

Karnataka High Court Kallappa Rama Londa vs Shivappa Nagappa Aparaj And ... on 7 June, 1994 Equivalent citations: AIR 1995 Kant 238, ILR 1994 KAR 3666 Bench: M Mirdhe JUDGMENT 1. Regular Second Appeal No. 659 of 1983 is filed by the appellant who was the plaintiff in the trial Court against the judgment and decree dt. 26-7-1983 passed by the Civil Judge-cum-J.M.F.C. Athani, in R.A. No. 100 of 1980 confirming the judgment and decree dt. 25-9-1978 passed by the I Additional Munsiff, Belgaum, in O. S. No. 261 of 1977. Regular Second Appeal No. 705 of 1983 is filed by the appellant who was the defendant in the trial Court against the judgment and decree dt. 26-7-1983 passed by the Civil Judge-cum-J. M. F. C. Athani, in R.A. No. 101 of 1980 confirming the judgment and decree dt. 25-9-1978 passed by the I Additional Munsiff, Belgaum, in O.S. No. 260 of 1977. 2. I have heard the learned counsel for the appellant and the learned counsel for the respondents fully and perused the records of the CASE. 3. One Shivappa had filed a suit in O.S. No. 260 of 1977 against this appellant for a permanent injunction to restrain the appellant from obstructing him with his peaceful possession and enjoyment of the suit schedule property on the ground that these properties along with some other properties belonged to Appanna who died leaving behind him his widow Krishnabai, a son Shankar and daughter-in-law Neelavva and Shankar also died subsequently leaving behind two widows i.e., his own widow Neelawa and his widowed mother Krishnabai. Krishnabai got the suit schedule property by way of maintenance from her daughter-in-law Neelavva in the year 1935 after the coming into force of the Hindu Succession Act and by virtue of Section 14(1) she became the absolute owner and thereafter she has gifted the properties in favour of the plaintiff Shivappa and he is in possession of the same. O.S. No. 261 of 1977 is filed by the plaintiff for declaration of his title and for possession and for injunction not to obstruct his possession and enjoyment of the suit properties or in the alternative for possession of the suit properties on the main averments that the said suit properties were given to mother-in-law of Neelavva for maintenance only and she had no right to alienate those properties and the alienations if made by her during her lifetime will not survive beyond her lifetime and the properties will revert back to Neelavva and Neelavva had sold these properties to the appellant Kallappa. Both the suits were clubbed together and common evidence was recorded and thereafter the trial Court dismissed the suit of the appellant and decreed the suit of the respondents. The appellant was aggrieved by the judgment and decree of the trial Court and hence he preferred Regular Appeals against the judgment and decrees of the trial Court and both the Regular Appeals also came to be decided against the appellant and hence these Appeals. 4. The substantial questions of law that are framed for decision in these cases are as follows:—“(1) Whether the finding of the Courts below that Krishnavva became the absolute owner of the suit properties, notwithstanding the fact that they were given to her by her daughter-in-law for maintenance only in the year 1935 is in consonance with Section 14(1) and (2) of the Hindu Succession Act? (2) Whether the suit O.S. No. 260/77 filed for a mere injunction without declaration is opposed to law and especially in view of the principle laid down in 1982(2) Kant LJ 561 ?” 5. The undisputed facts are

