

Bombay High Court Smt. Gangabai vs -D. Smt. Saraswati on 24 July, 2012
Bench: M.N. Gilani 1

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

Second Appeal No.296/1995

Smt. Gangabai w/o Krishnarao Mandalik,
aged about 45 Yrs., Occu. Weaver,

R/o Kalmeshwar, Post Kamleshwar,
Tahsil Kalmeshwar, Distt. Nagpur.

..V/s..

Smt. Chindhabai w/o Bapurao Wangekar,
aged about 50 Yrs., Occu. Cultivator,

R/o Bramhani, Tahsil, Kalmeshwar,
Post Kalmeshwar, Distt. Nagpur.

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1-A. Smt. Janabai w/o Somaji Patil,
aged about 55 Yrs., r/o Bramhani,

Tahsil Kalmeshwar, Distt. Nagpur.

1-B. Smt. Chandrakala w/o Gopal Bandhekar,
R/o Bramhani, Tahsil Kalmeshwar,
Distt. Nagpur.

1-C. Smt. Baby w/o Anandrao Chunarkar,
r/o Nandagiri Road, Ward No.86,
Ladpura, Nagpur - 17.

1-D. Smt. Saraswati w/o Amrut Khatik,

r/o Tandapeth, Navin Basti,
Chandrabhaga Nagar, Nagpur.

Mr. Rohit Joshi, Adv. for appellant.
Mr. V.R. Choudhari, Adv. for respondents.

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CORAM : M.N. GILANI, J.

Reserved On : 16/07/2012. Pronounced On : 24.7/2012. JUDGMENT. 1. This is an appeal directed against the judgment and decree dated 24/1/1995 passed by Additional District Judge, Nagpur in Regular Civil Appeal No.107/1990 thereby conforming the judgment and decree dated 21/2/1990 passed by Civil Judge Junior Division, Saoner in Regular Civil Suit No.58/1986 thereby suit filed by the plaintiff respondent herein for declaration and delivery of possession of the suit land came to be decreed. 2. One Eknath who is the original owner of the agricultural land area 0.67 H.R. and the house No.38 situated at Bramhani, Tq. Kalmeshwar, Distt. Nagpur (for short "suit property") which is the subject matter of instant appeal who died in the year 1953 leaving behind him a widow

Salubai and two daughters namely Chindhabai original plaintiff and Gangabai original defendant. Salubai mother of the plaintiff and defendant died in the year 1983. Before her death, on 19th October 1982 she executed the sale deed of the suit properties in favour of the plaintiff. The dispute arose between plaintiff and defendant over the ownership of the suit properties. This has resulted in the plaintiff filing suit for declaration, injunction and possession of the suit properties against her sister - defendant. 3. Defendant resisted the suit. Her case was that during life time and in the year 1982 Salubai mutually partitioned the suit properties and placed the plaintiff and defendant in possession of their respective shares. The mutations were also carried out. As against the sale deed executed by Salubai in respect of the suit properties, it is stated that fraud was practiced on her by the plaintiff. Sale deed being an outcome of fraud, no title in respect of the suit properties passed in favour of the plaintiff. 4. The learned Trial Court framed as many as 10 issues. Oral as well as documentary evidence was adduced by the parties. The learned Trial Court held that after death of Eknath, Salubai came in possession of the suit properties. By virtue of Section 14 of the Hindu Succession Act she became absolute owner of the same. On 10th August 1982 she executed sale deed in favour of the plaintiff. As regards defendant's case that there was amicable settlement and suit properties were allotted to plaintiff and defendant in equal shares, it was held that there was no such partition and so-called partition deed is not admissible in evidence. In that light of the matter, the learned Trial Court held that plaintiff is entitled to suit properties and granted the relief of declaration and possession of the suit properties. 5. The First Appellate Court after considering the material placed on record concurred with the findings of facts on all the points recorded by learned Trial Court. Resultantly, appeal came to be dismissed. 6. This Court vide order dated 12/6/1996 admitted this second appeal on grounds 2, 3 and 5 and thereafter the learned counsel for the appellant raised 3 more substantial questions of law for being adjudicated upon in this second appeal. They are reproduced below : "1. Whether Smt. Salubai could transfer the property by sale-deed which property has already been transferred before the day of sale-deed and was in possession of the appellant, as owner thereof ? 2. What was the effect of the mutation proceedings in mutating the said property in the name of the appellant in August 1982 ? 3. That, both the Courts below have erred in law in totally disregarding and overlooking the relevant papers on record showing that the suit property belonged to the appellant ? 4. On the death of their father, were not the appellant and the respondent vested with right to maintenance against the suit property, which belonged to their deceased father ? 5. On the commencement of the Hindu Succession Act, 1956 did not this limited right of maintenance blossom into an absolute right in view of section 14(1) of the said Act ? 6. After the commencement of the Hindu Succession Act, 1956 did not the appellant, respondent and their mother become co-owners of the suit property, each having 1/3rd undivided share therein ?" 7. Admittedly, Eknath died intestate in the year 1953. His widow Salubai came to acquire and possess the suit properties left by him. After coming into force of Section 14 of the Hindu Succession Act, 1956, she became absolute owner of the same. Mr. Rohit Joshi,

