death, whatever rights I will be having in my above said property, in that eventuality, out of the land situated at village Nalvi Kalan, my wife Smt.Lachhmi Bai shall be having ownership of land measuring about 2½ Acre comprised in Rectangle No.4, Killa No.17/2, 18, 19/1, 23/1, and she will be entitled to maintain herself out of the proceeds from the same. She will not be entitled to mortgage or sell the said land. Of the remaining property, my son Shri Mool Chand will be owner to the extent of 1/2 share and Ram Kishan and Nand Lal sons of Shri Mool Chand (my grand-sons), will be absolute owners of 1/2 share in equal shares. My wife Smt.Lachhmi Bai will be owner, of the houses situated at village Kunjpura and she will be entitled to reside in the said house or to rent out the same. She will not be able to mortgage or sell the same. After her death, my son Shri Mool Chand will be absolute owner of the same to the extent of 1/2 share and my grand-sons Shri Ram Kishan Lal and Nand Lal to the extent of 1/2 share."

7. After the execution of the above referred will, the testator Kanwar Bhan died on 11.10.1965. As indicated earlier, his wife executed a sale deed in favour of the appellant herein leading to the son and grandson of Tej Bhan instituting a suit for declaration that the sale deed in favour of the petitioner is void and also sought delivery of possession.

8. In its judgment dated 31.01.1986, the Trial Court relied on decision in Tulsamma's case and held that the property given to the wife of Kanwar Bhan is in the nature of maintenance and such a pre-

existing right shall enlarge into full estate. Rejecting the contention of the respondent plaintiffs based on Section 14(2) and also rejecting the applicability of the judgment of this Court in Karmi v. Amru 3 and certain other decisions of the same High Court, the Trial Court dismissed the suit. Even in the first appeal, the respondent-plaintiffs relied on Karmi (supra) and certain other decisions of this Court to submit that the disposition of the property by the wife of the testator falls under sub-

section (2) of Section 14. The First Appellate Court dismissed the appeal and affirmed the decision of the Trial Court following the principle in Tulsamma and also rejected the submission of the respondent based on Karmi's decision. The High Court, from which the impugned order arises reversed the concurrent findings of the court below only on a (1972) 4 SCC 86 question of law. According to the High Court, the correct principles were laid down in the decision of Sadhu Singh v. Gurdwara Sahib Narike & Ors4.

9. Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the appellant submitted that Sadhu Singh (supra) is wrongly decided and is contrary to the principles laid down in Tulsamma. He has also referred to a number of other decisions such as Gulwant Kaur v.

Mohinder Singh 5, Thota Sesharathamma v. Thota Manikyamma6, Balwant Kaur v. Chanan Singh & Ors.7, Shakuntala Devi v. Kamla8, Jupudy Pardha Sarathy v. Pentapati Rama Krishna 9 and V. Kalyanaswamy v. L. Bakthavatsalam10. On the other hand, Mr. Sunil K. Mittal, learned counsel for the respondents has submitted that the decision of Karmi (supra) is of a three-Judge bench and it has not been overruled. He would further submit that the said judgment was in fact followed in Bhura and Ors. v. Kashiram11 where the position of law involving interplay between sub-section 1 and 2 of Section 14 has been explained. He would also rely on the decision in Sadhu Singh (supra) which was also relied on by the High Court. Further, it was submitted 4 (2006) 8 SCC 75 5 (1987) 3 SCC 674 6 (1991) 4 SCC 312 7 (2000) 6 SCC 310 8 (2005) 5 SCC 390 9 (2016) 2 SCC 56 10 (2021) 16 SCC 543 11 (1994) 2 SCC 111 that judgments in Gaddam Ramakrishnareddy and Ors. v. Gaddam Ramireddy and Anr.12, Jagan Singh (Dead) through LRs. v. Dhanwanti and Anr.13, Shivdev Kaur (Dead) by LRs. and Ors. v. RS Grewal14, Ranvir Dewan v. Rashmi Khanna and Anr. 15 and Jogi Ram v. Suresh Kumar and Ors16 adopt the same line.