as follows :- The suit properties along with some other properties were of the ownership of one Appanna Korabu and he died in the year 1929 leaving behind him his wife Krishnabai, his son Shankar and his daughter-in-law Neelavva, wife of Shankar. Shankar was the only son of Appanna and he inherited the properties of Appanna by survivorship. Shankar also died in the year 1931 leaving behind him his wife and mother i.e. Krishnabai and Neelavva. In the year 1935. the daughter-in-law Neelavva gave the suit schedule properties to her mother-in-law Krishnabai for her maintenance. 6. The learned Author Mulla in Hindu Law, 16th Edition, at page 550 has given an illustration i.e. illustration (c) in Section 544. The said Section lays down that "An heir is legally bound to provide, out of the estate which descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain. Illustration (c) refers to the case of mother-in-law. It reads as follows:-"(c) Mother-in-law. – A dies leaving a widow B and a mother C. B is under no personal obligation to maintain her mother-in-law C, but if she inherits property from A, she is bound to maintain C., she (C) being a person whom A was legally bound to maintain as his mother (Bai Kanku v. Bai Jadav (1884) 8 Bom 15". Neelavva gave the two properties i.e. the suit schedule properties to her mother-in-law for her maintenance. The difference arose between the mother-in-law and daughter-in-law and allegations and counter allegations have been hurled against each other even to the extent of touching their character. Krishnabai gifted the suit schedule properties in favour of Shivappa whereas Neelavva has executed a sale deed of the suit schedule properties in favour of the appellant. Kallappa's claim is that after the coming into force of Section 14 of the Hindu Succession Act in the year 1956, Krishnabai had become full owner and, therefore, the gift deed executed by her in favour of Shivappa is legal and valid whereas the case of the appellant is that Krishnabai had only limited estate and that could not have been enlarged into a full estate in view of Section 14(2) of the Hindu Succession Act. Therefore, after the death of Krishnabai in the year 1974 the properties are to revert to Neelavva and Neelavva has executed a sale deed in favour of the appellant and therefore he has got right title and interest to the said properties. 7. The learned counsel for the appellant relied on a ruling of the Supreme Court reported in *Mst. Karmi v. Amru* wherein His Lordship of the Supreme Court has held as follows (at p. 746):-"Thus where only life estate is conferred on her under the will, she cannot claim to have become absolute owner under the Act," His Lordship has observed in that ruling as follows:- "The life estate given to her under the will cannot become an absolute estate under the provisions of the Hindu Succession Act." 8. In *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi (dead) by LRs.* (AIR 1977 SC 1944) their Lordships of the Supreme Court have held as follows (at pp. 1947, 1948) :- "Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Subsection (2) is more in the nature of a proviso or exception to subsection (1). It excepts certain kinds of acquisition of property by a Hindu female

from the operation of sub-section (1) and being in the nature of an exception, to a provision which is calculated to achieve A social purpose by bringing about change in the social and economic position of woman in Hindu Society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by subsection (1). Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to subsection (1) and so read, it must be 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. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, 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 prescribes a restricted estate in the property.” There are two rulings of the Supreme Court now, one holding that the limited estate cannot become full estate under the provisions of Section 14 of the Hindu Succession Act and another ruling reported in AIR 1977 SC 1944 wherein the limited estate is given to a widow and such an estate becomes enlarged into full estate under Section 14(1) of the Hindu Succession Act. Both these cases have been considered by this Court in *Basappa Sangappa Unki v. Siddappa Ehimppa Hullyal* (ILR 1991 Kant 2877) wherein His Lordship has observed as follows:- “8. It appears that there is a conflict of judicial opinion as evidenced by these Decisions of the Supreme Court. All judgments of the Supreme Court are binding upon this Court and therefore it has to be seen as to which of them most appropriately apply to the facts of this case. In the instant case a submission was made before the Court below that the widow having been given a life estate in recognition of their pre-existing right of maintenance, the case was governed by Section 14(1) and not Section 14(2) of Hindu Succession Act. That was precisely the question raised in AIR 1977 SC 1944 and AIR 1978 SC 361. The precise question was answered in favour of the party contending that such limited estate was enlarged into an absolute estate by application of the Rule under Section 14(1) of the Hindu Succession Act, and that Section 14(2) of the Hindu Succession Act did not apply to such a case. This specific point was neither raised nor considered by the Supreme Court in and though what was observed in those two judgments would certainly help the plaintiff/appellant in this Appeal. The proposition of law stated in those two judgments are wide enough and permit of no exception to the Rule laid down therein. However, since the question that arose in the instant appeal directly arose in AIR 1977 SC 1944, I hold that the judgment of the Supreme Court in *Tulsamma's* case squarely governs this case. The learned Civil Judge was therefore right in dismissing the suit. I may also notice the judgment of the Supreme Court relied upon by learned counsel for the appellant. That was a case where a will was made in favour of a separated brother's wife. It was held that she did not enlarge her limited estate into an absolute estate in view of