learned counsel for the appellant, contended that even in the old Shastrik Hindu Law the daughters have been conferred with the right to get maintenance from the ancestral/joint family property. Therefore, like widow succeeding to the joint family properties in satisfaction of her right of maintenance, the daughter has to be kept at par with her. With this analogy, and by giving wider meaning to the word “possessed” it should be held that along with mother, the daughter also acquired and possessed the properties left by her father in satisfaction of her right of maintenance. To fortify his contention, reliance is placed on the decision in case of *Vaddeboyina Tulasamma and others V/s. Vaddeboyina Sehsha Reddi* reported in AIR1977 S.C.1944. On interpretation of section 14(1) of the Hindu Succession Act the principles laid down in that case by Their Lordships still hold the field. In that case, there was dispute between the widow and brother of her deceased husband. In execution of the decree for maintenance, a compromise was arrived at regarding getting the property with limited interest in satisfaction for her right of maintenance. It was then held that the property in question was acquired by the widow under compromise in lieu of satisfaction of right of maintenance. Sub-section 1 of section 14 was attracted and she must be deemed to have become owner of the suit property notwithstanding that compromise prescribed a limited interest for her in the said property. 8. In case of *Mangal Singh and others V/s. Smt. Rattno* and another reported in AIR 1967 SC 1786 scope of word “possessed” occurring under sub-section 1 of section 14 of the Act was considered. Their Lordships held that it is intended to cover not only actual or constructive possession but also possession in law. 9. The contention that the daughter having right to be maintained out of the joint family property and as such she had charge over such property would connote that in law she “possessed” the property in law and after coming into force of section 14(1) of the Hindu Succession Act she becomes full owner thereof cannot be accepted for many reasons. Section 14(1) contemplates acquisition and possession of the property as a limited owner. The aforesaid provision aims at abolishing concept of Hindu womens’ limited estate and making them full owner thereof. By no stretch of imagination, it can be said that the daughter having right to receive maintenance acquires a limited ownership of the joint family property or part thereof. Certainly, consideration would be different if any property is settled upon the daughter under any instrument or otherwise in lieu of her right to maintenance. In that event, the requirements of a female Hindu having had “possessed” the property on the date of coming into force of Hindu Succession Act, can be said to be fulfilled. 10. In *Eramma V/s. Veerupana and others* reported in AIR 1966 S.C.1879 the Supreme Court explaining the provisions of Section 14 of the Hindu Succession Act held that it is not attracted where female Hindu is in possession of property without any right to it. Explaining this Their Lordships observed that : “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 S.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" as given in the last portion of subsection (1) of S.14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, S.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." (Emphasis supplied) 11. In case of Bai Vajja and others V/s. Thakorbhai Chelabhai and others reported in AIR 1979 S.C.993 it was explained that limited ownership is sine qua non for applicability of sub-section 1 of section 14 of the Hindu Succession Act. 12. Relying upon the decisions in Eramma V/s. Veerupana and others (supra) and Bai Vajja and others V/s. Thakorbhai Chelabhai and others (supra) the Supreme Court in case of Kalawatibai V/s. Soiryabai and others reported in AIR 1991 S.C.1581 Their Lordships held that : "A female Hindu possessed of the property on the date the Act came into force could become absolute owner only if she was a limited owner. The legislature did not intend to extend the benefit of enlargement of estate to any or every female Hindu irrespective of whether she was a limited owner or not." 13. Facts of the instant case are : After death of Eknath in the year 1953, his widow Sakubai acquired limited interest in the property left by him which ripened into full ownership after coming into force of Section 14 (1) Hindu Succession Act. Viewing from any angle and having regard to the right of both these daughters to receive maintenance from the properties left by their father there would be no warrant in saying that they acquired a limited ownership in the said properties. There is a distinction between acquiring the limited ownership in the property and having charge over the said property to ensure existence of source for future maintenance. Merely having right to receive maintenance without anything more is not suffice. In case of Gulabrao Balwantrao Shinde and others V/s. Chhabubai Balwantrao Shinde and others reported in AIR 2003 S.C.160 the widow was in possession of the ancestral property. There was no pleadings that said property was given to her by way of maintenance. Their Lordships held that mere possession would not enlarge into full ownership right by invoking section 14 of the Hindu Succession Act. In the instant case after death of Eknath possession was that of mother when Hindu Succession Act came into force. 14. In Balwant Kaur and another V/s. Chanan Singh and others reported in AIR 2000 S.C.1908 the question before Their Lordships was chance of a daughter to succeed to her father's estate in case father died intestate in the light of the facts that the father had conferred limited ownership on her by executing will. Resolving the issue, Their Lordships observed that : "limited ownership conferred on daughter by her father's will would not mature into full ownership merely on basis of such chance to succeed." Her legal right being not pre-existing she has merely a chance to succeed i.e. spess successionis. 15. Aforesaid being the legal position, it follows that on death of Eknath in the year 1953, Salubai who succeeded to the properties by virtue of provisions of Hindu Womens Right to Property Act would become full owner of the said properties on coming into force of Hindu Succession Act. Her limited ownership will be enlarged into