10. We will first reproduce Section 14 of the Act, before referring and reviewing the judgments of this Court interpreting the Section.

“Sec 14. Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

11. We will commence with a 1967 judgment of this Court in Mangal Singh and Ors. v. Rattno (Dead) by LRs. and Anr.17. In this decision, (2010) 9 SCC 602 13 (2012) 2 SCC 628 14 (2013) 4 SCC 636 15 (2018) 12 SCC 1 16 (2022) 4 SCC 274 17 AIR 1967 SC 1786 the court explained the scope and ambit of the expression of “any property possessed by a female Hindu” in Section 14(1) of the Act. In Seth Badri Prasad v. Smt. Kanso Devi 18, a three Judge bench observed that sub-section (2) of Section 14 is more in the nature of a proviso or an exception to sub-section (1) and it comes into operation if acquisition of the property by a female Hindu is made through any of the methods mentioned

therein for the first time and without their being any pre-existing right.

12. Tulsamma was decided in 1977. It referred 19 to a number of decisions of this Court and that of the High Courts and has followed 20, approved 21 or overruled 22 them.

18 (1969) 2 SCC 586 19 Referred to: Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva (1959) Supp 1 SCR 968; RBSS Munna Lal v. SS Rajkumar (1962) Supp 3 SCR 418, Mangal Singh v. Rattno AIR 1967 SC 1786; Narayan Rao Ramachandra Pant v. Ramabai LR 5 IA 114; Mst Dan Kuer v. Mst Sarla Devi LR 73 IA 208; Pratapmull Agarwalla v. Dhanabati Bibi LR 63 IA 33; Namangini Dasi v. Kedarnath Kundu Chowdhry ILR 16 Cal 758 (PC).

20 Followed: Seth Badri Parsad v. Smt. Kanso Devi (1969) 2 SCC 586; Nirmal Chand v. Vidya Wanti (1969) 3 SCC 628; Rani Bai v. Yadunandan Ram (1969) 1 SCC 604; RBSS Munnalal v. SS Raj Kumar (1962) Supp 3 SCR 418; Eramma v. Veerupana (1966) 2 SCR 626; Mangal Singh v. Rattno (1967) 2 SCR 454; Sukhram v. Gauri Shankar (1968) 1 SCR 476; 21 Approved: B.B. Patil v. Gangabai, AIR 1972 Bom 16, Sumeshwar Misra v. Swami Nath Tiwari AIR 1970 Pat 348; Gadew Reddayya v. Varapula Venkataraju AIR 1965 AP 66; Lakshmi Devi v. Shankar Jha AIR 1967 Mad 428; H Venkanagouda v. Hanamanagouda AIR 1972 Mys 286; Smt Sharbati Devi v. Pt. Hiralal AIR 1964 Punj 114; Seshadhar Chandra Devi v. Tara Sundari Dasi AIR 1962 Cal 438; Saraswathi Ammal v. Anantha Shenoi AIR 1966 Ker 66; Kunji Thomman v. Meenakshi ILR (1970) 2 Ker 45; Sumeshwar Mishra v. Swami Nath Tiwari AIR 1970 Pat 348; Sasadhar Chandra Day v. Tara Sundari Dasi AIR 1962 Cal 438.

22 Overruled: Naraini Devi v. Ramo Devi (1976) 1 SCC 574, Gurunadham v. Sundrarajulu ILR (1968) 1 Mad 467; Santhanam v. Subramania ILR (1967) 1Mad 68; S Kachapalaya Gurakkal v. Subramania Gurukkal AIR 1972 Mad 219; Shiva Pujan Rai v. Jamuna Missir ILR (1947) Pat 1118; Gopisetti Kondaiah v. Gunda Subbarayudu ILR (1968) AP 621; Ram Jag Misir v. Director of Consolidation AIR 1975 All 151; Ajab Singh v. Ram Singh AIR 1959 J&K 92; Narayan Patra v. Tara Patrani (1970) 36 Cut LT 567; Gopisetty Kondaiah v. Gunde Subbarayodu ILR 1968 AP 621; Gurunadham v. Sundrajulu Chetty ILR (1968) 1 Mad 567.