the provisions of Section 14(2) of the Hindu Succession Act. This case is clearly distinguishable because a separated brother's wife had no pre-existing right of maintenance which she could enforce against the property of her husband's separated brother. The right in her favour was created for the first time under the will and was not in recognition of any preexisting right." This Court has followed the ruling reported in *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi* (dead) by LRs. (AIR 1977 SC 1944) on the ground that the specific point regarding the application of Section 14(1) and (2) was neither raised nor considered by the Supreme Court in *Mst. Karmi v. Amru* and in *G. Appaswamy chettiar v. R. Sarvapari Chettiar* 9. In another ruling in *Smt. Gulwant Kaur v. Mohinder Singh* the Supreme Court has held as follows :- "Where a Hindu wife gets lands in lieu of maintenance from her husband and she enjoys the produce therefrom, her right becomes absolute by virtue of Section 14(1) of the Act. L.P.A. No. 521 of 1976 D/- 13-5-1980 (Punj & Har) Reversed. Case law discussed. Section 14 is aimed at removing restriction or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to be lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and the widow is not required to establish any further title before she can claim; full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. 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, sub-section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedent right. The Supreme Court in has not laid down that what was enlarged by sub-section (1) of Section 14 into a full estate was the Hindu Woman's estate known to Hindu law. When the Court uses the words 'limited estate', the words are used to connote a right in the property to which the possession of the female Hindu may be legitimately traced, but which is not a full right of ownership. If a female Hindu is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she had acquired a limited right or interest in the property and once that position is accepted, it follows that the right gets enlarged to full ownership under Section 14(1) of the Act. Therefore, it could not be argued that even if the land was given to the wife in lieu of maintenance, it must be established that what was given of her was a limited estate in the sense of ownership without the right of alienation and that under Section 14 of the Hindu Succession Act, only such a limited estate would blossom into an absolute estate." Taking into consideration the rulings of the Supreme Court, it will have to be held that even if the suit schedule properties were given to Krishnabai for maintenance, that limited estate will become full estate by virtue of Section 14(1) of the

Hindu Succession Act, The learned counsel for the appellant submitted that in view of the fact that the estate given to Krishnabai was a limited estate for her maintenance, it will be Section 14(2) of the Hindu Succession Act and not Section 14(1) of the Act will come into play. This argument of the learned counsel for the appellant is answered in the ruling reported in *Jaswant Kaur v. Major Harpal Singh*, wherein it has been held as follows:- “It is now settled law that if a female Hindu acquires property under a written instrument or a decree of the Court and where such acquisition is not traceable to any antecedent right then sub-section (2) of Section 14 alone would be attracted and where an antecedent right is traceable, a document in the nature of will is of no consequence and the case will be covered by provisions contained in Section 14(1).” In the instant case also the right of Krishnabai is an antecedent right to be maintained by her husband and, therefore, even though there is a document giving her limited estate, the case will fall not under Section 14(2) of the Act but under Section 14(1) of the Act, Hence Krishnabai will become absolute owner of the suit schedule properties notwithstanding the fact that they were given to her by her daughter-in-law for her maintenance in the year 1935. The first question of law raised in this appeal is answered accordingly. 10. The second question is whether the suit filed by Shivappa in O.S. No. 260 of 1977 for a mere injunction without declaration is opposed to law. The evidence on record discloses that Shivappa was in possession of the suit schedule properties and he was claiming the possession of the properties by virtue of a gift deed executed by Krishnabai Krishnabai was the person to whom Neelavva had given those properties for her maintenance and by virtue of Section 14(1) of the Act she had become absolute owner of the suit schedule properties. She had a right to give the property in favour of Shivappa. When such is the case, it cannot be said that the possession of Shivappa was illegal. The ruling cited in the question of law lays down that where the suit for declaration of title and injunction is filed and the title is not clear the question of title will have to be kept open without denying the plaintiff’s claim for injunction, in views of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff had gained possession by any unfair means just prior to the suit. Even as per the decision of this ruling the suit of Shivappa will be maintainable for mere injunction in view of the fact he is in possession and it cannot be said that he has obtained possession by fraud just prior to his suit. Therefore, the suit filed by Shivappa will be maintainable. The second question of law raised in this Appeal is answered accordingly. I do not find any such grounds to interfere with the judgment and decrees of the Courts below. 11. Hence I proceed to pass the following order:- The Appeals are dismissed confirming the judgment and decrees of the Courts below. No order as to costs. 12. Appeal dismissed.