full ownership. Since she became full owner of the properties left by deceased Eknath, she has a right to transfer the same. The question of the daughters becoming co-owners along with their mother does not arise. Gangabai - original defendant relied upon the partition deed which was not accepted and rightly so. The learned Trial court found number of flaws touching to the execution of the said deed. It was rightly held by both the Courts below that it is not admissible in evidence. The very foundation of the mutations is nothing but this partition deed which is inadmissible in evidence and has not been proved. Exhibit 49 is the Ferfar entry which refers to Salubai partitioning the lands in her possession and allotting them to her daughters namely Chindhabai and Gangabai. Since this 'Ferfar' and subsequent entries in the 7/12 extracts are an outcome of the alleged partition deed which the defendant could not prove and substantiate, they became redundant. Both the courts below were fully justified in discarding the same. In that view of the matter, the sale deed executed by Salubai on 19/10/1982 cannot be questioned on the ground that on 10/8/1982 (date of partition) Salubai was divested of her rights in the suit properties. I am, therefore, of the view that sale deed executed by Salubai is perfectly valid. Mutations carried out will have no bearing on her right to transfer the property of which she is full owner. This is the only inference which can possibly be deduced from the evidence on record. In that view of the matter, questions formulated are answered thus : No error was committed by both the Courts below in considering the evidence particularly, entries in the revenue record. Having held that there was no partition, Salubai continued to be the absolute owner of the suit property. As such she had a right to execute the sale deed. On death of Eknath (in the year 1953) the property devolved upon Salubai as limited owner was enlarged to full ownership. Thus, the question of her daughters' getting any share in the property does not arise. In the result, appeal fails and is dismissed with no order as to costs. JUDGE Tambaskar.