The principles that were formulated in this landmark decision are as follows;

“(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 en- larged 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."

13. The decision in Tulsamma (supra) was followed in the case of Gulwant Kaur v. Mohinder Singh 23 and this was affirmed by a three-

Judge bench in Jaswant Kaur v. Major Harpal Singh 24.

14. In a 1991 decision, a two-Judge bench in Thota Sesharathamma (supra), while following the decision in Tulsamma (supra), noticed another three-Judge bench decision in Karmi (supra) which was not noticed in Tulsamma. Having examined the matter in detail, one of the Judges observed that the decision in Karmi (supra) "is a short judgment 23 Id no. 5- See para nos. 4 and 9.

(1989) 3 SCC 572.

without adverting to any provisions of Section 14(1) or 14(2) of the Act.

The judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Badri Pershad v. Smt Kanso Devi. The decision in Mst Karmi cannot be considered as an authority on the ambit and scope of Section 14(1) and (2) of the Act"25.

Taking a similar stand, the concurring Judge held that in Karmi (supra) "the attention of this Court to Section 14(1) was not drawn nor had an occasion to angulate in this perspective. Therefore, the ratio therein is of little assistance to the appellant"26.

15. It is true that the decision in Karmi (supra) neither analysed the provisions of the Act nor has considered the purpose and object of Section 14 and the precedents on this subject. However, the principle on the basis of which the Court in Karmi (supra) decided the case resonates in many subsequent decisions which have in fact followed it as a precedent.

16. A 1996 decision of this Court in the case of C. Masilamani Mudaliar and Ors. v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and Ors27 is important for the reason that it is of a three Id n 6 – See para 10 Ibid – See para 29 27 (1996) 8 SCC 525 Judge bench and it identifies a discordant note in a subsequent case of a two Judge bench in Gumpha v. Jaibai 28, the court observed that :

> "28. In Gumpha case 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."
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> 17. The above referred decision in Masilamani Mudaliar (supra) was followed in Bhoomireddy Chenna Reddy v. Bhoospalli Pedda Verrappa29 and V. Kalyanaswamy v. L. Bakthavatsalam, Nazar Singh v. Jagjit Kaur 30, Balwant Kaur (supra), Shakuntala Devi (supra), Santosh & Ors.

v. Smt Saraswathibai & Anr31, Jupudy Pardha Sarathy (supra) as well as the recent, Munni Devi Alias Nathi Devi (D) v. Rajendra Alias Lallu Lal (D)32 and Kallakuri Pattabhiramswamy (D) Through LRs v. Kallakuri Kamaraju & Ors33 are other decisions that have followed Tulsamma

(supra).

18. The other stream of thought seems to have originated in a three-

Judge bench of this Court in Karmi (supra) about which we have 28 (1994) 2 SCC 511 29 (1997) 10 SCC 673 30 (1996) 1 SCC 35 31 (2008) 1 SCC 465 32 (2022) 17 SCC 434 33 2021 INSC 883; in addition to Tulasamma this case also relied on Raghubar Singh v. Gulab Singh (1998) 6 SCC 314, Mangat Mal v. Punni Devi (1995) 6 SCC 88 and Jaswant Kaur v. Harpal Singh (1989) 3 SCC 572.

already mentioned. The conclusion in this decision is drawn from a different perspective of statutory construction, elucidation of which is seen in the subsequent decision of this Court in Bhura (supra).

However, it is only in Gumpha (supra) that the principle of the alternate thoughts are formulated as under:

> 1. While qualifying the law relating to intestate succession, to become a complete code, the Act also deals with testamentary succession. In Section 30, the law which had been judicially expounded is incorporated by creating absolute power in a Hindu to dispose of his property by will. This power extends to creating restricted right in favour of a female.
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> 2. Will under Indian Succession Act, applies to Hindu Succession Act as well, operates from the date of death of the testator.
>
> 3. Position of the property contemplated in Section 14(1) cannot include acquisition by will.
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> 4. The expression, 'any manner whatsoever', will not include a will, which is specifically mentioned in Section 14(2).
>
> 5. Even though the instances in the explanation are not exhaustive, it cannot include disposition by way of a will under Section 14(2).
>
> 6. Parliament has never intended to confirm a higher right on a Hindu female, than what was enjoyed by a male Hindu.
>
> 7. Possession under Section 14(1) must be legal, therefore if the position is placeable to a will, then she cannot get a higher right than what is stipulated in the document.
>
> 8. A combined reading of the Sections is that when the law attempts to remove the disability imposed by customary Hindu law, it does not enlarge and exchange the right she will get under a will.

9. The judgement in the case of Thota (supra) is not relevant for interpretation. As in that case, the testator died before the Hindu Succession Act came into force and the widow was in possession as limited owner and her rights became absolute.

10. In the present case succession opened after the Act has come into force.

19. In the above referred decision of this Court in Gumpha (supra), the Court distinguishes the decision in Thota Sesharathamma (supra) on the ground that the testator died before the commencement of the Hindu Succession Act.

20. The next important decision of this Court is Sadhu Singh (supra) the principle as formulated in this judgment can be restated as under:

1. A hindu wife is entitled to be maintained by her husband u/s.18 HAMA and a hindu widow, being a dependent u/s.21 HAMA, is entitled to claim maintenance from heirs of her husband u/s.22 HAMA to the extent of the estate inherited by them. Further, s.28 HAMA entitles her to claim maintenance against a transferee even. However, this aforesaid entitlement nowhere allows her to create a charge on her husband's property. In fact, s.27 HAMA expressly states to the contrary.

2. The test therefore is to look at the nature of right acquired by a female hindu - If she takes as an heir, she does it absolutely. But if it's under a devise, then any restriction placed will apply in view of s.14(2).

3. S.30 is an affirmation to an owner's right to deal with his property. Thus, when an owner executes a will, laying down the bequest with respect to his estate, the legatee takes subject to terms therein. S.14(2) reaffirms the affirmation in s.30. Any interpretation of s.14(1) which renders s.14(2) and s.30 otios cannot be allowed.

4. Ratio in Tulasamma has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right (limited or pre-existing). The decision in Karmi can only be justified on the premise that the widow had no pre-existing right in the self-acquired property of her husband. Decision in Bhura and Sharad Subramanyan Vs. Soumi Mazumdar & Ors. 34 is along the same lines.

5. Thus, the essential ingredients for determining application of s.14(1) are as follows - antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be.

6. Any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act.

21. As this judgment is argued to be contrary to the principles laid down in Tulsamma and also bad in law for the reason that it is a decision of a two-Judge bench, it is

necessary to extract the portion of the judgment. The extract will also indicate how Tulsamma was understood and analysed in this judgment. The relevant portion of this judgment is extracted herein for ready reference:

"4. Under Section 18 of the Hindu Adoptions and Maintenance Act, a Hindu wife is entitled to be maintained by her husband during her lifetime, subject to her not incurring the disqualifications provided for in sub-section (3) of that section. The widow is in the list of dependants as defined in Section 21 of the Act. The widow remains a dependant so long as she does not remarry. Under Section 22, an obligation is cast on the heirs of the deceased Hindu to maintain the dependant of the deceased out of the estate inherited by them from the deceased. Under sub-section (2), where a dependant has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act, the dependant would be entitled, but subject to the provisions of the Act, to maintenance from those who take the estate. It is seen that neither Section 18 relating to a wife nor Section 21 dealing with a widow, provides for any charge for the maintenance on the property of the husband. To the contrary, Section 27 specifies that a dependant's claim for maintenance under that

34 (2006) 8 SCC 91 Act, shall not be a charge on the estate of the deceased unless one would have been created by the will of the deceased, by a decree of court, by an agreement between the dependant and the owner of the estate or otherwise. Thus a widow has no charge on the property of the husband. Section 28 provides that where a dependant had a right to receive maintenance out of an estate, that right could be enforced even against a transferee of the property if the transferee had notice of the right, or if the transfer is gratuitous, but not against a transferee for consideration without notice of the right. Section 28 is in pari materia with Section 39 of the Transfer of Property Act. The Kerala High Court in Kaveri Amma v. Parameswari Amma [AIR 1971 Ker 216 : 1971 KLT 299] has liberally interpreted the expression "right to receive maintenance" occurring in the section as including a right to claim enhanced maintenance against the transferee. The sum and subtotal of the right under the Hindu Adoptions and Maintenance Act is only to claim maintenance and the right to receive it even against a transferee. In the absence of any instrument or decree providing for it, no charge for such maintenance is created in the separate properties of the husband.

11. On the wording of the section and in the context of these decisions, it is clear that the ratio in V. Tulasamma v. Shesha Reddy [(1977) 3 SCC 99 : (1977) 3 SCR 261] has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261] ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in Raghubar Singh v. Gulab Singh [(1998) 6 SCC 314 : AIR 1998 SC 2401] wherein the testamentary succession was before the Act. The widow had obtained possession under a will. A suit was filed challenging the will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the

property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right.

In Karmi v. Amru [(1972) 4 SCC 86 : AIR 1971 SC 745] the owner of the property executed a will in respect of a self- acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in Bhura v. Kashi Ram [(1994) 2 SCC 111] after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In Sharad Subramanyan v. Soumi Mazumdar [(2006) 8 SCC 91 : JT (2006) 11 SC 535] this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261] . Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is

really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression "property possessed by a female Hindu" occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance."

22. It is important to note that except, Karmi (supra), the decisions in Bhura, Gumpha and Sadhu Singh (supra) are all by two Judge benches.

The larger perspective in which Section 14 was interpreted holistically commenced from Karmi and was followed in many subsequent cases.

Some of the decisions in the same line are Gaddam Ramakrishnareddy, Jagan Singh, Shivdev Kaur, Ranvir Dewan and Jogi Ram (supra).

23. We have noticed that while following Tulsamma, the subsequent decisions in Thota Sesharathamma, Masilamani Mudaliar and Shakuntala Devi (supra) have made passing observations about the discordant note in the case of Karmi, Bhura and Gumpha (supra) but they have not been clearly and categorically overruled. Perhaps this is the reason why the subsequent decisions consistently followed the idea in Karmi and enunciated different principles in the subsequent decisions of Gumpha, Sadhu Singh (supra) and that perspective continued on its own strength.

24. We heard the present appeal in detail and have also taken a view in the matter, but having realised that there are a large number of decisions which are not only inconsistent with one another on principle but have tried to negotiate a contrary view by distinguishing them on facts or by simply ignoring the binding decision, we are of the view that there must be clarity and certainty in the interpretation of Section 14 of the Act.

25. In view of the above, we direct the Registry to place our order along with the appeal paper book before the Hon'ble Chief Justice of India for constituting an appropriate larger bench for reconciling the principles laid down in various judgments of this Court and for restating the law on the interplay between sub-section (1) and (2) of Section 14 of the Hindu Succession Act.

.....J. [PAMIDIGHANTAM SRI NARASIMHA] .....J. [SANDEEP MEHTA] NEW DELHI;

DECEMBER 09, 2024.